

Shoheb Ali @ Shajid Ali vs The State By Karnataka on 20 April, 2023

Author: B. Veerappa

Bench: B. Veerappa

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF APRIL, 2023

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA
AND
THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL No.72/2023
C/W
CRIMINAL APPEAL No.183/2023

IN CRL.A. No.72/2023:

BETWEEN:

1. SHOHEB ALI @ SHAJID ALI,
S/O SADIQ ALI SAYYAD,
AGED ABOUT 22 YEARS,
R/AT NEAR RAJA TOWN SCHOOL,
NEAR OLD HUBBALLI - 580024.
2. IRFAN,
S/O NOOR AHMMED NALATHAWAD
AGED ABOUT 33 YEARS,
R/AT GOUSIA TOWN,
ISLAMPUR ROAD,
OLD HUBBALLI - 580024.
3. MAHAMMAD AJARUDDIN,
S/O SHAMSHUDDIN JILLERI,
AGED ABOUT 35 YEARS,
R/AT ANAND NAGAR,

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KULKARNI HAKKALA,

NEAR OLD HUBBALLI - 580024.

4. JAINULLABUDEEN,
S/O ABDUL MUNAF,
AGED ABOUT 31 YEARS,
R/AT KOWALPET 2ND CROSS,
OLD HUBBALLI - 580024.
5. ABDUL MALIK,
S/O ABDUL SIKUR BEPARI,
AGED ABOUT 35 YEARS
R/AT MANTUR ROAD
HARISH CHANDRA COLONY
HUBBALLI - 580024.
6. BASHA SAB,
S/O ABDUL SUKUR BEPARI
AGED ABOUT 50 YEARS
R/AT MANTUR ROAD,
KASTHURI BAI NAGAR,
HUBBALLI - 580024.
7. DADAPIR,
S/O ABDUL KADAR BETAGERI,
AGED ABOUT 38 YEARS,
R/AT H.NO.8,
1ST CROSS, NOORANI FLAT,
OLD HUBBALLI - 580024.
8. AFTAB,
S/O ABDUL GAFAR BAGEWADI,
AGED ABOUT 29 YEARS,
R/AT UKT HILL 2ND CROSS,
GUDIHAL ROAD,
OLD HUBBALLI - 580024.
9. MALLIKARIHAN,
S/O SIKANDAR SHEIK,

AGED ABOUT 19 YEARS,
R/AT NEW SIMLA NAGAR,
OLD HUBBALLI - 580024.
- 10 . MAHAMMED IRFAN,
S/O MAHB00B SAB SANDALAWALE,
AGED ABOUT 37 YEARS,
R/AT ISLAMPUR,
N A NAGAR, 4TH CROSS,
OLD HUBBALLI - 580024.

...APPELLANTS

(BY SRI S. BALAKRISHNAN, ADVOCATE)

AND:

THE STATE BY KARNATAKA,
OLD HUBBALLI POLICE STATION,
HUBBALLI 580 024.
REPRESENTED BY THE SPP,
HIGH COURT BUILDING,
BANGALORE 560 001.

...RESPONDENT

(BY SRI V.M. SHEELVANT, SPECIAL PUBLIC PROSECUTOR)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 21(4) OF NATIONAL INVESTIGATION AGENCY ACT BY THE APPELLANTS PRAYING TO SET ASIDE THE ORDER OF THE XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL COURT FOR NIA CASES, (CCH-50), AT BENGALURU DATED 26.12.2022 IN SPL.C.C.NO.2263/2022 AND GRANT BAIL TO THE APPELLANTS IN CR.NO.63/2022 OF OLD HUBBALLI POLICE STATION, HUBBALLI DHARWAD DISTRICT, NOW INVESTIGATED BY NIA AND NUMBERED AS SPL.C.NO.2263/2022, NOW PENDING ON THE FILE OF XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL COURT FOR NIA CASES, (CCH-50), BENGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 147, 148, 323,

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324, 332, 333, 353, 504, 506, 427, 307, 120(B), 225(B) AND 153(A) R/W 149 OF IPC, SECTION 3(1) OF PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984 AND UNDER SECTIONS 16(1)(b), 18 AND 20, 43-D(5) OF UNLAWFUL ACTIVITIES (PREVENTION) ACT 1967.

IN CRL.A. No.183/2023:

BETWEEN:

1. SHABBIR,
S/O AFORZ BENGALURA,
AGED ABOUT 36 YEARS,
R/AT ANANDA NAGAR,
NEAR 2ND BUS STOP,
OLD HUBBALLI-580024.
2. MAHAMMAD SADIQ,

S/O NAZEER AHAMMAD CHAJJO,
AGED ABOUT 38 YEARS,
R/AT MASTANA SOPA,
7TH CROSS,
OLD HUBBALLI-580024.

3. MOHAMMAD SHAHABAJ,
S/O MOHAMMAD GOUSE,
AGED ABOUT 23 YEARS,
R/AT N A NAGAR,
NEAR ALAHAYATH SCHOOL,
OLD HUBBALLI-580024.

4. TABAREZ,
S/O BASHA MASANUR,
AGED ABOUT 23 YEARS,
R/AT N A NAGAR,
NEAR ALAHAYATH SCHOOL,
OLD HUBBALLI-580024.

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5. SHANAVAJ,
S/O BUDAN SAB LAKKAD HARE,
AGED ABOUT 29 YEARS,
R/AT GOUSIA TOWN,
6TH CROSS,
HUBBALLI-580024.

6. SAYYAD BASHA,
S/O MAHAMMAD ALI,
AGED ABOUT 32 YEARS,
R/AT ESHWAR NAGAR,
N A NAGAR ROAD,
2ND CROSS, HUBBALLI-580024.

7. NIJAMUDDIN,
S/O HUSEN SAB MANIYAR,
AGED ABOUT 38 YEARS,
R/AT YALLAPURA ONI,
PATIL GALLI,,
HUBBALLI-580024.

8. MAHAMMAD IRFAN,
S/O MAHB00B SAB SANDALAWALE,
AGED ABOUT 37 YEARS,
R/AT ISLAMPUR,
N.A. NAGAR, 4TH CROSS,
OLD HUBBALLI-580024.

9. MAHAMMAD IRFAN,,

S/O MEHABOOB SAB GULEDAGUDDA,
AGED ABOUT 39 YEARS,
R/AT H NO.108, UKT HILLS,
NEAR MOSQUE,
OLD HUBBALLI-580024.

- 10 . DAVAL MALLIK,
S/O HUSEN SAB DAREKHAN,
AGED ABOUT 27 YEARS,
R/AT ANANDA NAGAR,

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BEHIND CHURCH,
OLD HUBBALLI-580024.

11. ASIF,
S/O HUSEN SAB YALIWALA,
AGED ABOUT 42 YEARS,
R/AT NEW ANANDA NAGAR,
NEAR MADANI MOSQUE,
OLD HUBBALLI 580024.
- 12 . REHAMATULLA,
S/O BASHEER AHAMMAD BEPARI,
AGED ABOUT 19 YEARS,
R/AT VISHAL NAGAR,
3RD CROSS,
OLD HUBBALLI-580024.
- 13 . MUSTHAKA,
S/O MERA SAB MUDGAL,
AGED ABOUT 41 YEARS,
R/AT BANATI KATTA,
NEAR MOSQUE,
OLD HUBBALLI-580024.
- 14 . SABALU
S/O SADATH SALMANI
AGED ABOUT 22 YEARS
R/AT ANANDA NAGAR
NEAR MADANI MOSQUE
OLD HUBBALLI-580024.
- 15 . SALMAN,
S/O SHABBER SALMANE,
AGED ABOUT 25 YEARS,
R/AT ANANDA NAGAR,
NEAR MADEENA MOSQUE,
8TH CROSS,
OLD HUBBALLI-580024.

