Thwaha Fasal vs Union Of India on 28 October, 2021

Author: Abhay S. Oka

Bench: Abhay S. Oka, Ajay Rastogi

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1302 OF 2021
(Arising out of SLP (Crl.) No. 2415 of 2021)

THWAHA FASAL ..… APPELLANT

v.

UNION OF INDIA ..... RESPONDENT

WITH

CRIMINAL APPEAL NO. 1303 OF 2021
(Arising out of SLP (Crl.) No. 5931 of 2021)

UNION OF INDIA …... APPELLANT

v.

ALLAN SHUAIB …... RESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

Leave granted.

1. These two appeals take exception to the Judgment and Order passed by a Division Bench of Kerala High Court in the appeals preferred by the Union of India under sub-section (4) of Section 21

of the National Investigation Agency Act, 2008 (for short "the NIA Act"). The appeals before the High Court arose out of the Order dated 9 th September 2020, passed by the learned Judge of the Special Court appointed to conduct the trial of National Investigation Agency cases at Ernakulam in Kerala. By the said Order, the learned Judge of the Special Court For NIA Cases, granted bail to the accused no.1 Allen Shuaib and the accused no.2 Thwaha Fasal.

2. A First Information Report was registered against the accused nos.1,2 and 3 for the offences punishable under Sections 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 (for short "the 1967 Act"). The Offence was registered by Pantheerankavu Police Station in Kerala. Later on, the investigation of the case was transferred to National Investigation Agency (for short "NIA") established under the NIA Act.

3. The accused no.3 is absconding. On completion of investigation, a charge sheet was filed by NIA against the accused nos.1 and 2. Offences punishable under Sections 38 and 39 of the 1967 Act as well as under Section 120-B of the Indian Penal Code (for short "IPC") were alleged against the accused no.1. The same offences were alleged against the accused no.2. In addition, an offence punishable under Section 13 of the 1967 Act was also alleged against the accused no. 2. Before filing of charge sheets, bail applications moved by the accused nos.1 and 2 were dismissed and the order of dismissal was confirmed by High Court in appeals preferred under sub-section (4) of Section 121 of the NIA Act. After investigation was transferred to NIA, the accused no.2 applied for bail which was dismissed by the learned Judge of the Special Court. After filing of charge sheet, fresh applications were filed by the accused which were allowed by the learned Judge of the Special Court by the Order dated 9th September 2020. By the impugned Judgment and order, the appeal preferred by the Union of India against the order of the Special Court was partly allowed. The High Court proceeded to set aside the order granting bail to the accused no. 2. However, the order of the Special Court granting bail to the accused no.1 was confirmed by the High Court. The appeal arising out of Special Leave Petition(Crl.) No. 2415 of 2021 has been preferred by the accused no. 2 and the appeal arising out of Special Leave Petition (Crl.) No. 5931 of 2021 has been preferred by the Union of India for challenging that part of the impugned Judgment and Order by which the order of the Special Court granting bail to the accused no.1 has been confirmed. The accused nos.1 and 2 were apprehended on 1 st November 2019. The accused no.1 who was born on 27 nd August 1999 was 20 years old at that time and the accused no.2 who was born on 5th August 1995 was 24 years old at that time. As noted by the Special Court, the accused no.1 was a law student at that time and the accused no.2, while working and earning his livelihood, was pursuing his studies in Journalism through a Distant Education Programme.

4. On 1st November 2019, the complainant who is the Sub-Inspector of Police attached to Pantheerankavu Police Station in Kozhikode city in Kerala found that the accused nos.1 to 3 were standing in suspicious circumstances in front of Medicare Laboratory in Kozhikode city. After seeing the police vehicle, the accused no. 3 ran away. However, the accused nos.1 and 2 were apprehended. The accused no.1 was carrying a shoulder bag and the accused no.2 was carrying a red plastic file. Nine items were seized from the shoulder bag of the accused no.1. From the red plastic file of the accused no.2, two items were seized. The First Information Report was registered on the same day under Sections 20, 38 and 39 of the 1967 Act alleging that the accused nos. 1 and 2 were the

members of the Communist Party of India (Maoist) [for short "CPI (Maoist)"] which is a terrorist organisation within the meaning of Clause (m) of Section 2 of the 1967 Act which is listed at Item No.34 in the First Schedule to the 1967 Act. By the order dated 18th April 2020, the Government of India granted sanction in exercise of powers under Section 45 of the 1967 Act to prosecute the accused no.1 for offences punishable under Sections 38 and 39 of the 1967 Act. Under the same order, a sanction to prosecute the accused no.2 for the offences punishable under Sections 13, 38 and 39 of the 1967 Act was granted. As can be seen from the order dated 18 th April 2020, NIA had recommended for grant of sanction under the aforesaid Sections. It is pointed out across the Bar by Shri S.V. Raju, the learned Additional Solicitor General of India (ASG) that the case is fixed for framing of charge. However, it was also pointed out across the Bar that a report from the Forensic Science Laboratory is not yet received.

