

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.1159 of 2022

Mangal Munda, aged about 24 years, son of Ato Munda,
resident of village-Chipibandadih (Jilingpiri), P.O. + P.S.-
Tamar, District-Ranchi (Jharkhand).

... Appellant

Versus

Union of India through National Investigation Agency

... Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant : Mr. Birendra Kumar, Advocate
For the Respondent : Mr. Amit Kumar Das, Advocate

Order No. 08: Dated 12th March, 2024

Per Sujit Narayan Prasad, J.

I.A. No. 1487 of 2024

1. The instant application has been filed for condoning the delay of 10 days in filing the appeal though not under Section 21(5) of the NIA Act but under Section 5 of the Limitation Act.

2. Learned counsel for the appellant has submitted that the said Interlocutory Application has been filed due to inadvertence since before filing of the instant application, one Interlocutory Application being I.A. No. 10052 of 2022 was filed, hence submission has been made that the instant Interlocutory Application is not being pressed.

3. Considering the aforesaid submission, the instant Interlocutory Application is dismissed as not pressed.

I.A. No. 10052 of 2022

4. At the outset, learned counsel for the appellant has sought for leave of this Court to make necessary correction, in the provision of law under which the instant application has been filed, by deleting '5 of the Limitation Act' and in place thereof inserting '21(5) of the N.I.A. Act'.

5. Considering the nature of prayer, let necessary correction be done by him in course of day in the instant Interlocutory Application.

6. The instant application has been filed for condonation of delay of 10 day in filing the appeal.

7. Heard learned counsel for the parties.

8. In view of reason assigned in the application, the delay in filing the appeal is condoned.

9. Accordingly, I.A. No. 10052 of 2022 stands disposed of.

Criminal Appeal (D.B.) No.1159 of 2022

10. The instant appeal preferred under Section 21(4) of the National Investigation Agency Act, 2008 is directed against the order dated 16.08.2022 passed by the AJC-XVI-cum-Spl. Judge, NIA, Ranchi in Misc. Cr. Application No.1544 of 2022, (Special (NIA) Case No.02/2021) corresponding to R.C. No.02/2021/NIA/RNC, arising out of Toklo P.S. Case No.09 of 2021 registered for the offence under Sections 147, 148, 149, 120B, 121/121A, 307, 302,

333 and 353 of the Indian Penal Code (I.P.C.), Section 3/4 of Explosive Substances Act, Section 17 of the C.L.A. Act 1908 and under Sections 16, 20, 38 & 39 of the Unlawful Activities (Prevention) Act 1967, whereby and whereunder, the prayer for regular bail of the appellant has been rejected.

Prosecution case and Facts

11. The brief facts of the prosecution case leading to this Criminal Appeal is that the superintendent of Police Chaibasa, West Singhbhum, received information from various sources regarding the movement of Anal Da @ Toofan Da @ Patriram Manjhi and Maharaj Pramanik @ Raj Pramanik, both senior cadres of Central committee of CPI Maoist, along with other cadres of their groups were roaming in the hilly area of Lanji Mountain, under Toklo Police Station, District- West Singhbhum and planning to execute a big incident in that area and disrupt the development. Accordingly on direction of Superintendent of Police, Chaibasa and senior officials, one special operation was launched from the Darkada (Jharjhara) base camp by the troops of Jharkhand Jaguar AG-II and C/197 CRPF BN.

12. It is further alleged that when informant along with search parties reached near slope of Lanji Hill, the troops of Jharkhand Jaguar AG II were on front and leading the

operation and troops of CRPF/ 197 BN was moving behind the Jharkhand Jaguar AG-II. Suddenly, at about 8.30 hours a heavy blast took place from the left flank approx. 100-150 meters on the hill from the base of Lanji Hill. In retaliation to the blast six rounds were fired by Constable Vijay Yadav of Jharkhand Jaguar towards the hill for his self-defence when the troops heard the sound of blast all the operation team took position for a while.

13. In the meantime, Section Commander of the Jharkhand Jaguar informed through wireless set that an IED blast has taken place and five jawans of his team and one Jawan of CRPF got injured and out of them two become martyred and rest injured were rescued to Medica hospital Ranchi. Later on, one head constable also attained martyrdom after reaching Medica hospital, Ranchi, Jharkhand.