- 16 . KHAJA MAINUDDIN,
S/O SAYYAD SAB BOWDIWALE,
AGED ABOUT 39 YEARS,
RA/T SADARASOPA,
NEAR GOVT. HOSPITAL,
OLD HUBBALLAI 580 024.
- 17 . MALLAK JAHAN,
S/O SHABBIR AHAMMAD RONA,
AGED ABOUT 19 YEARS,
R/AT SANGAMA COLONY,
NEAR MOSQUE,
OLD HUBBALLI 580 024.
- 18 . MAHAMMADAPURA KHAN,
S/O RUSTHUM SAB MISHRIKOTE,
AGED ABOUT 19 YEARS,
R/ AT PADADAIAHANA HAKKALA,
1ST CROSS,
OLD HUBBALLI 580 024.
- 19 . MAHAMMAD JUBER,
S/O NIJAMUDDIN SHEIK,
AGED ABOUT 26 YEARS,
R/AT GOUSIYA TOWN,
ISLAMPUR ROAD,
OLD HUBBALLI 580 024.
- 20 . MAHAMMAD SAHIL,
S/O FAROOQ BHANGI,
AGED ABOUT 20 YEARS,
R/AT HEGGERI,
DEVARAJA NAGAR,
OLD HUBBALLI 580 024.
- 21 . MAHAMMAD FIROZ,
S/O FAROOQ BHANGI,
AGED ABOUT 18 YEARS,
R/AT HEGGERI,

DEVARAJANAGAR,
OLD HUBBALLI 580 024.

- 22 . MAHAMMAD JUBERA,

S/O HAFIJ MAHAMMAD USMAN NOORI,
AGED ABOUT 27 YEARS,
R/AT H.NO. 18, RAZIYA TOWN,
ISLAMPUR ONI,
OLD HUBBALLI 580 024.

23 . IFTHIKAR ALI,
S/O MANEER AHAMMAD MULLA,
AGED ABOUT 26 YEARS,
R/AT 1ST BUS STOP,
ANANDA NAGAR,
OLD HUBBALLI 580 024.

24 . SADDAM HUSSAIN,
S/O SAYYAD SAB BANNURA,
AGED ABOUT 27 YEARS,
R/AT ARUNAGAR,
2ND CROSS,
OLD HUBBALLI 580 024.

25 . MOHAMMAD JUBER @ ABBU,
S/O SHOWKATH ALI BIJAPUR,
AGED ABOUT 23 YEARS,
R/AT BEERABANDA ONI,
NEAR MOSQUE,
OLD HUBBALLI 580 024.

26 . TUPEL AHAMMAD,
S/O SAYYAD GOUSE MULLA,
AGED ABOUT 38 YEARS,
R/AT MULLA ONI,
KAMARI PET,
HUBBALLI 580 024.

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27 . VASIM AKRAM,
S/O TAFAJULLA KHAN HAKEER @ PATHANA,
AGED ABOUT 35 YEARS,
R/AT MILALTH NAGAR,
MANTUR ROAD,
HUBBALLI 580 024.

28 . MOHAMMAD RAFEEQ,
S/O MEHABOOB SAB PINJARA @ NADAF,
AGED ABOUT 41 YEARS,
R/AT ANANDA NAGAR 8TH CROSS,
GHODKAR FLAT,
OLD HUBBALLI 580 024.

29 . AKBAR ALI,

S/O DASTHAGEER SAB YADAVADA,
AGED ABOUT 31 YEARS,
R/AT ANANDA NAGAR,
8TH CROSS, GHODKE FLAT,
OLD HUBBALLI-580 024.

30 . SADIQ KHAN,
S/O SABEER KHAN PATHANA,
AGED ABOUT 26 YEARS,
RA/T ADHYAPAK NAGAR,
3RD CROSS,
OLD HUBBALLI 580 024.

31 . SAIF KHAN,
S/O FAYAZ KHAN JAGEERDAR,
AGED ABOUT 26 YEARS,
R/AT NEAR OLD HUBBALLI CIRCLE,
AZAD BANK,
OLD HUBBALLI 580 024.

...APPELLANTS

(BY SRI S. BALAKRISHNAN., ADVOCATE;APPEAL AS AGAINST
APPELLANT Nos.8 AND 11 DISMISSED AS NOT PRESSED VIDE
COURT ORDER DATED 3.2.2023;

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AND:

THE STATE BY KARNATAKA,,
OLD HUBBALLI POLICE STATION,
HUBBALLI-580024.
UNDERTAKEN BY NIA,
REPRESENTED BY THE SPP,
HIGH COURT BUILDING,
BANGALORE-560001.

...RESPONDENT

(BY SRI V.M. SHEELVANT, SPECIAL PUBLIC PROSECUTOR)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 21(4) OF
NIA ACT 2008 CR.PC BY THE APPELLANTS PRAYING TO SET ASIDE
THE ORDER OF THE COURT OF XLIX ADDL.CITY CIVIL AND
SESSIONS JUDGE AND SPL.COURT FOR NIA CASES AT BENGALURU
DATED 26.12.2022 IN SPL.C.C.NO.2263/2022 AND GRANT BAIL TO
THE APPELLANT IN CR.NO.63/2022 OF OLD HUBBALLI POLICE
STATION, HUBBALI, DHARWAD DISTRICT, NOW INVESTIGATED BY
NIA AND NUMBERED AS SPL.C.NO.2263/2022 NOW PENDING ON
THE FILE OF XLIX ADDL.CITY CIVIL AND SESSIONS JUDGE AND
SPL.COURT FOR NIA CASES BENGALURU FOR THE OFFENCES
PUNISHABLE UNDER SECTIONS 143,147,148,323,324,332,333,

353,504,506,427,307,120(B),225(B), 153(A) R/W 149 OF IPC AND SEC.3(1) OF PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT 1984 AND UNDER SECTIONS 16(1)(b),18,20 AND 43-D(5) OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT 1967.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, B. VEERAPPA J., DELIVERED THE FOLLOWING:

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JUDGMENT

Criminal Appeal No.72/2023 is filed by appellants/Accused Nos.21, 29, 30, 31, 87, 132, 137, 139, 146 and 157 and Criminal Appeal No.183/2023 is filed by appellants/Accused Nos.4,8,14, 15, 22, 24, 27, 30, 32, 35, 40, 41, 45, 51, 55, 64, 70, 76, 90, 101, 103, 113, 116, 120, 129, 136, 138, 142, 144, 147, and 148, under Section 21(4) of the National Investigation Act, 2008 against the order dated 26th December, 2022 made in Spl.C.C. No.2263/2022 on the file of XLIX Additional City Civil and Sessions Judge (Special Court for trial of NIA cases)(CCH-50), Bengaluru, rejecting the bail applications filed under Section 439 of Code of Criminal Procedure.