SUBMISSIONS OF THE LEARNED COUNSEL

5. Shri Jayanth Muthuraj, the learned Senior Counsel representing accused no.2 in support of the appeal preferred by the said accused made detailed submissions which can be summarised as under:

> (a)Though FIR was registered against both the accused for the offences punishable under Sections 20, 38 and 39 of the 1967 Act, while filing the charge sheet, the offence punishable under Section 20 has not been invoked. He pointed out that Section 20 is applicable to an accused who is a member of a terrorist gang or a terrorist organisation which is involved in a terrorist act. He submitted that though there is an allegation made in the FIR that the accused nos.1 and 2 are members of CPI (Maoist), even sanction to prosecute the accused under Section 20 has not been granted in accordance with Section 45 of the 1967 Act. He submitted that the maximum punishment for the offence under Section 20 is of imprisonment for life and fine. However, for the offences under Sections 38 and 39, the maximum punishment is of 10 years or with fine or with both. He submitted that Section 13 of the 1967 Act has been applied to the accused no.2 for which the maximum punishment is of 5 years or fine or with both.

(b)He pointed out that the stringent provisions for grant of bail provided in sub-section (5) of Section 43D of the 1967 Act are applicable only for the persons accused of offences punishable under Chapters IV and VI of the 1967 Act. He submitted that Section 13 is a part of Chapter III and therefore, only for the offences punishable under Sections 38 and 39 of the1967 Act, stringent provisions of sub-section (5) of Section 43D will have to be applied.

(c) He invited our attention to the fact that on 1 st November 2019 in the red file carried by the accused no.2, a book on Caste Issues in India and a book styled as Organisational Democracy, Disagreement with Lenin were found. He pointed out that from the house search of the accused no.2, 18 items were found most of which are documents. He pointed out that two red colour banners were seized from his house calling upon people to support the freedom struggle of Jammu and Kashmir. He pointed that one laptop, mobile phone with sim, two additional sim cards, three memory cards and two pen drives were seized from the house of the accused no. 2.

(d)He submitted that even assuming that the accused no. 2 was found in possession of various materials concerning the activities and meetings of the CPI (Maoist), Sections 38 and 39 are not attracted. He submitted that the offence under sub- section (1) of Section 38 can be made out if a person associates himself with a terrorist organisation with intention to further its activities. He submitted that similarly, an offence under Section 39 is attracted only when the acts incorporated in Section 39 are committed with intention to further the activity of a terrorist organisation. He submitted that the charge sheet does not disclose any material to show that there was such an intention on the part of the accused no.2.

(e)The learned Judge of the Special Court has taken into consideration each and every material incorporated against the accused in the charge sheet and has concluded that the charge sheet does not make out a prima facie case of the accused having intention to encourage, further, promote or facilitate the commission of terrorist activities. He submitted that there are no reasons assigned by the High Court to disturb the said prima facie finding. He relied upon a decision of this Court in the case of People's Union for Civil Liberties and Anr. v. Union of India1. He submitted that the challenge in the said case before this Court was to the constitutional validity of various provisions of the Prevention of Terrorism Act, 2002 (for short "POTA"). He submitted that this Court accepted the argument of the learned Attorney General of India that Sections 20, 21 and 22 would not cover any activities which do not have an element of intention of furthering or encouraging terrorist activity or facilitating its commission. He submitted that it was held that the said three provisions do not exclude mens rea. He also relied upon another decision of this Court in the case of Arup Bhuyan v. 1 (2004) 9 SCC 580 State of Assam2. He submitted the offences under Sections 38 and 39 are not attracted unless it is shown that the accused nos. 1 and 2 were active members of CPI (Maoist). He also pointed out that subsequently in the year 2015, the said decision has been referred to a larger Bench by a Coordinate Bench.

(f) The learned Senior Counsel relied upon a decision of this Court in the case of Union of India v. K.A. Najeeb3. Relying upon the said decision, he submitted that the statutory embargo imposed by sub-section (5) of Section 43D of the 1967 Act does not oust the jurisdiction of a Constitutional Court to grant bail on the ground of violation of rights conferred by Part III of the Constitution of India. He submitted that in the statutes like the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"), while granting bail, there is a requirement of the Court recording a prima facie satisfaction that the accused is not guilty of the offence alleged against him and that he is unlikely to commit another offence while on bail. But there is no such pre-condition in the 1967 Act. He submitted that under sub-section (5) of Section 43D, 2 (2011) 3 SCC 377 3 (2021) 3 SCC 713 before granting bail, the Court is required to record a satisfaction that there are reasonable grounds for believing that the accusation against the accused is prima facie not made out.

(g)He submitted that even going by the tests laid down by this Court in the case of National Investigation Agency v. Zahoor Ahmad Shah Watali4, the accused no.2 is entitled to bail. He submitted that stringent conditions were imposed by the Special Court while enlarging the accused no.2 on bail.

(h)He submitted that immediately after cancellation of bail under the impugned Judgment and Order, the accused no.2 surrendered. He pointed out that the accused no.2 is in custody for more than 572 days. He pointed out that 92 witnesses have been cited in the charge sheet and even charge has not been framed by the Special Court. He submitted that the punishment imposed under Sections 38 and 39 of the 1967 Act can extend to ten years or fine or with both. He submitted that considering the fact that charge is not yet framed and total 92 witnesses are to be examined, the trial is not likely to be completed in near future. He submitted that as 4 (2019) 5 SCC 1 FSL report is yet to be received, charge is not likely to be framed immediately.

