

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 289 OF 2022

Jyoti Jagtap,

D/o. Raghobha Shankar Jagtap,
Indian inhabitant, aged 34 years,
Presently lodged at Byculla District
Jail (Women), Class – I, Byculla,
Mumbai – 400 008;
Otherwise R/o. Pulacha – Mala,
Belsar, Teshil – Purandar,
Pune.

.. Appellant

(Ori. Accused No.15)

Versus

- 1. National Investigating Agency,**
(FIR No.1 of 2020)
having its Mumbai office at
7th Floor, Cumballa Hill Telephone
Exchange, Pedder Road,
Mumbai- 400 026.

- 2. State of Maharashtra**

.. Respondents

Mr. Mihir Desai, Senior Advocate i/by Kritika Agarwal, Advocate for Appellant.

Mr. Sandesh Patil, Advocate & Special PP a/w Mr. Chintan Shah, Ms. Anusha Amin, Mr. Prithviraj Gole, Advocate for Respondent No. 1

Mr. S.S. Hulke, APP for State

Mr. Pradip Bhale, Dy. S.P. N.I.A. present.

CORAM : A. S. GADKARI &
MILIND N. JADHAV, JJ.

RESERVED ON : 04th OCTOBER 2022
PRONOUNCED ON 17th OCTOBER 2022

JUDGMENT (PER : MILIND N. JADHAV, J.)

. By this Appeal, filed under Section 21(4) of the National Investigation Agency Act, 2008 (for short “**NIA Act**”), Appellant has challenged the Judgment and Order dated 14.02.2022 passed by the Special Judge, Greater Bombay (for short “**Trial Court**”) in NIA Special Case No.414 of 2020, rejecting the Appellant's Bail Application.

2. Appellant is arraigned as accused No. 15 in FIR No. RC-01/2020/NIA/MUM registered by National Investigation Agency (for short “**NIA**”) under Sections 120B, 115, 121, 121A, 124A, 153A, 505(1)(B) and 34 of the Indian Penal Code, 1860 (for short “**IPC**”) and Sections 13,16,18,18A, 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act, 1967 (for short “**UAP Act**”).

3. Facts which emerge for consideration of the present Appeal, are as under:

- (i) On 31.12.2017, Bhima Koregaon Shaurya Din Prerana Abhiyan organised an event called ‘Elgaar Parishad’ in Shaniwarwada, Pune. It was decided to celebrate 200th Anniversary of the historic battle of Bhima Koregaon on 01.01.2018 by more than 200-250 social

organisations under the banner of '*Bhima Koregaon Shaurya Din Prerana Abhiyan*' led by Hon'ble Justice (Retd.) P.B. Sawant and Hon'ble Justice (Retd.) B.G.Kolse Patil. On 01.01.2018, mobs bearing saffron flags attacked persons travelling to and returning from Shaniwarwada Pune; there was large scale violence and one youth lost his life.

- (ii) A Zero(0) FIR was registered on 02.01.2018 at Pimpri Chinchwad Police Station, Pune by eye-witness Ms. Anita Salve under various provisions of Indian Penal Code, 1860, Arms Act,1959, Maharashtra Police Act, 1951 and Scheduled Castes and Scheduled Tribes (Previsions of Atrocities) Act, 1989) (for short "SC & ST Act") alleging involvement of Sambhaji Bhide, Milind Ekbote and their followers for the attack and violence. A state wide bandh was also called by several Dalit, OBC, Maratha and Muslim organisations against the attacks across Maharashtra State thereafter.
- (iii) On 08.01.2018, first informant Mr. Tushar Damgude, registered FIR No. 4 of 2018 under the provisions of Sections 153-A, 505(1)(b), 117 read with 34 of IPC stating that, the Elgar Parishad event organised at

Shaniwarwada, Pune on 31.12.2017 was attended by him at around 2:00 p.m., wherein there were a few speakers, compere, singers and other performers who performed on stage. The speakers gave provocative speeches, their performances were provocative in nature and had the effect of disrupting communal harmony. It is stated that the banned terrorist organisation CPI (Maoist) (for short "**CPI(M)**") had an organisational role to play in the said programme. CPI(M) wanted to infiltrate, inculcate and permeate its ideology amongst the masses, mostly impoverished classes and misguide them towards violent unconstitutional activities. According to complainant Kabir Kala Manch's (for short "**KKM**") Sudhir Dhawale, other members and activists had performed provocative street plays in different areas of Maharashtra earlier, made malice speeches and spread false history, made disputable statements and objectionable slogans inciting passion and hatred to disrupt communal harmony, sung songs and participated in road dramas. On 31.12.2017, these very activists performed skit / stage plays at the 'Elgar Parsihad' event, as a direct result of which there were incidents of violence, arson,

stone pelting and death of an innocent person near Bhima Koregaon, Pune on 01.01.2018.

- (iv) Houses of Rona Wilson (Accused No. 2), Surendra Gadling (Accused No. 3), Sudhir Dhawale (Accused No. 1), Harshali Potdar, Sagar Gorakhe (Accused No. 13), Deepak Dhengale, Ramesh Gaichor (Accused No. 14) and Appellant Jyoti Jagtap (Accused No. 15) were searched by the police. Articles and material seized during the search were sent to Forensic Science Laboratory, Pune. The analysis of seized electronics/digital articles confirmed that accused Surendra Gadling, Rona Wilson, Shoma Sen (Accused No. 4), Mahesh Raut (Accused No. 5), Comrade M. @ Milind Teltumbade (WA-1) (now deceased), Comrade Prakash @ Navin @ Ritupan Goswami (WA-2) (absconding), Comrade Manglu (WA-3) (absconding), Comrade Deepu (WA-4) (absconding) were involved in the crime. During investigation, the investigating officer invoked provisions of Sections 13, 16, 17, 18, 18(B), 20, 38, 39, and 40 of the UAP Act.
- (v) Accused Surendra Gadling, Rona Wilson, Shoma Sen, Mahesh Raut and Sudhir Dhawale were arrested on

06.06.2018. Residences of Shoma Sen and Mahesh Raut were searched, and Police seized digital devices and other articles. Articles and material seized showed involvement of more accused, that is, Varavara Rao (Accused No. 6), Arun Ferreira (Accused No. 8), Sudha Bharadwaj (Accused No. 9), Vernon Gonsalves (Accused No. 7), Anand Teltumbade (Accused No. 10), Stan Swamy (Accused No. 16) and Gautam Navlakha (Accused No. 11). Their names were added on 23.08.2018.

