IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Appellate Jurisdiction)

Criminal Appeal (DB) No. 856 of 2019

Gopal Krishna Patar @ Raja Peter, son of late Khetra Mohan Patar, resident of village- Kamarhappa, PO-Ulidih, PS-Tamar, District-Ranchi, Jharkhand **... Appellant**

Versus

Union of India, through National Investigating Agency, New Delhi
... Respondent

(Heard in the Court on 29th March 2022 & through V.C on 30th March 2022)

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Appellant : Mr. Jitendra Singh, Sr. Advocate
Mr. Abhishek Kumar, Advocate
Mr. Satish Kumar Keshri, Advocate
For the NIA : Mr. Amit Kumar Das, Spl. PP
Ms. Zeenat Mallik, PP

J U D G M E N T

C.A.V on 30th March 2022 Pronounced on 5th April 2022

Per, Shree Chandrashekhar, J.

Gopal Krishna Patar @ Raja Peter has filed this criminal appeal under section 21 of the National Investigation Agency Act, 2008 (in short, NIA) against the order dated 3rd August 2019 passed by the Judicial Commissioner-cum-Special Judge, NIA at Ranchi in Misc. Cr. Application No. 757 of 2019. By the said order, the Special Judge (NIA) rejected the application seeking bail to the appellant in connection to Special (NIA) 1 of 2017 – that was fourth attempt by the appellant in NIA Court.

2. The appellant is in custody since 9th October 2017.

3. This criminal appeal was filed on 26th August 2019 but as the proceedings would reveal the matter was not prosecuted on behalf of the appellant for more than 2 years. By virtue of an order of assignment dated 24th August 2021, this criminal appeal was listed before us for the first time on 31st January 2022.

4. A crime was registered at Bundu PS on the statement of

Nand Kishore Yadav who had driven Ramesh Singh Munda on a vehicle (Tavera) to S.S. High School, Bundu at around 12:15 hrs. on 9th July 2008, where he was assassinated by unknown criminals – 3 more persons lost their lives in the incident.

5. The case of the prosecution is that on the information supplied by Sheshnath Singh Kharwar who was one of the bodyguards of Ramesh Singh Munda the Maoists came at S.S. High School, Bundu where Ramesh Singh Munda was invited in a prize distribution ceremony. The informant saw that three Maoists carrying weapons moved towards the bodyguards of Ramesh Singh Munda who were standing in the corridor adjacent to the hall of the school where the programme was organized. One of the Maoists first fired in the air and then they all started firing at Shivnath Minz and Khurshid Alam, the guards. The informant who at that time was in Tavera on which Ramesh Singh Munda had come to the school could see that the Maoists continued firing for three to five minutes and then left the scene of crime shouting slogans *"Maowadi Zindabad"*. He saw gunshot injuries on Shivnath Minz, Khurshid Alam and the unknown boy – Ramesh Singh Munda had suffered multiple gunshot injury. All four persons were taken to Ranchi Institute of Medical Sciences by Bundu police where the doctors declared them brought dead. The informant claimed that he could recognize 3 persons who were around 25 years of age and wearing raincoats, amongst 10-12 other persons who were involved in the occurrence.

6. In Bundu PS Case No. 65 of 2008 which was lodged against unknown assailants, a charge-sheet was filed on 25th October 2008 against Dileshwar Mahto, Bindu Devi, Mahadev Oraon and Mahendra Oraon while investigation against other accused was kept pending. The charge-sheet dated 25th October 2008 gave rise to Sessions Trial No. 50 of 2009 which according to the appellant ended in acquittal of all four accused vide judgment dated 1st September 2010. The Crime Investigation Department (in short, CID) which took over the investigation from local police filed 1st supplementary charge-sheet on 30th November 2009

against Balram Sahu while investigation against Kundan Pahan, Radhe Shyam Badaik, Ram Mohan Singh Munda, Santosh Munda, Mahesh Munda, Pawan Singh Munda and other unknown accused remained pending – on this Sessions Trial No. 77 of 2010 commenced.

7. 2nd supplementary charge-sheet came to be filed on 30th September 2016 against Kundan Pahan, Radhe Shyam Badaik and Ram Mohan Singh Munda stating therein that the investigation in respect of Pawan Singh Munda, Santosh Munda, Mahesh Munda, Tulsi Das, Jakaria, Binod, Gurua Munda and against other unknown accused was pending. This 2nd supplementary charge-sheet led to Sessions Trial No. 310 of 2016 in which the aforesaid three persons were put on trial.

8. At this stage, by an order dated 29th May 2017 offences under the Unlawful Activities (Prevention) Act, 1967 (in short, UAPA) were added and NIA was directed by the Central Government vide order dated 28th June 2017 to investigate the case. Pursuant thereto, NIA registered R.C-11/2017/NIA/DLI which contained additional charges under sections 18, 20 and 38 of UAPA and section 17 of the Criminal Law (Amendment) Act. After having taken over charge of the case, NIA issued notice to the appellant on 13th September 2017 for his appearance and carried out search at his premises on 8th October 2017. According to NIA, the appellant was arrested on 9th October 2017 which is disputed by him and he took a stand that he was arrested on 8th October 2017 and coerced to sign the seizure-memo. The premises of the appellant was again searched on 12th October 2017 and 13th October 2017 and in course of the aforesaid searches several incriminating materials and letters written by the appellant were seized.

9. 3rd supplementary charge-sheet was filed on 31st March 2018 by which the appellant has been sent up for trial. In the charge-sheet, specific allegations of committing offences under section 302 read with section 120B of the Indian Penal Code, sections 16, 17, 18 and 20 of UAPA and section 25 (1B) of the

Arms Act are made against him. However, by an order dated 21st August 2018, charges only under section 302 read with section 120B of the Indian Penal Code and under sections 16, 18 and 20 of UAPA have been framed against the appellant. We are informed that all pending sessions trials are merged together and renumbered as Special (NIA) 1 of 2017. Now the trial has commenced against 15 accused as out of 18 accused, Ghashi Ram Munda, Pawan Lohra and Tulsi Das have since died.

