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association which is related to the banned extremist organization outfit - TPC. The members of said organization were extracting levy from the coal traders and D.O. holders by creating a fear in the name of the extremists of T.P.C. - Gopal Singh Bhokta @ Brajesh Ganjhu, Mukesh Ganjhu, Kohramjee, Akramanjee @ Ravindra Ganjhu, Anischay Ganjhu, Bhikan Ganjhu, Deepu Singh @ Bhikan and Bindu Ganjhu.

4. It has been alleged that if any of the businessmen hesitate to pay levy, they were threatened by members of such organization and are also subjected to hardships. In order to verify the truthfulness or otherwise of such information, a raiding party was constituted on the orders of the Superintendent of Police, Chatra. A raid was conducted in the house of the President of the Association, Binod Kumar Ganjhu and from under his bed as well as from his almirah Rs. 91,75,890/- cash was recovered. No satisfactory explanation could be submitted by Binod Kumar Ganjhu with respect to recovery of such a huge amount of cash. From the house of Binod Kumar Ganjhu, two persons were also apprehended who disclosed their names as Birbal Ganjhu and Munesh Ganjhu and on search of their persons, a loaded mauser pistol was recovered from the possession of Birbal Ganjhu while from the possession of Munesh Ganjhu, a countrymade pistol and two live cartridges were recovered. Both have confessed of being associated with the T.P.C. organization. Binod Kumar Ganjhu had disclosed that he is the President of Magadh Sanchalan Samiti and the levy collected is sent to Gopal Singh Bhokta @ Brajesh Ganjhu and thereafter it is distributed between Mukesh Ganjhu, Kohramjee, Akramanjee @ Ravindra Ganjhu, Anischay Ganjhu, Bhikan Ganjhu, Deepu Singh @ Bhikan. He has disclosed that Bindu Ganjhu is a member of Amrapali Sanchalan Samiti who collects levy on behalf of TPC and since he is at present in jail, the collection of levy is being done by Pradip Ram. On such information, a raid was conducted in the house of Pradip Ram and from under his bed as well as from an almirah Rs. 57,57,710/- in cash was recovered. No satisfactory explanation could be furnished by Pradip Ram with respect to such recovery of cash.

Based on the aforesaid allegations, Tandwa P. S. Case No. 2 of 2016 was instituted for the offences under Sections 414, 384, 386, 387, 120 (B) I.P.C., Sections 25 (1-b) (a)/26/35 of the Arms Act and Section 17 (1) (2) of the Criminal Law Amendment Act against Binod Ganjhu, Munesh Ganjhu, Pradip Ram, Birbal Ganjhu, Gopal Singh Bhokta @ Brajesh Ganjhu, Mukesh Ganjhu, Kohramjee, Akramanjee @ Ravindra Ganjhu, Anischay Ganjhu, Deepu Singh @ Bhikan, Bindu Ganjhu and Bhikan Ganjhu.

5. In course of investigation Sections 16, 17, 20 & 23 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAP Act') were added. Since the offence involved is a scheduled offence in exercise of the power conferred under Section 6 (5) read with Section 8 of the National Investigation Agency Act, 2008, the Central Government by order dated 13.02.2018 had directed the National Investigation Agency to take up the investigation of the case and consequently Tandwa P. S. Case No. 2 of 2016 was re-registered as NIA Case No. RC-6/2018/NIA/DLI.

6. Mr. Sanjeev Kumar, learned senior counsel for the appellant has referred to the various provisions of the U.A.P. Act while submitting that the NIA does not have any jurisdiction to investigate the case since the commission of offence by the members of TPC is not a scheduled