I. Brief facts of the case

2. It is the case of the prosecution that on 16.04.2022, at 11.45 p.m., Head Constable No.1328 by name Sri.J.B.Kalappannavar of Old Hubballi Police Station lodged the first information statement with the SHO of Old Hubballi Police Station stating that on 16.04.2022, at 10.30 p.m., when he, along with his colleague i.e., PC 1359, was about to leave the Police Station to attend patrolling duty in their station limits, one Mohammed S/o Azar Beleri, along with 5 to 6 persons had come to the Police Station and lodged the first information statement to take action on the accused who kept the photo as his WhatsApp status on his mobile phone, wherein a Saffron Flag has been hoisted on the dome of the Masjid, which hurt their religious sentiments. By knowing this, some more community members i.e., Mohammed Arif Razvi, Muktum @ Babajan Nalband, Sikkander Makandar, Shabbir Bengaluri, Tajuddin Ballari, Sadik Chajjo, Hajjukhan Dharwad, Mohammed Gouse khalzi and others formed an unlawful assembly of 1000 to 1500 people by holding lethal weapons such as clubs and stones and gathered in front of the Police Station and raised slogans to take stern action against the accused who hurt their religious sentiments. The Police Inspector by name A.G. Chawan along with his staff tried to convince the mob that, a case was already registered, he would arrest the offender and initiate the proper legal action against such person. But the mob started raising slogan against the police that if the police did not arrest the accused, they would not leave anybody, even the police and by saying so, they started obstructing the police in discharging their public duty. Further, the mob, with an intention to commit murder of the Police personnel, assaulted with clubs, pelted stones and threw chappals on the police and caused injuries, destroyed the vehicles of Police and Public and Government properties etc.

3. Based on the said information, Old Hubballi Police registered the case in Crime No.63/2022 for the offence punishable under Sections 123, 143, 147, 148, 323, 307, 324, 333, 353, 504, 506, 427 r/w section 149 of IPC, Section 3(c) of the PDPP Act and took up the matter for investigation. During the investigation, Sections 16, 18 and 20 of the UA(P) Act were invoked, the accused persons were arrested, produced before the Court and were remanded to J.C. Later on, investigation of the case has been transferred to the National Investigation Agency (hereinafter referred to as NIA for brevity) established under the NIA Act. On completion of investigation, the Investigation Officer (I.O.) submitted charge sheet before the Special Court. Soon after filing charge sheet, the appellants herein and other accused persons filed bail applications under Section 439 of Code of Criminal Procedure seeking for regular bail, which came to be rejected on 26.12.2022 by the trial Court. Hence, these appeals are filed by the appellants/accused persons for grant of bail.

4. We have heard the learned Counsel for the parties. II. Arguments advanced by learned counsel for the appellants/accused

5. Sri S. Balakrishnan, learned counsel for the appellants/accused contended that, Sections 16, 18 and 20 of UA (P) Act is invoked while filing final report. Unless the Investigating Agency collect material under 2(k) of terrorist act 2(l) of terrorist gang and 2(m) of terrorist organization, provisions of Sections 16, 18 and 20 of UA (P) Act cannot be fastened against the appellants persons; the appellants cannot be declared as members of Terrorist Organization as defined under Section 2(m) of the Act as none of them are members of any of the 43 banned Terrorist Organizations under Section 35 of UA (P) Act; the Investigating Agency did not file charge sheet for the offences punishable under Section 15 of the UA (P) Act vis-à-vis Section 2(k) of the Act is not applicable to the present case. In the absence of Section 2(k) and 15 of UA (P) Act, question of committing the offence punishable under Section 16(1)(a)&(b) of the UP (A) Act does not arise. It is pertinent to note that section 16(1)(a) is applicable only if the Act has resulted in the death of any person. No death took place in the present case and as such, question of invoking Section 16(1)(a) of the UP (A) does not arise. Section 16(1)(b) is punishable not less than 5 years but may extend to imprisonment for life. None of the appellants persons have committed any of the acts as mentioned in Section 15(1)(a)(b)(c) of the UA(P) Act and hence viewed from any angle, there are absolutely no shred of material to attract Section 16 of UAP Act.

6. The learned counsel for the appellants further contended that to attract Section 18 of UA (P) Act, there must be some material for initiating terrorist act. Even if the allegations made in the entire charge sheet are accepted as true and correct, there are absolutely no prima-facie case made out to prove conspiracy. The allegations made by the prosecution indicate that a spontaneous mob of 1000-1500 people was assembled triggered by a WhatsApp message out of sudden provocation and hence there cannot be any conspiracy for a sudden provocation in the digital media and spontaneous acts were committed at the spur of the moment; while rejecting the bail application, the trial Court has erroneously observed that giving threat to police and forming an unlawful association is nothing but terrorist act as defined u/s 2(a) of the UP (A), further it was observed, as per Section 15(1) of UA (P) Act, whoever does any act with intent to threaten or likely to threaten the integrity, security, unity and sovereignty of India is punishable u/s.16 of UA(P) Act. Prima facie it appears that the acts of the accused in respect of attacking police station, causing damage to the

police vehicles, causing injury to the police personnel etc., cannot be called as terrorist activities and against the object of the provisions of Sections 15 and 43 of the UA(P) Act.

7. It is further contended that, though the learned Trial Judge referred to various judgments cited by the accused/appellants, has observed that, the facts of the present case are altogether different to that of the cited cases and viewed from any angle, the findings by the Trial Court while rejecting the bail petition is perverse and opposed to the principles of the judgment rendered by the High Courts and Supreme Court in a catena of decisions and hence, prays that this Court has to re-appreciate the entire material brought on record and to grant bail to the appellants.

8. The learned counsel for the appellants further submits that Section 20 of UA (P) Act defines the Punishment for being member of terrorist gang or organization. In the present case, any of the appellants being member of a terrorist organization is, ruled out. If Section 2(k) and Section 15 of the Act is taken into consideration, there must be act on the part of the appellants which falls within the purview of Section 15(1)(a) (i) to (iv), (b), (c) of the UA (P) Act. The entire charge sheet does not specify or make out a prima-facie case for the said offenses. The Investigation Officer intentionally blown the case out of proportion. The Hon'ble High Court in CrI. Appeal No.130/2022 disposed of on 21/4/2022 set following circumstances to strike a balance between the mandate under Section 43D of the UA (P) and the rights of the appellants to divide as to whether the accusation in such case is prima-facie true the following circumstance would provide adequate guidelines to form an opinion which reads as under:

a) Whether the appellants are associated with any organization, which is prohibited through an order passed under the provisions of the act?

b) Whether appellants were convicted of the offenses involving such crimes, or terrorist activities, or though acquitted on technical ground; was held to be associated with terrorist activities?

c) Whether any explosive material, of the category used in the Commission of the crime, which gave rise to the prosecution; was recovered from, or at the instance of the appellants?

d) Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the appellant, at or around the scene of occurrence?
And

e) Whether the appellants were arrested, soon after the occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies?

9. It is further contended that, in the present case, the investigating agency has not brought anything on record to point out that the appellants have associated themselves with any organizations which is prohibited or barred under the provisions of UA (P) Act. Certain mobile handsets and SIM cards were collected from the appellants which do not lead to an inference that they have committed any

of the ingredients under Sections 16, 18 and 20 of the UA (P) Act. In the absence of any prima-facie case, restrictions imposed by sub section (5) of Section 43D of the UA (P) per se do not prevent this Hon'ble Court from granting bail. He has placed reliance on catena of decisions of various High Courts and Hon'ble Apex Court that the appellants facing trial under UA (P) Act are entitled for bail. He further submits that the Appellants are innocent of the offences, they shall offer surety and abide by any conditions that may be imposed on them at the time of granting bail.