10. The order dated 3rd August 2019 passed in Misc. Cr. Application No. 757 of 2019 takes note of the following materials produced by NIA:

> *"The N.I.A has disclosed a number of incriminating materials against the petitioner accused Gopal Singh Patar which are as under:*
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> - *Deposition of three witnesses namely P.W.1 Ram Mohan Singh Munda, PW.2 Santosh Burma @ Tipru & PW.3 Nand Kishore Yadav has been recorded during course of trial.*
> - *Letter No. RC-11/2017/NIA/DLI/CFSL/330 dated 09.02.2018 of Superintendent of Police, NIA, Raipur forward to CFSL Chandigarh together with Specimen handwriting of Gopal Krishna Patar.*
> - *Disclosure Memo dated 20.8.2017 (1335-1430 hours) towards the facts disclosed by accused Ram Mohan Singh Munda @ Mochhu @ Bhagat @ Pragati @ Ram Mohan.*
> - *Disclosure Memo dated 20.8.2017 (1240-1330 hours) towards facts disclosed by Balram Sahu @ Bolo @ David.*
> - *Further disclosure Memo dated 20.8.2017 (1555-1625 hours) towards the facts disclosed by Balram Sahu.*
> - *Pointing out Memo dated 20.8.2017 (1440-1550 hours) and the sketch map towards the pointings at the instances of accused Balram Sahu @ Bolo @ David and Ram Mohan Singh Munda @ Pragati @ Bhagat @ Mochhu.*
> - *Certified copy of CFSL, CBI Letter bearing File No. CFSL-2017/FPD-1163/4121 dated 21.11.2017 enclosing Forensic Psychological Assessment Report and Layered Voice Analysis Report No.CFSL-2017/FPD-1163 dated 21.11.2017 of the petitioner accused.*
> - *Two letters written to elder brother dated 22.1.2000 and without date (2nd letter).*
> - *One letter written to elder sister dated 12.4.1998.*
> - *One letter of MCCI addressed to K.K. Kedia and Ashok Agrawal dated 25.12.2008. Letter no.12 which containing name and contact number of Kundan Pahan back side of the paper.*
> - *PW.129 Umesh Machhua son of late Leeladhari Machhua, village & P.O Baredih, PS Tamar, District Ranchi.*
> - *On the basis of confessional statement of Ram Mohan Singh Munda and Kundan Pahan indicating the involvement of the petitioner in the commission of offence."*

11. Mr. Jitendra Singh, the learned Senior counsel for the appellant, has raised three-fold contentions to seek bail for the appellant: (i) there is no direct evidence on complicity of the appellant in murder of Ramesh Singh Munda (ii) materials which NIA seeks to use against the appellant such as confession of the co-accused, voice analysis test, forensic report of the weapons seized in connection to other cases are not admissible in evidence and (iii) long incarceration of the appellant and no reasonable possibility of the trial concluding in the near future would trample his rights under Article 21 of the Constitution of India.

12. The learned Senior counsel for the appellant has relied on the following judgments to find support to the above contentions raised on behalf of the appellant:

(i) *"State through superintendent of police, CBI/SIT v. Nalini & Ors."* [1],

(ii) *"Jayendra Saraswathi Swamigal v. State of T.N."*[2],

(iii) *"Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr."* [3],

(iv) *"Selvi & Ors. v. State of Karnataka"*[4],

(v) *"Central Bureau of Investigation v. Ashok Kumar Aggarwal & Anr."*[5] ,

(vi) *"Union of India v. K. A. Najeeb"*[6],

(vii) *"Ashim alias Asim Kumar Haranath Bhattacharya alias Asim Harinath Bhattacharya alias Aseem Kumar Bhattacharya v. National Investigation Agency"*[7], and

(viii) *"Sanjay Jain v. The Union of India through the Superintendent of Police, NIA"*[8].

13. The learned counsel for NIA has relied on the following judgments to oppose this criminal appeal for bail:

(i) *"Kalyan Chandra Sarkar "*[3],

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1 *(1999) 5 SCC 253*
2 *(2005) 2 SCC 13*
3 *(2005) 2 SCC 42*
4 *(2010) 7 SCC 263*
5 *(2013) 15 SCC 222*
6 *(2021) 3 SCC 713*
7 *(2022) 1 SCC 695*
8 *[Cr. Appeal (DB) No.222 of 2019]*

(ii) *"State of Maharashtra v. Damu S/o Gopinath Shinde & Ors."*[9] ,

(iii) *"Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr."*[10],

(iv) *"Chandrakeshwar Prasad alias chandu babu v. State of Bihar & Anr."*[11], and

(v) *"Mahipal v. Rajesh Kumar alias Polia & Anr."*[12] .

14. Placing heavy reliance on *"Kalyan Chandra Sarkar"*[10], Mr. Amit Kumar Das, the learned counsel for NIA, vehemently argued that in the earlier proceedings the High Court recorded a specific finding as to the existence of prima facie case against the appellant and, therefore, to reconsider the earlier order rejecting prayer for bail made by the appellant in Criminal Appeal (DB) No. 678 of 2018 some fresh material(s) either factual or legal must be shown to the Court. On the other hand, on behalf of the appellant, it is contended that the rule of finality does not apply to the bail petitions and moreover an order which does not reflect consideration of the materials against the accused for recording the existence of prima facie case would not be an order as envisaged by the Hon'ble Supreme Court in *"Kalyan Chandra Sarkar"*[10].

15. Voluminous records by way of three supplementary affidavits containing more than 200 pages each have been produced by the appellant. On behalf of the appellant, written arguments running into 20 pages and a long list of judgments have also been filed. NIA has also filed brief written submissions and relied on few judgments. We have recorded all this because we are not required to look into each page of the records produced in the present proceeding and would consider only those aspects on which arguments were made on behalf of both sides.

