

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Criminal Appeal No. 960 of 2021****Judgment Reserved on : 20.10.2022****Judgment delivered on : 04.11.2022**

Abhay Nayak, S/o. Devdas Nayak, Aged About 35 Years,
Currently Incarcerated as Jagdalpur Central Jail, Civil
Lines, Jagdalpur, Chhattisgarh 494001

---Appellant**Versus**

The State of Chhattisgarh through Station House Officer
of Police Station Mardum, District Bastar, Chhattisgarh.

---Respondent**Criminal Appeal No. 983 of 2021**

Abhay Devdas Nayak, S/o. Devdas Nayak, Aged About 35
Years, Currently Incarcerated as Jagdalpur Central
Jail, Civil Lines, Jagdalpur, Chhattisgarh 494001

---Appellant**Versus**

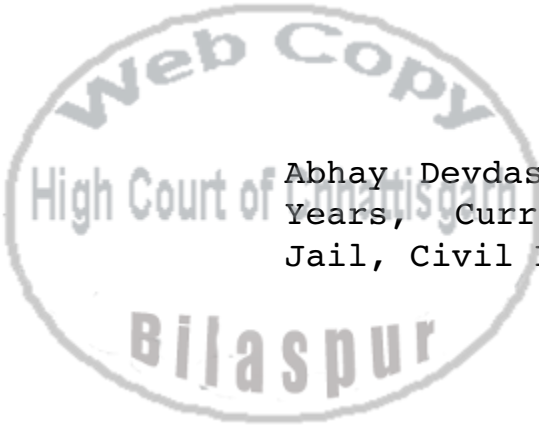
The State of Chhattisgarh through Station House Officer
of Police Station Darbha, District Bastar, Chhattisgarh.

---Respondent**And****Criminal Appeal No. 989 of 2021**

Abhay Devdas Nayak, S/o. Devdas Nayak, Aged About 35
Years, Currently Incarcerated as Jagdalpur Central
Jail, Civil Lines, Jagdalpur, Chhattisgarh 494001

---Appellant**Versus**

The State of Chhattisgarh through Station House Officer
of Police Station Kondenar, District Bastar,
Chhattisgarh.

---Respondent



For Appellant :- Mr. Shailendra Dubey and Ms.
Shivali Dubey, Advocates

For State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Deepak Kumar Tiwari

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. These criminal appeals under Section 21(4) of the National Investigation Agency Act, 2008 have been preferred by the common appellant Abhay Devdas Nayak against the order dated 10.06.2021 passed by the Special Judge (NIA Act) Jagdalpur, District Bastar rejecting his application under Section 439 of Cr.P.C. finding no merit.
2. Since common question of law and fact are involved, these appeals have been heard together, clubbed together and are being disposed of by this common judgment. These three Criminal Appeals have been arising out of three Special Sessions Trials and three crime numbers of three Police Stations namely Mardum, Darbha & Kondenar, the details of which are as under :



CRA No.	Spl.ST. No.	Cr.No.	Police Station	Offence U/s.
960/2021	109/2018	7/2017	Mardam, Dist.Bastar	120-B of the Indian Penal Code; 13(1)(b), 18, 38 & 39(2) of the Unlawful Activities (Prevention) Act, 1967; and 8(1)(3)(5) of the Chhattisgarh Special Public Security Act,
983/2021	105/2018	7/2017	Darbha, Dist.Bastar	120-B of the Indian Penal Code; 4 & 5 of the Explosive Substances Act, 1908; 13(1)(b), 18, 38 & 39 (2) of the Unlawful Activities (Prevention) Act, 1967; and 8(1)(3)(5) of the Chhattisgarh Special Public Security Act, 2005
989/2021	110/2018	7/2017	Kodenar, Distt.Bastar	120-B of the Indian Penal Code; 4 & 5 of the Explosive Substances Act, 1908; 13(1)(b), 18, 38 & 39(2) of the Unlawful Activities (Prevention) Act, 1967; and 8(1)(3)(5) of the Chhattisgarh Special Public Security Act, 2005

