

# Moirangthem Anand Singh vs National Investigation Agency (Nia) on 2 April, 2025

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh, Amit Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 24th J

Pronounced on: 2nd

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CRL.A. 918/2024

MOIRANGTHEM ANAND SINGH

..... Appellant

Through: Mr. M Gunedhor Singh, Mr. David

Ahongsangbam, Mr. S Gunabanta

Meitei & Mr. Rahul Kumar, Advs. (M:

8810656240)

versus

NATIONAL INVESTIGATION AGENCY (NIA) ..... Respondent

Through: Mr. Rahul Tyagi, SPP, with Mr.

Mathew M. Philip, Mr. Jatin, Mr.

Sangeet Sibou, Mr. Amit Rohila &

Aniket Kumar Singh, Advs. for NI

DSP Neeraj Mishra, CIO, NIA.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been held through hybrid mode.

2. This is an appeal filed by the Appellant - Moirangthem Anand Singh challenging the impugned order dated 24th August, 2024 by which his bail application has been dismissed by the Special NIA Court in RC- 23/2023/NIA/DLI.

3. The present case is intricately linked to multiple FIRs arising from distinct yet interrelated incidents. In the interest of clarity, the Court considers it appropriate to provide a comprehensive summary of the background facts.

**Brief Background**

4. This appeal arises in the backdrop of the conflict in Manipur between the Meitei and Kuki communities. At the relevant time, there were reports of several government armouries being looted

by mobs in 2023. In this regard, various FIRs were filed by the Manipur State Police. One such FIR is FIR No. 54(05)2023 filed by PS Heingang, in respect of an incident of looting from the Arms Kote of Manipur Police Training College, Pangei (hereinafter 'MPTC'). The same was thereafter transferred to CBI and was re-registered as RC/6(S)/2023/C81/SC8/Kolkata on 9th June, 2023 (hereinafter 'CBI FIR').

5. Subsequently, another FIR, being RC-23/2023/NIA/DLI (hereinafter 'NIA FIR') was registered on 19th July, 2023 by the National Investigation Agency, New Delhi (hereinafter 'NIA'), under Sections 120B, 121A & 122 IPC & Sections-18, 18B & 39 of Unlawful Activities (Prevention) Act, 1967 (hereinafter 'UAPA') based on certain intelligence about a transnational conspiracy being executed in Manipur which was alleged to be abetted by Myanmar-based terror outfits aiming to wage war against the Government of India. The suspected offence in the said FIR is as under:

"Credible Inputs have been received in respect of a transnational conspiracy hatched by Myanmar based leadership of terror outfits operationally active in the North Eastern Indian states to exploit the current ethnic unrest in the state of Manipur to wage a war against Government of India and execute terrorist attacks thereby exacerbating the current security situation in the Manipur."

6. On 3rd September, 2023, owing to the continued disturbances in the State of Manipur, District Magistrate, Imphal East promulgated Section 144 of Cr.P.C in Imphal East. During the said period, on 6th September, 2023 at about 20:00 hours, the team of Special Commando Unit of Manipur Police was deployed for checking and frisking duty of passing vehicles at Kongba Wangkhei Road near Meitei Mayek High School.

7. During one such checking, the team is said to have intercepted a white coloured Mahindra Bolero vehicle bearing registration no. MN-06LB-6905 in which admittedly the Appellant and four other individuals were caught wearing camouflaged clothes (resembling CDO, Manipur Police Uniform) along with various weapons. The description of the weapons that were recovered from their possession are as follows:

(i) 1(one) INSAS Rifle bearing no 18531215 having 4(four) magazine with 78 live rounds;

(ii) 1 (one) SLR rifle bearing no 58478 having 3(three) magazine with 50 live rounds and;

(iii) 2 (two) .303 Rifles bearing no. D91642 and E90617 with 1 (one) magazine each containing 5 live rounds in each magazine.

8. These weapons were identified to be a part of the set of weapons looted by mobs from various armouries including Arms Kote, MPTC. The PS Porompat, Manipur Police registered FIR No. 1234(09)023 (hereinafter 'Manipur FIR') in this regard and arrested the Appellant and the other four co-accused on 17th September, 2023.

9. On the same day, all the five accused in the Manipur FIR were produced before the concerned Special Judge, NIA in Imphal, by the Manipur Police seeking police custody for a period of 9 days. At that time, a report was filed by Mr. R.K. Tejbir Singh, Investigating Officer (IO) of the Manipur FIR which stated as under:

"2. The brief fact of the case is that on 16/09/2023 at around 7:30 pm, on received of an information from reliable source, a combined team of Imphal East CDO, Imphal West CDO and Special CDO Unit, Khabeisoi including Subedar L. Bebekananda Singh - OC- SPL/CDO under the supervision of Kh. Herojit Singh, MPS, Addl.SP(Ops) under the guidance of Th. Krishnatombi Singh, MPS, SP/Railways & In Charge Special CDO Unit, Khabeisoi rushed to the Kongba Wangkhei road near Meitei Mayek School and conducting frisking and checking near Meitei Mayek School. During the frisking and checking, 1(one) white Bolero is coming from wangkhei towards the Irilbung in a very suspicious manner. Due to the suspicious driving mode, the bolero was detained for checking and verification on the spot. On checking the bolero, there were 5(five) persons in camouflage dressed in it. On verification, they identified themselves as 1) Moirangthem Anand Singh, (45)yrs S/o (L) Achou Singh of Singjamei Makha Sorokhaibam Leikai, ii) Athokpam Kajit @ Kishorjit (39)yrs S/o A. Dhananjoy of Kongba Nongthombam Leikai, iii) Loukrakpam Michael Mangangcha (30)yrs S/o (L) L. Iboton of Khural Ahongel, iv) Konthoujam Romojit Meitei (28)yrs S/o K. Meghajit of Sagolband Sayang and v) Keisham Johnson (35)yrs S/o (L) K. Ibomcha of Singjamei Sorokhaibam Leikai. On random searching of the Bolero (white in colour) bearing regd. No.MNO6LB6905, 1) 1(one) Insas Rifle bearing no 18531215 having 4(four) magazine with 78 live rounds, 2) 1(one) SLR rifle bearing no S8478 having 3(three) magazine with 50 live rounds and 3) 2(two) 303 Rifles bearing no. D91642 and E90617 with 1(one) magazine each containing 5 live rounds in each magazine were found hiding inside the bolero back seat. At the spot questioning, they stated that they were entering to conduct pre-judicial activities. Hence, they were arrested at the spot at Kongba Wangkhei road near Meitei Meyek School for carrying illegal arms and ammunitions at 8:00 pm by preparing arrest memo and seized the above arms & ammunitions along with Bolero bearing regd.

No.MNOGLB6905 by preparing seizure memo at 8:05pm. Hence the case.

3. During the course of investigation, inspected the place of occurrence where the accused persons were arrested and examined witnesses including the complainant who corroborated the facts of the occurrence. Four arms and ammunition i,e (1) One INSAS Rifle bearing no. 18531215 having four magazine with 78 live rounds, (2) One SLR Rifle bearing no. 58478 having 3 magazine with 50 live rounds and (3) 1(one) 303 Rifles bearing no. \_\_\_\_\_ 1(One) Magazine containing 5 live rounds in magazine and (4) 1(one) 303 rifle bearing no. E90617 with 12(one) magazine containing 5 live rounds in magazine were seized from the joint possession of 5(five) arrested accused. And all camouflage dress worn by accused person and Bolero B/no MNO6LB6905 were also seized in the case.