14. Accordingly, a case was registered on the basis of written report made by Sub-inspector of police Ramdeo Yadav as Toklo P.S. Case No.09 of 2021 under Sections 147, 148, 149, 353, 120B, 121, 121A, 307, 302, 333 and 353 of the Indian Penal Code (I.P.C.), Section 3/4 of Explosive Substances Act, Section 17 of the C.L.A. Act 1908 and under Sections 16, 20, 38 & 39 of the Unlawful Activities (Prevention) Act 1967 (UA(P) Act 1967) against the thirty three named accused persons along with 20-25

unknown members of banned terrorist Organisation i.e. CPI (Maoist).

15. Later on, considering the gravity of the offence, Ministry of Home Affairs, Government of India vide order dated 20.03.2021 directed National Investigation Agency (NIA), Ranchi to take over the investigation of the Toklo P.S.Case No.09 of 2021.

16. In compliance to the directions of the Ministry of Home Affairs, Government of India, (Order No. F.No.11011/25/2021/NIA dated 20.3.3021), NIA, Ranchi re-registered the aforesaid case as RC-02/2021/ NIA/RNC dated 24.03.2021 under Sections 147, 148, 149, 120B, 121, 121A, 307, 302, 333 and 353 of the Indian Penal Code (I.P.C.), Section 3/4 of Explosive Substances Act, Section 17 of the C.L.A. Act 1908 and under Sections 16, 20, 38 & 39 of the Unlawful Activities (Prevention) Act 1967 (UA(P) Act 1967) against the accused persons.

17. After obtaining the administrative approval of the competent authority the case docket and case exhibits were transferred to the NIA by the Investigating agency and accordingly investigation was taken up by the NIA.

18. On 07.09.2021 charge-sheet was submitted against 19 accused persons and the present appellant was arrayed as an Accused no.9 (A-9).

19. Consequently, the above-named appellant had preferred the regular bail application vide Misc. Cr. Application No. 1544 of 2022 before the NIA Special Court, Ranchi for regular bail but the same has been rejected vide order dated 16.08.2022 against which the present appeal has been filed.

Submission of the Learned Counsel for the Appellant

20. Learned counsel for the appellant has assailed the impugned order on the following grounds:-

- (i)** The NIA has not established through its investigation as to what terrorist act was committed by the appellant and thus no offence under Unlawful Activities (Prevention) Act can be said to be made out.
- (ii)** The learned court below failed to appreciate and consider that the appellant has no any nexus with extremist organization, thus the appellant cannot be brought within the ambit and scope of Act, 1967.
- (iii)** Appellant is quite unknown about the alleged offence and he has got no connection with said crime and he was not arrested from the place of occurrence. Further No incriminating articles have been recovered from the possession of the appellant.
- (iv)** The appellant is not named accused in the FIR and he has been arrayed as an accused in the instant case only on the basis of suspicion and after his

arrest his confessional statement was recorded which led to recovery of nothing.

(v) He is in custody in the instant case since 13.03.2021 i.e. almost 3 years and the instant case is running at the stage of evidence and as such there is no chance of conclusion of the trial in near future.

(vi) As per the judgment passed by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeer*** reported in ***(2021) 3 SCC 713*** the personal liberty of the individual has paramount importance, hence, taking into consideration the period of custody, it is a fit case where the appellant deserves to be released from judicial custody.

21. Learned counsel for the appellant, on the aforesaid premise, has submitted that the learned court ought to have considered that aspect of the matter, while considering the prayer for regular bail, but having not been considered, therefore, the impugned orders need to be interfered with.

Submission of the Learned Counsel for the Respondent NIA

22. While, on the other hand, learned counsel appearing for the respondent NIA has defended the impugned orders on the following grounds:-

- (i) It is evident from the charge-sheet that the present appellant has worked as aid to the proscribed organization as such provisions of UA(P) Act, 1967 will be applicable against the appellant.
- (ii) During investigation it has emerged that the present appellant used to procure iron pipe and supply the same to the armed cadres of CPI (Maoist) which has been used as IED blast material as per the discussion made hereinabove
- (iii) On the basis of material which have been surfaced during investigation, it is established that the present appellant was part of the larger conspiracy hatched with association and direction of armed cadres of CPI Maoist and by using the iron pipe supplied by him, Maoist carried out IED blast at Lanji forest resulting killing of the three police personnel and causing serious injuries to the few other Police personnel.
- (iv) Further the proviso as stipulated under Section 43D(5) of UA(P) Act puts a complete embargo against release of the accused persons, if *prima facie* case is made out and allegation against the appellant is serious in nature.
- (v) In this case there is *prima facie* case made out against the appellant and chargesheet has been submitted in which cognizance has been taken and

now after framing of charge case record is running for prosecution evidence. Hence, seeing the seriousness of the crime which is against sovereignty, unity, Integrity of the country, it is not fit case to enlarge the appellant on bail.