10. The learned counsel for the appellants further submitted that, the Trial Court while rejecting bail application has erroneously held that the prosecution has placed material before the Court to show that accusation made against the accused are prima-facie true and that, there are restrictions to grant bail to the appellants u/s.43(D)(5) of UA (P) Act. It is further submitted that while debating enactment of Section 43(D)(5) of UA(P) Act, the then Home Minister pointed out that the Courts while granting bail need to appreciate the materials placed on record which leads to an inference that the accusations against the accused are prima facie true. It is further contended that CCTV footage, CDR, video collected during the course of investigation indicate that there was mob fury due to spur of moment, without any pre mediations, intention, and knowledge to commit any offence. None of the appellants possessed any weapon which falls within the purview of Section 15, 16 of UA(P) Act. The Trial Court erroneously observed that Section 15 of UA(P) Act requires no need to use any bombs, dynamite or lethal weapons. The trial Court further has erroneously observed that, even the intention of the accused persons to strike terror in public or in any section of public in India is sufficient to attract Section 15 of the Act. It is submitted that the very fact that Charge sheet is not filed for the offences punishable u/s 15 of UA(P) Act indicates that there is no material, but the Trial Court erroneously observed that there are materials to attract Section 15 of the Act. Hence, the learned counsel for the appellants sought for re-appreciation of the entire material on record and grant bail in favour of the appellants.

11. The learned counsel for the appellants further submits that, the Trial Court has erroneously given findings with regard to the authorities produced by the appellants and thus, caused perversity in the bail order. He further submits that no other case has been filed or pending before this Court or any Court seeking the relief sought in the appeals. In the circumstances, learned counsel for the appellants/accused sought for setting aside the impugned order passed by the trial Court rejecting the bail applications of the appellants/accused and to grant bail in favour of the appellants/accused.

11(a). The learned counsel for the appellants in support of the arguments, relied upon the following decisions:

1. Saleem Khan and Ors. Vs. State of Karnataka in the unreported judgment of the Karnataka High Court in CrI. A. No.130/2021 decided on 21.4.2022.
2. Iqbal Ahmad kabir Ahmed Vs. The State of Maharashtra in the unreported judgment of High Court of Bombay in CrI.A. No.355/2021 decided on 13.8.2021.
3. State of Kerala Vs. Raneef in the unreported judgment of the Hon'ble Supreme Court in CrI. A. No. 3/2011 decided on 3.1.2011.

4. Dhan Singh and Ors. Vs. Union of India and Ors. in the unreported judgment of the High Court of Bombay in Crl. A. No. 580/2016 and connected cases decided on 14.6.2019..

5. A. Ramachandran vs. Central Bureau of Investigation and Ors. in the unreported judgment of High Court of Kerala at Ernakulam in Crl. A. No.346/2015 and connected cases decided on 18.6.2015.

6. Devendar Gupta and Ors. Vs. National Investigation Agency in the unreported judgment of High Court of Andhra Pradesh in Crl. A. No. 795/2013 decided on

12.3.2014.

7. Arup Bhuyan vs. State of Assam in the unreported judgment of the Hon'ble Supreme Court in Crl. A. No. 889/2007 decided on 3.2.2011.

8. Faizan Khan vs. State of NCT Delhi in the unreported judgment of Delhi High Court in Bail Application No. 2725/2020 decided on 23.10.2020.

9. Vikram vinay Bhawe vs. State of Maharashtra in the unreported judgment of High Court of Judicature at Bombay in Crl. A. No. 187/2020 decided on 6.5.2021..

10. Asif Iqbal Tanha vs. State of NCT Delhi, in the unreported judgment of Delhi High Court in Crl. A. No. 39/2021.

11. Thwaha Fazal vs. Union of India in the unreported judgment of the Hon'ble Supreme Court in Crl.A. No. 1302/2021 decided on 28th October, 2021.

12. C.K. Ramachandran Vs. Central Bureau of Investigation in the unreported judgment of High Court of Kerala at Ernakulam in Crl. Mc. No. 6772/2018.

III. Arguments advanced by learned SPP for the respondent/State

12. Per Contra, Sri Sheelvant, learned Special Public Prosecutor for the State vehemently contended that some of these appellants and other accused persons have challenged the jurisdiction of Special Court and they contend that this case requires to be tried by this Court, hence, the Crl. Appeal filed by the appellants are not maintainable in law or on facts, he would further submits that these appellants are involved in heinous offences of creating religious disharmony amongst the society, which leading to disturbance of public peace and tranquility and the involvement of these appellants and other accused persons have been traced out from CCTV footages and call detail records (CDR). Learned Special PP would further submits that, if these appellants are enlarged on bail, there is apprehension that, they may commit similar offences of disturbing the peace in the society. There are abundant material and prima facie case against appellants to establish that, they are actively involved in commission of the crime.

13. The investigating agency has chargesheeted only against the persons who are identified by the witnesses, CDRs and CCTV footages. The accused persons are active members of the terrorist gang i.e. Lion Lifter Fitness Gym, Islamic Sultan Group and Hubli Goodshed King, which are WhatsApp Groups for carrying on terrorist act as defined under the UA(P) Act. The learned SPP would further submits that all appellants and other accused persons are having criminal antecedents and political background and at their instance, in a fraction of second, huge crowd was gathered and these appellants and other accused persons instigated all accused to commit an offence. The offences alleged against these appellants are punishable with imprisonment for life.

14. The learned Spl. PP further submits that, a) in the incident, about 20 police personnel have received internal injuries. CW-1, CW-57, CW-93 and CW-94 were injured and they have taken treatment in hospital; b) 6 police jeeps, one Innova Crysta Car and one police motor bike were damaged in the incident apart from private properties including temple for which separate crimes have been registered; and c) voluntary statement of Accused Nos. 1, 31, 40, 45, 75, 87, 138, 139, 141, 157 and 158 are recorded. On all these grounds, learned Spl. PP prayed to reject the appeals.

IV. Point for determination

15. Having heard learned counsel for the parties and the material available on record, the point that would arise for our consideration in these criminal appeals is:

"Whether the appellants/accused have made out a case to interfere with the impugned order passed by the Special Court and to grant bail in their favour in the facts and circumstances of the case?"

V. Consideration

16. In the instant case, the prosecution has alleged that, the appellants and other accused persons were involved in commission of offences punishable under the provisions of UA(P) Act and PDPP Act. In the light of the case of prosecution, let us examine the aims and objective of UA(P) Act and PDPP Act.

17. The National Integration Council appointed a committee on National Integration and Regionalisation to look into, inter alia, the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of recommendations of the Committee, the Constitution (16th amendment) Act, 1963 was enacted to impose, by law, reasonable restrictions in the interest of the sovereignty and integrity of India.

In order to implement the provisions of 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament. The object of the UA(P) Act to impose by law reasonable restrictions in the interest of the sovereignty and integrity of India, on the, -

- i) freedom of speech and expression;
- ii) right to assemble peaceably and without arms; and
- iii) right to form associations or unions.