(vi) Searches were conducted on 28.08.2018 at the residences/workplaces of Varavara Rao, Sudha Bharadwaj, Arun Ferreira, Gautam Navlakha, Stan Swamy and Vernon Gonsalves. Police arrested Varavara Rao, Sudha Bharadwaj, Gautam Navlakha, Arun Ferreira and Vernon Gonsalves and put them under house arrest. On 15.11.2018, Pune Police filed charge sheet under sections 153 (A), 505(1)(B), 117, 120 (B), 121, 121 (A), 124 (A) and 34 of IPC and sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the UAP Act against Sudhir Dhawale, Surendra Gadling, Shoma Sen, Mahesh Raut, Rona and five absconding accused

persons namely Kishan da @ Prashanto Bos (WA-5), Milind Teltumbde, Prakash @ Rituparn Goswami, Deepu and Manglu. Subsequently, on 21.02.2019, Police filed supplementary charge sheet under sections 153 (A), 505(1)(B), 117, 120 (B), 121, 121 (A), 124 (A) & 34 of IPC and section 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the UAP Act against Varavara Rao, Arun Ferreira, Vernon Gonsalves and Sudha Bharadwaj and one absconding accused namely Ganapathy @ Mupalla Laxman Rao (WA-6).

(vii) On 19.02.2019, Pune police filed supplementary chargesheet against four more arrested persons before the Sessions Court.

(viii) On 24.01.2020, the Under Secretary to the Government, Ministry of Home Affairs, New Delhi, directed the Respondent No. 1 - NIA to take up the investigation of FIR No. 4/2018 of Vishrambaug Police Station. NIA re-registered FIR RC-01/2020/NIA/Mum u/s. Section 153A, 505(1)(b), 117, 34 of the IPC and Section 13, 16, 18, 18B, 20 and 39 of the UAP Act on 24.01.2020.

(ix) Appellant was arrested on 08.09.2020.

- (x) Appellant applied for bail by filing Criminal Application No.5 of 2021 in the NIA Special Court. Appellant contended that prosecution case against her at the most related to offences punishable under Sections 38 and 39 of the UAP Act and there was no incriminating material found against her to link her with the banned CPI(M), a terrorist organization and / or support the terrorist organisation. It was contended that there is no material to suggest that Appellant was involved in any conspiracy to overthrow the government. Appellant claimed that, it would take time for conclusion of trial, and thus, prayed to release her on bail. Respondent-NIA opposed the application. NIA claimed that there is evidence against Appellant and all co-accused having a link with members of the banned organisation CPI(M) and they were all active members in its overt and unconstitutional activities. NIA contended that Appellant had received arms / weapons / explosives training with the banned organisation CPI (Maoist) in the past and therefore, Appellant should not be released on bail.
- (xi) Learned Special Judge rejected the bail application by

the impugned judgment and order dated 14.02.2022.

Hence, Appellant is before us in appeal.

Respondent No. 1 - NIA has filed affidavit in reply dated 17.08.2022 and has placed a compilation of relevant documents from the chargesheet running into 134 pages.

4. We have heard Mr. Mihir Desai, learned Senior Advocate appearing for Appellant and Mr. Sandesh Patil, Special PP for Respondent No.1 – NIA and Mr. S.S.Hulke, learned APP for State of Maharashtra and with their able assistance perused entire record.

5. Mr. Mihir Desai, learned Senior Advocate appearing on behalf of Appellant has made the following submissions:

5.1. That there are 4 specific grounds indicting involvement of Appellant put forth by prosecution in the present case, viz; (a) that Appellant was part of the organizing committee for 'Elgar Parishad' and attended organisational meetings prior to the event date; (b) that Appellant, on the date of event participated, performed and made provocative slogans and thus was involved in the larger conspiracy to unsettle the democratically established government and spread communal disharmony; (c) that the provocative acts of Appellant on the date of event led to violence as alleged in the FIR on the following day; and (d) that Appellant had received arms training in 2011 and

attended the camp conducted by co-accused and members of the banned CPI(M), a terrorist organisation;

5.2. He submitted a consolidated argument in respect of the first 3 grounds relating to the 'Elgar Parishad' event. He submitted that it was organized by more than 200 – 250 social organizations and in all 13 preliminary meetings were held for organizing the said event prior to the date of event and out of them Appellant had participated in 4 meetings on 24.09.2017 (at Dadar), 02.10.2017 (at Pune), 12.11.2017 (at Aurangabad) and 23.11.2017 (at Aurangabad). That the invitation card in respect of organizing and inviting people for the said event was signed by more than 100 persons, out of which Appellant was one of them and incidentally only 15 persons out of the entire organisational team of the said event have been proceeded with by filing FIR. That in so far as indictment of Appellant for making provocative statements is concerned, prosecution has relied upon 3 statements viz. of Mr. Kishor Kamble dated 11.06.2018, Mr. Datta Pole dated 12.06.2018 and Dr. Sangram Bamne @ Sangram Maurya dated 24.09.2020. However, perusal of all 3 statements reveal that none of them specifically talk about or point a finger towards any provocative act or statement made by Appellant during the said event. That the report dated 01.01.2018 prepared by the Senior Police Inspector, Vishrambaug Police Station and submitted to the Deputy Commissioner of Police, Pune City merely states that participation of

Appellant was restricted to shouting slogans and performance in the skit/play with several other participants during the event and does not directly attribute any role of provocative nature and act to Appellant. That there is no statement recorded which directly indicts Appellant's role as being provocative in nature and leading to violence on the following day after the event. That the name of Appellant did not figure in the FIR registered on 02.01.2018.

5.3. In respect of the allegation for indictment of Appellant on the basis of her visit to the forest in the year 2011 when she was 24 years old, he submitted that prosecution has relied on two statements dated 16.08.2020 and 17.08.2018 given by KW-3 under Section 161 and 164 of the Cr.P.C. That out of these two statements, statement under Section 161 dated 16.08.2020 talks about Appellant carrying arms whereas the second statement under Section 164 is absolutely silent about Appellant's role / name. That prosecution has further relied on 4 statements dated 02.11.2018, 23.12.2018, 24.08.2020 and 25.08.2020 given by KW-4 under Section 161 (first two statements) and 164 (later two statements) of the Cr.P.C. Out of these 4 statements, two statements under Section 161 do not mention the name of Appellant whereas the two statements under Section 164 mention the presence of Appellant in the forest during her visit in the year 2011. He submitted that, taking the case of prosecution at the highest, assuming that Appellant had visited the forest in the year

2011, it was the exuberance of her youth days and nothing more should be read into it to link her visit to the present allegations in the FIR. That merely on the basis of these 3 statements mentioning the presence of Appellant during her visit in the forest, she cannot be linked to the banned CPI(M) terrorist organisation.

5.4. That prosecution registered FIR on 08.01.2018, whereas they arrested Appellant on 08.09.2020 i.e. after a period of almost more than 2 years and 9 months. That during this period Appellant was always available and despite two raids for recovery and seizure of incriminating material from the house of Appellant on 17.04.2018 and 12.09.2020, no incriminating material whatsoever was recovered, whereas in so far as the other accused persons are concerned, during the house raids in their respective houses, substantial incriminating material was recovered.

5.5. That it is alleged by prosecution that KKM is the frontal organization of CPI (M) without any basis. He admitted that CPI(M) is notified as a terrorist organization in the first scheduled to the UAP Act against entry No.34 since 22.06.2009. That in this respect prosecution has relied upon two statements of KW-5 under Section 161 of Cr.P.C. dated 31.08.2020 wherein it is stated that KKM is the front of CPI (M) and another statement under Section 164 Cr.P.C. dated 03.09.2020 wherein it is stated that KKM participated in the 'Elgar Parishad' meeting. That, apart from these statements there is no

other material to show nexus of KKM as the frontal organization of CPI (M) and both these statements are wholly unsubstantiated allegations.