offence within the meaning of the NIA Act. Amplifying such submission, Mr. Kumar has referred to Section 3 of the U.A.P. Act while submitting that TPC has not been declared an unlawful association though while taking recourse to Section 16 of the Criminal Law Amendment Act, the State of Jharkhand vide notification dated 22.05.2009 has declared TPC as an 'Unlawful Association' from the date of its formation and as such, the same will be governed by the Criminal Law Amendment Act only. As a corollary to the non-declaration of T.P.C. as an unlawful association in terms of Section 3 of U.A.P. Act, it cannot also be declared as a 'Terrorist Gang' as envisaged in Section 2(1)(l) of U.A.P. Act. Reference has also been made to Sections 2 (1) (k) and Section 15 of the U.A.P. Act, which denotes a 'Terrorist Act' and which according to the learned senior counsel for the appellant would not be attracted in the facts and circumstances of the present case. It has been submitted that the appellant has been alleged to have organized a meeting between the officials of CCL, TPC members and villagers and in order to facilitate smooth functioning of Amrapali Coal Mines, the appellant had inter-acted with the members of TPC for extortion of money from transporters and local contractors for TPC and himself, though it is not in dispute that 'Shanti Sah Sanchalan Samiti' was in existence and the appellant had merely acted in terms of the policy of CCL Management to cooperate with the villagers and the persons whose lands were acquired for the purpose of providing compensation and employment to them. Learned senior counsel has stressed that there never was any conspiracy between the operatives of TPC and the appellant as the meeting was attended in the presence and knowledge of police officials, district administration and other senior functionaries of CCL as per the policy of the management to run the closed unit situated in naxal infested areas. In support of such contention, reference has been made to some documents brought on record through supplementary affidavits.

7. Mr. Sanjeev Kumar, learned senior counsel has referred to the allegations made against Sudesh Kedia (A-19) to the effect that he also colluded with the terrorist gang - TPC and others and abetted/promoted and thereby strengthened TPC in criminal conspiracy with the members of such outfit with an intent to raise funds for the outfit through the co-accused. He used to pay levy of Rs. 200 per ton to TPC/CCL and Village Committee Members for smooth running of Amrapali and Magadh collieries. The said Sudesh Kedia has been granted bail by the Hon'ble Supreme Court as reported in (2021) 4 SCC

704. Reference has also been made to the case of one of the co-accused Sanjay Jain who was working as General Manager of M/s. Adhunik Power and Natural Resources Ltd. and who was also alleged to be instrumental in collection of levy has been granted bail by this court in Criminal Appeal (DB) No. 222 of 2019. The case of the present appellant according to Mr. Kumar, stands on exactly similar footing to both of Sudesh Kedia and Sanjay Jain. It has been submitted that though, it has been alleged about collection of extortion money by the appellant and even in spite of the disclosure statements of the witnesses, no recovery has been effected from the appellant. The materials collected against the appellant by the NIA do not prima-facie make out a case against the appellant and therefore, the restrictions provided in Section 43 (D) (5) of U.A.P. Act cannot be considered as a bar in grant of bail to the appellant. The appellant is a retired employee of CCL and his past conduct does not arise any iota of suspicion. One of the grounds for rejection of the bail application of the appellant by the NIA Court in its order dated 16.09.2019 regarding charge having not been framed due to abscondance of the appellant is a misnomer since on 15.12.2018, non-bailable warrant was

obtained by the prosecution and the appellant had approached this court in W.P.(Cr.) No. 131 of 2019 and he had thereafter surrendered on 07.09.2019. Learned senior counsel has also referred to a judgment of the Punjab and Haryana High Court in the case of "Amarjeet Singh @ Amar Singh Vs. National Investigation Agency" in ACRA-D\_226-2021 as also an order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl. No. 5617 of 2021) which relates to grant of bail to an accused when the incarceration in custody is for long and there is no chance of the trial being concluded in the near future. On the parameters noted above, learned senior counsel has prayed that the appellant be granted bail.

8. Mr. Vikramjeet Banerjee, learned ASGI has drawn the attention of the court to the first supplementary charge-sheet filed by the NIA while submitting that the appellant is the main brain behind the entire operation/scheme. He has referred to the charge showing the break-up of village/Shanti Sah Sanchalan Samiti and other beneficiaries with respect to Rs. 258/- per metric tonne and the share of CCL including the appellant was fixed at Rs. 39/- per metric tonne. He has submitted that the disclosure statements clearly indicate the active participation of the appellant in criminally conspiring with the members of TPC in raising terrorist funds.