3. In the first round, the appellant has preferred the first bail applications under Section 439 of Cr.P.C. before the Special Judge, which were



rejected by the learned Special Judge against which the appellant preferred three criminal appeals bearing Criminal Appeal Nos. 1212/2019, 1146/2019 & 1216/2019. All these criminal appeals under Section 21(4) of the National Investigation Agency Act were dismissed by this Court by a common order dated 20.12.2019 against which the appellant preferred a Special Leave to Appeal (Crl.) No(s). 6390-6392/2020 and their Lordships of the Supreme Court by order dated 12.01.2021 passed the following order :-

"This special leave petition has been filed against the order dated 20.12.2019 passed by the High Court, by which the High Court rejected the bail application of the petitioner who is accused in FIR No.7/17 under Section 120B of the I.P.C., Section 4 and 5 of the Explosive Substance Act and Sections 38 and 39(2) of the Unlawful Activities (Prevention) Act.

Learned counsel for the petitioner submits that though charge sheet has been filed against the petitioner yet charges have not been framed.

In the facts of the present case, ends of justice be served in granting liberty to the petitioner to renew his bail application before the Trial Court after charges are framed.

With the above, the special leave petitions stand disposed of. Pending application stands disposed of."

4. It is pertinent to mention that charges were framed against the appellant by order dated 31.12.2019 for the offences under Sections 120-B of the Indian



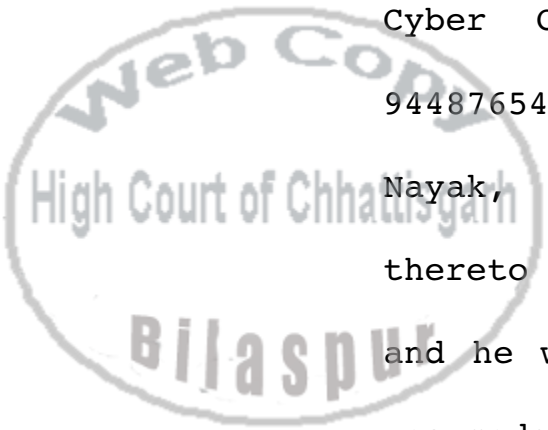
Penal Code; 13(1)(b), 18, 38 & 39(2) of the Unlawful Activities (Prevention) Act, 1967 (*for short 'UAPA'*) and 8(1)(3)(5) of the Chhattisgarh Special Public Security Act, 2005 (*for short 'CSPSA'*) and the appellant has preferred application in all the three trials for grant of bail under Section 439 of Cr.P.C. which came to be rejected by the three impugned orders separately passed, against which these three appeals have been preferred by the appellant questioning the orders passed by the Special Judge rejecting his bail application preferred under Section 439 of Cr.P.C.

5. Case of the prosecution, in brief, is that on 28.01.2017 the Incharge of the Police Station Darbha, District Baster (C.G.) received secret information that the naxalites/Maoist armed with deadly weapons gathered in the middle of village Bhadrimahu and Urukpal, then the Incharge of Police Station Darbha alongwith other staff went to spot, where, the police has found pamphlets, documents (literature) and steel made IED tiffin bomb. The police has seized the aforesaid articles and registered Dehati Nalishi and thereafter wheels of investigation started running. On perusal of the seized documents, it was noticed that the names of Maoist Commander Abhay and Vikalp are mentioned in





the pamphlet. It is further found that, mobile no. 8763873894 and 94487654345 and email ID naxalrevolution@gmail.com are also mentioned in the literature documents. Upon further investigation, it was found that the aforesaid e-mail ID is created by the appellant Abhay Nayak and he is operating a blog namely Naxal Revolution, which contained the materials of banned organization CPI Maoist. In relation to the aforesaid mobile number and e-mail ID, the Police has gathered information from the Cyber Cell, which discloses that mobile no. 9448765435 belongs to the present appellant Abhay Nayak, R/o Bangaluru (Karnataka) and pursuant thereto he was arrested from Bangaluru (Karnataka) and he was brought to Jagdalpur and interrogation was made and thereby it is brought to the notice of the police that the appellant Abhay Nayak involved in the naxal activity and he is a part of urban network of naxal organization and he is working to look after the publicity of naxal activity and to connect the people with naxal movement through his Internet Blog and other sites, i.e. Twitter, Google, Plus, Yahoo etc. It also came to the knowledge of the police that the appellant herein is receiving e-mails from naxal spoke persons namely Vikalp and Gudsa Usendi and other naxali





leaders containing anti national publicity documents and attachments and the appellant had also issued pamphlet, documents and statement in his name by putting digital signature.