6. Shri S.V. Raju, the learned Additional Solicitor General made the following submissions for opposing the appeal preferred by the accused no.2 and in support of the appeal preferred by the Union of India:

> (a)He submitted that Item No. 34 of Schedule 1 of the 1967 Act incorporates CPI (Maoist) in the list of terrorist organisations within the meaning of Clause (m) of Section 2 of the 1967 Act.

He submitted that the said organisation is a terrorist organisation as distinguished from an unlawful association contemplated by Clause (p) of Section 3 of the 1967 Act.

(b)He pointed out from the counter filed by NIA and in particular Clauses (i) to (xvi) of paragraph 30 that when the house of the accused no.2 was being searched, he shouted various slogans such as Inquilab Zindabad, Maoism Zindabad, Naxalbari Zindabad etc. He pointed out that two red colour handmade cloth banners of CPI (Maoist) were recovered from his residence calling upon people to support the struggle for independence of Kashmir. He submitted that material used for preparation of banners was also recovered. He submitted that the contents of the banners amount to inciting the rebellion and public disorder.

(c) He pointed out that during the house search of the accused no.2 not only various materials published by CPI (Maoist) were found but a notebook was found containing minutes of the meeting held on 15th September 2019. He pointed out that the said notebook was found in a locked room inside his house. He pointed out that soft copies of number of volumes of news bulletin of CPI (Maoist) were recovered from the digital device used by the accused no.2. He submitted that the digital device also contains the party programme issued by the Central Committee of CPI (Maoist) and the road map of the party. He submitted that the digital device also contains material about the political and military strategy of the CPI (Maoist).

(d)He submitted that material found from the custody of both the accused and the material seized from their houses indicates that both of them and especially the accused no.2 are intimately connected with activities of CPI (Maoist). He submitted that the very fact that the minutes of the secret meetings were found in the custody of the accused no.2 shows that he is actively involved in the activities of the terrorist organisation. He submitted that considering the material forming a part of the charge sheet, intention on the part of both the accused to further the activities of the terrorist organisation can be inferred.

(e)He submitted that a person who is a member of terrorist organisation can be prosecuted under Section 38 of the 1967 Act. He submitted that though Section 20 may not have been applied, in view of the decision of this Court in the case of the State of Gujarat v. Girish Radhakrishnan Varde5, the Special Court can disagree with the police report and issue process for an offence which is not made out in the charge sheet. He submitted that even further investigation can be ordered by the Court.

(f) He submitted that the prosecution can subsequently obtain the sanction to prosecute for the offence punishable under Section 20 of the 1967 Act as well. He submitted that apart from the fact that the decision in the case of Arup Bhuyan (supra) has been referred to a larger Bench, the issue involved in the said case was in connection with Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short "TADA"). He submitted that 5 (2014) 3 SCC 659 the case of PUCL (supra), the challenge was to various provisions in POTA and not the 1967 Act.

(g)He submitted that the High Court while confirming the order granting bail to the accused no.1 has completely disregarded sub-section (5) of Section 43D of the 1967 Act. He submitted that the bail granted to the accused No.1 has been confirmed by the High Court by ignoring sub-section 5 of Section 43D.

(h)He submitted that the Special Court has completely ignored the law laid down in the case of Watali (supra) and as rightly found by the High Court, the Special Court has conducted a mini trial which is not permissible.

(i) He submitted that the accused nos.1 and 2 who are the active members of the terrorist organisation are trying to create disharmony with the object of overthrowing the democratically elected government. He submitted that though the personal liberty is sacrosanct, the individual rights should subserve the national interest. He submitted that the prima facie findings recorded by the High Court on consideration of the entire material against the accused Nos.1 and 2 disentitle both of them to grant of bail.

7. The learned Senior Counsel Shri R. Basant appearing for the accused no.1 opposed the submissions made by learned ASG in the appeal preferred by Union of India. His submissions can be briefly summarised as under: -

> (a) He submitted that NIA never sought sanction to prosecute the accused Nos.1 and 2 for the offence punishable under Section 20 of the 1967 Act. He submitted that in view of Section 45, the Special Court cannot take cognisance of the offence under Section 20 without previous sanction of the Central Government.
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> (b) He submitted that the finding recorded by the High Court in the impugned Judgment that the accused no.1 was taking treatment for certain psychiatric issues is not disputed by the prosecution. He invited our attention to what is held by this Court in the case of PUCL (supra) while upholding the validity of Sections 20, 21 and 22 of POTA. He relied upon paragraph 46 which records the submission of the Government of India that Sections 20, 21 and 22 of POTA can be applied only to a

person who acted with intent of furthering or encouraging terrorist activities or facilitating its commission. He submitted that while repealing POTA, amendments were made to the provisions of the 1967 Act by including intention to further activities of terrorist organisations in Sections 38 and 39. Relying upon the decision of this Court in the case of Mahipal v. Rajesh Kumar alias Polia and Anr6, he submitted that while exercising the power of appeal under sub-section (4) of Section 21 of NIA Act, the Court cannot interfere with the order granting bail unless the order suffers from non-application of mind or is not borne out from a prima facie view of the evidence on record. He submitted that there is no possibility of Special Court framing charge as a report of FSL is not yet received.