4. It is ascertained from the statement of complainant that all the five accused person were arrested at the Wangkhei Ayangpalli Road near Meitei Mayek High school while they were travelling in a Bolero B/No. MNo6 6905 by wearing camouflage dress resembling to Spl. CDO of Manipur Police. They were impersonating police by misusing police uniform to conduct prejudicial activities.

5. During interrogation, it is revealed that accused Moirangthem Anand Singh @ Khingba @ Thapa started working as an overground member of RPF/PLA in the year 1993 under S/s Thougamba, senior member of PLA. In the year 2001, he under went basic military training of the outfit at Khongtal, Chandel District and he was allotted army no. 2326.

He was earlier arrested by police on different FIR cases for being a trained cadre of RPF/PLA and extortion. Last arrest before the present arrest was on 19/06/2010 for being a member of KCP (N).

6. During interrogation, Moirangthem Anand @ Thapa disclosed that probably on 10/09/2023 at around 15:00 hrs he went to Phubala, BPR on his verna Car to take stock of the situation as there was exchange of firing between Kuki and Meitei. He saw one unknown Meitei volunteer who was trying to repair one defect INSAS Rifle. In that he watched for sometime but the unknown person could not do the work. He approached him to help as he was a trained person. Being a trained cadre of PLA, he corrected the defect of the INSAS Rifle and the unknown Meitei volunteer gave him (M Anand) the INSAS Rifle with ammunition. However the unknown person who gave him the INSAS Rifle left the place. Then M Anand brought the INSAS Rifle at his home alongwith 4 magazine loaded with 78 live rounds on the car and kept concealed at his house. The Remaining accused persons stated that the arms and ammunition were collected from different persons whom they could not recollected."

10. A perusal of the aforementioned report reveals that, in addition to the prior allegations, the specific allegation against the Appellant is that he is a senior member of the People Liberation Army (hereinafter 'PLA') who had joined the organisation in 1996 and was allotted Army No. 2326 in it. It is relevant to note that the PLA is a proscribed terrorist organisation listed in the First Schedule of the UAPA.

"LIST OF ORGANISATIONS DESIGNATED AS 'TERRORIST ORGANIZATIONS' UNDER SECTION 35 OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967, LISTED IN THE 1ST SCHEDULE OF THE ACT.

S No.	Name of Terrorist Organization
13.	People Liberation Army (PLA)
"	

11. The Investigation Officer's report also says that the Appellant did not disclose the source of the weapons at the time of interception. According to the Appellant, he was using the rifles for the protection of the lives and properties of immigrants. The

report also records that he was involved in different FIRs for training the cadre of the Revolutionary People's Front and People Liberation Army and that he was earlier arrested on 19th June, 2010 for being a member of Kangleipak Communist Party. On all these grounds, remand was sought by the Police from the NIA Court, Imphal and the Court had remanded the said accused till 22nd September, 2023.

12. Following the said arrest and remand, it is stated that various protests erupted in and around the said locality demanding the unconditional release of the Appellant and the four accused. The Special Judge (NIA), Imphal East in his bail order dated 22nd September, 2023, records as under:

"14. The Id. Special PP for the state also submitted admitting the present law and order situation between two communities and also submitted that the 5 accused persons are the village volunteers and they are doing their certain activities for the protection and safety of the villagers at large in Manipur (based on the statements recorded by the police during the course of investigation). It is also admitted that the large number of people including large number of women folks are also demanding unconditional release of the 5 accused persons by declaring 48 hours general strike and also even thronged into the police stations demanding the same on the ground that they are doing their certain activities for the safety and protection of the villagers at large."

13. In these circumstances, the Ministry of Home Affairs (hereinafter 'MHA') vide its order dated 21st September, 2023 transferred the case from Manipur Police to NIA, New Delhi, on the following grounds:

(a) That Scheduled offences under the NIA Act, 2008 have been committed; and

(b) That the FIR No. 1234(09)023 filed by PS Porompat is related to RC-23/2023/NIA/DLI filed by NIA, Delhi.

14. The case in which the Appellant was arrested i.e., FIR No.1234(9)023, PS Porompat (Manipur FIR) was registered under Sections 121A/416/419/506/120B/170 IPC, Section 25 (1-A) of Arms Act & Section 16 of UAPA read with Section 6(1)(a) of Official Secrets Act. The description of the offence against him is set out below:

"Conspiracy to Commit Offence, Cheating by impersonation, Criminal intimidation, Criminal conspiracy, personating and unauthorized possession of fire arms, Punishment for terrorist Act & Helping another to enter a prohibited area which goes against the safety of the state while doing so if wear an official uniform."

15. The NIA FIR, registered under Sections 120B/121A/122 IPC and Section 18/18B/39 of UAPA is based on intelligence about a trans-national conspiracy being hatched by Myanmar-based terror outfits operationally active in the north-eastern Indian states. The alleged conspiracy was to exploit

the current ethnic unrest in the State of Manipur to wage war against the Government of India and execute terrorist attacks.

16. Though the Appellant was not one of the named accused in the NIA FIR, certain organisations such as Kanglei Yaol Kanba Lup and People's Liberation Army were all named in it. The relevant extracts from FIR read as under:

"whereas, acting in furtherance of this conspiracy, the China- Myanmar module of NSCN/IM based in Myanmar under the leadership of Hangshi Tangkhul and Absolom Tangkhul have decided to extend support to proscribed terrorist organisations, Kanglei Yaol Kanba Lup(KYKL) under the leadership of N. Oken, the Chairman, KYKL and People's Liberation Army (PLA) under the leadership of MM Ngouba, the acting President and Chief of Staff, PLA to infiltrate their cadres into the Indian territory for carrying out terrorist attacks in India. For this purpose, the aforementioned leadership of NSCN/IM has promised a safe passage; along with arms, ammunition, explosives and other terrorist hardware, to Manipur based terrorist outfits and proscribed organisations. In addition, these outfits have also been tasked to identify, recruit and train impressionable youths and get them involved in the ongoing violence with the larger goal of destabilizing the security situation in Manipur and to further wage a war against the Government of India;"

17. In these circumstances, the Appellant, who is alleged to have been an active member of PLA, was apprehended wearing camouflaged outfits and in possession of weapons looted from State Armoury. This led the MHA to reasonably infer a connection between these two FIRs.

18. Following the MHA Order dated 21st September, 2023, the NIA Special Judge, Patiala House Courts, New Delhi on the same day issued a production warrant under Section 267 Cr.P.C in the NIA FIR directing the production of the Appellant on or before 25th September, 2023. The Appellant at the said time was in police custody in the Manipur FIR vide order dated 17th September, 2023.

19. On the next day i.e., 22nd September, 2023, all the five accused in the Manipur FIR were produced before the concerned Special Judge, NIA in Imphal, by the Manipur Police seeking extension of the police custody for a further period of 15 days on similar grounds. The Appellant and other co- accused had made an application praying for bail. The said application was decided in favour of the Appellant and the other co-accused vide order dated 22nd September, 2023 and all the five persons were released on bail.