(vi) The ratio of judgment relied upon by the learned counsel for the appellant as rendered by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeer*** (Supra), is not applicable in the instant case, reason being that in the aforesaid case, nature and background of the offence was different.

23. Mr. Das, learned counsel for the respondent-NIA based upon the aforesaid ground has submitted that since the nature of allegation leveled against the appellant is very grave and bail of identically placed accused persons namely Sorto Mahali @ Don, Ramrai Hasda, Jaiki Paradhi @ Jaiki and Suli Kandir @ Suleman Kandir, have already been rejected vide order dated 18.01.2023, 10.01.2024, and 11.01.2024 passed in Criminal Appeal (DB) No. 399 of 2022, 1141 of 2023 and 990 of 2023 respectively, therefore, the present appeal is also fit to be dismissed.

Analysis

24. We have heard learned counsel for the parties and considered the finding recorded by learned Court in the impugned order as also the charge-sheet.

25. This Court, before proceeding to examine as to whether the appellant has been able to make out a *prima facie* case for enlarging him on bail, deems it fit and proper to discuss some settled proposition of law and the relevant provisions of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as Act, 1967).

26. The main objective of the Act 1967 is to make powers available for dealing with activities directed against the integrity and sovereignty of India. As per Preamble, Act 1967 has been enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. Therefore, the aim and object of enactment of UAPA is also to provide for more effective prevention of certain unlawful activities.

27. To achieve the said object and purpose of effective prevention of certain unlawful activities the Parliament in its wisdom has provided that where an association is declared unlawful by a notification issued under Section 3, a person, who is and continues to be a member of such association shall be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine.

28. Clause (m) of Section 2 of the 1967 Act defines “terrorist organization”. It is defined as an organization

listed in the First Schedule. CPI (Maoist) has been listed at Item no. 34 in the First Schedule. Chapters III onwards of the 1967 Act incorporate various offences. Chapter IV has the title “punishment for terrorist act”. Clause (k) of Section 2 provides that “terrorist act” has the meaning assigned to it under Section 15 and the terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

29. Further section 10(a)(i) of Act 1967 provides that where an association is declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that Section, a person, who is continues to be a member of such association shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine therefore, so long as Section 10(a)(i) stands a person who is or continues to be a member of such association shall be liable to be punished.

30. As per mandate of Section 13 of the Act 1967 who takes part in or commits, or advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

31. At this juncture it will be purposeful to discuss the core of Section 43(d)(5) of the Act 1967 which mandates

that the person shall not be released on bail if the court is of the opinion that there are reasonable grounds for believing that the accusations made are prima facie true apart from the other offences the appellant is accused of committing offences under Sections 17, 18 and 21 of the UA(P) Act, 1967.

32. The requirement as stipulated under Section 43D(5) of the UA(P) Act, 1967 in the matter of grant of regular bail fell for consideration before the Hon'ble Apex Court in the case of **National Investigation Agency v. Zahoor Ahmad Shah Watali [(2019) 5 SCC 1]** wherein at paragraph 23 it has been held by interpreting the expression “prima facie true” as stipulated under Section 43D(5) of the Act, 1967 which would mean that the materials/evidence collated by the investigation agency in reference to the accusation against the accused concerned in the First Information Report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It has further been observed that 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. The degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of the

accused “not guilty” of such offence as required under the other special enactments. For ready reference, paragraph 23 of the aforesaid judgment is required to be quoted herein which reads hereunder as :-

“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable 11 grounds for believing that the accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to

opine that the accusation is “prima facie true”, as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act....”

33. It is, thus, evident from the proposition laid down by the Hon'ble Apex Court in the case of **National Investigation Agency v. Zahoor Ahmad Shah Watali** (Supra) that it is the bounden duty of the Court to apply its mind to examine the entire materials on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not.

34. Further It is settled proposition of law that at the stage of granting or non-granting of the bail, the Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise and the elaborate examination or dissection of the evidence is not required to be done at this stage.

35. Further, the Hon'ble Apex Court by setting out propounding the law in the same case of **National Investigation Agency v. Zahoor Ahmad Shah Watali** (supra), has observed that the elaborate examination or

dissection of the evidence is not required to be done at this stage and the Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise. For ready reference paragraph 24 and 25 of the aforesaid judgment is being quoted herein under:-

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

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 Cr.P.C.) and other material gathered by the investigating agency during investigation.”