5.6. That prosecution has relied upon contents of one letter dated 02.02.2018 addressed by Comrade Rona on the subject of success of 'Elgar Parishad', however reading contents of the said letter does not in any way involve or incriminate the Appellant.

5.7. That in all there are 16 accused in the Bhima Koregaon case (Elgar Parishad) event and Appellant is accused No.15; that in so far as other accused are concerned, they have been charged on the basis of substantial recovery of incriminating material from their mobile phones, e-mails, computers, laptops, printed material and books, whereas in Appellant's case there is no such recovery whatsoever and hence Appellant deserves to be enlarged on bail.

6. Mr. Desai in support of his aforesaid submissions has relied upon the following decisions:

- (i) *National Investigating Agency Vs. Zahoor Ahmad Shah Watali*¹;
- (ii) *Union of India Vs. K.A. Najeeb*²;
- (iii) *Sudesh Kedia Vs. Union of India*³;
- (iv) *Dhan Singh Vs. Union of India*⁴;
- (v) *The State of Maharashtra Vs. Iqbal Ahmed*⁵;
- (vi) *Iqbal Ahmed Kabir Ahmed Vs. State of Maharashtra*⁶;

1 (2019) 5 SCC 1

2 2021 SCC Online SC 50

3 (2021) 4 SCC 704

4 2019 SCC Online Bom. 5721

5 Special Leave to Appeal (Cri.) No(s).9957/2021

6 2021 SCC Online Bom. 18051

- (vii) *Thwaha Fasal Vs. Union of India*⁷;
- (viii) *Indra Das Vs. State of Assam*⁸;
- (ix) *The State of Maharashtra Vs. Konnath Muralidharan*⁹;
- (x) *Konnath Murlidharan Vs. State of Maharashtra*¹⁰;
- (xi) *Sidhique Kappan Vs. State of Uttar Pradesh*¹¹;
- (xii) *Balwant Singh & Anr. Vs. State of Punjab*¹²;
- (xiii) *Bhagwan Swarup Lal Bishan Lal & Ors. Vs. State of Maharashtra*¹³;
- (xiv) *Lennart Schussler & Anr. Vs. The Director of Enforcement & Anr.*¹⁴;
- (xv) *Extracts of Kehar Singh & Ors. Vs. State (Delhi Administration)*¹⁵;
- (xvi) *Extract of State Vs. Nalini & Ors.*¹⁶;
- (xvii) *Amit Sahni (Saheen Bagh) Vs. Commissioner of Police*¹⁷ and
- (xviii) *Kartar Singh Vs. State of Punjab*¹⁸.

6.1. We do not find it necessary to reproduce the submissions made in respect of all the aforesaid judgments for avoiding repetition. We have dealt with four judgments which we find absolutely essential. The thrust of Mr. Desai's submissions while referring to the ratios of the aforesaid judgments is to persuade us to consider the settled legal

7 2021 SCC Online SC 1000

8 (2011) 3 SCC 380

9 SIP (CrI.) No.4822/2019

10 Cri. BA No.488/2018

11 SLP (CrI.) No.7844/2022

12 (1995) 3 SCC 214

13 (1964) 2 SCR 378

14 1970 (1) SCC 152

15 (1988) 3 SCC 609

16 (1999) 5 SCC 253

17 (2020) 10 SCC 439

18 (1994) 3 SCC 569

position about issues to be considered for deciding application for bail on the basis of following parameters:

- (i) whether there is any prima facie or reasonable ground to believe that accused committed the offence;
- (ii) nature and gravity of charge;
- (iii) severity of punishment in the event of conviction;
- (iv) danger of accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with;
- (viii) danger, of course, of justice being thwarted by grant of bail; and
- (ix) when it comes to offences punishable under special enactments, such as the 1967 Act, something more is required to be kept in mind in view of the special provisions contained in Section 43-D of the UAP Act, inserted by Act 35 of 2008 w.e.f. 31.12.2008.

6.2. He submitted that while considering the prayer for bail in relation to offences under UAP Act and special enactments, Court is required to record its opinion that there are reasonable grounds for believing that accused is “not guilty” of the alleged offences; that there are reasonable grounds for believing that the allegations and

accusations against such person are “*prima facie* true” and such recording of satisfaction would mean that the material/evidence recovered, seized and collated by the Investigating Agency in reference to the accusation against accused in the FIR must prevail until contradicted and/or disproved by other evidence and that such material on the face of it shows complicity of accused in the commission of the stated offence. He has drawn our attention to paragraph Nos.23 and 24 of the judgment in the case of *National Investigating Agency Vs. Zahoor Ahmed Shah Watali (first supra)* which is the settled law and urged us to record a finding on the basis of broad probabilities regarding involvement of Appellant in the crime which according to him is far from remote. Paragraph Nos.23 and 24 of the said judgment, which we find relevant to reproduce read thus:-

“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 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 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 concerned accused 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 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 the case of Ranjitsing Brahmajeetsing Sharma (supra), wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paragraphs 36 to 38, the Court observed thus:

“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 paragraphs 44 to 48, the Court observed:

“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 the case Puran v. Rambilas : (SCC p. 344, para 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 (2004) 7 SCC 528 (2001) 6 SCC 338 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. Capt. Jagjit Singh and Gurcharan Singh v. State (Delhi Admn.) 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 (2005) 2 SCC 13 (1962) 3 SCR 622 (1978) 1 SCC 118 probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

6.3. Next he has referred to the observations of the Supreme Court made in paragraph No.20 in the case of *Union of India Vs. K.N.*

Najeeb (second supra) to highlight and outline that the provision of Section 43-D(5) of the UAP Act when considered for enlargement on bail is comparatively less stringent than the provision of Section 37 of the NDPS Act wherein the competent Court needs to be satisfied that *prima facie* accused is not guilty and that he is unlikely to commit another offence while on bail whereas there is no such pre-condition under the UAP Act.

6.4. He has next referred to and relied upon paragraph Nos.17 and 18 in the case of *Dhan Singh Vs. Union of India and other companion matters (third supra)* decided by a Co-ordinate Bench of this Court, which has explained and highlighted the interpretation of the words “*prima facie*” coupled with the word “true” and the exercise which the Court needs to undertake in this context on the basis of material on records, as also interpretation of the words “reasonable ground” as appearing in Section 43-D(5) of UPA Act. We find it useful to reproduce paragraph No.17 and 18 for reference which read thus:

“17. When the word "prima facie" is coupled with the word "true", it implies that the court has to undertake an exercise of cross- checking the truthfulness of the allegations made in the avk 44/84 APPEALS-580-2016-581-2016-622-2016-623-2016-J.doc complaint, on the basis of the materials on record. If the court finds, on such analysis, that the accusations are inherently improbable or wholly unbelievable, it may be difficult to say that a case, which is "prima facie true", has been made out. In doing this exercise, the court has no liberty to come to a conclusion, which may virtually amount to an acquittal of the accused. Mere formation of opinion by the court, on the basis of the material placed before it, is sufficient. In the matter of Jayanta Kumar Ghosh (supra) the Hon'ble Division Bench of Gauhati High Court interpreted

provisions of Section 41D(5) of the NIA Act and exhaustively dealt with meaning of words "prima facie, true, and reasonable ground". Paragraphs 69, 74, 78 and 82 of the said judgment can be quoted with advantage.