18. Further, with a view to curb acts of vandalism and damage to public property, including destruction and damage caused during riots and public commotion, a need was felt to strengthen the law to enable the authorities to deal effectively with cases of damage to public property, the Prevention of Damage to Public Property Act, 1984 came into force. In the light of the above UA (P) Act and the PDPP Act, let us examine the case of the appellants.

19. On 16.04.2022, at 10.30 p.m., one Mohammed S/o Azar Beleri, along with 5 to 6 persons had come to the Police Station and lodged the first information statement, to take action against some accused persons, who kept the photo as his WhatsApp status on his mobile phone, wherein a Saffron Flag has been hoisted on the doom of the Masjid, which hurt their religious sentiments. By knowing this, some more community members i.e., these appellants and other accused persons, about 1000 to 1500 persons, formed an unlawful assembly by holding lethal weapons such as clubs and stones gathered in front of the Police Station and raised slogans to take stern action against accused persons who hurt their religious sentiments. Though the Police Inspector convinced the mob but they started raising slogans against the Police that if the Police did not arrest the accused, they would not leave anybody, even the police and by saying so, they started obstructing the police in discharging their public duty. Further, the mob, with an intention to commit murder of the Police personnel, assaulted with clubs, pelted stones and threw chappals on the Police and caused injuries, destroyed the vehicles of Police and Public and Government properties. Hence, case has been registered, in all 158 accused persons were arrested during the course of investigation and their bail applications were rejected by the Special Court.

20. In these appeals, we are mainly concerned with the offences punishable under Sections 3(1) of PDPP Act. The said section reads as under :

3. Mischief causing damage to public property.-(1) whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

21. Section 15 of the Terrorist Act, 1967 is defined as under :

(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,--

(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--

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(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]

(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.]

22. In this case, there is no allegation against accused persons of committing any terrorists act. Chapters IV and VI of UA(P) Act contain provisions for forfeiture of proceeds of terrorism with which we are not concerned. In the instant case, the main allegation against the accused persons is,

they were actively involved in unlawful activities and caused damage to the public property and also assaulted public servants while they were in discharge of their public duty.

23. Hence, it is relevant to examine Section 13 of the UA(P) Act, which reads as under :

"13. Punishment for unlawful activities:-

(1) Whoever--

(a) takes part in or commits, or

(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.

(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 therefore carried on by any person authorised in this behalf by the Government of India."

24. In these appeals, we are mainly concerned with the offences punishable under Sections 16(1)(b), 18 and 20 of the UP (A) Act, which reads thus:--

16. Punishment for terrorist act.-(1) whoever commits a terrorist act shall,-

(a) xxxx

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18. Punishment for conspiracy, etc.- whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directs or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

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.

25. The offence punishable under Section 20 of the UA (P) would attract, 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.

26. 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, these appellants and other accused persons being members of unlawful assembly, obstructed the public servants while they were in discharge of public duty and they pelted stones on the public properties, police officers and caused damage to public vehicles.

27. It is relevant to consider the provisions of the UA (P) 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:

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)

28. The stringent conditions for grant of bail in sub-section (5) of Section 43D will apply only to the offences punishable 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 Criminal Procedure Code, 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.

29. In the case of National Investigation Agency vs. Zahoor Ahmed Shah Watali reported in (2019) 5 SCC 1, the Hon'ble Apex Court has extensively dealt with sub-section (5) of Section 43D of the UA

(P) 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, the Hon'ble Apex Court in the aforesaid case has 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)

30. After considering the law laid down by Hon'ble Supreme Court in various decisions including the decision in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra reported in (2005) 5 SCC 294, has held at paragraphs 24 and 25 as 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 CrPC) and other material gathered by the investigating agency during investigation." (emphasis added)

31. Therefore, while deciding a bail petition filed by an accused against whom offences under UP (A) Act and PDPP 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 prima facie satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is true, then the accused is entitled for 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 UP (A) Act and PDPP Act. There must be reasonable grounds for believing that the accusation against the accused is prima facie true. 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.

32. In the instant case, the Investigating Officer, after through investigation has filed charge sheet against 158 accused persons for the aforesaid offences. The learned Special PP for the State has submitted the individual overtact of each accused persons by considering the statement of witnesses, CCTV footages, CDRs and WhatsApp messages, etc.

33. According to the learned Special Public Prosecutor for the respondent/State, the involvement of the accused persons in these criminal appeals may be categorized under the following four groups:

i) Overtacts of the accused who were in the WhatsApp groups;

ii) Accused who were in the video;

iii) Accused who were in the CCTV; and

iv) Accused who were in the CDR and Tower dump.

34. The Investigating agency has charge sheeted only against the persons who are identified by the witnesses, CCTV footages, CDR (Call Detail Records), Video, WhatsApp group, Tower dump procedure etc., On careful perusal of the charge sheet, note submitted by the Special Public Prosecutor and the synopsis filed by learned counsel for the accused, we summarize the details of the appellants/accused in Criminal Appeal No.72/2023 as under:

a) Accused No.21/Shoabali: CDR shows presence of this accused at the scene of occurrence.

CW.121/Head Constable - 1612 - I.S. Saunshi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

b) Accused No.31/Irfan: CDR, CCTV and video show
presence of this accused at the scene of

occurrence. CW.121 - Head Constable 1612 - I.S. Saunshi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. CW.53 - ASI - B.K. Joudar was present at the scene of occurrence and his statement was recorded. The accused threw stones on the Police Station, police vehicles and on police officials. As per the charge sheet, he is the main accused and main cause for the incident and he has instigated the crowd to commit the offence. Voluntary statement of the accused has been recorded.

c) Accused No.87/Mohammedazaruddin: CDR and CCTV show presence of this accused at the scene of occurrence. CW.64 - ASI - P.L. Chalavadi and CW.72 - Police Constable 2182 - V.S. Gudgeri were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. As per the charge sheet, he is the main accused and main cause for the incident and he has instigated the crowd to commit the offence. The accused threw stones on the police station, police vehicles and on police officials.

d) Accused No.132/Jainulabadin: CDR shows presence of this accused at the scene of occurrence.

CW.126/Police Constable - 2269- R.T. Ramdurg was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the

Police Station, Police vehicles and on police officials.

e) Accused No.137/Abdul Malik: CDR shows presence of this accused at the scene of occurrence.

CW.73/Police Constable -2300 - B.M. Hedderi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials. He is a Rowdy Sheeter.

f) Accused No.140/Basha @ Basha Sab: CW.73/CPC-

2300 - B.M. Hedderi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

g) Accused No.146/Dadaphir: CDR and CCTV show presence of this accused at the scene of occurrence. He is the main accused and main cause for the incident and he has instigated the crowd to commit an offence as mentioned in the charge sheet. CW.72/CPC-2182 - V.S. Gudgeri was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

h) Accused No.157/Aptab: CDR, CCTV and WhatsApp group message show presence of this accused at the scene of occurrence. He is the main accused and main cause for the incident and he has instigated the crowd to commit an offence as mentioned in the charge sheet. CW.58/PSI - G.N. Kalyani was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials. The mobile phone of this accused was seized and his voluntary statement was recorded.

i) Accused No.29/Mallikarihan: CCTV shows presence of this accused at the scene of occurrence.