36. It is, thus, evident that the exercise to be undertaken by the court at this stage of granting bail of giving reasons for grant or non-grant of bail that 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. Rather, the Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.

37. Further it is the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise and such 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. Reference in this regard may be taken from the Judgment as rendered by the Hon'ble Apex Court in the case of

Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra reported in **(2005) 5 SCC 294**. For ready reference the following paragraph of the aforesaid Judgment is being quoted herein under:-

“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.”

38. The Hon’ble Apex Court in a very recent judgment rendered in **Gurwinder Singh Vs State of Punjab and Another** reported in **2024 SCC OnLine SC 109** while taking in to consideration of the judgment as rendered in the **National Investigation Agency v. Zahoor Ahmad Shah Watali** (Supra) and **Union of India Vs. K.A. Najeeb** (Supra) has observed that, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail and lays down that if the Court, *‘on perusal of the case diary or the report*

made under Section 173 of the Code of Criminal Procedure’, is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is *prima facie* true, such accused person *shall not be* released on bail or on his own bond.

39. The Hon’ble Apex Court further observed that the conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - ‘bail is the rule, jail is the exception’ - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act and the ‘exercise’ of the general power to grant bail under the UAP Act is severely restrictive in scope.

40. In the aforesaid context it has further been observed by the Hon’ble Supreme Court that the courts are, therefore, burdened with a sensitive task on hand and in dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail and the ‘justifications’ must be searched from the case diary and the final report submitted before the Special Court.

41. In the aforesaid background the Hon’ble Apex Court has held that the test for rejection of bail is quite plain and Bail must be rejected as a ‘rule’, if after hearing the public

prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It has further been observed that it is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the **‘tripod test’ (flight risk, influencing witnesses, tampering with evidence).**

42. For ready reference following paragraphs of the aforesaid Judgment are being quoted herein under:

“27. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It lays down that if the Court, *‘on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure’*, is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person **shall not be** released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43D(5) of the UAP Act. In that sense, the language of bail limitation adopted therein remains unique to the UAP Act.

28. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts

must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- '*shall not be released*' in contrast with the form of the words as found in Section 437(1) CrPC - '*may be released*' - suggests the intention of the Legislature to make bail, the exception and jail, the rule.

29. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, '*prima facie*' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of '*strong suspicion*', which is used by Courts while hearing applications for 'discharge--'

43. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are *prima facie* true. It is only if the test for rejection of bail is not satisfied that the Courts would proceed to decide the bail application in accordance with the '**tripod test**' (**flight risk, influencing witnesses, tampering with evidence**). This position is made clear by Sub-section (6) of Section

43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

44. The Hon'ble Apex Court in the aforesaid judgment after textual reading of Section 43 D(5) UAP Act, has formulated the guideline which was summarized in the form of a **twin-prong test**. For ready reference the relevant paragraph is being quoted herein under:

“**31.** On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test:

1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged ‘accusations’ make out an offence under Chapter IV or VI of the UAP Act

1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC (‘tripod test’)?”

45. Further, it is settled proposition of law that at the stage of granting or non-granting of the bail, the Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise and the

elaborate examination or dissection of the evidence is not required to be done at this stage.

46. Further, it is the duty of the Court to record its opinion that the accusation made against the accused concerned is *prima facie* true or otherwise and such 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 charge-sheet and other material gathered by the investigating agency during investigation.

47. This Court, on the basis of the aforesaid position of law and the factual aspect as has been gathered against the appellant is proceeding to examine as to whether the accusation against the appellants is *prima facie* true as compared to the opinion of accused not guilty by taking into consideration the material collected in course of investigation.

48. Counter affidavit has been filed by the respondent wherein the charge-sheet dated 07.09.2021 has been appended as Annexure-A.

49. It is evident from the counter affidavit that the appellant has been charge-sheeted accused (A-9) of the instant case.

50. After investigation NIA submitted chargesheet against the appellant and it is evident from the perusal of charge-sheet that NIA in his investigation found that cadre

of the CPI (Maoist) hatched conspiracy with the help of the supplied iron pipe by the appellant which is mentioned in para 17.5.2 & 17.14.03 of the chargesheet. For ready reference the aforesaid para are being quoted herein under:-

“17.5.2. During investigation it has been established that the arrested accused A-7 was an associate of accused A-11, A-12 and A-14 and was helping the armed cadres of CPI(Maoist), a banned terrorist organization, by supplying explosive materials. It is also established that the accused A-9 was working on the directions of absconding accused A-13 and was also supplying Iron Pipes for using them to fabricate improvised explosive device / IED and in disruptive activities against the security forces.