CONSIDERATION OF SUBMISSIONS

8. Clause (m) of Section 2 of the 1967 Act defines "terrorist organisation". It is defined as an organisation 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 III deals with unlawful associations and unlawful activities with which we are not concerned. Chapter IV has the title "punishment for terrorist act". Section 16 in Chapter IV prescribes the punishment for terrorist act. Clause (k) 6 (2020) 2 SCC 118, of Section 2 provides that "terrorist act" has the meaning assigned to it under Section 15 which reads thus:

> "15. Terrorist act.— [(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—
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> (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—
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> (i) death of, or injuries to, any person or persons; or
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> (ii) loss of, or damage to, or destruction of, property; or
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> (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or [(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]
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> (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

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

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

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

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.] [(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.] In this case, there is no allegation against the accused nos.1 and 2 of committing any terrorists act. Chapter V contains provisions for forfeiture of proceeds of terrorism with which we are not concerned.

9. In these appeals, we are mainly concerned with the offences punishable under Sections 20, 38 and 39 of the 1967 Act, which read thus:-

"20. Punishment for being member of terrorist gang or organisation.- Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine".

"38. Offence relating to membership of a terrorist organisation.—(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member;

and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the First Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

39. Offence relating to support given to a terrorist organisation.—(1) A person commits the offence relating to support given to a terrorist organisation,—

(a) who, with intention to further the activity of a terrorist organisation,—

(i) invites support for the terrorist organization; and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—

(i) to support the terrorist organization; or

(ii)to further the activity of the terrorist organization; or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub- section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both" (emphasis added)

10. The offence punishable under Section 20 is attracted when the accused is a member of a terrorist gang or a terrorist organisation which is involved in terrorist act. Section 20 is not attracted unless the terrorist gang or terrorist organisation of which the accused is a member is involved in terrorist act as defined by Section 15. Section 20 provides for a punishment of imprisonment for a term which may extend to imprisonment for life and fine.

11. On plain reading of Section 38, the offence punishable therein will be attracted if the accused associates himself or professes to associate himself with a terrorist organisation included in First Schedule with intention to further its activities. In such a case, he commits an offence relating to membership of a terrorist organisation covered by Section

38. The person committing an offence under Section 38 may be a member of a terrorist organization or he may not be a member. If the accused is a member of terrorist organisation which indulges in terrorist act covered by Section 15, stringent offence under Section 20 may be attracted. If the accused is associated with a terrorist organisation, the offence punishable under Section 38 relating to membership of a terrorist organisation is attracted only if he associates with terrorist organisation or professes to be associated with a terrorist organisation with intention to further its activities. The association must be with intention to further the activities of a terrorist organisation. The activity has to be in connection with terrorist act as defined in Section 15. Clause (b) of proviso to sub-section (1) of Section 38 provides that if a person charged with the offence under sub-section (1) of Section 38 proves that he has not taken part in the activities of the organisation during the period in which the name of the organisation is included in the First Schedule, the offence relating to the membership of a terrorist organisation under sub-section (1) of Section 38 will not be attracted. The aforesaid clause (b) can be a defence of the accused. However, while considering the prayer for grant of bail, we are not concerned with the defence of the accused.

12. Section 39 deals with the offences relating to support given to a terrorist organisation. It covers three kinds of offences under clauses

(a), (b) and (c) of sub-section (1) of Section 39. The offences punishable under clauses (a), (b) and (c) of sub-section (1) of Section 39 are attracted only when the actions incorporated therein are done with intention to further the activities of a terrorist organisation. As observed earlier, the activities must have some connection with terrorist act. Clauses (a), (b) and (c) are attracted only if actions/activities specified therein are done with intention to further the activities of a terrorist organisation.

13. Thus, the offence under sub-section (1) of Section 38 of associating or professing to be associated with the terrorist organisation and the offence relating to supporting a terrorist organisation under Section 39 will not be attracted unless the acts specified in both the Sections are done with intention to further the activities of a terrorist organisation. To that extent, the requirement of mens rea is involved. Thus, mere association with a terrorist organisation as a member or otherwise will not be sufficient to attract the offence under Section 38 unless the association is with intention to further its activities. Even if an accused allegedly supports a terrorist organisation by committing acts referred in clauses (a) to (c) of sub- section (1) of Section 39, he cannot be held guilty of the offence punishable under Section 39 if it is not established that the acts of support are done with intention to further the activities of a terrorist organisation. Thus, intention to further activities of a terrorist organisation is an essential ingredient of the offences punishable under Sections 38 and 39 of the 1967 Act.

14. The punishment prescribed for both the offences is imprisonment for a period not exceeding 10 years or with fine or with both. The offence under Section 20 is more serious as it attracts punishment which may extend to imprisonment for life and fine. Depending upon the gravity of offence committed under Section 38 and/ or 39 and other relevant factors, the accused can be let off even on fine.