20. However, immediately after this order was passed, the Appellant alone was apprehended by the NIA Delhi team at about 5:10 P.M. on the same day, and he was flown to New Delhi. This arrest was carried out in the NIA FIR pursuant to the production warrant issued by the Special NIA Court, New Delhi, vide order dated 21st September, 2023. He was then produced before the Special NIA Court, Delhi where police remand was sought, and the same was granted on 23rd September, 2023 and, thereafter, he was sent to judicial custody.

21. The judicial remand was extended from time to time and he continues to remain in custody. It is relevant to note that on 20th October, 2023, the Appellant was handed over to the CBI RC-6(S)/2023/CBI/SCB/Kolkata filed by the CBI in relation to the looting of MPTC, Pangei. He is presently stationed in the Central Jail, Kamrup, Assam. Thereafter, the Special NIA Court, Imphal, passed an order on 24th October, 2023, transferring the case records in the Manipur FIR to the Special NIA Court, New Delhi taking into consideration that the case has been handed over to the NIA as per the MHA notification. NIA filed its chargesheet in RC-23/2023/NIA/DLI on 7th March, 2024.

22. Insofar as the criminal antecedents of the Appellant are concerned, the various case diary entries and the letter dated 17th October, 2023 written by Superintendent of Police/CID (SB), Manipur, Imphal which are placed on record shows that the Appellant was earlier arrested seven times. The details of the said FIRs and dates when he was arrested are set out below:

- i) First arrest on 15th May, 1997 in c/w FIR No.119(5)1997 SJM-PS u/s 13 UA(P)A for being RPF/PLA;
- ii) Second arrest in the year 2001 in c/w FIR No. 20(9) 2001 SJM-PS u/s 10/13 UA(P)A Act being a member of RPF PLA;
- iii) Third arrest in the year 2002 in c/w FIR No.153(6) 2002 SJM-PS u/s 10/13 UA(P)A Act being a member of PLA;
- iv) Fourth arrest in the year 2004 in c/w FIR No.29(3)2004 SJM-PS u/s 10/13 UA(P)A Act;
- v) Fifth arrest in the year 2005 in c/w FIR No.29(1)2005 IPS u/s 17/20 UA(P)A Act and 384 IPC for being member of PLA;
- vi) Sixth arrest in the year 2009 in c/w FIR No.261(12) 2009 SJM PS u/s 17/20 UA(P)A Act being a member of PLA;
- vii) Seventh arrest on 19th June, 2010 in c/w FIR No. 60(6)2010 LPS u/s 16/17/20 UA(P)A Act being member of KCP(N)

23. With respect to the bail applications, the Appellant's first bail application in the NIA FIR was filed before the Special Judge NIA, New Delhi in November, 2023. However, the same was dismissed as withdrawn on 27th November, 2023. The Appellant then moved a second bail application in March, 2024 which was rejected by the NIA Special Court, New Delhi vide the impugned order dated 24th August, 2024. It is this order that has been challenged in the present appeal.

Submissions by Parties

24. Adv. Mr. M. Gunedhor Singh with Adv. Mr. David Ahongsangbam and Adv. Ms. S Gunabanta Meitei have made submissions on behalf of the Appellant. Learned Special Public Prosecutor Adv. Mr. Rahul Tyagi along with learned APP Adv. Mr. Vikas Walia, made submissions on behalf NIA.

#### Submissions on behalf of the Appellant

25. The Appellant's case is that he is a peace-loving family man living with his wife and two sons aged about 16 years and 7 years, respectively. The Appellant claims to be the proprietor of a food business company called M/s Phouoibee Food Production. He also has a car washing business called 'Washing Lawn'. As per the ld. Counsel, he also runs a bakery from 2018 onwards.

26. The submissions made by Mr. M. Gunedhor Singh, learned Senior Counsel appearing on behalf of the Appellant, are as follows:

(i) That the prima facie case under Section 43D(5) of UAPA is not made out. Based on the evidence placed on record, the Appellant, at best, could have been stated to be a volunteer who was working for the protection of the villagers belonging to his Meitei community. He was merely safeguarding the interest of the local people as the central security forces were not doing their duty.

(ii) That the allegation of the transnational conspiracy is not borne out by any evidence placed on record. There is no evidence placed on record to explain how the relevant incident of being caught in camouflaged dresses along with weapons relates to a transnational conspiracy alleged by the NIA in RC No. 23/2023/NIA/DLI.

(iii) There is no admissible evidence or direct admission by the Appellant showing that he is a member of the PLA.

(iv) Insofar as the Appellant's criminal antecedents are concerned, it is submitted that although seven FIRs have been registered against the Appellant, charge sheet has not been filed in any of them. In fact, in five of the FIRs, a closure report has been filed for insufficiency of evidence and in two of them, the investigation is still in progress.

(v) That the Appellant satisfies the three-prong test prescribed under Section 439 of Cr.P.C as he is a law abiding citizen having deep roots in the society. He does not pose any threat to the investigation and will not flee as he is married and has closed family bonds.

(vi) Out of the five accused who were released on bail vide order dated 22nd September, 2023, only the Appellant was re-arrested by the NIA and the others are enlarged. The other four co-accused have not been arrested till date and thus, the Appellant cannot be treated differently.



(vii) Once the Appellant was released on bail by the Manipur Court, he could not have been re-arrested by a different agency on the same facts.

The Special NIA Judge, New Delhi in the impugned order, failed to consider the facts on which bail was granted by the Special Court, Imphal, on 22nd September 2023.

(viii) The NIA, New Delhi does not have the jurisdiction to continue holding the Appellant under arrest as the Manipur High Court, vide order dated 5th February, 2025 in CrI.A.26 of 2023, has set aside the order of Special Court, Imphal transferring the case records to from Imphal to New Delhi courts.

27. Lastly it was submitted that the Appellant deserves bail even if on strict conditions, such as that he would stay in Guwahati and report to the NIA's office every week. The residential address would be given to the NIA who can monitor his movements. Any other stringent conditions may also be imposed.

Submissions on behalf of the NIA

28. Mr. Rahul Tyagi, Id. SPP appearing for NIA has vehemently opposed the grant of bail. The submissions made by Mr. Tyagi, are as follows:

(i) Firstly, it is submitted that the prima facie case under Section 43D(5) of UAPA is easily made out considering the several grave circumstances under which the Appellant was arrested. The Appellant was arrested wearing camouflaged dresses and in possession of weapons which were looted from the State Armoury. This, according to the Id. SPP, in itself establishes a prima facie case against the Appellant for conspiracy under Section 18 of UAPA. Reliance is placed on Joginder Singh @ Joginder Rana v. NIA (CrI.A. 799/2023, decided on 17th January 2025).

(ii) The Appellant clearly fails even the Tripod Test prescribed by Section 439 of Cr.P.C. The Appellant yields enormous influence in the local area which can be gauged from the fact that immediately upon his arrest, there was almost a local bandh and complete collapse of law and order. The concerned police station was stormed. There was an apprehension that the local police station could even be burned down.