"69 From the meaning, attributed to the word "prima facie", by various dictionaries, as indicated above, and the observations, made by the Supreme Court, in its decisions, in The Management of the Bangalore Woollen Cotton and Silk Mills, (supra) what clearly follows is that prima facie is a Latin word, which means, At first sight or glance or on its face and in common law it is referred to as "the first piece of evidence of fact" i.e., considered true unless revoked or contradicted."

"74 The term "true" would mean a proposition that the accusation brought against the accused person, on the face of the materials collected during investigation, is not false. The terms false again would mean a proposition, the existence of which cannot be a reality. While arriving at a finding whether there are reasonable grounds for believing that the accusation against the accused is prima facie true or false, the court can only look into the materials collected during investigation, and on its bare perusal should come to a finding that the accusation is inherently improbable, however, while so arriving at a finding the court does not have the liberty to come to a conclusion which may virtually amount to an acquittal of the accused."

"78 The expression, "reasonable ground", means something more than prima facie ground, which contemplates a substantially probable case for believing that the accused is guilty of the offence(s) alleged. Under Section 437 Cr.P.C. an accused is not to be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence, which is punishable with death or imprisonment for life. Under Section 437 Cr.P.C., the burden is on the prosecution to show existence of reasonable ground for believing that the accused is guilty. Hence, the presumption of innocence, which always runs in favour of the accused, is displaced only on the prosecution showing existence of reasonable ground to believe that the accused

is guilty. [See Union of India v. Tharmssharasi, (1995) 4 SCC 190 and Union of India v. Shiv Shankar Kesari, (2007) 7 SCC 798.]"

"82 In short, thus, while the Special Court, constituted under the NIA Act, does not suffer from the limitations, which the TADA courts had by virtue of the provisions of Section 20(8), read with Section 20(9) thereof, the fact remains that the Special Court, not being a court of Sessions or of the High Court, cannot exercise the powers of the Court of Sessions or High Court under Section 439 Cr.P.C. Hence, while dealing with the scheduled offences, covered by the proviso to sub-Section (5) of Section 43-D, Special Court, constituted under the NIA Act, would suffer not only from the limitations imposed by clauses (i) and (ii) of sub-Section (1) of Section 437, but also by the proviso to sub-Section (5) of Section 43D of the UA(P) Act, 1967, wherever the provisions, contained in the proviso to Section 43D(5), would be applicable."

18. In the matter of Bharat Mohan Rateshwar (supra) and Ashringdaw Warisa @ Partha Warisa (supra) while reiterating the similar position of the law in this regard, it is reiterated that in a case, investigated by the agency, if the Special Court forms an opinion that there are reasonable grounds for believing that the accused has committed an offence punishable with death or imprisonment for life, the Special Court would have no jurisdiction to grant bail."

6.5. In this context we also find it to refer to decision of the Supreme Court in the case of Thwaha Fasal (seventh supra), paragraph Nos. 22 and 23 of which

"22. After considering the law laid down by this Court in various decisions including the decision in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, in paragraphs 24 and 25 it was held thus:-

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 7 (2005) 5 SCC 294 regarding the involvement of the accused in the commission of the stated offence or otherwise.

25. From the analysis of the impugned judgment, it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded Under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation.”

(emphasis added)

20. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 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. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The

grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue of prima facie case as required by sub-section (5) of Section 43D is not expected to hold a mini trial. The Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is.”

6.6. He therefore submitted that considering the aforementioned settled law, this Court is merely expected to record its finding on the basis of broad probabilities regarding involvement of Appellant and record its opinion. That in the present case there is no material brought on record by prosecution to indict Appellant and show her having any nexus with the banned CPI(M) as also her role and involvement in the 'Elgar Parishad' event held on 31.12.2017 which led to public violence on the following day. In respect of her role in the alleged conspiracy is concerned he has drawn our attention to the broad principles governing the law of conspiracy enunciated by the Supreme Court in the case of *State Vs. Nalini (sixteenth supra)* and submitted that in so far as Appellant is concerned, the evidence collated and recovered by prosecution does not make out a case for conspiracy against Appellant. That there is no nexus of Appellant or meeting of minds of Appellant with any of the other co-accused which can be proved through the material recovered and seized by prosecution. That the ingredients stipulated by the Supreme Court are

clearly missing in so far as Appellant is concerned. That mere participation and shouting slogans in the 'Elgar Parishad' event by itself does not amount to conspiracy and she does not get linked to any terrorist act. That mere participation in the event where there were other participants who had also shouted the same slogans and participated in the skit/play would not amount to any incriminating act done by her to destabilize the country as *prima facie* there is no material evidence produced by prosecution to allege that Appellant is a part of a larger conspiracy of any terrorist / organisation act and therefore her indictment under the stringent provisions of Sections 16 and 18 of the UAP Act is completely unwarranted. That at the highest Appellant can be charged under the provisions of Sections 38 and 39 of the said Act. That application of the provisions of Section 15 of the said Act is a grave and serious offence and it will have to be shown on the basis of incriminating material and evidence that Appellant was linked to the act of terror or conspiracy. That participation in the 'Elgar Parishad' event of 31.12.2017 cannot be deemed to be an act of terror. That in fact, the participants in 'Elgar Parishad' event had pledged their support to the Constitution of India at the end of the program. That Appellant has been incarcerated in jail for more than 2 years after her arrest. That according to prosecution there are more than 250 witnesses in the present case and therefore it will be a lengthy trial and hence in view thereof the Appellant deserves to be

enlarged on bail.

7. **PER-CONTRA**, Mr. Sandesh Patil, learned Advocate appearing for Respondent No.1 - NIA has opposed the appeal and made the following submissions:-

7.1. That Appellant is an active member of CPI (Maoist), a banned terrorist organization under Entry/Serial No.34 in the first schedule to the UAP Act. That Appellant is an active member of KKM and on the date of the event i.e. 31.12.2017, Appellant was specifically involved in raising provocative slogans through the performances by KKM members which led to disturbing communal harmony.

7.2. That they performed skit/stage play in the 'Elgar Parishad' event, as a result of which there were incidents of violence, arson, stone pelting and death of an innocent person, near Bhima Koregaon, Pune on 01.01.2018.