16. The learned Senior counsel for the appellant would submit that none of the prosecution witnesses in his statement under section 161 of the Code of Criminal Procedure including A5 Balram Sahu whose confessional statement was recorded on

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9 *(2000) 6 SCC 269*
10 *(2004) 7 SCC 528*
11 *(2016) 9 SCC 443*
12 *(2020) 2 SCC 118*

23rd August 2009 and PW1 Ram Mohan Singh Munda whose confessional statement was recorded on 1st April 2016 and 13th April 2016 has indicated involvement of the appellant in the crime and after about 9 years of registration of Bundu PS Case No. 65 of 2008 on the basis of some letters allegedly seized from the premises of the appellant and the confessional statement of other co-accused the appellant has been falsely implicated in the case labeling him as the mastermind.

17. In his statement under section 164 of the Code of Criminal Procedure, PW1 stated that the appellant is the mastermind behind the crime. He sought support of CPI (Maoist) to win the Assembly by-election to fulfill his aspirations to enter politics. On the direction of Kundan Pahan, Balram Sahu called the appellant to Birbanki forest area where the appellant along with two others came in the 3rd and 4th week of June and a meeting took place between the appellant, Kundan Pahan and three other Maoists. The appellant agreed to pay Rs.5 crores and provided AK-47 rifle for executing the plan to assassinate Ramesh Singh Munda, a sitting MLA of Jharkhand Assembly. On 8th July 2008, Kundan Pahan revealed to PW1 that Vivek Ji and Manish Da have issued instructions to kill Ramesh Singh Munda. Then he accompanied Kundan Pahan, Ghashi Ram Munda and Tulsi Das @ Vishal and came to the house of Bindu Devi, who was later on acquitted in Sessions Trial No. 50 of 2009, where he found that the appellant along with Jai Ganesh and Sonu were present. The appellant gave Rs.3 crores to Kundan Pahan and assured him that the remaining Rs.2 crores shall be paid after murder of Ramesh Singh Munda. The appellant handed over a slip containing mobile number of Sheshnath Singh Kharwar who would provide informations regarding movement of Ramesh Singh Munda. He has further stated that Kundan Pahan called Bhajo Hari Singh Munda around 07:30 PM and asked him to collect the money. After Ramesh Singh Munda was assassinated, Kundan Pahan asked Balram Sahu to contact the appellant for the balance sum of

Rs.2 crores who called him at Sun Temple, Bundu on 11th July 2008 and delivered the rest amount to Sonu and Rajesh Machhua.

18. We are informed that by now eight prosecution witnesses have been examined in the trial and evidence of PW9 who was the second investigating officer in the case has been recorded on 21st March 2022. PW1 has stated the facts starting from planning to execution; PW2 who also turned approver stated about the appellant meeting with Naxals and the discussions about how to execute the plan; PW3 who is the informant is naturally an important witness; PW4 stated about conspiracy with Kundan Pahan and others; PW5 was the shopkeeper at Bundu who was forced to give information about movement of Ramesh Singh Munda; PW6 who was running a hotel at Bundu deposed about utterances and grudge of the appellant against Ramesh Singh Munda and; PW7 who was a student and forced to become a member of Maoist gang has spoken about participation of other accused in the crime – PW4, PW5, PW6 and PW7 are the protected witnesses.

19. The learned counsel for NIA submitted that these seven witnesses who have been examined in the trial have provided sufficient support to the prosecution case against the appellant. It is contended that during extensive cross-examination in which more than 200 questions were posed to the witnesses still they remained firm to their ground on complicity of the appellant in the crime. We have, however, adopted a cautious approach and just glanced through examination-in-chief of these witnesses and find that evidence has come against the appellant the sufficiency of which for conviction can be examined by the Special Judge at the end of the trial.

20. Section 145 of the Indian Evidence Act, 1872 enables the cross-examiner to use any former statement of the witness but it cautions that “if it is intended to contradict the witness the cross-examiner is enjoined to comply with the formality prescribed therein”. The statements of PW1 under sections 161 and 164 of the Code of Criminal Procedure were usable by the defence to

contradict him against the statement given by him in the examination-in-chief. Not just in passing, we would indicate that a former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction and only such of the inconsistent statement which is liable to be contradicted "would affect the credit of the witness". Therefore, to contradict a witness must be to discredit the particular version of the witness and as held in *"Tahsildar Singh v. State of U.P"*[13] unless the former statement has the potency to discredit the present statement even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness. However, we must stay away from scrutinizing the evidence tendered by PW1 in the Court and would again indicate that what is the effect of answers elicited by the defence in the cross-examination of PW1 shall be evaluated by NIA Court. At this stage, suffice it would be record that the evidence tendered by PW1 cannot be ignored while deciding the present criminal appeal for bail.

21. The learned Senior counsel for the appellant would refer to paragraph no. 33 in *"Ashok Kumar Aggarwal"*[5] to challenge truthfulness of the evidence of PW1 on the ground that PW1 is accused in several criminal cases and since he has been granted pardon just in one case he may not be able to come out of the clutches of the police pressure. Mr. Amit Kumar Das, the learned counsel for NIA, would however submit that a glance at the testimony of PW1 would reveal that after serious thought and due repentance PW1 realized that it is better to reveal all the details of the crime, and it is not that out of fear or any kind of duress, pressure or inducement that PW1 turned approver and came to the Court as the prosecution witness.