This, according to the Id. SPP, shows the extent of influence that the Appellant wields. Mr. Tyagi Id. SPP placed reliance on certain confidential documents placed in a sealed cover in this regard. It was repeatedly emphasised that persons like the Appellant were the reason for persisting law and order problems in Manipur. It is submitted that the Appellant if released, could cause substantial damage both to the investigation and the law and order situation in Manipur.

(iii) Mr. Tyagi, responding to the Appellant's contention that he could not have been re-arrested after being granted bail by the Manipur Court, submitted that the Jurisdictional Court, i.e., the

Special NIA Court, New Delhi, had issued production warrants for the Appellant on 21st September 2023, which was prior to the consideration and grant of bail by the Special NIA Court in Manipur on 22nd September, 2023. It was the execution of the arrest that was effected after the grant of Bail and the same was for the purpose of investigation and custodial interrogation by NIA.

(iv) The subject matter in both the FIRs, though related, are completely different. FIR No.1234(9)023 is limited to the local incident which took place when the Appellant and other co-accused were intercepted and arrested after being found in camouflaged dress and in possession of arms and ammunition. However, RC-23/2023/NIA/DLI, arises from intel about a transnational conspiracy to exploit the ethnic unrest in Manipur to execute terrorist attacks. It is submitted that the investigation in the NIA case is of a broader scope, involving different legal provisions and carrying more severe implications. Consequently, the parameters for considering the grant of bail would differ in both the FIRs. Reliance is placed on *Pradeep Ram v. State of Jharkhand and Ors* MANU/SC/0881/2019.

(v) With respect to the Appellant's contention about the non-arrest of the co-

accused, it was submitted that the decision to not arrest the co-accused was a conscious decision taking into account (a) the antecedents of the co-accused, (b) inputs from the state police and (c) the law and order situation at Manipur. It was further submitted that the discretion of the arrest vests with the investigating agencies and a co-accused cannot insist on arrest of other co-accused if he is arrested or on his release in case of non-arrest of the Co-accused. It is settled law that even the Courts cannot interfere in the prerogative of the investigating agency to arrest an accused. Reliance is placed on the judgment of the case of *Vishwanath Biradar v. Deepika & Ors.*; MANU/SC/1392/2021

(vi) With respect to the Appellant's contention regarding the stay on the Manipur NIA Court's order dated 24th October 2023, which directed the transfer of case records to the Special Court, Delhi, it is submitted that the said order was issued pursuant to the MHA order dated 21st September 2023. While the Manipur High Court has set aside the Manipur NIA Court's order, the MHA order, which forms the basis of the said transfer, has neither been challenged nor stayed. Therefore the arrest is valid under the law.

#### Analysis and findings Preliminary Contentions and Respective Findings

29. Before examining the merits of the case, the Court deems it appropriate to first address certain preliminary issues raised by the Appellant, which have been duly responded to by the Prosecution to the satisfaction of the Court.

30. Insofar as the Manipur High Court's final order is concerned, the same was passed in Crl.A. 26 of 2023. The High Court had set aside the Manipur NIA Court's order dated 24th October, 2023, primarily on the ground of non-compliance with the Principles of Natural Justice.

31. However, it is pertinent to note that while the High Court, through its final order, has set aside the Manipur Special NIA Court's order dated 24th October, 2023, the underlying order dated 21st September, 2023 issued by the Ministry of Home Affairs (MHA), which forms the basis of the transfer of investigation to the NIA, remains unaffected. The said MHA order has neither been challenged nor set aside, and thus continues to be valid and binding. As a result, the legal authority and jurisdiction conferred upon the NIA to conduct the investigation remain intact. Consequently, the investigation continues to stand transferred to the NIA, thereby empowering the agency to exercise its statutory authority, including the power to effect arrests of the accused in accordance with the law, if deemed necessary. This ensures that despite the procedural irregularity identified by the High Court in the lower court's order, the NIA retains full authority to proceed with its investigation.

32. Next, the Court is inclined to deal with the contention that the Appellant could not have been re-arrested by a different agency on the same case, considering he was released on bail by the Manipur Special NIA Court.

33. In this regard, the Court first clarifies that in the present case, there are two FIRs which were clubbed together by the MHA for various reasons which the Court at this stage does not wish to speculate upon. However, the Court concurs with the NIA's submission that while the two FIRs may be interrelated, they are distinct in scope and legal implications. The NIA FIR is investigating the incidents relating to transnational conspiracy on a broader scale and may have serious consequences.

34. The NIA case intended to investigate the role of the Appellant and other similarly placed persons who may have caused unrest in Manipur. Whereas, the scope of the Manipur FIR cannot be beyond the solitary incident which took place on 17th September, 2023 when the Appellant was arrested. Accordingly, the contention that the Special Judge, in the impugned order, failed to consider the basis on which bail was granted by the Special Court, Imphal, on 22nd September 2023 is entirely untenable as the two FIRs stand on different pedestals and thus involve different considerations.

35. The next contention is with respect to the non-arrest of co-accused. Firstly, in this regard, it deserves to be noted that the Appellant has criminal antecedents and is an influential person in the local area. There is reasonable basis, as discussed in the latter part of the judgment, to believe that if he is released on bail, he may influence witnesses and could even abscond.

36. Insofar as the co-accused are concerned, they were earlier released on bail by the local NIA Court and were not subsequently re-arrested by the NIA. It is a well-settled principle of law that the discretion to arrest is the prerogative of the investigating agency, and judicial interference in such matters is unwarranted. That being said, it suffices to say that the Appellant appears to be having a leadership role and his case could, therefore, be treated differently from the other co-accused.

Case on Merits - The Twin Prong Analysis

37. Having addressed the preliminary aspects, the Court shall now proceed to examine the merits of the case. However, before undertaking a factual analysis, it is essential to first delineate the law and settled jurisprudence governing the grant of bail under UAPA.

38. Section 43D of the UAPA modifies the application of certain provisions of the Criminal Procedure Code to cases involving offences described under UAPA. Notably, Section 43D(5) imposes a more stringent threshold for the grant of bail compared to cases involving offences under the IPC. Section 43D of UAPA reads as under :

"43D. Modified application of certain provisions of the Code.--(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days: Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that--

(a) the reference in sub-section (1) thereof--

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government.";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

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

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. (6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

39. The legal position for bail under the UAPA is continuously evolving, depending upon various factors such as the kind of offences, period of incarceration, etc., However, the primary facet of the provision remains that the accused shall not be released on bail if the allegations are prima facie true.

40. The said aspect has been considered in various decisions of the Supreme Court, and it would be of relevance to discuss the same. In the landmark case of Gurwinder Singh v. State of Punjab, (2024) 5 SCC 403, the Supreme Court examined the scope of Section 43D(5) and observed that unlike in conventional bail matters--where "Bail is the rule and Jail is the exception", under the UAPA the legislative intent is to make "Jail, the rule and Bail, the exception". The Court further laid down specific guidelines for considering bail applications under Section 43D(5) of UAPA. The relevant portion of the judgment is extracted below:

"18. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released'-suggests the

intention of the Legislature to make bail, the exception and jail, the rule.

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

"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."

20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

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

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

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act  
1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

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

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2 Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?."