15. The accused no.2 has been charged with the offence punishable under Section 13, which reads thus:

> "13. Punishment for unlawful activities.—(1) Whoever—
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> (a) takes part in or commits, or
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> (b) 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.
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> (2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both. (3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India." It is essentially an offence of committing unlawful activities as defined under Clause (o) of Section 2. The said offence has been alleged on the ground that two banners were found in the house of the accused no.2 which according to the prosecution invite public support to freedom movement of Jammu and Kashmir. Section 13 does not form a part of Chapter IV or VI. Hence, for consideration of grant of bail to a person accused of an offence under Section 13, stringent provisions of sub-section (5) of Section 43D will not apply.

16. Now, we come to the provision in the 1967 Act regarding the grant of bail. Sub-section (5) of Section 43D is relevant which reads thus:

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

17. The stringent conditions for grant of bail in sub-section (5) of Section 43D will apply only to the offences punishable only under Chapters IV and VI of the 1967 Act. The offence punishable under Section 13 being a part of Chapter III will not be covered by sub-section (5) of Section 43D and therefore, it will be governed by the normal provisions for grant of bail under the Code of Criminal Procedure, 1973. The proviso imposes embargo on grant of bail to the accused against whom any of

the offences under Chapter IV and VI have been alleged. The embargo will apply when after perusing charge sheet, the Court is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. Thus, if after perusing the charge sheet, if the Court is unable to draw such a prima facie conclusion, the embargo created by the proviso will not apply.

18. In the case of Watali (supra), this Court has extensively dealt with sub-section (5) of Section 43D of the 1967 Act and has also laid down the guidelines for dealing with bail petitions to which sub-section (5) of Section 43D is applicable. In paragraph 23, this Court considered the difference in the language used by Section 37 of the NDPS Act governing grant of bail and sub-section (5) of Section 43D of the 1967 Act. Paragraph 23 of the said decision reads thus:-

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

19. After considering the law laid down by this Court in various decisions including the decision in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra7, in paragraphs 24 and 25 it was held thus:-

> "24. A priori, the exercise to be undertaken by the Court at this stage-of giving reasons for grant or non- grant of bail-is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities 7 (2005) 5 SCC 294 regarding the involvement of the accused in the commission of the stated offence or otherwise.
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> 25. From the analysis of the impugned judgment, it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded Under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report under Section 173 CrPC) and other material gathered by the investigating agency during investigation." (emphasis added)

20. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue of prima facie case as required by sub-section (5) of Section 43D is not expected to hold a mini trial. The Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is.

21. Under sub-section (1) of Section 45 of the 1967 Act, the Court is not empowered to take cognizance of any offence under Chapters IV and VI without previous sanction of the Central Government. Procedure for obtaining sanction has been laid down in sub-section (2) of Section 45,

which reads thus:-

> " [(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government.]"

22. The order of sanction dated 18 th April 2020 is a part of the charge sheet which is placed on record of these appeals. Paragraphs 2 and 3 of the order of sanction show that though the offence was registered under Sections 20, 38 and 39 of the 1967 Act, by a letter dated 13 th April 2020, NIA did not seek sanction for prosecuting any of the three accused for the offence punishable under Section 20. Sanction was sought to prosecute the accused nos.1 and 2 for the offences punishable under Sections 38 and 39. In addition, a sanction was sought to prosecute the accused no.2 under Section 13. Paragraph 4 of the order refers to the authority appointed by the Central Government under sub-section (2) of Section 45 consisting of a retired Judge of a High Court and a retired Law Secretary, as well as the report submitted by the said authority. Paragraph 6 of the said order records prima facie satisfaction of the Central Government that a case is made out against the accused under the provisions of the Act of 1967, as mentioned in letter dated 13 th April 2020. Thus, as of today, sanction under sub-section (1) of Section 45 has not been accorded for prosecuting the accused for the offence punishable under Section 20 of the Act of 1967 and, therefore, as of today, the Special Court under NIA Act cannot take cognizance of the offence punishable under Section

20. Therefore, for deciding the issue of prima facie case contemplated by sub-section (5) of Section 43D, the case against the both accused only under Sections 38 and 39 is required to be considered. In view of the absence of sanction and the fact that NIA did not even seek sanction for the offence punishable under Section 20, a prima facie case of the accused being involved in the said offence is not made out at this stage. As stated earlier, sub-section (5) of Section 43D will not apply to Section 13, as Section 13 has been incorporated in Chapter III of the 1967 Act.

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

24. Now we turn to the material against the accused nos.1 and 2 in the charge sheet. In paragraph 18 of the charge sheet, the charges against accused nos.1 and 2 have been set out. Paragraph 18.1 to 18.17 reads thus:

> "18.1 That, accused A-1, A-2 and A-3 had, knowingly and intentionally, associated themselves and acted as members of Communist Party of India (Maoist) in short CPI (Maoist), proscribed as a terrorist organisation by the Government of India under section 35 of the Unlawful Activities (Prevention) Act, 1967 and included in the 1st

Schedule to the Act.

18.2 That, accused A-1, A-2 and A-3 knowingly and intentionally attended various conspiracy meetings along with other underground part-time and professional members of CPI (Maoist). They had also attended various programmes organized by the frontal organisations of the proscribed terrorist organisation, for furthering the objectives of CPI (Maoist). 18.3 That, the accused A-1, A-2 and A-3 had, knowingly and intentionally conducted meeting and conspired in front of Medicare Laboratory, Kottayithazham, Kozhikode City, at around 06:45 PM on 01.11.2019 for furthering the activities of the proscribed terrorist organisation CPI (Maoist). 18.4 That, the accused A-1 had knowingly possessed documents supporting and published by CPI (Maoist) with the intention of supporting the proscribed terrorist organisation and propagating its violent extremist ideology.