CW.59/ASI - C.S. Dindalkoppa and CW.60/Head Constable-1731 - S.V. Valyapur were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

35. The Investigating agency has charge sheeted only against the persons who are identified by the witnesses, CCTV footages, CDR (Call Detail Records), Video, WhatsApp group, Tower dump procedure etc., On careful perusal of the charge sheet, note submitted by the Special Public Prosecutor and the synopsis filed by learned counsel for the accused, we summarize the details of the appellants/accused in Criminal Appeal No.183/2023 as under:

i) Accused No.4/Shabir: CDR shows presence of this accused at the scene of occurrence. CW.212/PSI -

F.S. Bhajantri has identified the accused and arrested him. CW.96/Civil Head Constable 1479 - T.K. Jadhav was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

ii) Accused No.8/Mohammedsadiq: Video, CCTV and photographs show presence of this accused at the scene of occurrence. S.V. Valyapur was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

iii) Accused No.14/Mohammedshabaj: CDR shows presence of this accused at the scene of occurrence. CW.85 /Police Constable 3094 - Manjunath N. Rayareddi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

iv) Accused No.15/Tabreez: CDR and WhatsApp group show presence of this accused at the scene of occurrence. CW.85/Police Constable 3094 - Manjunath N. Rayareddi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials and he is a member of Islamic Sultan group in WhasApp.

v) Accused No.22/Shaanvaz: CDR, Video and WhatsApp group show presence of this accused at the scene of occurrence. CW.90/Head Constable 1757 - F.R. Gobargumpi Rayareddi and CW.121 - Head Constable 1612 - T.S. Saunshi were present at the scene of occurrence and they identified the accused and accordingly their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials and he is a member of Islamic Sultan group in WhatsApp.

vi) Accused No.24/Sayeedbasha: CDR and WhatsApp group show presence of this accused at the scene of occurrence. CW.121/Head Constable - 1612 - I.S. Saunshi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials and he is a member of Islamic Sultana Group in WhatsApp.

vii) Accused No.27/Nizamuddin: CDR shows presence of this accused at the scene of occurrence.

CW.54/Head Constable - 1435 was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

viii) Accused No.30/Mohammed Irfan s/o Mahaboobsab Sandalvale: CDR and WhatsApp group show presence of this accused at the scene of occurrence. CW.89/Head Constable 1698 - Mrutunjaya Kalwad of Keshwapur police station was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the

Police Station, Police vehicles and on police officials and he is the member of Islamic Sultan group in WhatsApp.

ix) Accused No.32/Mohamedirfan s/o Mahaboobsab
Guledgudd: CDR and WhatsApp group show

presence of this accused at the scene of occurrence. CW.89/Head Constable 1698 - Mrutunjaya Kalwad of Keshwapur police station was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials and he is the member of Islamic Sultan group in WhatsApp.

x) Accused No.35/Devalmalika: CDR shows presence of this accused at the scene of occurrence. CW.212 - PSI - F.S. Bhajantri and CW.90 - Head Constable - F.R. Gobarumpi were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xi) Accused No.40/Asif: He has already been released on bail on health ground.

xii) Accused No. 41/Rehemathutulla: CDR shows presence of this accused at the scene of occurrence. CW.54 - Head Constable 1435 - R.K. Jakali was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xiii) Accused No.45/Mustak: CDR shows presence of this accused at the scene of occurrence. CW.124/Head Constable 1574 - P.A. Dapali was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials. His voluntary statement was also recorded.

xiv) Accused No.51/Sabalu: Video shows presence of this accused at the scene of occurrence. CW.212/PSI - F.S. Bhajantri was present at the scene of occurrence and arrested the accused. He speaks about his presence. CW.72 - Police Constable 2182

- VS. Gudgeri and CW.125/Head Constable 1651 - M.A. Gani were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xv) Accused No.55/Salman s/o Shabir Salmane:

CW.212/PSI - F.S. Bhajantri and CW.125/Head Constable 1651 - M.A. Gani were present at the scene of occurrence and they identified the accused and accordingly,

their statements were recorded.

The accused threw stones on the Police Station, Police vehicles and on police officials.

xvi) Accused No.64/Khazamainudin: CW.73/Police Constable 2300 - B.M. Hedhari was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xvii) Accused No.70/Malikjahan: CDR shows presence of this accused at the scene of occurrence.

CW.57/Police Constable 3117 - V.H. Hosalli and CW.67/Police Constable 2400 - S.M. Nadaf were present at the scene of occurrence and they identified the accused and accordingly their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xviii) Accused No.76/Mohamedafurkha: CDR and Tower dump show presence of this accused at the scene of occurrence. CW.123/Head Constable 1469 - Uday Nayak was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded.

xix) Accused No.90/Mohammedzuber: CW.68/Police Constable 2505 - B.M. Nayak was present at the scene of occurrence and his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xx) Accused No.101/Mohamedsahil: CDR shows presence of this accused at the scene of occurrence. CW.56/Head Constable 1561 - N.M. Patil was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials. xxi) Accused No.103/Mohammedfiroz: CDR, Tower dump and video show presence of this accused at the scene of occurrence. CW.60/Head Constable 1731 - S.A. Valyapur and CW.55/Head Constable 1687 - M.B. Bhajantri were present at the scene of occurrence and they identified the accused and accordingly their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xxii) Accused No.113/Mohammedzuber: CDR shows presence of this accused at the scene of occurrence. CW.97/Police Constable 2696 - G.C. Sabrad was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials. xxiii) Accused No.116/Iptikarali: CW.212/PSI - F.S. Bhajantri and CW.71/Head Constable 1781 - M.F. Nadaf were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xxiv) Accused No.120/Sadamhussain: CDR shows presence of this accused at the scene of occurrence. CW.67/Police Constable 2400 - S.M. Nadaf was present at the scene of occurrence and

he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials. xxv) Accused No.129/Mohamedzuber: CDR and video show presence of this accused at the scene of occurrence. CW.65/Head Constable 1439 - M.F. Ullikashi and CW.72/Police Constable 2182 - V.S. Gudgeri F.R Gobargumpi were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xxvi) Accused No.136/Tupaelahmed: CDR and CCTV footage show presence of this accused at the scene of occurrence. CW.126/Police Constable 2269 -

R.T. Ramdurg was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The

accused has toppled and damaged the police Jeep bearing Regn. No.KA-25-G-408 in old Hubballi Police Station Crime No.67/2022 and his mobile also seized at the scene of occurrence.

xxvii) Accused No.138/Wasemakram: CCTV and CDR show presence of this accused at the scene of occurrence. He is the main accused and main cause for the incident and he has instigated the crowd to commit an offence as mentioned in the charge sheet. CW.92/Police Inspector - Aalap M and CW.71/Head Constable 1781 - M.F. Nadaf were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. The mobile phone of the accused was seized at the incident and his voluntary statement also record. xxviii) Accused No.142/Mohammedrafiq: Video shows presence of this accused at the scene of occurrence. CW.69/PSI - C. Madarkhandi and CW.56/Head Constable 1561 - N.M. Patil were present at the scene of occurrence and they identified the accused and accordingly, their statements were recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xxix) Accused No.144/Akbarali: WhatsApp group shows presence of this accused at the scene of occurrence. CW.69/PSI - C. Madarkhandi was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials. The mobile phone of the accused was seized.

xxx) Accused No.147/Sadiqkhan: CDR shows presence of this accused at the scene of occurrence.

CW.54/Head Constable - 1435 was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

xxxi) Accused No.148/Saiefkhan: CDR shows presence of this accused at the scene of occurrence.