9. The contention of the learned senior counsel for the appellant that NIA does not have the power to investigate the case since TPC has not been declared a "terrorist organization" under the UAP Act has been refuted by the learned ASGI by referring to an order passed in Criminal Appeal (D.B.) No. 367 of 2020 and the findings recorded therein have attained finality, since it has not been challenged before the higher forum. Reference has also been made to the judgments in the case of "Sudesh Kedia" (supra) and "Sanjay Jain" (supra) while pointing out that both the said accused are victims and their roles are entirely different from the present appellant as the present appellant had received money and the entire scheme of operation was his brain-child. Mr. Banerjee, has also referred to Section 43 (D) (5) of UAP Act and has submitted that there are reasonable grounds to believe that the allegations against the appellant is prima-facie true. The case against the appellant having been found to be prima-facie true as his application of discharge having been rejected upto this Court, the same is an additional ground for rejection of the prayer for bail of the appellant. The second supplementary charge-sheet reveals that the TPC was formed in 2002 after a number of cadres of the Communist Party of India Maoists in Jharkhand walked out of their parent outfit and created TPC. Since its inception, it has indulged in fratricidal clashes with other Maoist outfit in Jharkhand. Mr. Banerjee has also referred to the case of "NIA Vs. Zahoor Ahmad Shah Watali" reported in (2019) 5 SCC 1. He has also drawn the attention of the court to the impugned order dated 16.09.2019 which according to the learned ASGI has considered all aspects of the matter and therefore no interference is necessitated in the same.

10. Mr. Sanjeev Kumar, learned senior counsel has in reply submitted that 'Shanti Sah Sanchalan Samiti' is a peace loving Committee and the appellant was not the sole person to organize its meetings and decide the amount to be divided. He has further brought to the notice of the Court that Sanjay Jain was also collecting levy from the transporters and D.O. holders and the case of Sanjay Jain is therefore similarly situated. It has been submitted that the charge has been framed and considering the period of custody undergone by the appellant and there being no chance of the trial being concluded in the near future, as 185 witnesses are to be examined, the present appeal deserves

to be allowed.

11. The preliminary objection raised by the learned senior counsel appearing for the appellant that NIA does not have the power to investigate the case since TPC has not been declared a "terrorist organization" under the UAP Act, has already been answered in the case of the present appellant (Ajit Kumar Thakur Vs. Union of India and others in Criminal Appeal (D.B.) No. 367 of 2020) which was preferred against an order refusing discharge and it was held as follows"

"32. It is not in dispute that the power of N.I.A. to investigate is in relation to any schedule offence prescribed under the N.I.A. Act. It is further not in dispute that the schedule to N.I.A. Act contains UA(P) Act, but does not contain CLA Act. It is further not in dispute that Tritya Prastuti Committee (TPC) is an Unlawful Association declared by State of Jharkhand under CLA Act, but no such declaration has been made with regards to Tritya Prastuti Committee (TPC) under UA(P) Act, 1967.

33. It is the specific case of NIA as per the supplementary chargesheet that Tritya Prastuti Committee (TPC) is a break- away faction of CPI (M) is an unlawful association and also indulged in terrorist activity by forming a terrorist gang. As per the allegation, it had transpired that TPC was instrumental in hurling several attacks by bombs upon Reserve Battalion in India at Amrapali and was involved in other activities of extortion, murder and bomb blasts. It has been alleged that the said association used to raise huge funds and invest the same in procurement of arms and ammunition for nurturing their terrorist activities. Over the period, this terrorist gang which is being run in the name of TPC has become a menace and has given effect to various terrorist activities and NIA is presently investigating following cases instituted against TPC and its member/aids: RC 22/2018/NIA/DLI, RC 23/2018/NIA/DLI, RC 23/2018/NIA/DLI and the instant case. It has been alleged that the present appellant was instrumental and was directly involved in raising and collection of funds and for providing funds to TPC and though TPC has not been declared as a terrorist organization under UA(P) Act, but it is a break-away faction of a terrorist organization CPI (M) organization and formed a terrorist gang. Tritya Prastuti Committee (TPC) has already been declared as an unlawful association by the State Government. As per the chargesheet, there has been revelation of facts related to modus operandi of extortion/ collection of levies from coal traders/transporters/contractors by TPC and structural organization of TPC. It was revealed during investigation that before starting the Amrapali Colliery, TPC operatives used to extort levy from local contractors executing public works in an organised manner and in the year 2012, the work of Amrapali coal mine was to start and all the villagers of affected villages were approached by the accused including the appellant. A meeting was held between officials of CCL and committee members including villagers wherein demands for providing job to one person from every family and compensation for land acquisition of land were placed before CCL. At that time BGR Company took the tender for removal of OB (over burden) and digging out the coal, but villagers opposed the starting of colliery work because their demands