7.3. that the prosecution has recovered and seized incriminating documents from Appellant in the present crime and on its basis it is proven that Appellant is a member of the banned CPI (M) which made inroads into 'Elgar Parishad' movement with the ulterior motive to destabilize the secular fabric of the country; that one of the important documents seized from accused is a document titled 'Special Social Sections and Nationalities-Our Tactics', wherein it is mentioned that, *"Women, dalits, adivasis and religious minorities are the most important of the social sections to be taken cognisance of by the party*

of the proletariat leading the revolution in the concrete conditions prevailing in India. All these sections have special problems of their own and specific types of extra-economic oppression apart from the class-oppression. We have to pay due attention to solve their special problem and to chalk out special tasks to mobilise them effectively into the revolutionary movement. Towards this end, we have to not only bring these sections into class organizations along with other oppressed masses, but also evolve the necessary forms of organizations and form of struggle for the widest mobilization of these sections on their special problems both on a short term and long-term basis. Broader joint fronts too should be formed wherever and whenever necessary to address the specific grievances.” That it is evident from this seizure that, CPI (M) made inroads into the “Elgar Parishad” event according to a well deliberated tactical measure. That other arrested accused viz; Sudhir Dhawale & others including Appellant formed a broader joint united front on similar lines which is evident from one other letter recovered from one Narmadakka, CCM of CPI (Maoist), who stands chargesheeted and is accused in another case.

7.4. Next Mr. Patil referred to a compilation of the relevant documents against Appellant forming part of chargesheet filed by prosecution in the present case. Considering that the chargesheet runs into several thousand pages, in so far as the present Appeal is concerned, he collated the relevant pages/incriminating material to

highlight and outline the role of Appellant. He has drawn our attention to the letter dated July 2017 written in telugu language and its ture translation which forms part of the chargesheet. This letter is that page No.106 of the compilation. It has been addressed by one Sridhar to Com. Sunil and in the contents thereof, accused No.1 Suhdir Dhawale and his role as leader in Maharashtra is prominently named.

7.5. Next he has referred to paragraph No.17.22 of the chargesheet on page 113 of the Memorandum of Appeal wherein it is stated as under:

“17.22. During the investigation, it is revealed that, Kabir Kala Manch (KKM) is a frontal organization of CPI (Maoist). KKM was formed somewhere in 2002 and indulged in street plays, cultural activities, poetry reading etc. The accused in instant crime namely Sagar Gorkhe & Ramesh Gaichor has been associated with KKM since 2003. In 2005, CPI (Maoist) systematically entered in KKM in such a way that the operation goes unnoticed. Further, members of KKM are systematically furthering the ideology of CPI (Maoist) since 2005 which has also been revealed in ATS PS Mumbai CR No.19/2011 registered under Sections 387, 419, 465, 468, 120B of IPC, Section 10, 13, 17, 18, 18A, 18B, 20, 21, 38, 39 and 40 of the UAP Act.”

7.6. Next, to substantiate the multiple charges that Appellant was actively involved in organising the “Elgar Parishad” event; that Appellant was actively involved with other co-accused and members of KKM; that KKM is the frontal organization of the banned terrorist organization CPI (M); that Appellant had received arms/weapons training in the forest camp of CPI(M) in the past, he has referred to the following incriminating material:-

- (i) Statement given by KW-3 under Section 164 Cr.P.C. dated 17.08.2020;
- (ii) Statement given by KW-4 recorded under Section 161 Cr.P.C. dated 24.08.2020;
- (iii) House search panchnama of the raid conducted in the house of Appellant on 12.09.2020;
- (iv) Statement of Kishor Madhukar Kamble recorded under Section 164 dated 11.06.2018;
- (v) Statement of Datta Pol recorded under Section 164 dated 12.06.2018;
- (vi) Statement of Ulka Mahajan recorded under Section 164 dated 29.09.2020;
- (vii) Statement of Dr. Sangram Bamne recorded under Section 164 dated 24.09.2020;
- (viii) Pamphlet of Elgar Parishad Meeting dated 01.01.2018;
- (ix) Report of meeting held at Dadar, Mumbai on 24.09.2017; and
- (x) Judgment dated 19.09.2022 passed in Criminal Appeal No. 351/2022 in the case of Hany Babu (Accused No. 12) Vs. National Investigation Agency and Anr. in respect of the same Special Case No. 414 of 2022.

7.7. Mr. Patil has taken us through the contents of the aforesaid material and contended that the role of Appellant cannot be segregated separately as argued by Appellant. He submitted that the material recovered and seized from Appellant as well as other co-accused in the present case clearly lead to a larger conspiracy and design wherein Appellant is actively involved in the activities of KKM since long. That KKM is the frontal organization of banned CPI(M), a terrorist organization under the UAP Act. He submitted that Appellant has a direct nexus with wanted accused and members of CPI(M) who

are co-accused in the present crime. The offences invoked against Appellant carry maximum life or death penalty punishment. He submitted that the provisions of Section 43-D(5) of UAP Act would require this Court to proceed on the basis of the material collected during investigation. He submitted that investigation in the present case has revealed that Elgar Parishad event was used to establish underground contacts with the banned terrorist organization CPI(M) through its activists, Appellant being one of them. He submitted that Appellant played a major role in organizing the 'Elgar Parishad' event which is evident from the material seized and thus is involved in directly propagating activities of CPI(M). Hence, he has submitted that there is no infirmity in the order passed by the learned Special Judge in rejecting the bail application of Appellant and the present Appeal be dismissed.

8. At this stage it would be apposite at this stage to refer to the provision of Section 43-D(5) of the UAP Act, which is the relevant provision for the decision of the present case. It reads thus:-

“43-D. Modified application of certain provisions of the Code—

(1)

(2)

(3)

(4)

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his

own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

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

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

(7) *.....”*

(emphasis supplied)

8.1. As alluded to herein above, the Supreme Court in the case of Watali (*first supra*) has held that at this stage, as is the Appellant’s case, it is not the duty of the Court to weigh the evidence meticulously but to arrive at a finding based on broad probabilities. We have carefully perused the material available on record. Hence in order to record our findings based on broad probabilities regarding involvement of Appellant in the present crime, we would now propose to consider the material relied upon by the prosecution against Appellant. *Prima facie*, after going through the material on record, we find that there are reasonable grounds for believing that the allegations / accusations against Appellant are true. However we hasten to clarify and elaborate our reasons for the same, based on broad probabilities. Our observations have been made in the context of the provisions of Section 43-D(5) of the UAP Act.

9. We now propose to deal with the material pressed by Respondent No. 1 – NIA before us against the Appellant and her role in the present crime on the basis of the documents referred to in paragraph 7.4 herein above.

9.1. Statement recorded on 17.08.2020 of KW-3 by NIA under Section 164 Cr.P.C. (appearing on page 213 of the Memo of Appeal) states that between 2010 and 2015, Appellant was actively involved in working with CPI(M), the banned terrorist organization. Witness has stated that in the year 2011 after arrest of Angela i.e. wife of CCM Milind Teltumbde, the naxalites working under the banner of KKM in Pune urban region felt leaderless and hence for seeking guidance, all naxalite members working under the banner of KKM visited Korchi Area Committee Jungle to meet Milind Teltumbde. Witness has stated that these naxalite members comprised of Sachin Mali, Sheetal Sathye, Sagar Gorkhe (Accused No. 13), Ramesh Gaichor (Accused No. 14), **Jyoti Jagtap (Appellant)** and Others. That after receiving directions and orders from CCM Milind Teltumbde, they returned. This statement establishes the presence of Appellant in the meeting with the naxalites in 2011. It is pertinent to note that KW-3 has stated that in the year 2012, another meeting was held in Korchi Area Committee Jungle which was attended by Sagar Gorkhe, Ramesh Gaichor and Rupali Jadhav since Sachin Mali and Sheetal Sathe had left the party

and in this meeting directions were sought for running the party in western Maharashtra by them. However this meeting was not attended by Appellant. The reason to mention about this meeting is because of the fact that Appellant is an active member of KKM in Pune and Western Maharashtra and close to co-accused Ramesh Gaichor and Sagar Gorkhe.