17.14 Offences Established during Investigation

17.14.03: Role. Activities and Offences established against the arrested accused Mang Munda (A-9), in the instant crime:

it is established that arrested accused was an octane of the armed cadre of CPI (Maoist), a banned organisation declared by the Government of India Accused A-9 used to arrange Iron Pipes (for using them in IED) and further supply the same to the armed cadres of CPI (Maoist) and he was also associated with the criminal conspiracies, hatched by the cadres of CPI (Maoist) against the government, has been established that accused A-9 was in contact of A-13, A-14, A-32, A-43 and other cadres of CPI (Maoist) and further on their instructions, he used to supply the iron pipes, knowing fully well that such iron pipes were to be actually used for the terrorist acts. The Iron pipes are being used by the CPI(Maoist) to fabricate IEDs for killing personnel of security forces and looting their weapons and committing disruptive activities to threaten the Security, Sovereignty and Integrity of India.

Therefore, as per averments made in pre-para, it is established that accused A-9, became an Over Ground Worker/member of CPI (Maoist), a proscribed organization and participated in the conspiracy hatched among co-accused with common intention to assemble with deadly weapons to carry out terrorist attack on the police patrolling party at Lanji Forest Hill on 04.03.2021. Accused A-9 had arranged and supplied the iron pipes, which were using by the armed cadres of CPI (Maoist) for fabricating an IED and further planting them in different areas. Thereby, arrested accused A- has committed offences U/s 20, 38 & 39 of UA (P) Act, 1967 and Sections 3 & 4 of Explosive Substance Act.”

51. Thus, from perusal of the charge-sheet it appears that the present appellant (A-9) used to arrange Iron Pipes (for using them in IED) and further supply the same to the armed cadres of CPI (Maoist) and he was also associated with the criminal conspiracy, hatched by the cadres of CPI (Maoist) against the government. It has been established that the appellant was in contact with Anal Da(A-13), Maharaj Pramanik((A-14), Amit Munda and other cadres of CPI (Maoist) and on their instructions, he used to supply the iron pipes, knowing fully well that such iron pipes were to be actually used for the terrorist acts. These Iron pipes are regularly being used by the CPI (Maoist) to fabricate IEDS for killing personnel of security forces and for committing various disruptive activities to threaten the Security, Sovereignty and Integrity of India.

52. It appears from the aforementioned paragraph of the charge-sheet that the appellant was close associate of the CPI Maoist a banned terrorist organisation declared by the Govt. of India and on the basis of material brought on record it appears that the appellant was part of the criminal conspiracy hatched with association and direction of armed cadres of CPI Maoist.

53. It appears from the content of the charge-sheet that there is prosecutable evidence against the appellant which is supported by documentary evidence of the chargesheet.

54. Further, it appears from record that the appellant had a clear knowledge that CPI (Maoist) is a proscribed terrorist organization and involved in many terrorist acts across the State. Despite having such knowledge, he continued his nexus with the said terrorist organization and he acted in blatant contravention of laws and impair the safety and security of citizens and the State.

55. Thus, from perusal of the paragraphs of the charge sheet, it *prima facie* appears that the appellant has associated himself with terrorist organisation CPI (Moist) and aided the said organization voluntarily to further its terrorist activities.

56. Learned counsel for the appellant has taken the ground of custody and has also taken the aid of the

judgment passed by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeed*** (supra).

57. It has been contended by taking aid of the aforesaid judgment that in the instant case there is no probability in near future that trial will be concluded, hence, taking into consideration the period of custody, and probable delay in trial, it is a fit case where the appellant deserves to be released from judicial custody.

58. While, on the other hand, learned counsel appearing for the respondent has seriously disputed the aforesaid fact apart from the merit that the present appellant is having a close association with the CPI (Maoist) a banned organization.

59. The contention has been made that the judgment relied upon by the learned counsel for the appellant i.e. the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeed*** (Supra), is not fit to be accepted, reason being that in the said case, the Hon'ble Apex Court taking in to consideration the huge number of witnesses i.e. 276, put a pin-pointed question therein for reducing the number of witnesses by the investigating agency and when the same has been shown to be not possible then the Hon'ble Apex Court, by taking into consideration the period of custody and there is no likelihood of conclusion of the trial in near future, has not

interfered in the order granting bail to the respondent-accused.