41. Paragraphs 20 and 21 of the judgment as extracted above, prescribes the 'twin-prong' test to be followed in considering a bail application under UAPA. Under this test, the first consideration is whether the accusations made by the Prosecution, prima facie, make out an offence under Chapter IV or IV of UAPA. Thereafter, as part of the second prong, the Court is required to apply the 'tripod test', which is the usual test for grant or non-grant of bail prescribed under Section 439 of Cr.P.C i.e., 'flight risk, influencing of witnesses and tampering of evidence'. Therefore, it is clear that the plea for bail, in this case, has to be tested against the rigours of the following standards-

(i) The rigorous standards of prima facie case prescribed under Section 43D(5) of UAPA; and

(ii) The tripod standards prescribed under Cr.P.C which are generally applicable for any criminal offence.

#### First Prong - Prima Facie Case Standard

42. The Court in Gurwinder Singh (Supra) had also analysed National Investigation Agency v. Zahoor Ahmad Shah Watali (2019) 5 SCC 1 and upheld/crystallised eight propositions as laid down therein. The said propositions clarify the scope of the first prong i.e., prima facie case standard prescribed in Section 43D(5) of UAPA. The operative portion reads as under:

"Test for Rejection of Bail: Guidelines as laid down by Supreme Court in Watali's Case

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

□Meaning of 'Prima facie true' [para 23]: On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

□Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges Compared [para 23]: Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

□Reasoning, necessary but no detailed evaluation of evidence [para 24]: 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.

□Record a finding on broad probabilities, not based on proof beyond doubt [para 24]: "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."

□Duration of the limitation under Section 43D(5) [para 26]: The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. □Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27]: The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. □Contents of documents to be presumed as true [para 27]: The Court must look at the contents of the document and take such document into account as it is.

□Admissibility of documents relied upon by Prosecution cannot be questioned [para 27]. The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.....In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

43. A perusal of the above decision makes it clear that the Court would have to examine whether the materials on record, prima facie show the complicity of the Appellant/Accused in the commission of any of these offences charged against the accused.

44. Similarly, The Delhi High Court recently in Abdul Wahid v. National Investigation Agency, 2024 SCC OnLine Del 5402, had held that threshold imposed under Section 43D(5) of UAPA is high in



comparison with the ones imposed under Section 439 of Cr.P.C:

"21. The UAPA is a special Act, which has provisions that lay down standards to be adopted for grant of bail. Section 43-D(5) of the UAPA 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."

A perusal of the above provision shows that the threshold for granting bail under Section 43-D(5) of UAPA is quite high; the accused person shall not be released on bail if the Court is of the opinion that there are grounds to believe that the allegations against the accused are prima facie true."

45. The Supreme Court in Union of India (UOI) rep. by the Inspector of Police, National Investigation Agency, Chennai Branch v. Barrakathullah & Ors. (MANU/SC/0475/2024), was considering the bail application of office bearers, members, and cadres of the PFI. The Supreme Court while setting aside the order of the Madras High Court wherein bail was granted to the Accused persons therein, held that where the Court is satisfied after perusing materials on record that there exists a prima facie case against the Accused, the stringent provision under Section 43-(D) (5) of the UAPA would be applicable for not releasing the Accused on bail. The relevant portion of the said judgment is extracted hereinunder for a ready reference:

"22. In the instant case, we are satisfied from the chargesheet as also the other material/documents relied upon by the appellant that there are reasonable grounds for believing that the accusations against the respondents are prima facie true and that the mandate contained in the proviso to Section 43(D)(5) would be applicable for not releasing the respondents on bail. Having regard to the seriousness and gravity of the alleged offences, previous criminal history of the respondents as mentioned in the charge-sheet, the period of custody undergone by the respondents being hardly one and half years, the severity of punishment prescribed for the alleged offences and prima facie material collected during the course of investigation, the impugned order passed by the High Court cannot be sustained. We are conscious of the legal position that we should be slow in interfering with the order when the bail has been granted by the High Court, however it is equally well settled that if such order of granting bail is found to be illegal and perverse, it must be set aside.

23. This Court has often interpreted the counter terrorism enactments to strike a balance between the civil liberties of the accused, human rights of the victims and compelling interest of the state. It cannot be denied that National security is always of paramount importance and any act in aid to any terrorist act - violent or non-violent is liable to be restricted. The UAPA is one of such Acts which has been enacted to provide for effective prevention of certain unlawful activities of individuals and associations, and to deal with terrorist activities, as also to impose reasonable restrictions on the civil liberties of the persons in the interest of sovereignty and integrity of India.

24. In that view of the matter, the impugned order passed by the High Court is set aside. The respondents shall forthwith surrender themselves before the appellant-NIA. Since, the chargesheet has already been submitted before the Special Court, it is directed that the Special Court shall proceed with the trial as expeditiously as possible and in accordance with law, without being influenced by any of the observations made by this Court in this order."

46. A perusal of the above paragraphs would show that (i) the seriousness and gravity of the alleged offences, (ii) the previous criminal history of the accused, (iii) the period of incarceration shall be other crucial factors that had to be considered while granting bail under Section 43D(5) of UAPA.

47. However limiting the scope of application of the said factors, the Supreme Court in Javed Gulam Nabi Shaikh v. State of Maharashtra and Anr, 2024 SCC OnLine SC 1693 also observed that the fundamental right to speedy trial cannot be denied solely based on the ground that the crime is serious. The observations of the Supreme Court are as under:

"19. If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

48. The NIA FIR was filed under Sections 18, 18B, and 39 of UAPA. However, the charges levelled specifically against the Appellant in the chargesheet dated 7th March, 2024 are under Sections 18, 23 and 39 of UAPA. Considering this circumstance, the Court proceeds to assess the evidence presented against the Accused/Appellant concerning the primary charge of conspiracy under Section 18 of the UAPA.

49. Section 18 of UAPA is a broad provision which punishes, among other things, committing, abetting, inciting, or attempting to commit a 'terrorist act'. The provision reads as under:

"18. Punishment for conspiracy, etc.--Whoever conspires or attempts to commit, or advocates, abets, advises or 3[incites, directly 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."

50. 'Terrorist Act' is defined under Section 15 of UAPA which reads as under:

"3[15. Terrorist act.-- 4[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security 5[, 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 5[(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 6[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act."

51. Applying these to the facts/evidence at hand, admittedly, the Appellant was intercepted in camouflaged clothing, posing as a police officer along with certain weapons. The Appellant was apprehended when the entire state was engulfed in a fierce violent encounter between two ethnic

groups. It is submitted on behalf of the Appellant himself that he was a volunteer who was working for the protection of the villagers belonging to the Meitei community. The chargesheet dated 7th March, 2024 states as under:

"17.2.3 During the course of investigation the statement of seizure witnesses as well as other witnesses established that the accused person A-1 to A- 5 were moving with prohibited arms and prohibited ammunition in violation of prohibitory order of District Magistrate with the intention to indulge in violence against the rival community groups and to strike terror in the area. The statement of the complainant of the instant Porompat P.S. Case established that on 16-09-2023 the Special Commando Unit team was deployed for checking and frisking duty at Kongba Wangkhei Road near Meitei Mayek High School and detained one white colour Bolero vehicle (Regn. no MN 06 LB-6905) moving in suspicious circumstances. On checking the vehicle the accused persons A-1 to A-5 were found seated in the vehicle dressed in camouflage uniform resembling the dress of Manipur Police security personnel with accused Athokpam Kajit @ Kishorjit driving the vehicle. The physical search of the vehicle in presence of 02 witnesses of the Commando party revealed prohibited arms and prohibited ammunition concealed under the back seat of the Bolero vehicle \*\*\*\*\* 17.3.4 The investigation corroborates the fact from the statements/disclosures that A-1 is a trained cadre of the proscribed terrorist organization People's Liberation Army (PLA). A-1 has a criminal history of carrying out unlawful activities on behalf of the PLA and is named in several criminal cases registered in different police stations of Manipur pertaining to People's Liberation Army (PLA) which is corroborated by documents received from CID (Special Branch) of Manipur Police.