9.2. Statement recorded on 24.08.2020 of KW-4 by NIA under Section 164 Cr.P.C. (appearing on page 223 of the Memo of Appeal) states that Appellant along with urban naxal members namely Smt. Manju Vijay, Arun Ferreira for Mumbai area, Angela wife of Milind Teltumbde from Pune area, members of KKM namely Ramesh Gaichor, Sagar Gorkhe, **Jyoti Jagtap (Appellant)**, Sheetal Sathe, Sachin Mali, Rupali jadhav, Harshali Potdar, Surendra Gadling, Jagdish Meshram, Vernon Gonsalves, Gautam Navlakha, Varavara Rao, Prof. Shoma Sen, Rona Wilson, Prof. Sai Baba, Sudha Bharadwaj, Vira Satidar, Sudhir Dhawale, Mahesh Raut in 2010-11 and 2012 had come to meet Milind Teltumbde for discussing urban work of CPI(M) in the Jungle area and they all underwent arms/weapons and explosives training and awareness programme on various topics related to Maoist movement. Further statement recorded on 25.08.2020 of KW-4 states that between 2008 and 2018 CCM Milind Teltumbde was looking after the Jungle and urban area work of CPI(M). That in 2011-12, Maoist

members looking after the urban area from Pune namely Ramesh Gaichor, Sagar Gorkhe, Rupali Jadhav, Jyoti Jagtap (Appellant), Sachin Mali, Sheetal Sathe visited Gadchiroli in the Korchi Khobramendha Jungle for attending a meeting (Parisamwad) and met Milind Teltumbde. At that time these persons stayed in the jungle for 5-6 months and underwent weapons and explosives training. This statement once again establishes the active presence of Appellant with the naxalite movement and its core members. Hence the submission made by Mr. Desai that, assuming whilst denying, at the highest even if Appellant may have visited the Jungle / Forest area in 2011-12, it should be attributable to her youthful exuberance cannot be countenanced.

9.3. House search panchnama dated 12.09.2020 of Room No. 56/2/1, Lane No. 31, Dagdi Chawl, NIBM Road, Kondwa, Pune, residence of Appellant (appearing on page No. 178 of the Memo of Appeal) refers to seizure of various documents, prominent amongst which is a zerox copy of Shaniwarwada Elgar Parishad account and another hand written letter addressed to one Sudhir dated 26.05.2019 which mentions the name "Gadling" in the said letter. The eight pages of Shaniwarwada Elgar Parishad account have been tendered across the bar by Mr. Patil. They form part of charge-sheet. The same is taken on record and marked "X" for identification. Perusal of the said

account statement clearly reveals that Appellant was looking after the entire account of income and expenditure of the Elgar Parishad event from 02.10.2016. It is a detailed account of the entire income received, funds received and expenditure incurred, maintained by Appellant. The summary of account in the statement states that against the total income of Rs. 3,83,790/-, there was an expenditure of 3,50,170/- for the Shaniwarwada event. This accounting document negates the argument of Appellant that she was merely a member of KKM who had gone to the event to perform and shout slogans just like others at the event when it is now revealed that her role in organizing the Elgar Parishad event was much more and she was actively involved in the same since she maintained the entire income and expenditure account of the event.

9.4. Statement recorded on 11.06.2018 of Mr. Kishor Manohar Kamble by NIA under Section 164 Cr.P.C. (appearing on page 242 of the Memo of Appeal) states that Appellant along with other members of KKM attended the meeting in the first week of October 2017 at Panmala, Buddhavihar for organizational purpose of Elgar Parishad event and within one month thereof, Appellant herself gave a phone call and met him personally, coordinated with him and persuaded him to attend the Elgar Parishad event. The said statement further states that Jyoti Jagtap (Appellant) had participated in various other

meetings in respect of organization of Elgar Parishad event actively.

9.5. Statement recorded on 12.06.2018 of Mr. Datta Pol by NIA under Section 164 Cr.P.C. (appearing on page 246 of the Memo of Appeal) states that Jyoti Jagtap (Appellant) along with Sagar Gorkhe and Ramesh Gaichor was involved in organizing the Elgar Parishad event, attended preparatory meetings; that he deposited Rs. 10,000/- with Ramesh Gaichor for the purpose of mandap, speaker and lights for the event.

9.6. Statement recorded on 29.09.2020 of Ms. Ulka Mahajan by NIA under Section 164 Cr.P.C. (appearing on page 251 of the Memo of Appeal) states that Jyoti Jagtap (Appellant) was actively involved in coordinating with her and invited her to attend the Elgar Parishad event.

9.7. Statement recorded on 24.09.2020 of Dr. Sangram Bamne by NIA under Section 164 Cr.P.C. (appearing on page 255 of the Memo of Appeal) states that he had attended the long march programme by KKM members including Ramesh Gaichor, Sagar Gorkhe and Jyoti Jagtap (Appellant). He has stated that on 12.11.2017, a State level meeting was held at Aurangabad under his presidentship and 50 to 60 representatives of various districts including Sudhir Dhawale and KKM members Sagar Gorkhe, Ramesh Gaichor and Jyoti Jagtap were present in the said meeting wherein

discussion on fund collection and distribution, review of district level meeting, long march, publication of book namely 'Bheema Koregaon Shauryadin' etc was made. He has further stated that the programme started at 03:00 p.m. and ended at 10:30 p.m.. That the song and performance by Sagar Gorkhe, Ramesh Gaichor, Jyoti Jagtap (Appellant), Rupali Jadhav and other KKM members was aggressive in nature and they also performed a street play at the Elgar Parishad event. Thereafter final speech was delivered by Prakash Ambedkar wherein he appealed to donate for Elgar Parishad programme and members of Pune District Committee collected the funds donated by public present in the said programme in cash by moving a jholi (large cloth) and Rs. 2-2.50 lacs was collected.