CW.67/Police Constable 2400 - S.M. Nadaf was present at the scene of occurrence and he identified the accused and accordingly, his statement was recorded. The accused threw stones on the Police Station, Police vehicles and on police officials.

36. In these two appeals, the accused persons alongwith others in a mob of about 1000-1500 persons gathered near the police station and involved in the incident, wherein:-

- a) About 20 police personnel suffered internal injuries.
- b) 6 police jeeps, one innova crista car and one police motorbike were damaged apart from private properties including temple for which a separate crimes are registered.
- c) Voluntary statements of Accused Nos.1, 31, 40, 45, 75, 87, 139, 141, 157 and 158 were recorded.
- d) CW.1, CW.57, CW.83 and CW.94 sustained injuries and have taken treatment in the hospital.

Out of 1000 to 1500 persons in a mob, the Investigating agency has charge sheeted only against 158 persons who are identified by the Police witnesses, CDRs, CCTV footages, WhasApp group, Tower dump procedure etc., Some of the accused were already released on bail on medical grounds.

37. Learned counsel for the appellants/accused in Criminal Appeal No.72/2023 has filed a memo alongwith certain medical documents stating that appellant No.2 (Accused No.31) is suffering from chronic low backache; appellant No.4 (Accused No.132) is suffering from heart related disease; appellant No.9 (Accused No.29) is suffering from liver problem; and that appellant No.10 (Accused No.30) has behavioural problem. Learned counsel for the appellants in Criminal Appeal No.183/2023 has filed a memo alongwith certain medical documents stating that appellant No.12 (Accused No.41) is suffering from acute acid peptic disease and viral fever and appellant No.25 (Accused No.129) is suffering from diabetes Meletus.

38. The medical certificates in respect of Accused Nos.31, 132, 29, 30, 41 and 129 produced in these appals are perused carefully and none of the diseases mentioned therein are serious in nature and in respect of regular ailments of the accused, it is the duty of the concerned prison authorities including the Medical Superintendent to look after their welfare, in addition to other under trial prisoners.

39. Though learned counsel for the appellants contended with vehemence that all the accused persons who were before this Court, are innocents and they have been falsely implicated in the case without there being any material on record, the same cannot be accepted. In order to verify the said statement, we summoned the learned Special Public Prosecutor to produce the CD (compact disc) relating to the incident and in the open Court in presence of learned counsel for the appellants and the learned Special Public Prosecutor, the Court viewed the video relating to the incident to ensure that innocent persons should not be implicated in the criminal case as their rights under Article 21

of the Constitution of India are involved. The video clearly depicts that there was a huge mob in front of the Police Station and the persons in the mob threw stones on the police station, police vehicles and on police officials and in the incident about 20 police personnel suffered internal injuries and 6 police jeeps, one innova crystal car and one police motorbike were damaged. Out of 1000 to 1500 persons in a mob, the accused persons were arrested based on the identification by the police witnesses, CDRs, CCTV footages, WhatsApp group, Tower dump procedure etc., thereby the impugned order passed by the learned Sessions Judge rejecting the bail applications of the appellants/accused under Section 439 of the Code of Criminal Procedure, is just and proper.

40. On perusal of the impugned order passed by the learned Sessions Judge rejecting the bail applications of the accused under the provisions of Section 439 of the Code of Criminal Procedure and on perusal of the entire material on record including CD and the charge sheet materials, it is clear that the accused persons were involved in heinous offences of creating religious disharmony amongst the society leading to disturbance of public peace and tranquillity and their involvement can be traced out from the CCTV footages, call detail records etc., The Investigating Officer has collected materials to show that some of the accused persons forwarded hatred messages on their mobile phones. He has also collected the materials to show that some of the accused persons forwarded messages in the WhatsApp groups to gather their community people near the Police station for commission of the offence. The Investigating Officer has collected the evidence in the form of statements, videos, CCTV footages and CDRs to show the involvement of the accused persons in the alleged crime. The intention of the accused persons in furthering the activities can be inferred from their overacts or acts and their active participation in the activities of the organisation, which are borne out from the material which forms part of the charge sheet. Though the CD depicts huge mob consisting of small children, old persons and others, are involved, ultimately the Investigating Officer has identified each one of the accused persons through the statements of witnesses, video, CCTV footages and CDRs collected during the investigation and he has submitted the charge sheet only against the persons who were identified by the witnesses, CDRs, CCTV footages and were really involved in the incident and caused internal injuries to 20 police personnel and damaged 6 police jeeps, one innova crystal car, one Police motorbike etc., The material on record clearly depicts that the accused persons participated in a protest or a gathering organised by a organization and prima facie there is material in the charge sheet with regard to active participation of all the accused persons. The material on record is also sufficient to infer the presence of the accused persons in the incident and the part played and the overtacts committed by them on the date of the incident so also commission of the offences under the provisions of IPC, UA(P) Act and PDPP Act.

41. A careful examination of the material forming part of the charge sheet clearly depicts that accused persons have gathered on the date of the incident and caused injuries to the Police personnel and damaged Police vehicles, thereby attract the offences against the accused persons under Chapter IV of the UA(P) Act. It is well settled that the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused persons is prima facie true. If the Court is prima facie satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused prima facie proved, then the accused is entitled for bail. Thus, the scope of inquiry is to decide whether prima facie material is

available against the accused of commission of the offences punishable under Section 120B of IPC and the other provisions of IPC and also Sections 16(1)(b), 18 and 20 of the UA(P) Act, which comes under Chapter IV of the UA(P) Act. There must be a reasonable ground for believing that the accusation against the accused is prima facie true. It is also not in dispute that the Court, while examining the issue of prima facie case as required by sub-section (5) of Section 43-D of the UA(P) Act, is not expected to hold 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 the charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is. Keeping the aforesaid principle, after examination, it clearly indicates that the allegations against the accused are prima facie proved.

42. It is also well established principles of law that while considering a bail application, Court has to consider the nature of the offences, circumstances in which the offence is committed, position and status of the appellants with reference to the victim and witnesses; likelihood of fleeing away from justice, of repeating same offences by the appellants, of tampering with witnesses, character and antecedents of the appellants. Further, the law is well settled that while disposing of bail petition Court need not scan the prosecution papers and hold a mini trial.

43. At this stage, it is relevant to refer to Section 43-D(5) of the UA(P) Act, which reads as under:

5. Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

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

Since there is a prima facie case against the accused, in view of the provisions of Section 43-D(5) of the UA(P) Act, there is a bar to release the appellants/accused on bail.

44. Though several contentions urged by the learned counsel for the appellants for granting bail and the learned SPP for rejecting the bail, the fact remains that the accused have not made out any prima facie case to grant bail. The learned Sessions Judge considering the charge sheet material has rightly recorded the finding at paragraphs 27 and 28 of the impugned order, which reads as under:

"27. In order to substantiate the said allegations, the Investigating Officer has collected the evidence during the investigation in the form of statements of witnesses, documents, CCTV footages, CDRs and videos. The Investigating Officer has collected the materials to show that some of the accused persons held conspiracy meetings to

commit terrorist activities before commission of the offence. He has collected the materials to show that some of the accused persons forwarded hatred messages on their mobile phones. He has collected the materials to show that some of the accused persons forwarded messages in the WhatsApp groups such as Lion Lifter Fitness Gym, Islamic Sulthan Group and Hubli Goodshed King to gather their community people near the Police Station for the purpose of commission of terrorist act. The investigating Officer has retrieved the messages out of the mobile phones seized from the possession of the accused persons. The said messages clearly go to show that the accused persons conspired with each other to commit a terrorist act.