18.5 That, the accused A-2 had knowingly possessed documents supporting and published by CPI (Maoist) with the intention of supporting the proscribed terrorist organisation and propagating its violent extremist ideology.

18.6 That, the accused A-3, on seeing the Police party, had fled from the scene and managed to escape owing to his membership in the proscribed terrorist organisation CPI (Maoist). He is still absconding. 18.7 That, A-1 had knowingly and with the intention of aiding CPI (Maoist) possessed on his digital devices, materials supporting the proscribed terrorist organisation and its violent extremist ideology, for the purpose of spreading such ideology.

18.8 That, the materials found during the house search of A-2 such as notices, pamphlets, books, hand written notes, banners besides digital devices and publications were knowingly and intentionally possessed by A-2 for supporting the proscribed terrorist organisation CPI (Maoist).

18.9 That, in pursuance of the conspiracy to further the activities of CPI (Maoist), during the house search of A-2, he had, intentionally and knowingly, raised slogans, supporting the ideology of the proscribed terrorist organisation.

18.10 That, in furtherance of the conspiracies with co-

accused and others, A-2 had knowingly and intentionally prepared cloth banners supporting secession f Kashmir from the Indian Union, for displaying at public places on behalf of CPI (Maoist) and thus committed unlawful activity as defined under the Unlawful Activities (Prevention) Act.

18.11 That A-1, knowingly and intentionally participated in the meetings of the proscribed terrorist organisation CPI (Maoist) with professional members including A-3 and had prepared notes that were maintained by A-1.

18.12 That, A-1 and A-3 knowingly and intentionally conspired and conduced secret meetings at the rented accommodation of A-1 in Kannur district, for furthering the objectives of the proscribed terrorist organisation CPI (Maoist).

18.13 That, the accused A-1, had knowingly and intentionally propagated the Maoist ideology amongst his close friends with the intention of radicalizing and recruiting them in to the proscribed terrorist organisation CPI (Maoist).

18.14 That, the accused had knowingly and intentionally conducted several conspiracy meetings (APTs) in Kozhikode and Kannur districts of Kerala for furthering the objectives of the proscribed terrorist organisation CPI (Maoist).

18.15 That, the accused A-3 and other underground professional members of CPI (Maoist) had radicalised and recruited A-1 and A-2, besides others, into the proscribed terrorist organisation, with the intention of furthering the activities of CPI (Maoist).

18.16 Therefore, Allan Shuaib @ Mamu @ Mammu @ Vivek (A-1) committed offences punishable under Section 120B of the Indian Penal Code besides sections 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

18.17 Therefore, Thwaha Fasal @ Thaha @ Fasal @ Kishan (A-2) committed offences punishable under section 120B of the Indian Penal Code besides sections 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967."

25. We have examined the material forming part of charge sheet. The material is in the form of books and other printed material found in the custody of the accused nos.1 and 2 and the material found on the digital devices seized from the accused no.2. The learned judge of the Special Court in his detailed judgment has categorised the seized material into 12 categories in paragraph 59. As regards the accused no.1, certain documents were found in the shoulder bag carried by him when he was apprehended. The said documents are under:

> 1. A notice in Malayalam titled Professor Madhava Gadgil Committee report nadappilakuka (Implement Professor Madhav Gadgil Report).
>
> 2. A notice in Malayalam tiled "Maoist Veetekkethire Janangal Rangathiranguka" (people should rise against Maoist Hunt) by Jogi, Spokesperson, CPI (Maoist), Paschima Ghatta Prathyka Meghala Committee" (Western Ghats Special Zonal Committee).
>
> 3. A notice in Malayalam titled "Puthiya Munnettangalkkayi Thayyaredukkuka, (Prepare for New Advancements) October 28, 29, 30 Wayanad Collectorattil Rappakal Maha Dharna" (Day and Night Maha Dharna at Wayanad Collectorate).

4. A hand written paper with scribble “Malabar Motham 17” and ending with word “student”.

5. A handwritten paper with writings “Reporting -2” which ends as “Porayama Undakunnathu Swabhavikam” having four pages serial numbered from 1 to 4.

6. A spiral bound note pad of “SPIROPAD No. 4150 Janvi” with some writings in code language.

7. A letter pad having 06 pages and light blue colour cover page with writings “Vimarshana Swathatryam Thiricchu Pidikkuka” (Regain Freedom to Criticize) “Swathatra Lokam 2017 Deshiya Seminar.”

8. A monthly Magazine “Maruvakk Rastriya Samskarika Masika” of October 2019 Volume - 4, Edition – 10 having 50 pages.

9. A pocket diary having 09 pages.

From search of his house, a mobile phone was seized.

26. Two items were recovered from red file possessed by the accused no.2 when he was apprehended. Following two items were recovered from the red plastic file of the second accused :

“A book with heading “Indiayile Jathiprasnam Nammude Kazhchapadu – May Dinam 2017” (Caste issues in India, our views – May day 2017) – published by Central Committee of CPI (Maoist).