17.3.5 The accused A-1 in his disclosure revealed that accused mobilized local youth for armed training to escalate the ethnic strife in the state of Manipur. A-1 disclosed that during the month of July 2023, participated in a weapons training camp organized in Selloi Langamai Ecological Park near Keikhu by PLA cadres Oken Singh and one Yaiphaba, wherein around 80-90 youths were trained by the aforesaid individuals to handle firearms. A-1 also assisted in imparting training on battle drills and jungle warfare to the participating youth. In the camp, he also came in contact with some cadres having organizational names viz. Mowgli. Mukundo, Johnny Macha. Telhaiba, Taxi and Chouba. The accused A-1 further disclosed that he acquired one INSAS Rifle along with one semi-used magazine and two full magazines from the cadre known to him by the name of Chouba and he retained the weapon and ammunition.

17.4 During investigation, CDR analysis corroborates the conspiracy between accused persons to carry out violent terror acts in the valley area. Pursuant to the conspiracy accused A-1 was in close touch with accused A-3. This is corroborated by the regular and constant communication between A-1 (user of mobile number 813 1859961) and A-3 Keisham Johnson, who was the user of mobile number 8837485449 and

subscribed in the name of Oinam Romola Devi, wife of (A-3) during the period of ethnic strife since May 2023 onwards. Accused A-1 to A-3 have used telephonic communication to communicate among themselves. CDR analysis indicates 163 calls between A-1 & A-3 through these numbers including several calls made on the date of their arrest on 16-09-2023 which reveals the conspiracy, strength and intensity of communication between the accused persons.

\*\*\*\*\* 17.6 The investigation has substantiated that the accused A-1, A-2, A-3, A-4 & A-5 were apprehended while travelling in a white colour Mahindra vehicle in the cover of uniformed security personnel of Govt and were in constructive possession of prohibited arms and prohibited ammunition and that the accused person intended to use criminal force, carry out violence against the rival community and security forces with the intention to create fear, sense of insecurity and to terrorize them."

52. Further, at the time of interception, the recovered weapons were suspected to be a part of the cache looted from various State Armouries. A large volume of weapons (approx. 4,000 in number) were stated to have been looted from the police stations/Armouries in Manipur. Even the Supreme Court has taken note of the looting of police armouries and arms in Dinganglung Gangmei v. Mitum Churamani Meetei & Ors in SLP(C) Dairy No. 19206/2023 decided on 7th August, 2023. In fact, the Supreme Court has given directions to the Union of India and States to take stock of missing arms looted from the armouries. The relevant paragraph of the said judgment is set out below:

"29. The Union of India and the State of Manipur shall:

- a. Ensure that all the areas which are vulnerable to sectarian violence and riots are identified and monitored so that preventive measures are effectively put into place;
- b. Disseminate information regarding and widely publicize the constitution of the SITs and the constitution of the three-Judge Committee by this Court in all villages, towns, and districts of Manipur as well as in every relief camp that has been set up, in a language that is comprehensible to all residents of Manipur. This information must be made available even to those who are not in possession of a radio, newspaper subscription, smartphone, or television; and c. Take stock of the number of arms missing or looted from the armouries of the state and of these, the number of arms which have been recovered. Formulate and implement a plan to recover any missing arms."

53. The said incidents are currently being investigated by various agencies, including the CBI in RC-6(S)/2023/C81/SC8/Kolkata. In fact, the custody of the Appellant is said to have been handed over to the CBI in relation to the said FIR on 20th October, 2023. Only the investigation therein would reveal as to how the said arms were looted and how some of which reached the Appellant.

54. But the NIA's investigation has substantiated the allegation to the extent that the recovered weapons were, in fact, part of the cache looted from various State Armouries, including Manipur Police Training College, Pangei. The relevant paragraph from the chargesheet dated 7th March, 2024 reads as under:

"17.9 The investigation has substantiated through forensic examination report of Directorate of Forensic Sciences Manipur, Pangei that the firearms seized from the accused were prohibited bore weapons. The documents obtained from MPTC/Pangei, 7th Manipur Rifles. Imphal East and 2nd IRBn, Bishnupur substantiate that the arms seized from the accused were snatched and looted from government armouries."

55. This allegation has been confirmed by the State Inspector General of Manipur vide letter dated 1st April, 2024. The same is extracted below:

56. In light of the decision in Watali (Supra), where the inadmissibility of evidence was held not to be a bar in determining a bail application under Section 43D(5) of the UAPA, the first two allegations, along with the corroborative material on record, establishes a prima facie case against the Appellant under Section 18 of the UAPA. Furthermore, the third allegation that the weapons recovered from the Appellant can be traced to the loot from the State Armouries is a serious accusation.

57. In fact, in Joginder Singh @ Joginder Rana v. NIA (Crl.A. 799/2023, decided on 17th January 2025), this Court had held that a prima facie case under Section 43D(5) of the UAPA was made out, primarily on the basis that a substantial quantity of weapons was recovered from the Appellant under unexplained circumstances. The relevant excerpts from the said judgment are as follows.

"35. In the present case, a large quantum of weapons, expensive mobile phones, ammunitions, etc. were found from the residence of the Appellant as captured in the seizure memo dated 12th September, 2022. In these circumstances, a prima facie opinion against the innocence of the Appellant is drawn by the Court as it is not normal or justifiable to find incriminating evidence of this quantity at someone's residence. Moreover, applying the triple test of bail jurisprudence in this case, the Appellant herein has a son who has already absconded from bail to Thailand and had to be extradited back to India. The Appellant is the pairokar of his son. Further, the Appellant was convicted in FIR No. 796/2018, PS. City Jagadhri, Haryana under Section 174A IPC, 1860 vide judgment dated 25th July, 2023 for being an absconder in FIR No. 826/2017. There are also allegations made by the NIA that the Appellant herein has a substantial base in Thailand and the chances of flight risk are quite high. Moreover, the deep-rooted involvement of the entire family leads this Court to believe that the Appellant's propensity to indulge in continued illegal activity and support for LB's gang is also quite high.

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38. The innocence of the Appellant at this stage cannot be said to be prima facie, proved under the rigours of Section 43D(5) UAPA, 1967 as both the sons were in custody at the time, when the search was conducted at the Appellant's house. Therefore, it is implausible for the Court to believe that such a large quantum of expensive mobile phones and the whole cache of weapons which were found including guns and live cartridges, etc. could have been stored without his knowledge, in his own residence where he and his wife reside.