22. The antecedent of a prosecution witness may become relevant for shaking his credibility but as provided under section 153 of the Indian Evidence Act it is only a co-lateral or incidental matter on which his evidence is tabooed. PW1 who was an accused in the present case became an approver and deposed

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13 *AIR 1959 SC 1012*

in the Court on behalf of the prosecution. Illustration (b) to section 114 of the Indian Evidence Act provides that an accomplice is unworthy of credit unless he is corroborated in material particulars. However, section 133 of the Indian Evidence Act provides that an accomplice shall be a competent witness and a conviction is not illegal merely because it is based on uncorroborated testimony of an accomplice. A conjoint reading of illustration (b) to section 114 and section 133 of the Indian Evidence Act would indicate that there is no prohibition in law to base conviction on uncorroborated testimony of an accomplice.

23. After "*The King v. Baskerville*"[14], the rule of corroboration which was in practice since long became almost a rule of law. Lord Reading, C.J. wrote that there is no doubt that the uncorroborated evidence of an accomplice is admissible in law and the Court will not quash the conviction merely upon the ground that the accomplice's testimony was uncorroborated. "*Baskerville*"[14] held sway in its time and the opinion of the learned Chief Justice was accepted by the Courts in India – perhaps, first in *"Rameshwar v. State of Rajasthan"*[15]. Now the law is well settled that evidence of an accomplice in the Court is given the same weight as any other witness but as a rule of prudence the Court may look for evidence which would lend assurance to the testimony of an accomplice. NIA boasts that it has collected abundance of materials to support and corroborate PW1.

24. Besides PW1 Ram Mohan Singh Munda who turned approver, Balram Sahu and Kundan Pahan who are arrayed as accused gave their confessional statements under section 164 of the Code of Criminal Procedure. According to NIA, the real story behind murder of Ramesh Singh Munda and the plan hatched by the appellant became known to the prosecution when Kundan Pahan made several startling revelations after he agreed to accept the Surrender Policy of the State of Jharkhand in the year 2016 and laid down arms before the police. He was taken on remand in this case and while he was in judicial custody an application was

14 *(1916) 2 K.B. 658*
15 *AIR 1952 SC 54*

moved by NIA to record his statement under section 164 of the Code of Criminal Procedure. Mr. Jitendra Singh, the learned Senior counsel for the appellant, has challenged the confessional statement of Kundan Pahan by drawing our attention to the affidavit filed by Kundan Pahan in the Court of Judicial Commissioner at Ranchi wherein he stated that he was not willing to make confession before the Magistrate. Mr. Amit Kumar Das, the learned counsel for NIA, states that a Magistrate was sent to the jail to ascertain willingness of Kundan Pahan for recording his statement under section 164 of the Code of Criminal Procedure and only after having satisfied himself about genuineness of willingness of Kundan Pahan the Court recorded his statement on 17th November 2016.

25. The act of recording confessions under section 164 of the Code of Criminal Procedure is a solemn act and in discharging this duty the Magistrate is required to see that the requirements of section 164 of the Code of Criminal Procedure are fully satisfied. If it appears to the Court that the confession has been caused by any inducement, threat or promise it must be excluded and rejected *brevi manu*.

26. Some say that the use of confession in law was since the times of Tudors and Stuarts. Lord Sumner observed that the rules of common law relating to confessions are "as old as *Lord Hale*" [refer, *"Ibrahim v. Emprror"*[16]]. Generally speaking a confession is an admission of a person charged with the offence that he has committed the crime. The Latin phrase *"optimum habemus testem confitentem reum"* which means "we have the best witness, a confessing defendant" was the guiding thought in the earlier years.

27. The first full and clear exposition of the rule came in *"The King v. Warickshall"*[17] which ruled that, "it is a mistaken notion that the evidence of confessions and facts which have been obtained from prisoners by promises or threats, is to be rejected

16 *AIR 1914 PC 155*

17 *(1783), 1 Leach 263 (168 English Reports 234)*

from a regard to public faith, no such rule ever prevail". Jane Warickshall was charged with receiving stolen goods which were found in her bed. The defence put forth on her behalf was that as the fact of finding the stolen property in her custody was obtained through the means of an inadmissible confession the proof of that fact ought also to be rejected. It was in those facts that the Court observed that "confessions are received in evidence, or rejected as inadmissible, under a consideration whether they are or not entitled to credit".

28. A century after "Warickshall", the Queen's Bench through Cave, J. observed that: "..... by that law, to be admissible, a confession must be free and voluntary. If it proceeds from remorse and a desire to make reparation for crime, it is admissible. If it flows from hope or fear, enticed by a person in authority, it is inadmissible....". [refer, "*The Queen v. Thompson*"[18]]. We would indicate that in the common law jurisdictions *"Ibrahim v. The King"*[19] is often referred to seek support from the statement of Lord Sumner to use voluntary confessions of an accused in the trial.

29. The following was the opinion of the Privy Council delivered by Lord Sumner:

> *"It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale."*

30. Whether the safeguards provided under section 164 of the Code of Criminal Procedure have been followed or not when confessional statements of co-accused including Kundan Pahan were recorded by the Magistrate and whether evidence of PW1 as approver which has been challenged by Mr. Jitendra Singh, the learned Senior counsel for the appellant, with reference to the judgment in *"Ashok Kumar Aggarwal"*[5] inspires confidence and the Court can act on his evidence are all matters which have to be argued at the time of final hearing in Special (NIA) 1 of 2017 and it

18 *17 Cox's Criminal Cases 641: (1893) 2 QB 12*
19 *(1914) A.C 599*

is for the Special Judge (NIA) to form an opinion on admissibility or otherwise of the materials laid before him. We may, however, indicate that even where the confessional statement of an accused is not admissible in evidence it is not altogether a prohibited zone and the Court can look into it to find the real story behind the occurrence [refer, *"Sandeep v. State of U.P"*[20]].

31. Mr. Amit Kumar Das, the learned counsel for NIA, seeks support from "*Damu*"[9] to further submit that the confessional statement of other co-accused can be used against the appellant also for the reason that the conditions under section 10 of the Indian Evidence Act are satisfied in the present case.