A book in Malayalam language with heading “Sankatana Janadhipathyam - Leninodulla Viyojanangal” (Organisational democracy, disagreement with Lenin) of Rosa Luxemberg.”

27. From the house of the accused no.2, the following 18 items were seized:

“1. A Diary of 2018

2. A book with heading “Indiayile jathiprasnam Nammude Kazhchapadu – May Dinam 2017 (Caste issues in India, our views – May day 2017) – published by Central Committee of CPI (Maoist).

3. Pamphlets with heading “Sathruvinte Adavukalum Nammude Prathyakramana Adavukalum (Enemies tactics and our counter tactics) – 18 sheets.

4. A book titled “Hello Bastar, India Maoist Prasthanattinte Parayappadatta Katha” (Hello Bastar, the Untold story of Indian Maoist Organisation) written by Rahul

Panditha.

5. A book titled “Mundur Ravunni – Thadavarayum Porattavum” (Mundur Ravunni – Imprisonment and fight written by Madula Mani.

6. A book titled “Indonesian Janankale Fasist Bharanadhikarikale Marichidan Vendi Onnikkuka Poraduka” – (Peoples of Indonesia, Join together and Fight to knock out the Fascist Ruler).

7. A book with outer cover writings “TRIVENI Special” and writings inside.

8. A book with outer cover writing “CLASSMATE”, and having writings inside.

9. One page ruled paper having writings “Jammu Kashmirinte Swathanthrya Porattathe Pinthunakkuka” (Support the freedom struggle of Jammu Kashmir).

10. One page paper having writings “Pattaya Preshnam Collecorateil Ottayal Porattam (Land document issue, one personal strike at Collectorate).

11. A printed pamphlet with title “Vivadamaya Maradu Flat Samuchayangal Polichuneekuka” (Demolish the controversial flats at Maradu).

12. Printed Notice having printing starts with “sakhakkalakk” (to comrades) and ends with “area committee” and A4 size notices with writings “Jammu Kashmirinmelulla Adhnivesham Avasanipikuka” (stop the control of Jammu and Kashmir) and ends with “Paschima Ghatta Prathyeka Mekhala Committee” (Western Ghats Special Zonal Committee (dated 2018 Aug 6-15 Nos., found kept inside a folded newspaper of Mathrubhumi daily dated 2019-Oct-4.

13. Two red colour Banners 180 cm x 87 cms with printing in Yellow colour “Jammu Kashmirinte Swanthanthra Poratathe Pinthunakkuka, Kashmiril Adhinivesha Vazhcha Nadathunna Indian Bharana Koodathe Cherukkuka, Bhrahmanya Hindutwa Fascist Bharana Varganthinethire Kalapam Cheyuka: CPI (Maoist)” (Support the freedom struggle of Jammu Kashmir, oppose the control of Indian Government at Jammu Kashmir, do struggle against Hindu Brahmin Fascist Government).

14. One laptop with charger,

15. Mobile phone with SIM,

16. Two additional SIM cards,

17. Three memory cards,

18. Two Pen Drives."

28. FSL report shows that the cell phone of the accused no.1 had a video clip with the title "Kashmir bleeding", as well as portraits of various communist revolutionary leaders, like Che Guvera and Mao Tse Tung, as also portrait of Geelani, a Kashmiri leader. Copies of certain posters were also found. Pdf files extracted showed that it contained material regarding abrogation of Article 370 of the Constitution and various other items. The photographs also showed that the accused no.1 attended protest gathering conducted in October 2019 by Kurdistan Solidarity Network.

29. As regards the accused no.2, on his devices, images of CPI (Maoist) flag, files relating to constitution of central committee of CPI (Maoist), files relating to CPI (Maoist) central committee programme, image of hanging Prime Minister, various newspaper cuttings relating to maoist incidents were found. A book was also seized relating to encounter with PLGA (Maoist) at Agali.

30. The Special Judge noted that the face book account, e-mail accounts and call details of the accused do not contain any incriminating evidence. High Court has not recorded that any incriminating material was found therein.

31. Another piece of evidence against the accused no.2 is that during the search of his residence, he shouted slogans, such as inquilab zindabad and maoisim zindabad. He also shouted slogans containing greetings to the brave martyrs who died in an armed encounter between Maoist members and police. Another material forming a part of the charge sheet is that absconding accused no.3 visited the place where the accused no.1 was staying as a paying guest. Material was found regarding collection of membership fees and other amounts by the accused for the benefit of the said organization.

32. Taking the charge sheet as correct, at the highest, it can be said that the material prima facie establishes association of the accused with a terrorist organisation CPI (Maoist) and their support to the organisation.

33. Thus, as far as the accused no.1 is concerned, it can be said he was found in possession of soft and hard copies of various materials concerning CPI (Maoist). He was seen present in a gathering which was a part of the protest arranged by an organisation which is allegedly having link with CPI (Maoist). As regards the accused no.2, minutes of the meeting of various committees of CPI (Maoist) were found. Certain banners/posters were found in the custody of the accused no.2 for which the offence under Section 13 has been applied of indulging in unlawful activities. As stated earlier, sub-section (5) of Section 43D is not applicable to the offence under Section 13.