were not fulfilled by the CCL. The present appellant, Ajit Kumar Thakur, the then General Manager, CCL and the representative of BGR Company, Shri Raghuram Reddy, approached the leaders of Tertiary Prastuti Committee (TPC), to sort out the problem. TPC decided to intervene in the matter of coal project for its own financial interests and therefore, a meeting was organized to resolve the matter and to start the mining work in the area. The meeting was called and some prominent persons, from 5 adjoining villages, joined the meeting. In the meeting, TPC leader Akraman ji suggested that a committee of the villagers from all 5 villages should be formed to address the issues arising due to mining in Amrapali area. Accordingly, a committee was formed in the name of "SHANTI SAH SANCHALAN SAMITI" for each village and it was decided that each village will have 7 members (total 35 members having 7 members from each village) and it was further decided in the meeting that Rs.254/- per metric tonne would be collected from each transporter and delivery order holders, which were to be distributed in the manner indicated in the submissions of the learned counsel for NIA. Thus, prima-facie, on the basis of the materials collected during investigation, it appears that the accused persons joined hands with TPC for their personal gains and also for generation of funds for terrorist activities and thus formed terrorist gangs. The materials further reveal that, persons other than the members of Tertiary Prastuti Committee (TPC) were also involved and included in the furtherance of terrorist activities of Tertiary Prastuti Committee (TPC). In aforesaid view of the matter, non-declaration of Tertiary Prastuti Committee (TPC) as a terrorist organisation under UA(P) Act has no bearing in the matter of competence of NIA to investigate the case as the schedule to NIA Act, inter alia, mentions UA(P) Act, 1967, which includes terrorist gangs for which no separate declaration under UA(P) Act, 1967 is required. Accordingly, the point no. 2 is also decided against the appellant."

12. So far as the role of the appellant is concerned, he has been arrayed as A-10 in the first supplementary charge-sheet and it is depicted that the appellant was the then General Manager of Amrapali and Magadh Coal Area, Chatra, CCL and despite being a public servant, he had criminally conspired with the TPC operatives and other co-accused persons and abetted in collection of levy through coal transporters and contractors and was also engaged in coal mining/extraction/production related works for himself as well as for the TPC operatives and others and thereby had abetted in raising terrorist funds. The first supplementary charge-sheet was also submitted against Sanjay Jain (A-9) and he was attributed to be involved in aiding the terrorist gangs in collecting funds from illegitimate sources through extortion from coal traders/contractors/transporters. Be it noted that the accused Sanjay Jain was working as a General Manager in M/s. Adhunik Power and Natural Resources Ltd., Kandra, Seraikella-Kharsawan and was alleged to be closely associated with the operatives of the TPC. In the second supplementary charge-sheet, the name of Ajay Kumar @ Ajay Singh and Sudesh Kedia amongst others also featured and so far as Ajay Kumar @ Ajay Singh is concerned, he was working as a Manager in M/s. Adhunik Power and Natural Resources Ltd. and was involved in making payment of levy to TPC operatives on the direction of Sanjay Jain (A-9). So far as Sudesh Kedia (A-19) is concerned, he is the proprietor of M/s. S. K. Esskay Concast and Minerals Pvt. Ltd. and he used to attend meetings with TPC leaders and had paid levy to TPC, CCL and the Village Committee for smooth running of the business. It is

alleged that Sudesh Kedia had strengthened the terrorist organization with an intent to raise funds for the said terrorist organization through the appellant and others.

13. In the case of Sudesh Kedia Vs. Union of India reported in (2021) 4 SCC 704, it was held as follows:

"13. While considering the grant of bail under 7 Cr. Appeal (DB) No.535 of 2020 Section 43-D(5), it is the bounden duty of the Court to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not. We have gone through the material on record and are satisfied that the appellant is entitled for bail and that the Special Court and the High Court erred in not granting bail to the appellant for the following reasons:

13.1. A close scrutiny of the material placed before the Court would clearly show that the main accusation against the appellant is that he paid levy/extortion amount to the terrorist organisation. Payment of extortion money does not amount to terror funding. It is clear from the supplementary charge-sheet and the other material on record that other accused who are members of the terrorist organisation have been systematically collecting extortion amounts from businessmen in Amrapali and Magadh areas. The appellant is carrying on transport business in the area of operation of the organisation. It is alleged in the second supplementary charge-sheet that the appellant paid money to the members of the TPC for smooth running of his business. Prima facie, it cannot be said that the appellant conspired with the other members of the TPC and raised funds to promote the organisation.

13.2 Another factor taken into account by the Special Court and the High Court relates to the allegation of the appellant meeting the members of the terror organisation. It has been held by the High Court that the appellant has been in constant touch with the other accused. The appellant has revealed in his statement recorded under Section 164 CrPC that he was summoned to meet A-14 and the other members of the organisation in connection with the payments made by him. Prima facie, we are not satisfied that a case of conspiracy has been made out at this stage only on the ground that the appellant met the members of the organisation.