32. In "*Damu*"[9] the Hon'ble Supreme Court has observed as under:

> *"44. The basic principle which underlies Section 10 of the Evidence Act is the theory of agency and hence every conspirator is an agent of his associate in carrying out the object of the conspiracy (State of Gujarat v. Mohd. Atik). Section 10 permits "anything said, done or written by any one of such persons in reference to their common intention" to be recorded as a relevant fact as against each of the persons believed to have so conspired."*

33. For the sake of fullness, we need to revert to *"Kalyan Chandra Sarkar"*[10] wherein a specific plea was raised that the witnesses had turned hostile and there was no other material to implicate the accused in the crime except confessional statement of the co-accused. The Hon'ble Supreme Court rejected the plea observing that the admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced are all matters to be considered at the stage of the trial.

34. In *"Kalyan Chandra Sarkar"*[10] the Hon'ble Supreme Court has observed as under:

> *"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other*

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20 *(2012) 6 SCC 107*

circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.)

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay.)

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19. The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial."

35. The learned Senior counsel for the appellant made the following submissions to demonstrate that the materials sought to be used against the appellant are all in the realm of conjectures and surmises:

(i) The letter dated 22nd January 2000 which was written by the appellant to his elder brother is being used by NIA to show that the appellant had political ambitions but at that time Ramesh Singh Munda was not even MLA.

(ii) The letter dated 12th April 1998 written by the appellant to his elder sister would indicate that he had no money to engage a good lawyer to represent him in the trial of other cases which by that time had started.

(iii) The seizure of the letter dated 25th December 2008 which was written on the letter pad of MCCI demanding ransom of Rs.25 Lakhs from K.K. Kedia and Ashok Aggarwal which was

signed by Kundan Pahan was not found by NIA when search was conducted on 8th October 2017.

(iv) In his confessional statement recorded on 17th November 2017, Kundan Pahan on being confronted with the letter dated 25th December 2008 (D-252) categorically denied that the said letter was issued by his organization.

(v) No investigation was conducted in respect of K.K. Kedia and Ashok Aggarwal and the letter dated 25th December 2008 was not sent to the handwriting expert.

36. It is further submitted that the money trail is not established and NIA could not recover the money which according to the disclosure made by Bhajo Hari Singh Munda was concealed near the river bank of Kanchi river and an extraordinary explanation has been offered by NIA that the bag containing the money might have been washed away due to erosion or flood, whereas the RTI information from the Department of Home, Prison and Disaster Management dated 13th August 2019 would reveal that during the period between January 2008 to January 2019 no information as regards any flood around Tamar and Arki blocks was found in the records.

37. As regards arguments on hearsay evidence, we would indicate that in certain situations hearsay evidence is also accepted as proof of a fact [refer, *"Subramaniam v. Public Prosecutor"*[21]]. According to NIA, the appellant has a long list of criminal antecedent and he was involved in as many as 10 criminal cases of serious nature. Mr. Amit Kumar Das, the learned counsel for NIA, submitted that may be in his early years the appellant had financial difficulties but later on he collected huge sums of money through extortion and other crimes and his acquittal in so many criminal cases gives clear indication how much influence he wields in the area and is capable of influencing the witnesses. Mr. Jitendra Singh, the learned Senior counsel for the appellant, denied involvement of the appellant in 10 criminal cases and stated that in all 7 cases which were registered against the appellant he

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21 *(1956) 1 WLR 965*

has been acquitted by the Court. But the fact remains that the appellant who made a foray into the crime world early in his life was involved in so many criminal cases.

38. It is submitted that the appellant allegedly provided AK-47 rifle on 5th July 2008 but the same has not been recovered and there is nothing on record to suggest that AK-47 rifle recovered from possession of Tulsi Das on 23rd July 2017 in connection to Arki PS Case No. 26 of 2014 is the same weapon.

39. According to NIA, AK-47 rifle used in the crime was traced with the notorious outlaw of CPI (Maoist) Tulsi Das @ Vishal and that was seized in Arki PS Case No. 26 of 2014 and Winchester rifle and ammunitions which were carried by the house guard Khurshid Alam on the day of the occurrence have been recovered from the other extremists of CPI (Maoist).

40. The charge-sheet records that in connection to Arki PS Case No. 26 of 2014, one 7.62 mm caliber AK-47 rifle with magazine was recovered from Tulsi Das @ Vishal who died in an encounter on 26th July 2014; in connection to Arki PS Case No. 07 of 2012, one 30.06 bore Winchester rifle, 46 live cartridges and one empty case of 30.06 bore Winchester rifle were seized from Bhim @ Amus Munda; in connection to Arki PS Case No. 07 of 2012, 50 live cartridges of 30.06 bore Winchester rifle were seized from Martin Munda. These articles and seizure-memos have been brought on record of Special (NIA) 1 of 2017 and laid in evidence. The reports from CFSL, Kolkata and SFSL, Ranchi have been laid in evidence to establish that some of the empty cartridges were fired from the seized fire-arm.

41. In the above context, we may indicate that in *"State of Rajasthan v. Daud Khan"*[22] the FSL report was not conclusive in the sense that the bullet extracted from the body of the deceased could not definitely be linked with the recovered weapon but it was found that the bullet was capable of being fired from the recovered gun. The Hon'ble Supreme Court held that there was no doubt

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22 *(2016) 2 SCC 607*

both from the medical and the ocular evidence that Daud Khan fired shot with a gun.

42. NIA has proposed to produce a host of other incriminating materials against the appellant. Mobile phones and SIM cards were seized from the possession of A16 and A17 (the appellant) and CDs and DVDs seized during search conducted at residential premises and party office of the appellant have been sent for examination to CDAC, Thiruvananthapuram. At the place of occurrence, 25 rounds of 30.06 mm, 40 live rounds of 30.06 mm, 6 live ammunitions, 6 live rounds of 12 bore and one live round of 7.62 mm which were scattered around the victims were seized vide seizure-memo dated 9th July 2008. The materials recovered during postmortem of the victims were sent to CFSL, Kolkata and the documents seized during search conducted at the premises of the appellant along with specimen handwriting have been forwarded to CFSL, Chandigarh.