28. As per the allegations of the prosecution, more than thousand people gathered near the Police Station. The Investigating Officer has collected the evidence in the form of statements, videos, CCTV footages and CDRs to show the involvement of the accused persons in the alleged crime as discussed supra. The Investigating Officer has identified each one of the accused person through the statements of witnesses, videos, CCTV footages and CDRs collected during the investigation and he has submitted the charge-sheet only against the persons who are identified by the witnesses, CDRs and CCTV footages.

The rest of the persons who gathered in the mob are not brought before this Court."

45. In view of the provisions of Section 43-D(5) of the UA(P) Act and other material on record, the learned Sessions Judge rightly rejected the application of the appellants/accused under Section 439 of the Code of Criminal procedure for bail. The reasons assigned and the conclusion arrived at by the trial Court are just and proper. The appellants/accused have not made out any ground to interfere with the well reasoned order passed by the trial Court.

46. There is no dispute with regard to the principles enunciated in the judgments relied upon by the learned counsel for the appellants/accused, but the same are not applicable to the peculiar facts and circumstances of the present case.

47. Another contention was raised by the learned counsel for the appellants that only one Special Court is constituted under the provisions of UA(P) Act in the State of Karnataka and the said Court is overburdened with NIA cases and there are cases pending for more than nine years in the said Court and to conduct trial in the present case, it will take its own time, thereby injustice would be caused to the innocent persons. Learned counsel for the appellants would contend that inordinate delay in disposal of the cases especially under UA(P) Act is itself denial of justice. It is true that even if stringent requirements for granting bail in the special statutes like UAP Act may result in a situation where the accused finds it difficult to get favourable order of bail, the constitutional Courts could certainly grant bail, even in such cases if it is found that rights guaranteed under Part III of the Constitution are violated. It has been held that long delay in initiation and completion of trial violates the constitutional right to speedy trial and in that situation, the constitutional court can grant bail when there is no likelihood of the trial being completed in a reasonable time. It is thus clear that the presence of statutory restrictions like section 43-D(5) of the UAP Act per se does not

oust the ability of the constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both restrictions under the statute as well as the power exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigorous of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions such as Section 43-D (5) of the UA(P) Act being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

48. Keeping in view the aforesaid principle, we got the information and statistical data from the Registrar (Judicial) about pendency of cases before the Special Court which is dealing with NIA cases. The statement dated 12th April 2023 furnished by the Registrar (Judicial) depicts that as on 28th February 2023, 31 NIA cases are pending before the Special Court pertaining to different years, the details of which are as under:

Year to which pending	NIA cases	Approximate number of years
2014	1	9 years
2015	2	8 years
2016	2	7 years
2017	3	6 years
2018	3	5 years
2020	3	5 years
2021	8	2 years
2022	5	1 year

Apart from 31 NIA cases, 53 Sessions Cases and 2 CrI.Misc.

matters are pending before the said Special Court as on 31st March 2023.

49. We also got the information from the official website of the State Government, which depicts that Karnataka State is divided into four revenue Divisions viz.,

- a) Mysore Division .. consists 8 districts
- b) Belagavi Division .. consists of 7 districts
- c) Bengaluru Division .. consists of 9 districts
- d) Kalburgi Division .. consists of 6 districts

50. As on today, for the entire State, Government has established only one Special Court at Bangalore to deal with the cases under National Investigation Agency Act, 2008. By careful perusal of the statistical data, it clearly depicts that NIA cases which are more than 8 to 9 years old are pending as stated supra. It is relevant to state at this stage that today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors fail people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a judge is being judged with more strictness than others. It is the duty of the Court to ensure that timely justice given to those who approach the Court with great faith. It is high time for the State Government to fulfil the scope and object of the UA(P) Act and ensure speedy trial and

disposal by constituting/establishing three more Special Courts for trial of NIA cases in other revenue Divisions of Karnataka viz., Mysore Division, Belagavi Division and Kalburgi Division. The present Special Court at Bengaluru assigned with the work of trial of NIA cases alongwith Sessions and other cases. If the NIA cases are less in the newly proposed Special Courts, the said Courts may be assigned with Sessions and other cases as has been done in respect of Special Court at Bangalore established for speedy disposal of NIA cases. If the newly proposed Special Courts are not constituted/established, one Special Court in the entire State would be overburdened and will lead to inordinate delay in trial and disposal of NIA cases, which is against the constitutional mandate as contemplated under Articles 14 and 21 of the Constitution of India.

51. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of Abdul Rehman Antulay v. R.S. Nayak reported in (1992) 1 SCC 225, wherein it is held at paragraphs 81, 82 and 86 as under:

"81. Article 21 declares that no person shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure, 1973. Several other enactments too contain many a procedural provision. After Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : AIR 1978 SC 597] , it can hardly be disputed that the 'law' [which has to be understood in the sense the expression has been defined in clause (3)(a) of Article 13 of the Constitution] in Article 21 has to answer the test of reasonableness and fairness inherent in Articles 19 and

14. In other words, such law should provide a procedure which is fair, reasonable and just. Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch -- reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes.

82. The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of

the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains unpleasant as it is, that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code.

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-

conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights

and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on -- what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in *Barker* [33 L Ed 2d 101] "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in *U.S. v. Ewell* [15 L Ed 2d 627] in the following words:

'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.' However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused.

Even in USA, the relevance of demand rule has been substantially watered down in *Barker* [33 L Ed 2d 101] and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors -- 'balancing test' or 'balancing process' -- and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But

this is not the only course open.

The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order

-- including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded -- as may be deemed just and equitable in the circumstances of the case. (10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

VI. Conclusion

52. On re-appreciation of the entire material on record, we answer the point raised in these criminal appeals in the negative holding that the appellants/accused have not made out a case to interfere with the impugned order passed by the Special Court rejecting their applications for regular bail under Section 439 of the Code of Criminal procedure in the peculiar facts and circumstances of the case.

VII. Result

53. In view of the above, we pass the following order:

i) Criminal Appeals are dismissed as devoid of any merit.

ii) The impugned common order dated 26th December 2022 passed in Spl. CC No.2263/2022 on the file of the XLIX Addl. City Civil and Sessions Judge (Special Court for trial of NIA cases), Bengaluru, rejecting the bail applications of the appellants/accused under the provisions of Section 439 of Code of Criminal Procedure, is hereby confirmed.

iii) Taking into consideration the peculiar facts and circumstances of the case, we direct the learned Sessions Judge to dispose of the main matter itself expeditiously subject to cooperation of both the

parties to the lis.

iv) We hereby recommend the State Government to constitute/establish three Special Courts for trial of NIA cases in Mysore Division, Belagavi Division and Kalburgi Division within a period of six months from the date of receipt of copy of the order to ensure speedy trial and disposal of the NIA cases in order to access justice for the needy and to fulfill the scope and object of the of the UA(P) Act.

V) Copy of this judgment shall be sent to the Chief Secretary to Government of Karnataka for needful action in the matter at the earliest.

Sd/-

JUDGE Sd/-

JUDGE Pages 11 to 39 ... rs/-

40 to end .. gss/-