9.8. We have carefully gone through the transcript of the stage play enacted by KKM members. The entire transcript is placed at Page Nos. 160 to 165 and is part of chargesheet. On reading the same, we are afraid to state that the role played by KKM and its activists on the date of event was not only aggressive, but also highly provocative and clearly designed to incite hatred and ignite passion. There are a number of innuendos in the text / words / performance of KKM which are pointed directly against the democratically elected government, for seeking to overthrow the government, ridicule the government, excerpts of which need to be mentioned here in order to highlight the

role of Appellant. These pertain to songs / phrases / questions asked and answers given and performance ridiculing phrases like; “Acche din”, “Gomutra”, “*Shakahar*”, “the Prime-Minister referred to as an “infant”, “the P.M.’s travelogy”, “RSS dress/outfit”, “Policies like Demonetization”, “Sanatan Dharma”, “Ram Mandir”, “that Shivaji Maharaj being vehemently opposed to Muslims”, “that Tipu Sultan being against Hindus and he committed murders of Hindus and brought down temples”, “that Constitution is not the highest document, but according to Golwalkar Guruji it is Manusmriti”, “Behaviour and atrocities of Peshwas towards Dalits”, “Treatment and nomenclature of Dalit women by Peshwas”, “Atrocities on Dalits in today’s India”. KKM admittedly performed and incited hatred and passion by performing on the above agenda in the Elgar Parishad event. There is thus definitely a larger conspiracy within the Elgar Parishad conspiracy by KKM and CPI(M).

9.9. Mr. Patil has also referred to one document found in the hard-disk marked as Ex-7 of CyP170/2018 of Ramesh Gaichor (Accused No. 14) at page Nos. 315 to 334 which contains the report of meeting held on 24.09.2017 at Dadar, Mumbai for the purpose of organizing the Elgar Parishad event. In this document, Jyoti Jagtap (Appellant)’s name prominently figures as the representative in the committee for western Maharashtra region along with 12 others.

Another document recovered from the hard-disk Ex-7 of CyP170/2018 from Ramesh Gaichor relied upon by prosecution is the pamphlet of invitation for the Bhima Koregaon Shauryadin i.e. Elgar Parishad event. The invite clearly mentions the name of Jyoti Jagtap (Appellant) as one of the invitee as also the contact person along with the names of Sagar Gorkhe, Ramesh Gaichor who are active members of KKM as also three other persons. Hence her participation in the event was not merely restricted to her performance but was part of a larger conspiracy of CPI(M).

9.10. Admittedly, all the aforesaid documents form part of chargesheet and no objection is raised by the Appellant.

9.11. In respect of the larger conspiracy and design of CPI(M) to infiltrate and carry out its objectives through KKM and activists like the Appellant, we also deem it fit to reproduce certain relevant paragraphs from the Judgment dated 19.09.2022 in the case of Hany Babu (Accused No. 12) (*supra*) passed by a coordinate bench of this Court while rejecting the bail application of Accused No. 12 in the same crime.

9.12. Contents of paragraph Nos. 7.1 to 7.10 and 8 are directly and immediately relevant to unearth the larger conspiracy and read thus:-

“7.1 CPI (Maoist) is a merger of the Communist Party of

India (Marxist-Leninist), the People's War (People's War Group), and the Maoist Communist Centre of India (MCC). CPI (Maoist) was notified as a terrorist organisation on 22 June 2009 under UAP Act.

7.2. The objectives and goals of CPI (Maoist) are to engage in revolution supported by a commitment to protracted armed struggle. The eventual objective is to establish a 'people's government' by undermining and seizing power from the State. The Communist Party of India (Marxist-Leninist)– People's War with its formation and front organisations are banned under the UAP Act and are designated as terrorist organisations.

7.3 CPI (Maoist) works systematically. It has a party constitution and hierarchical system with the decisions taken by a Politburo. The Central Committee receives commands from the Politburo, which are sent to the members as per the hierarchy. The Central Military Commission is the main armed body of the CPI (Maoist). It has regional bureaus such as State Committees, Zonal Committees, District Committees and armed squads. The task of these organisations is to attack Government forces. The Central Technical Committee (CTC) is responsible for assembling and creating weapons from explosives looted by attacking the Government armed forces. The CPI (Maoist) has formulated some primary documents in its Unit Congress. These are: 'Constitution of the Party'; 'Party Program'; 'Strategy and Tactics of the India Revolution'; 'Holding High the Bright Red Banner of M.L.M.'; and 'Political Resolution'. As per the core documents, the main task is to seize political power to annihilate the armed forces of the State through war, mobilising the people on a large scale, both militarily and politically; the CPI (Maoist) Politburo, Central Committee and People's Army (PLGA), and United Front (a frontal organisation) will coordinate the armed struggle, which will be the main form of struggle.

7.4 According to the CPI (Maoist), a unified front and armed struggle are the primary weapons for defeating 'the enemy' and storming and shattering the 'enemy's position (the enemy being the Indian State). The CPI (Maoist) is working to assimilate the unemployed youth living in impoverished rural and urban areas, teachers, intellectuals and employees in other fields into the party organisation. The revolutionary front of CPI (Maoist) is the primary entity undertaking revolutionary movements and countering campaigns carried out by the security forces of the State. Under the pretext of democratic rights organisations, under the directions of CPI (Maoist), adverse reports are published directly affecting the anti-

Naxal operations carried out by the State security forces.

7.5 The CPI (Maoist) has planned a detailed strategy and programmes to unite the struggles of various oppressed nationalities into a common fighting united front against the Indian State. The documents seized from the accused refer to urban movement and military task and the urban movement being complementary to rural armed struggle. The movement involves sending cadres to the countryside, infiltrating enemy ranks, organisations in critical industries, sabotaging actions in coordination with rural armed struggle and generating intellectual support.

7.6 the CPI (Maoist) has established executive committees to work according to the revolutionary objective. The mass organisation has been divided into three sectors- Underground Revolutionary Mass Organizations, 'Open and Semi-open Revolutionary Mass Organizations' and 'Mass Organizations not directly linked to any party'- under such cover-up as Elgar Parishad at Pune. Mass Organisations not directly linked to the party are subdivided into three categories- 'Fractional Work', 'Party Formed Cover Organization', and 'Legal Democratic Organization'. Some methods include creating activist groups at the factories, mines, industrial estates, offices, branches, or any other level that is a unit for organising. Activist groups are to be formed in slums, chawls, streets, societies that are residential areas and also educational institutions. Party Cells will include organising masses, politicising, educating and recruiting them into the party. Party Fractions are non-party organisations that ensure that members within the organisations pursue uniform tactics.

7.7 The literature of CPI (Maoist) refers to the military task of the urban movement as secondary and complementary to the military strategy of the revolution. The urban organisations are to perform tasks complementary to the rural armed struggle. The military tasks performed in the urban areas are about the defence of the urban movement, helped by the urban organisation to the rural armed struggle and direct military operations conducted under a central direction. Elaborate means of personal communication using couriers and precautions to be taken during communications and meetings are evolved.

7.8 The CPI (Maoist) operates in secret, and important communications are made through couriers and the appointment channel. One of the CPI (Maoist) agendas is to keep the cadre's morale high. Systematic support is

offered from the frontal organisations to Naxals and their families. The Revolutionary Democratic Front (RDF), a banned organisation, is active in this endeavour. RDF organises conferences and fact-finding missions. The accused are also active members of other frontal organisations, namely, Anuradha Ghandy Memorial Committee, Kabir Kala Manch, Persecuted Prisoners Solidarity Committee, Committee for release of political prisoners. Committee for Protection of Democratic Rights, Peoples Union for Democratic Rights, Coordination of Democratic Rights Organization, Democratic Students Union, Visthapan Virodhi Jan Vikas Aandolan, Revolutionary Writers Association, Committee for defence and release of G.N. Saibaba.