6. Similarly, on 28.01.2017 an information was received by the concerned police that on the road between village Bastanar-Dankapara towards village Kandoli, a banner has been placed alongwith pamphlets containing anti national contents. On receipt of the information the team of Kodonar Police led by the Station House Officer reached to the place and found a banner and anti national contents and few naxal pamphlets written in English propagating naxal movement. On search of nearby places, the police team found an explosive like material and few wires, which were further dug out with proper security and found 8 kg Tiffin Bomb with 20 meters long wire alongwith pamphlets. The pamphlets were having signature of 'Vikalp' as spokesperson, Dandkaranya Special Zonal Committee CPI (Maoist). This organization has already been banned by the Government of Chhattisgarh and accordingly the offences were registered at Police Station Kodonar, District Bastar.

7. Similarly, during further investigation, it was brought to the notice that Police Station Darbha





has also registered Crime No.7/2017 and seized pamphlets and literatures containing propagation of naxal movement. The Investigating Officer found e-mail ID and mobile number written over the seized articles, which were further investigated on which one person appellant Abhay Nayak, R/o. Bangalore (Karnataka) was suspected as a person who has committed the offences.

8. It is further case of the prosecution that when the police team reached to Bangalore (Karnataka), the appellant was not available in the country, he was travelling abroad with unknown location, which compelled the police authority to issue Look Out Circular and in the meanwhile, the Immigration Bureau, New Delhi, informed the Superintendent of Police, Baster that the appellant has been taken into custody. He was enquired by Baster Police at Delhi and thereafter, upon his consent, Laptop, Mobile, Hard Disk, Pen Drive, etc. were recovered and brought to Baster for further investigation. In his confessional statement, the appellant admitted that for propagating naxal activities, he acts as a Blogger and Spokesman via its Blog and Social Media sites i.e. Twitter, Google+, Yahoo, etc. to increase urban naxal cadre and influence urban youths. The appellant was arrested on 1-6-2018 and



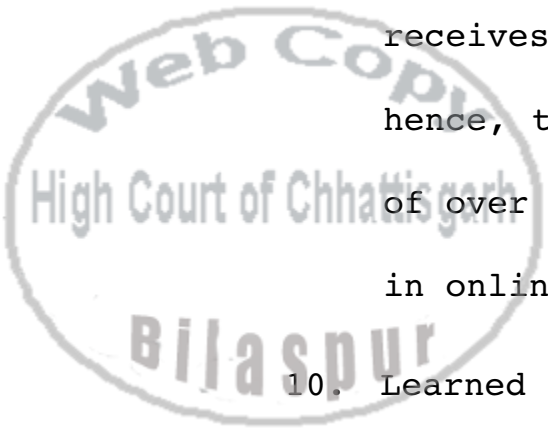


his residence was searched. The appellant was thereafter searched for two other offences.

9. It was also case of the prosecution that the appellant is a member of over ground cadre of CPI (M) and he was found using the e-mail ID to propagate naxal movement and ideology. The appellant opened the Blog Abhay Naxal Revolution in the year 2011. He has deleted certain incriminating articles though which were later on recovered during data analysis. The appellant runs the blog, receives e-mails and disseminates to others and hence, the appellant is actively working as member of over ground cadre of CPI(M). He is also involved in online recruitment of naxal cadre.