43. In the course of investigation, A16 and A17 had undergone polygraph test and it is stated that on the basis of forensic psychological assessment, behavioral analysis interview and layered voice analysis it was inferred from their statements that their answers on material issues were deceptive and they were hiding some information related to the occurrence. *"Selvi"*[4] has been referred to by the learned Senior counsel for the appellant to challenge admissibility of Narco Analysis Test Report of the appellant. In "*Selvi*"[4], the Hon'ble Supreme Court held that the test results cannot be admitted in evidence if they have been obtained through the use of compulsion but at the same time in paragraph no. 264 of the reported judgment it was made clear that voluntarily administration of the "polygraph test", "narco analysis technique" etc. is permissible provided that certain safeguards are in place. As would appear from the order dated 3rd August 2019 passed by the Special Judge (NIA), the appellant gave his statement on 13th September 2017 running into 6-pages in which he expressed his willingness to undergo "polygraph test" which he subsequently retracted.

44. With reference to some observations in *"Sanjay Jain"*[8], the learned Senior counsel for the appellant endeavoured to contend that no material has been produced by NIA to establish the facts constituting the essential ingredients for the offences under sections 16, 17 and 18 of UAPA and while so the bar under section 43-D(5) of UAPA is not attracted in the present case.

45. Section 2(k) of UAPA provides that "terrorist act" has the meaning assigned to it in section 15 and the expression "terrorist organization" is defined under section 2(m). The opening line of section 15 provides that an act done "with intent to threaten" or "likely to threaten" (i) the unity (ii) integrity (iii) security (iv) economic security or (v) sovereignty of India shall be a "terrorist act". The second part of sub-section (1) provides that any act with intent to strike terror or which is likely to strike terror in the people or any section of the people in India or in any foreign country by the use of arms, ammunitions etc. as mentioned under clause (a) which causes or is likely to cause death or injuries to any person or persons or causes loss, damage or destruction of property etc. would be a "terrorist act".

46. In a prize distribution ceremony at S.S. High School, Bundu, a sitting MLA of the Jharkhand Legislative Assembly was assassinated in broad daylight. Four persons including the bodyguard and house guard of Ramesh Singh Munda and a boy were killed in the occurrence. In the charge-sheet, the prosecution says that the murder of Ramesh Singh Munda was in series of the killings of Mahendra Singh who was MLA from Giridih, Sunil Mahto who was MP from Jamshedpur and son of a former Chief Minister who was killed in October 2007. During that period, such was the fear of Maoists that it was extremely dangerous to travel out of Ranchi by road after sunset as they had built the "liberated zones" around the capital city. It is stated that four hundred security personnel and more than thousand people are killed since the year 2000 in the fight between the State and Maoists. According to NIA, killing of Ramesh Singh Munda which was

executed by the Maoists was one another incident intended at creating fear and terror in the minds of the people.

47. Section 16 provides punishment for a "terrorist act" which shall be death or imprisonment for life in case the "terrorist act" has resulted in the death of any person and in any other case it shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life – in both the situations the accused shall be liable to pay fine also.

48. The relevant expressions in section 17 are that (i) whoever provides funds (ii) knowing that such funds are likely to be used (iii) by a terrorist organization or by a terrorist gang or by an individual terrorist (iv) to commit a "terrorist act" (v) notwithstanding whether such funds were actually used or not for commission of such act. Section 18 is also widely worded as it uses the expressions conspires, advocates, abets, advises, incites, directs or knowingly facilitates the commission of a "terrorist act". There is a specific allegation against the appellant that he sought support from CPI (Maoist), conspired with them and provided funds and weapon to them to assassinate a sitting MLA of the area which according to NIA was used by CPI (Maoist) to strike terror in the minds of the local people. It is a settled proposition in law that in a criminal conspiracy which is generally hatched in secrecy each conspirator may play different role to achieve the common purpose.

49. In *"Damodar v. State of Rajasthan"*[23] the Hon'ble Supreme Court has observed as under:

> *"15. ... The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not (sic) sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or a series of acts, he would be held guilty under Section 120-B of the Penal Code, 1860."*

23 *(2004) 12 SCC 336*

50. On the basis of the aforesaid discussions, we conclude that it is not possible to say that the accusations against the appellant are prima facie untrue and that the case set up by NIA against the appellant is based on no evidence.

51. The learned Senior counsel for the appellant launched a virulent attack on the finding of prima facie case against the appellant recorded in Criminal Appeal (DB) No. 678 of 2018 on the ground that without a discussion about nature of the evidence sought to be pressed against the appellant, a satisfaction about existence of a prima facie case against the appellant could not have been recorded by the previous Division Bench. It is further submitted that merely by observing that "upon taking into consideration the materials which have been collected during investigation by the NIA", the Court could not have recorded its satisfaction that the accusations against the appellant appear to be prima facie true.

52. The argument is that since there is no evaluation of the prosecution materials, whether these are substantive or hearsay evidence, the dismissal of Criminal Appeal (DB) No. 678 of 2018 on the ground that complicity of the appellant in the crime is prima facie established would not tie the hands of this Court to take a contrary view.