13.3. An amount of Rs 9,95,000 (Rupees nine lakh and ninety five thousand only) was seized from the house of the appellant which was accounted for by the appellant who stated that the amount was withdrawn from the bank to pay salaries to his employees and other expenses. We do not agree with the prosecution that the amount is terror fund. At this stage, it cannot be said that the amount seized from the appellant is proceeds from terrorist activity. There is no allegation that the appellant was receiving any money. On the other hand, the appellant is accused of providing money to the members of TPC.

14. After a detailed examination of the contentions of the parties and scrutiny of the material on record, we are not satisfied that a prima facie case has been made out against the appellant relating to the offences alleged against him. We make it clear that these findings are restricted only for the purpose of grant of bail to the appellant and the trial court shall not be influenced by these observations during trial."

14. One of the co-accused Sanjay Jain has been granted bail by this court in Criminal Appeal (D.B.) No. 222 of 2019. Recently a Coordinate Bench of this Court had granted bail to Ajay Kumar @ Ajay Singh in Criminal Appeal (D.B.) No. 535 of 2020.

15. So far as the evidence of the witnesses are concerned, the statement of P.W. No. 60 recorded under Section 161 Cr.P.C. reveals that 'Shanti Sah Sanchalan Samiti' was formed in the year 2014 in Amrapali Colliery on the direction of the appellant to ensure coordination and resolve all disputes between CCL, BGR and the villagers.

Protected witness 'F' has stated that on several occasions, he had given money to the appellant ranging from Rs. one lac to Rs. fifteen lacs and Chhotu Singh was informed so that he may make entry in the records.

P. W. No. 46 has stated about a meeting conducted by TPC in which the appellant and other stake holders were present and the modalities for starting dispatch of coal from Amrapali to Piprawar was worked out.

Protected witness 'C' has stated about the appellant receiving money from the office of Sri Balaji Transport and Roadways Pvt. Ltd.

16. Though certain allegations has been made by the witnesses regarding the appellant receiving money from several sources, but it appears that nothing was recovered from the appellant. There is no allegation against the appellant of being involved in a terrorist act and he seems to have acted as a conduit for the opening and running of the colliery in a smooth manner and he had also participated in meetings to iron out the demands and differences of the various stake-holders. The responsibility of running the collieries and ensuring smooth transportation of coal devolved upon the appellant in his capacity of being the General Manager. Therefore, a prima-facie case under Section 43 (D) (5) of UAP Act is not made out against the appellant. Merely because the discharge application of the appellant has been rejected upto this court, the same cannot operate as a bar being an additional feature as submitted by the learned ASGI as an application for bail and that of a discharge operate on different fields. In this context, we may profitably refer to the case of "NIA Vs. Zahoor Ahmad Shah Watali" (supra), wherein, it has been held as follows:

"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."

17. It has also to be borne in mind that the prosecution intends to examine as many as 185 witnesses, exhibit 131 documents and there are 66 numbers of material exhibits which the prosecution intends to prove. The appellant who is a retired General Manager of Central Coal Fields Ltd. is in custody since 07.09.2019. In the case of "Union of India Vs. K. A. Najeeb" reported in (2021) 3 SCC 713, it was held as follows:

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA 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 the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours 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 like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

18. In view of the discussions made hereinabove, we hereby allow the appeal and set aside the order dated 16.09.2019 passed by the learned Judicial Commissioner cum Special Judge, NIA, Ranchi in

connection with Special NIA Case No. 3 of 2018 (RC-06/2018/NIA/DLI) arising out of Tandwa P. S. Case No. 2 of 2016 by which the prayer for bail of the appellant was rejected.

19. The appellant shall be released on bail on usual conditions to be decided by the learned Judicial Commissioner-cum-Special Judge, NIA, Ranchi.

20. We make it clear that the learned trial court shall not be influenced while conducting the trial of any of the observation made by us in this order as such observations/findings are restricted only for the purpose of grant of bail to the appellant.

21. This appeal is allowed.

22. Pending I.A., if any, stands disposed off.

23. Let a copy of this order be sent through "FAX" immediately to the concerned court.

(Rongon Mukhopadhyay, J) (Rajesh Kumar, J.) R. Shekhar Cp 3