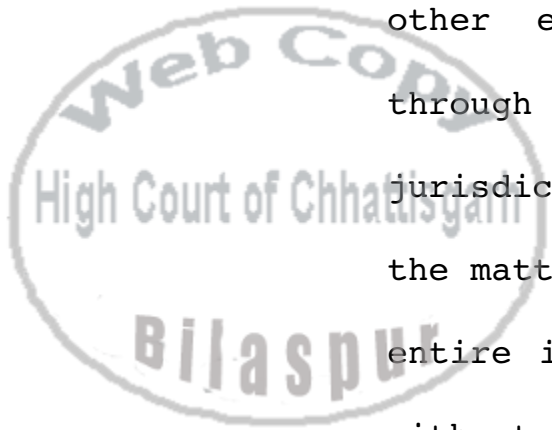
10. Learned Special Judge has rejected the application of the appellant filed under Section 439 of Cr.P.C. finding prima facie material for involvement of the appellant for the offences charged against him, as he is involved in naxal movements and he has blog of Naxal Revolution which is filled with the contents relating to the organization CPI Maoist and considering the other materials on record he is not entitled for grant of regular bail, against which, these appeals have been preferred.

11. Mr. Shailendra Dubey assisted by Ms. Shivali Dubey, learned counsel for the appellant, would submit





that in Criminal Appeal No.960/2021 which arises out of Special Case No.109/2018, 15 witnesses have been examined and most of the witnesses have not supported the case of the prosecution and they have completely turned hostile and the appellant is in jail for more than 4 ½ years and for the offences punishable under Sections 38 and 39 of the UAPA Act, maximum sentence is up to 10 years. He further submitted that the appellant is resident of Bangalore City and all the posting of e-mails and other electronic media blog platform is done through the City of Bangalore, as such, there is no jurisdiction of Chhattisgarh police to enquire into the matter and arrest the appellant. Therefore, the entire investigation done by the Bastar police is without jurisdiction. He also submits that the appellant's alleged confession before the police is barred under Section 25 of the Evidence Act and cannot be relied upon, as the material adduced in the charge- sheet does not substantiate or lend the slightest weight to any of the allegations made against the appellant. He also submits that there is no material on record to show that seditious blog posts material, inciting support for the Maoist movement and propagating the same uploaded by the appellant on his blog





naxalrevolution@gmail.com and the entire allegations made against the appellant are purely conjectures based entirely on suppositions and presumptions. He submits that the prosecution has adduced no evidence to support the charges under Section 18 UAPA and Section 9 of CSPA. Prosecuting the appellant for offences under Section 120 B of I.P.C., Section 13(1)(B), 38 and 39(2) of UAPA and Section 8(1) and 8(3) of CSPA on the basis of material included in the charge sheet submitted is barred under Article 20(2) of the Constitution of India. The incriminating handwritten notes seized from the appellant's house have not been placed in the charge sheet, therefore, no adverse inference against the appellant can be drawn and on that basis the appellant cannot be implicated in any way and, as such, no offence as alleged under Section 39(2) and under Section 8(1) and 8(3) of CSPA and offence under Section 120-B OF IPC are not made out against the appellant. Therefore, the appellant deserves to be released on bail by setting aside the impugned orders rejecting his applications under Section 439 of Cr.P.C.

12. Per contra, learned counsel for the respondent would submit that the prosecution had brought out sufficient material and documents on record, which





prima facie prove the involvement of the appellant in the anti-national activities and working with the completely banned naxal organization. He further submits that the appellant is the crucial source of urban network of naxal organization. He was playing very crucial and important role for publicity of naxal activities through the sources of internet and such an act of the appellant is dangerous to the public at large. It is submitted that since the investigation revealed that the appellant is also a member of the Coordination Committee of Maoist Party and Organization of South Asia and from the appellant currencies of as many as 15 different countries were seized including the currencies of Nepal, Uganda, Indonesia etc. and upon electronic examination of Laptop signatures affixed on pamphlets which was seized on 28.02.2018, a digital signature was also seized from his Laptop. It is also submitted that the appellant has received certain amount in his Bank Account through electronic mode of Google since 2010 till 2018, which was Rs.17,49,881/- from international sources. As such, learned Special Judge is absolutely justified in rejecting the bail application of the appellant and these appeals have no merit and deserves to be dismissed.





13. We have heard learned counsel appearing for the parties and considered the rival submissions made hereinabove and went through the material placed before us on behalf of the State.

14. While considering the prayer for release of an accused on bail, who is charged with offence under the Unlawful Activities (Prevention) Act, 1967, it is important to notice the provisions contained under Section 43D (5) & (6) of the said Act, which are quoted below :

"43D Modified application of certain provisions of the Code-

xxx xxx xxx
xxx xxx xxx
xxx xxx xxx

(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.