53. The relevant portions of the order dated 11th October 2018 passed in Criminal Appeal (DB) No. 678 of 2018 read as under:

> *"8. It may also be stated at this stage, that though in the present appeal, the appellant has also questioned the propriety of the order dated 28.6.2017, issued by the Ministry of Home Affairs, Government of India, handing over the investigation of the case to the NIA, after about eight years of occurrence, but the appellant had challenged the said order in W.P.(Cr.) No. 458 of 2017, and the said writ petition, upon adjudication, has been dismissed by a Bench of this Court, by Judgment dated 25.8.2018. As such, even questioning the propriety of handing over the investigation to NIA, is now no more available to the appellant.*
>
> *9. So far as the involvement of the appellant in the gruesome quadruple murder of sitting MLA, his two bodyguards and one innocent boy is concerned, it has been pointed out by the learned counsel for the NIA from the charge-sheet submitted against the accused persons, that this appellant had high political ambitions from the very initial stage, and during investigation, the NIA could lay its hands on the materials to establish the following facts:-*

(A) The appellant contacted CPI Maoists group (an extremist organisation) for eliminating the sitting MLA and also backing him in fighting the bye-election on the seat getting vacant thereby, and the appellant contacted the dreaded maoist Kundan Pahan and other top maoist leaders for that purpose.

(B) For eliminating the sitting MLA, the appellant had agreed to pay Rs. 5 crore and to give one A.K.-47 rifle and ammunitions to the CPI Maoists.

(C) On 5.7.2008, while the said Kundan Pahan was camping at Barigada along with his associates, the aides of the appellant delivered him one AK-47 rifle and ammunitions.

(D) Again on 8.7.2008 while said Kundan Pahan was at Baruhatu, the appellant along with his aides went there in a white colour Tata Dicor vehicle, and handed over the amount of Rs. 3 crores in two bags, as advance amount to Kundan Pahan.

(E) The appellant also provided Kundan Pahan the contact number of one bodyguard of the deceased MLA, who is also an accused in the present case, assuring that he would provide the information about the movement of said MLA.

(F) After the plan was executed, the remaining amount of Rs. 2 crore was also sent to the CPI Maoists on 11.7.2008.

(G) A raid was conducted in the house of the appellant, from where some incriminating letters were recovered by the NIA, one being written on the pad of CPI Maoists, demanding levy from two businessmen, and it has come in the investigation that the letter pad was being sent to the appellant for printing the letters for demand of levy and sending it to the business persons for collection of levy.

These materials collected against the appellant during investigation by the NIA, clearly showed that the appellant was having active connection with CPI Maoists for fulfilling his political ambitions, and he got the sitting MLA eliminated, fought the bye-election from the same seat with the backing of the CPI Maoists group, won the election and also became a Minister in the State of Jharkhand.

10. Learned counsel for the appellant, while arguing the case for bail, submitted that the appellant has been falsely implicated in the case due to political reasons, and all these materials have been collected after eight years of the occurrence, which is of the year 2008 itself, whereas the appellant has been made accused in this case only in the year 2017, on the basis of the confessional statement of the co-accused. It is also submitted that the alleged letters recovered during raid, were actually implanted, inasmuch as, even though the raid was conducted in his house earlier also on 8.10.2017, when the entire premises of the appellant was searched, but Criminal Appeal (D.B.) No. 678 of 2018 no recovery was made. Learned counsel, accordingly, made the prayer for bail of the appellant.

11. Learned counsel for the NIA, on the other hand, has opposed the prayer for bail, pointing out the materials collected against the appellant, as discussed above, and also submitted that Section 43(D)(5) of the Unlawful Activities (Prevention) Act, 1967, is bar to grant bail, once prima facie case is found against the appellant.

12. Having heard learned counsels for both the sides and upon taking into consideration the materials, which have been collected during investigation by the NIA, we are of the considered view that prima facie involvement of the appellant in the gruesome quadruple murder of sitting MLA, his two bodyguards and one innocent school boy, after entering into conspiracy with the top leaders of CPI Maoists, an extremist organisation, cannot be ruled out at this stage, and we are satisfied that the accusations against the appellant appear to be prima facie true.

13. As such, no case is made out for granting bail to the appellant and there is no illegality in the impugned order passed by the Trial Court below, rejecting the bail application of the appellant."

54. In *"Chandrakeshwar Prasad @ Chandu Babu"*[11] the Hon'ble Supreme Court seems to approve *"Kalyan Chandra Sarkar"*[10]. In *"Mahipal"*[12] reference has been made to *"Kalyan Chandra Sarkar"*[10] in paragraph no. 26 of the reported judgment to lay stress that the Court granting bail should exercise its discretionary powers in a judicious manner and not as a matter of course. These cases arose from the orders granting bail to the accused and reference of *"Kalyan Chandra Sarkar"*[10] has been made in the context of duty of the Court hearing bail petitions but there is no doubt that *"Kalyan Chandra Sarkar"*[10] is still a good law.

55. Even in *"Jayendra Saraswathi Swamigal"*[2], paragraph no. 16 of *"Kalyan Chandra Sarkar"*[10] has not been overruled by the Hon'ble Supreme Court. A little later, in the same volume of the law report one may find *"Kalyan Chandra Sarkar"*[3] which dealt with paragraph no. 16 in *"Jayendra Saraswathi Swamigal"*[2] and proceeded to examine the effect of aforesaid observations in *"Jayendra Saraswathi Swamigal"*[2] in the following manner:

> *"39. The learned counsel for the respondent further contended that this Court in Jayendra Saraswathi case having not agreed with the law laid down in Kalyan Chandra Sarkar ought to have overruled the said judgment in Kalyan Chandra Sarkar. We consider this as an argument of desperation. In Kalyan Chandra Sarkar there has been no declaration of any law made as such. This Court only applied the requirement of Section 437(1)(i) CrPC to the facts of the case and came to the conclusion that there was prima facie case against the respondent, hence, cancelled his bail. Nor has this Court in the case of Jayendra Saraswathi made any declaration of law. In that case also based on the facts of that case, this Court came to the conclusion that the prosecution had not established a prima facie case as against the accused in that case. It is while considering the judgment of this Court in Kalyan Chandra Sarkar this Court in the case of Jayendra Saraswathi observed:*
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> > *"The observations made therein cannot have general application so as to apply in every case including the present one wherein the Court is hearing the matter for the first time."*
>
> *40. It is probably based on the above observations of this Court in the case of Jayendra Saraswathi that the learned counsel was emboldened to submit that the Court in Jayendra Saraswathi case having stated so ought to have overruled the judgment in Kalyan Chandra Sarkar . Whether the judgment in Kalyan Chandra Sarkar ought to have been overruled or not by the Bench which delivered Jayendra Saraswathi judgment, we are not competent to say, but certainly we are competent to say what actually the Court stated in the said judgment of Jayendra Saraswathi and what the Court has done in that case. In the said case of Jayendra Saraswathi the Court only distinguished Kalyan Chandra Sarkar. While doing so they observed:*
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> > *"The case of Kalyan Chandra Sarkar was decided on its*