39. Even if the Court does not take the testimonies of the protected witnesses into consideration, the presence of the Appellant at his residence at the time when the seizure was effected and the fact that both the sons were in judicial custody when the seizure was effected, persuades this Court to reasonably believe at prima facie that the allegations against the Appellant are true, which is the standard to be considered under 43D(5) of the UAPA, 1967.

40. Therefore, the opinion of this Court is that the allegations against the Appellant are prima facie true and the Appellant is unable to prove his innocence at this stage or is able to give any valid explanation for the presence of the seized goods at his residence."

58. Given that Courts have denied bail even on such lower threshold based on mere suspicion, the admitted recovery of State-owned weapons in the possession of private individuals, such as the Appellant, who are allegedly using them to cause damage to public property, is a matter of grave concern. This in itself would persuade this Court not to accede to the prayer for bail.

59. Therefore, considering the evidence, the Court is of the opinion that the prima facie case has been established by the Prosecution under Section 43D(5) of UAPA.

#### Second Prong - Tripod Test Analysis

60. Though, in terms of Gurwinder (Supra), the question of entering the 'second prong' of the inquiry will not arise if the Appellant qualifies the 'first prong', this Court, considering the peculiar circumstances of the case, deems it appropriate to delve into the second test as well.

61. The tri-pod test, in essence, considers three factors namely, 'flight risk, the possibility of influencing of witnesses and tampering of evidence'. The Id. Counsel for the Appellant had vehemently argued that the Appellant passes the tripod test as he is a law-abiding citizen with deep roots in society. It was submitted that he does not pose any threat to the investigation and will not flee as he is a peace-loving family man who had closed family bonds in society.

62. On the contrary, the events which have transpired after his arrest has been noted by the IO in the general diary. It notes that there was a law and order situation which was created due to the arrest of the Appellant. In the wake of the arrest of the five accused, a 48-hour bandh had also been called by local clubs with effect from the midnight of 18th September, 2023 onwards. All the arterial

roads had been blocked, and an unconditional release was sought. Such protests and bandhs continued till 22nd September, 2023. The local groups had also started campaigns on the electronic media for mobilising youths to storm police stations seeking the release of the five accused, including the Appellant. It is clearly recorded that there was serious apprehension of the police stations themselves being stormed, looted and deterioration of the law and order situation. A serious law and order situation had been caused due to the arrest of the Appellant and other co-accused.

63. Subsequent entries in the General Dairy, also records that when the five accused persons were not released, attempts were made to enter the police station forcibly. It further notes that a case of rioting had to be registered in this regard. Agitations took place around the length and breadth of the valley area, seeking the release of the Appellant and other accused.

64. The events which transpired immediately after his arrest over the next four to five days, also showed that the Appellant commanded influence in the local area which may not have been fathomed at the time when he was arrested. The manner in which such a serious law and order situation was created seeking his release itself shows the power he wields in the area. The propensity of such situations being created i.e., attacks on police stations, pressure on local police officials (as is evident from the GD entries of the IO), pressure on the Public Prosecutors, pressure on the Court, etc., is a cause for serious concern. The Appellant enjoys substantial local support and releasing him on bail at this stage could also lead to further deterioration of the law and order situation.

65. In a similar circumstance of seizure of weapons, the High Court of Manipur in Vicky Mangoulam Singson v. Porompat Police Station (Bail Application 15-17/2023 decided on 1st September, 2023) has made observations in respect of volatile situations during clashes in Manipur. The observations of the Court are relevant and are set out below:

"8. Mr. Tungrei Ngakang, learned counsel for the petitioners submits that the guns were not seized from the physical possession of the accused persons. Accused Nos. 1 & 4 (who are father son duo) are staying in a four storied building occupied by four different families. It is stated that it is not shown from which floor, the guns were recovered. Learned counsel has pointed out that A-1 stays in 1st floor and A-4 at 3rd floor. Further, it is stated that A- 1 is 71 years old and he is suffering from various ailments and his continued detention will seriously affect his health conditions. Due to law and order problem, the medical record cannot be obtained. It is submitted that there are no sufficient materials to suggest the involvement of the accused persons in the alleged offences charged against them. Reliance is placed on the decision of Hon'ble Supreme Court in the case of Surinder Kumar Khanna v. Intelligence Officer, DRI, (2018) 8 SCC 271 to the effect that confession of the co-accused is not admissible against other accused. It is highlighted that A-1 & A-4 cannot be implicated by confession of A-2 & A-3. Learned counsel for the petitioners also refers to a judgment of Delhi High Court in the case of Md. Irshad v. State of NCT of Delhi [Bail Appln No. 994/20222, Order dated 05.05.2022] which held that except for the confession of the co- accused, there was no other independent evidence to implicate



the accused and the accused was accordingly released on bail. Further reliance is placed on the decision of Sanjay Chandra v. CBI, (2012) 1 SCC 40 which held that the object of bail is neither punitive nor preventive. It is prayed that the accused be released on bail and they would abide by all such conditions as imposed by this Court.

9. Mr. Y. Ashang, learned PP submits that the petitioners are involved in offences for creating disharmony and mistrust amongst communities settled in a mixed colony during the time of communal violence. He further points out the incident had triggered fresh violence in this sensitive area and State Government had to clamp curfew in this area for a longer period to control the volatile situation. It is submitted that the seizures of arms and ammunitions were done as prescribed by law in presence of the witnesses and the accused also signed on the seizure memos. It is pointed out that no medical report/record is submitted by A-1 to substantiate that he is suffering from serious ailments. As the accused are involved for creating fresh problems during communal clash, it is prayed that the bail applications be rejected.

10. This Court has considered the submissions made at bar, the materials on record and relevant case laws. The accused persons were arrested for instigating fresh violence in a locality of mixed communities during the volatile situation of communal clash. This incident had the potential of erupting fresh violence in the area, if not prevented by the security forces in time. The admissibility of the seizure and confessions of the co-accused are to be examined during the trial and the same may not be appropriate and is pre-mature at this stage while considering bail applications. The complaint is corroborated by the statements of the witnesses recorded under Section 161 CrPC.

Moreover, no material is placed on record to substantiate the illness of A-1. The safety of the accused is also paramount importance.

Considering all these facts, this Court does not incline to release the accused persons on bail. Accordingly, bail applications are rejected.

However, it is clarified that this Court does not express any opinion on the health condition of A-1 in absence of any materials. This order does not bar A1 from approaching appropriate forum for bail on Medical ground if so advised."

66. In fact, in the above case, the seizure of the weapons was not from the Petitioners, even then the bail was rejected by the Court on considering the volatile situation in the Manipur.

67. Similarly, this Court in a case (O.M.A Salam v. NIA; CRL.A. 564/2024 decided on 30th August, 2024) involving an office bearer of another proscribed terrorist organization People's Liberation Front, had denied interim bail primarily on the basis of the influence that the Appellant/Accused therein wielded in the State of Kerala. The relevant extracts of the judgment are as under:

"5. A brief background of this case is that on 13th April, 2022 the National Investigation Agency (hereinafter, the 'NIA') registered a RC-14/2022/NIA/DLI against the Appellant under Sections 120B/153A of the Indian Penal Code, 1860 and Sections 17/18/18B/20/22/38/39 of the Unlawful Activities (Prevention) Act, 1967. On 22nd September, 2022 the NIA arrested the Appellant.