15. Section 43D of UAPA came to be considered by their Lordships of Supreme Court in the matter of **National Investigation Agency v Zahoor Ahmad Shah**





Watalil¹ in which their Lordships have considered the scope and application of the proviso to section 43D and held thus in paras 25 to 27 :

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 1 (2019) 5 SCC 1 CRA No.1213 of 2019 & Other connected matters 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 of Cr.P.C., 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 Cr.P.C.) and other material gathered by the Investigating Agency during investigation.

26. Be it noted that the special provision, Section 43D 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) Cr.P.C., 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 CRA No.1213 of 2019 & Other connected matters framing of charge, the materials presented along with the charge-sheet (report under Section 173 of Cr.P.C.), 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.

27. For that, the totality of the material gathered by the Investigating Agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.

16. Thereafter, in the matter of **Thwaha Fasal v. Union of India**² it has been held that the restrictions



imposed by sub-section (5) of Section 43D per se do not prevent a Constitutional Court from granting bail on the ground of violation of Part III of the Constitution and held as under :

"26. While we deal with the issue of grant of bail to the accused nos.1 and 2, we will have also to keep in mind the law laid down by this Court in the case of K.A. Najeeb (supra) holding that the restrictions imposed by sub section (5) of Section 43D per se do not prevent a Constitutional Court from granting bail on the ground of violation of Part III of the Constitution.

42. As held in the case of K.A. Najeeb (supra), the stringent restrictions imposed by subsection(5) of Section 43D, do not negate the power of Constitutional Court to grant bail keeping in mind violation of Part III of the Constitution. It is not disputed that the accused no.1 is taking treatment for a psychological disorder. The accused no.1 is a student of law. Moreover, 92 witnesses have been cited by the prosecution. Even assuming that some of the witnesses may be dropped at the time of trial, there is no possibility of the trial being concluded in a reasonable time as even charges have not been framed. There is no minimum punishment prescribed for the offences under Sections 38 and 39 of the 1967 Act and the punishment can extend to 10 years or only fine or with both. Hence, depending upon the evidence on record and after consideration of relevant factors, the accused can be let off even on fine. As regards the offence under Section 13 alleged against accused no.2, the maximum punishment is of imprisonment of 5 years or with fine or with both. The accused no.2 has been in custody for more than 570 days."

17. Admittedly in the instant case, in the trial against the appellant, the learned Special Judge





has framed the charges by order dated 31.12.2019 and the appellant is facing three criminal trials and as per record available in Spl.S.T.No.109/2018 fifteen witnesses have been examined, in Spl.S.T.No.110/2018 twelve witnesses have been examined and in Spl.S.T.No.105/2018 ten witnesses have been examined. However, the proviso to Section 43D(5) of UAPA would show 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.

18. Considering the material available on record, it is apparent that the appellant is a member of over ground cadre of CPI(M) and also found using the e-mail ID to propagate naxal movement and ideology and he has opened the Blog Abhay Naxal Revolution and is actively involved in online recruitment of naxal cadre. He was also found to be using proxy server to hide his identity and he is also found to have officially created 'CPI Maoist Naxalite' blog and also wrote his blogs as 'abhaynaxalrevolution' to hide his overtly and expressly Maoist connection. It also appears from record that he is





also a member of Coordination Committee of Maoist Party and Organization of South Asia and also traveling records of 15 countries and having an amount of Rs.17,49,881/- from international sources and from other material available on record, which completely furnished reasonable ground for believing that the allegation against the appellant is prima facie true. We are of the opinion that the appellant has failed to make out a case for grant of bail under Section 439 of Cr.P.C. and the learned Special Judge is absolutely justified in rejecting his application in all the three cases.

Accordingly, we do not find force in these criminal appeals and they are accordingly dismissed.

19. It is made clear that observation made herein is only for the purpose of deciding appeals preferred against the orders rejecting applications under Section 439 of Cr.P.C. It should not be taken as opinion on merits of the matters and learned Special Judge will decide the trial on its own merit strictly in accordance with law without being influenced by any of the observations made hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Deepak Kumar Tiwari)
Judge