34. Now the question is whether on the basis of the materials forming part of the charge sheet, there are reasonable grounds for believing that accusation of commission of offences under Sections 38 and 39 against the accused nos.1 and 2 is true. As held earlier, mere association with a terrorist organisation is not sufficient to attract Section 38 and mere support given to a terrorist organisation is not sufficient to attract Section 39. The association and the support have to be with intention of furthering the activities of a terrorist organisation. In a given case, such intention can be inferred

from the overt acts or acts of active participation of the accused in the activities of a terrorist organization which are borne out from the materials forming a part of charge sheet. At formative young age, the accused nos.1 and 2 might have been fascinated by what is propagated by CPI (Maoist). Therefore, they may be in possession of various documents/books concerning CPI (Maoist) in soft or hard form. Apart from the allegation that certain photographs showing that the accused participated in a protest/gathering organised by an organisation allegedly linked with CPI (Maoist), prima facie there is no material in the charge sheet to project active participation of the accused nos.1 and 2 in the activities of CPI (Maoist) from which even an inference can be drawn that there was an intention on their part of furthering the activities or terrorist acts of the terrorist organisation. An allegation is made that they were found in the company of the accused no.3 on 30 th November, 2019. That itself may not be sufficient to infer the presence of intention. But that is not sufficient at this stage to draw an inference of presence of intention on their part which is an ingredient of Sections 38 and 39 of the 1967 Act. Apart from the fact that overt acts on their part for showing the presence of the required intention or state of mind are not borne out from the charge sheet, prima facie, their constant association or support of the organization for a long period of time is not borne out from the charge sheet.

35. The act of raising funds for the terrorist organisation has been alleged in charge sheet against both the accused. This is a separate offence under Section 40 of the 1967 Act of raising funds for a terrorist organisation which again contains intention to further the activity of terrorist organisation as its necessary ingredient. The offence punishable under Section 40 has not been alleged in this case.

36. The learned judge of the Special Court after examining the entire materials on record of the charge sheet noted that there is no prima facie material to show intention on the part of both the accused to further the activities of the terrorist organisation. Perusal of the impugned judgment of the High Court shows that it has considered various aspects, such as the accused were carrying their mobile phones when they were apprehended on 30 th November 2019 and that the documents which were possessed by the respondents were not out of curiosity or for intellectual pursuits. The High Court observed that the learned Special Judge has oversimplified the matter. However, the High Court did not notice that by taking the material collected during the investigation which forms a part of the charge sheet as it is, the Special Court had recorded a prima facie finding regarding the absence of any material to show intention on the part of the accused to further the activities of CPI (Maoist). The High Court has not recorded prima facie finding on this aspect. By applying the law laid down in the case of Watali (supra), there were no reasonable grounds for believing that the accusations against the accused nos.1 and 2 of commission of offences under Sections 38 and 39 were prima facie true.

37. There are other relevant factors which need consideration. The Special Court while enlarging the accused nos.1 and 2 on bail had imposed most stringent conditions, such as furnishing of bail bonds of Rs.One lakh with two sureties each for the like amount with further condition that one of the sureties shall be one of the parents of the accused and the other surety, shall be a relative of the accused. There was a condition imposed of marking attendance on every first Saturday of every month at local police station. There was also a condition imposed on the accused of not associating

in any manner or supporting in any manner activities of CPI (Maoist) and all its formations. The accused nos.1 and 2 were directed to not leave territorial limits of the State of Kerala without permission of the Special Court. Moreover, SHO of the concerned police station was directed to monitor the activities of both the accused. It is not the case of the prosecution that any conditions were breached by any of the accused after they were enlarged on bail.

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

39. It is true that without recording a satisfaction as contemplated by sub-section (5) of Section 43D, the order granting bail to the accused no.1 could not have been confirmed by the High Court. However, we have examined the material against both the accused in the context of sub-section (5) of Section 43D. Taking the materials forming part of the charge sheet as it is, the accusation against both the accused of the commission of offences punishable under Sections 38 and 39 does not appear to be prima facie true.

40. In view of the findings which we have recorded above, the appeal preferred by the accused no.2 is allowed. The impugned Judgment and Order of the High Court to the extent to which it sets aside the order granting bail to him is quashed and set aside and the Order dated 9th September 2020 of the Special Court For the Trial of NIA Cases at Ernakulam in Crl. Misc. Petitions Nos.55-56/20 in SC No.1/2020/NIA granting bail to him is hereby restored. The accused no.2 shall be produced before the Special Court within a maximum period of one week from today to enable him to complete the bail formalities by furnishing the fresh bonds. We also make it clear that all the conditions imposed by the Special Court are restored.

41. The appeal preferred by Union of India is dismissed and the order granting bail to the accused no.1 is confirmed.

42. We clarify that the observations and findings recorded in this Judgment are only for the limited purposes of considering the applications for bail made by the accused nos. 1 and 2. The Special Court shall not be influenced by the said observations and findings while applying its mind to the question of framing charge as the considerations for framing charge are different. The Special Court will not be influenced by the observations made in this Judgment during the trial of the case.

.....J (AJAY RASTOGI) .....J (ABHAY S. OKA) New Delhi;

October 28, 2021.