6. It is a matter of public record as is also captured in the order dated 29th September, 2022 passed by the Division Bench of the Kerala High Court in WP (C) No. 222/2019, that one day after the arrest of the Appellant, a flash hartal was called in Kerala by the PFI without giving the mandatory 7 days public notice. In view thereof, the Kerala High Court had impleaded the PFI through its General Secretary as also Mr. Abdul Sarthar, State General Secretary on 23rd September, 2022. Despite the Court's order that the said flash hartal is illegal and unconstitutional, widespread road blockages were effected, resulting in violent acts being perpetrated against the people of Kerala. There was substantial destruction and damage to the public and private property of Kerala during the hartal and a slew of directions were passed by the Court. The Kerala High Court fundamentally held the PFI responsible and accountable for the widespread violence in Kerala on 23rd September, 2022. The order of the Kerala High Court dated 23rd September, 2022 is extracted hereinunder for reference:

2. In our order dated 7.1.2019, we took note of the peculiar circumstances in the State of Kerala where calls for hartal, which ordinarily would not be viewed as illegal, have over the years come to carry an implied suggestion that the general public if they did not co-operate with those calling the hartal, might face threats of violence or actual violence. ...

3. Despite the aforementioned order, which made it clear that flash hartals, namely those hartals/strikes called without adhering to the procedure of giving seven days clear public notice, would be deemed illegal/unconstitutional entailing adverse consequences to the persons/party calling for the hartal, apart from visiting the person/party with liabilities for any loss, damage caused to the citizens and Government pursuant to the call for hartals/general strike, we note that a call for a flash hartal has been made yesterday by the Popular Front of India.

....."

7. Thereafter, vide order dated 29th September, 2022, the Kerala High Court held the PFI responsible for the damage and destruction that was caused in Kerala on 23rd September, 2022 as also imposed monetary fines on the PFI. Relevant portion of the order of the Kerala High Court dated 29th September, 2022 is extracted hereinunder:

"

.....

3. Today, when the matter was taken up for orders, a report was placed before us by the Government Pleader wherein details of the steps taken by the State Government to prevent untoward acts of violence as also the extent of destruction caused to public property have been enumerated. The relevant extract of the report reads as follows:

"13. Strict and unbiased legal action was initiated in all instances of violations reported during Harthals and legal provisions under Indian Penal Code, Kerala Public Ways (Restrictions of Assemblies and Possessions) Act 2011, Prevention of Damage to Public Properties Act 1984 and Prevention of Damage to Private Properties Act 2019 etc. were invoked appropriately.

14. It is further submitted that the directions issued by the Hon'ble Supreme Court on Destruction of Public and Private Properties, as well as the directions and guidelines issued by the various High Courts were strictly followed in its letter and spirit to ensure normal life of the public during Hartal.

15. It is respectfully submitted that police has made 687 preventive arrests in the State of Kerala to avoid any untoward incidents related to the Harthal call by PFI.

16. It is also submitted that after being taken such preventive measures, the Additional Respondent Party had indulged in violent incidents such as blocking public pathways, preventing vehicular traffic, attacking vehicles, pedestrians, shops and other establishments and throwing bombs at few places. The harthal sympathizers also obstructed Police by applying force with an intention to deter them from carrying out their official duty.

17. It is submitted that the loss to the public property was mainly borne by the Kerala State Transport Corporation. The PFI workers attacked the KSRTC buses at several places and smashed the wind screen. KSRTC was suffered an estimated loss to the tune of 25 lakhs approximately. Stoppage of the schedule was also caused loss to the Kerala State Road Transport Corporation and hence the loss incurred to the KSRTC will be much higher. In few incidents the Drivers/Passengers of the ill fated bus also sustained injuries. For the destruction of Public Properties a total of 63 cases were registered and 48 arrests were already made. More arrest will be made in the coming days. The damage to the Public Road couldn't be calculated, since the reports from the experts are not received.

18. Private vehicles and private establishments are also suffered from the wrath of the Harthal sympathizers. A total number of 50 cases were registered in the State and a loss to the tune of Rs.12,31,800/- was estimated approximately. 60 accused persons were arrested on the day of harthal itself.

19. The blockage of public path was also witnessed in some parts of the State and a total number of 118 cases were registered in this connection and 1054 accused persons were arrested.

20. Apart from the above, few incident of attack against Police personnel were also reported during the harthal day. In Eravipuram Police Station, Kollam City a motor cycle born PFI activist had attacked and made a murderous attempt on Police Personals on duty. In this connection a case in Crime No.1268/2022 U/s 294(b), 506, 333 & 307 IPC was registered and the case is being investigated.

21. Almost all the accused in the incidents that took place on the day of PFI Harthal were identified and many of them were already arrested and the remaining will be arrested soon. Till 26.09.2022, 417 FIR were registered in connection with the incidents during Harthal, 1992 persons were arrested and 687 preventive arrest were made."

XXXX

47. The Appellant in the present case is a person of great influence and was the chairman of the PFI, which is now a banned organisation. The observations of the Kerala High Court in orders dated 29th September, 2022 and 5th December, 2023 sufficiently captures the events that took place on 23rd September, 2022 i.e. one day post arrest of the Appellant herein. The observations of the Kerala High Court reveal the nature of influence that the Appellant wields.

48. Considering the facts of the present case as also the nature of influence the Appellant exerts, enlarging him on interim bail would not only entail flight risk but also the possibility of several witnesses being influenced in the present case."

68. A perusal of the above judgment reveals that the 'nature/extent of influence' of the Appellant/Arrestee in society shall be an essential factor in determining the tri-pod test.

69. Considering the volatile situation that exists in Manipur and the circumstances that had earlier led to his release on bail, including the protests, it can clearly be said that enlarging the Appellant on bail would not only entail flight risk but also the possibility of witnesses being influenced in the present case as also deterioration of law and order.

## Conclusion

70. Considering the totality of the circumstances, this Court is of the view that the Appellant is not entitled to bail at this stage upon weighing in the following factors:

- (i) The Prosecution has established a prima facie case against the Accused/Appellant, supported by material evidence indicating his involvement in the alleged offences;

(ii) The nature and gravity of the allegations levelled against the Appellant are serious, involving offences that have far-reaching implications for public order and national security;

(iii) The Appellant has failed to satisfy the parameters laid down under the tripod test in Section 439 of the Cr.P.C., namely the seriousness of the offence, the possibility of influencing witnesses or tampering with evidence, and the likelihood of fleeing from justice;

71. In view of the foregoing, this Court is not inclined to grant bail to the Appellant at this juncture.

72. The appeal is, accordingly, dismissed. All pending applications, if any, are disposed of.

73. Needless to state that all the observations made in this judgment are to consider whether a prima facie case for bail is made out or not qua the present Appellant. Nothing mentioned hereinabove is an opinion on the merits of the case of the Appellant or other Accused and the observations made herein are for the purpose of present appeal.

74. Copy of this judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.

75. Judgment be uploaded on the website of this Court, forthwith.

PRATHIBA M. SINGH JUDGE AMIT SHARMA JUDGE APRIL 2, 2025/Rahul/Arvind.