> *own peculiar facts where the accused had made seven applications for bail before the High Court, all of which were rejected except the fifth one which order was also set aside in appeal before this Court. The eighth bail application of the accused was granted by the High Court which order was the subject-matter of challenge before this Court. The observations made therein cannot have general application so as to apply in every case including the present one wherein the Court is hearing the matter for the first time."*

56. We would indicate that at the time when Criminal Appeal (DB) No. 678 of 2018 was decided the trial in Special (NIA) 1 of 2017 had not started and that seems to be the reason the Court did not discuss each individual piece of evidence independently. The word "prima facie" is a Latin expression which means "at first sight" or "based on first impression". In the order dated 11th October 2018 passed in Criminal Appeal (DB) No. 678 of 2018, the Court has recorded brief facts of the case, provisions under section 43-D(5) of UAPA, the materials collected against the appellant, arguments raised on behalf of the appellant and few judgments of the High Court. The requirement in law is that the order granting or refusing bail should reflect application of mind. Since that can be gathered from the discussions made in the order, it is felt that the order granting or refusing bail should contain a brief discussion about the materials the prosecution has proposed to use against the accused. As we see, the order dated 11th October 2018 which takes note of all relevant considerations for grant/refusal of bail is not a cryptic order rather it reflects application of mind to the facts and circumstances of the case. Whatever way one analyses the arguments advanced on both sides this much seems to be an admitted position in law that in the subsequent bail application(s) the accused must provide a specific reason and grounds to overcome the hurdle created by the first rejection. Except the stage of trial and arguments in law, nothing has been shown to us to differ with the finding on existence of a prima facie case against the appellant recorded in Criminal Appeal (DB) No. 678 of 2018.

57. The learned Senior counsel for the appellant would finally submit that NIA proposes to examine 192 witnesses and lay in evidence 373 documents as well as 76 material exhibits in

support of the charges framed against the accused and since the trial has progressed at snail's speed which thus would take years to conclude, the appellant who has spent four and half years in custody is entitled for bail. On instructions from the Investigating Officer who was present in the Court with records of the case, Mr. Amit Kumar Das, the learned counsel for NIA, informed the Court that against the appellant NIA proposes to examine about 35 witnesses.

58. There is no absolute and unconditional rule of law that only on account of a long period of incarceration the accused is entitled for bail. There are well established principles on a cumulative consideration of which the Court seized with the bail application moved by an accused can form its opinion whether to grant or not bail in the matter. Blackstone has said that; "crime is an act committed or omitted in violation of public law forbidding or commanding it". On the other hand, J. Oerter stated that; "personal liberty is the right to act without interference within the limits of the law". The individual liberty and societal interest come face to face when a bail application is moved in the Court, which is assigned this duty by law to strike a balance between the two competing theories. And, that seems to be the reason why it is unanimously accepted in the legal parlance that each case is decided in the facts and circumstances of the case applying the broad principles for grant or refusal of bail. The character, behavior, means, position and standing of the accused [*"State of U.P. v. Amarmani Tripathi"*[24]]; criminal history of the accused, likelihood of the offences being repeated and reasonable apprehension of course of justice being thwarted by grant of bail [refer, *"Prahlad Singh Bhati v. NCT, Delhi"*[25]] are some of the factors which are relevant for the purpose of the present criminal appeal.

59. In our opinion, the judgments referred to on behalf of the appellant do not bear any similarity on facts with the present case. In *"K.A. Najeeb"*[6] the Hon'ble Supreme Court examined the

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24 *(2005) 8 SCC 21*
25 *(2001) 4 SCC 280*

ambit of Article 21 of the Constitution of India which covers within its protective umbrella not only due procedure and fairness but also access to justice and a speedy trial and held that when a timely trial would not be possible and the accused has suffered incarceration for a significant period, the rights under Article 21 of the Constitution of India would trump the statutory restrictions on right to bail imposed by the provisions like section 43-D(5) of UAPA. In *"Ashim"*[7] hearing of the case was taking place only one day in a month and statement of *de facto* complainant was still not completed – there were 298 prosecution witnesses. In the above contexts, the Hon'ble Supreme Court taking note of incarceration of the accused for about 9½ years interfered in the matter and directed release of Asim on post-arrest bail. On a consideration of the facts and circumstances of this case, we are however of the opinion that no case of violation of the rights of the appellant as guaranteed under Article 21 of the Constitution of India is made out.

60. In the end, we would say that when the trial has progressed and several important witnesses have tendered some evidence which can be used against the appellant and as indicated in the charge-sheets there would be host of other incriminating materials which NIA proposes to produce against the appellant, keeping in mind the well settled principles for grant or refusal of bail, such as, existence of prima facie case, gravity of the offence, severity of punishment, antecedent of the appellant and possibility of the appellant impeding the trial once he is released on bail, this criminal appeal for bail cannot be entertained.

61. Criminal Appeal (DB) No. 856 of 2019 is dismissed.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

(Ratnaker Bhengra, J.)

Jharkhand High Court, Ranchi
Dated : 5th April 2022
R.K./Amit/Tanuj/A.F.R.