7.9 CPI (Maoist) does not believe in peace talks but only in protracted armed struggles. CPI (Maoist) has attacked and killed various government officials and looted weapons and explosives. CPI (Maoist) raises funds for unlawful activities by levying taxes on Tendu leaves, Bambu and road contractors. To keep their identity secret, they use different alias names. CPI(Maoist), frontal organisation members procure gelatin from illegal mining contractors, use Soda-Sulphur combination as explosive, and use Calcium-Ammonium Nitrate for carrying out attacks on the forces of the State. The accused are involved in procuring weapons and ammunition from Maoist in Nepal situated abroad through the 'Manipur Maoist' channel.

7.10 The policy of CPI (Maoist) is to exploit the discontent amongst the weaker sections to propagate hardcore Maoist philosophy of violence to drive them on the path of violence. As a part of pursuing this policy, street plays leading to incidents such as one in Bhima-Koregaon resulting in arson, violence and the death of one person are deliberately undertaken.

8. This, according to NIA, broadly is the outline of the aims and objects of CPI (Maoist) and the conspiracy and that the Appellant is part of the same According to NIA, these objectives are being implemented by the Appellant, and his role must be seen in the context of this larger canvas and not in isolation."

9.13. In the above context, we are also inclined to refer to certain documents which have been recovered from Accused No. 12 in the present crime. These documents would show and highlight the

desired objective of CPI(M) which has been referred to in the aforesaid judgment. We find it necessary and important to refer to these documents since they highlight the role of the CPI(M) in attempting to destabilize our country by carrying out killings methodically and engage in armed conflict. We reproduce paragraph Nos. 30, 31, 38 and 41 from the above judgment (Hany Babu) which we find most relevant to rely upon, to highlight the role of the co-accused in the present crime.

“30. Next document seized from the Appellant is a file 2 inch by Ramananna-H.pdf. It is about integrated weapon training. It refers to 50.8 M.M. Mortar and how the same is being handled. It will have to be dealt with by two persons, and one jawan cannot do it. There is a detailed analysis of the functioning of these weapons, such as progressive weapon training. There is a statement of ammunition. It also refers to identifying the use of high explosives, how to identify the bombs, the procedure of misfire, para illuminating bombs, and how to deal with 2-inch mortar, smoke, illuminating and signal bombs.

31. Another document recovered from the Appellant is A.C-G-B.pdf, a guidebook for the Area Committee Members. It deals with the area committees' consolidation of the party network. It deals with the flag protocol and important dates of the revolution. It says that 26 January and 15 August days are to be treated as Black days. One of the documents seized from the Appellant is regarding internet security and how to secure communications. AJ SS-1- Indian Army-English.pdf is issued by the Central Committee (Provisional) CPI (Maoist) Party under the Awam-E-Jung Study Series -1, a review and study of the Indian Army. BJ-SAC- RE.pdf is about Bihar-Jharkhand Special Area Committee and its functioning and work.

38. File Lr2 SIC-Oct-2016.pdf. seized from the Appellant is a communication issued by Varavara (Accused) to comrades wherein it states the information given in confidentiality about the topics raised by comrade Rona (Rona Wilson) (Accused No.2), comrade Sudhir (Accused) and comrade Varavar (Accused) in a meeting held on 26 September in New Delhi and states that in that context that the information was being given. It refers to political

parties, fascist movements and attacks on the party. It is necessary to restore the comrades' confidence and remove fear psychosis that a significant event targeting prominent personalities has been felt necessary. It refers to elections in Uttar Pradesh and Punjab where political figures keep coming. It also refers to arms struggle in the forest areas to improve the comrades' confidence. Then it refers to meetings held by senior political leaders such as Shri Narendra Modi, Shri Amit Shah and Shri Rajnath Singh and laying a booby trap in respect of the same. It also refers to coverage by international media which would increase the comrades' confidence.

44. HDD Laptop Cyp 168/18 Ex. 17/1 Ltr_2_RW Cyp 168/18 Ex. 17/1\Rback up\453 is communication between R (Rona Wilson) (Accused No.2) and comrade Prakash (Ritupan Goswami) (WA-2), which refers to a letter of Prakash (Ritupan Goswami) (WA-2), and it says that Arun (Arun Ferreira) (Accused No.8) and Vernon (Vernon Gonsalves) (Accused-7) and others are concerned with the struggle that is taking shape on the urban front. It refers to issues raised by comrade Saibaba. Then it refers to HB (Appellant) being given all the responsibilities to coordinate programmes and protests to raise public opinion and organise a programme under the banner committee for the defence and release of G.N. Saibaba. Rona Wilson (Accused No.2) has mentioned in this letter that she has spoken that by now, Prakash (Ritupan Goswami) (WA-2) has received details of the meeting and requirement of 8 Crores for annual supply of M4 with 400000 rounds. The learned ASG informs that M4 is a weapon. It is also stated therein that defeating Hindu fascism is a core agenda and a major concern for the party. It refers that comrades and other senior Comrades have proposed to take concrete steps to end the "Modi -Raj". It is stated that "we" are thinking along the lines of another "Rajiv Gandhi-type incident", and targeting "his" road shows could be an effective strategy."

10. Thus, it is seen from the totality of the entire material presented before us that Appellant's role cannot be segregated or separated and it will have to be seen in the light of the charge of conspiracy of the entire case put forth by the NIA. The documents referred to herein above clearly highlights the active role of Appellant in so far as organizing the Elgar Parishad event but more importantly

it is the association of Appellant with the prominent members of CPI(M) which is a designated terrorist organization which cannot be lost sight of. It is seen that Appellant was in active touch with all other co-accused working for different mask organizations to further the objectives of CPI(M). The Elgar Parishad event is thus a smaller conspiracy within the larger design and conspiracy of CPI(M) to further its agenda. From one of the letters it is seen that there is a congratulatory message given for the success of the Elgar Parishad event and a direction is issued to exploit the death of the youth in the violence on the following day. It is also seen that CPI(M) has chalked out a detailed strategy for furtherance of its objective to overthrow the democratically elected government of our country and the Appellant and other co-accused are *prima facie* actively strategising the same. The entire material produced before us by NIA clearly shows that the Elgar Parishad event was used and organized to establish underground contact with the banned terrorist organization CPI(M) through its activist which include the Appellant. It is seen that pursuant to the said programme, there was large scale violence resulting in unrest and death of one person.

11. In view of having considered the totality of the entire material on record as alluded to herein above, we are of the considered opinion that there are reasonable grounds for believing the

allegations / accusation of the NIA against Appellant having conspired, attempted, advocated and abated the commission of a terrorist act as *prima facie* true.

12. From the seriousness of the conspiracy and the threat that it poses, we are of the considered view that submissions made on behalf of the Appellant cannot be accepted. We do not find any infirmity or error in the order passed by the learned Special Judge rejecting the bail application of Appellant. Considering the materiel on record and in view of the above discussion and findings, the Appeal stands dismissed.

[MILIND N. JADHAV, J.]

[A. S. GADKARI, J.]