60. But here in the instant case, the appellant is closed associate by giving direct aid to the Naxal outfit and supplying iron pipe which was eventually used to carry the IED blast which resulted into death of 03 police personnel. Further, on instruction, it has been submitted by the learned counsel appearing for the Respondent-State that the prosecuting authority depending upon the situation will also reduce the number of witnesses and try to conclude the trial without any unnecessary delay as such in aforesaid fact the judgment as relied by the learned counsel for the appellant is not applicable in the facts of the instant case.

61. Considering the above facts and circumstance and after going through the evidence of the prosecution witnesses, case diary, chargesheet and other documentary evidence recorded by the NIA it is evident that there is direct and serious allegation against the appellant that in nexus with the member of proscribed organization, the present appellant supplied iron pipe, to the armed cadres of CPI who used the said iron pipe in IED blast on 04.3.2021 when armed troops were moving on the forward slope of Lanji forest hills under PS Toklo in which three security personnel were killed and few became seriously injured.

Therefore, allegation against petitioner appears to be very serious in nature and a prima facie case is made out against him.

62. So far as the argument regarding reliance having been placed upon the judgment of *Union of India vs. K.A. Najeer* (Supra) is concerned, this Court is of the view that in the facts and circumstances the aforesaid judgment will not be applicable herein since in the said case altogether 276 charge-sheeted witnesses were to be examined and on the pin-pointed question by the Hon'ble Apex Court, the investigating agency has submitted that there is no question of reducing the number of charge-sheeted witnesses and in view thereof and considering the period of custody, i.e., more than 5 and half years and also taking into consideration the spirit of Article 21 of the Constitution of India the Hon'ble Apex Court has not interfered in the order by which the bail was granted to respondent-accused.

63. While, the fact of the instant case is that there are only 148 witnesses as per the charge-sheet dated 07.09.2021 which is very much less in comparison to 276 witnesses of aforesaid case.

64. Further, in the instant case it has been submitted by the learned counsel appearing for the state on instruction that in course of trial, the number of charge-sheeted witnesses may also be reduced depending upon the

situation and trial may be concluded in shortest time period.

65. Further, the appellant has the active nexus of the banned terrorist organization and he has direct role as supplier of the iron pipe which are being used by the CPI(Maoist) to fabricate IEDs for killing personnel of security forces and looting their weapons and committing disruptive activities to threaten the Security, Sovereignty and Integrity of India as per the discussion made hereinabove.

66. This Court considering the aforesaid distinguishing fact in the present case by taking into consideration the active involvement of the appellant with the banned organization and further taking in to gravity of the offence, is of the view that the judgment rendered by the Hon'ble Apex Court in the case of **Union of India vs. K.A. Najeer** (Supra) is not fit to be applied herein.

67. It is pertinent to mention here that an application for bail (Cr. Appeal (DB) No. 399 of 2022) has been preferred by the co-accused persons namely Sorto Mahali @ Don @ Rava @Tiera Mahli (A-7) and Ramrai Hasda @ Ramrai Hansda (A-1) which has been dismissed vide order dated 18.01.2023 by the Co-ordinate Bench of this Court.

68. Further the bail applications of other co-accused persons namely Jaiki Paradhi @ Jaiki and Suli Kandir @

Suleman Kandir, have already been rejected by this Court vide order dated 10.01.2024, and 11.01.2024 passed in Criminal Appeal (DB) No. 1141 of 2023 and 990 of 2023 respectively.

69. Accordingly, this Court, on the basis of the facts as referred hereinabove and coming to the provision of Section 43D(5) of the Act, 1967 as also the judgment rendered by the Hon'ble Apex Court in the case of **Zahoor Ahmad Shah Watali (supra)** and **Gurwinder Singh Vs State of Punjab and Another(supra)** is of the view that it cannot be said that the allegation levelled against the appellants is *prima facie* untrue.

70. In view of the foregoing discussions, we find no illegality in the impugned order dated 16.08.2022 passed in Misc. Cr. Application No.1544 of 2022 by AJC-XVI-cum-Spl. Judge, NIA, Ranchi rejecting the bail petition of the appellant, as such order impugned requires no interference by this Court.

71. In the result, we find no merit in instant appeal, hence, the same is dismissed.

72. Pending Interlocutory Application(s), if any, also stands dismissed.

73. It is made clear that any observation made herein will not prejudice the case of the appellant in course of trial

and view as expressed by this Court is only limited to the instant appeal.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

Birendra/**A.F.R.**