Sudesh Kedia vs Union Of India on 28 January, 2025

Author: Sujit Narayan Prasad

Bench: Sujit Narayan Prasad, Navneet Kumar

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 641 of 2024

Sudesh Kedia, aged about 51 years, son of Late Gouri Shanker Kedia, resident of Kedia House, Near Hanuman Temple, Ratu Road, P.O. Hehal, P.S. Sukhdeonagar, District-Ranchi, PIN 834005 (Jharkhand)
... ... Appellant

Versus

Union of India, through National Investigation Agency, Ranchi Camp, having its Camp office at Quarter No.305 Sector II, P.O. & P.S. Dhurwa, District Ranchi (Jharkhand), PIN 834004.
... ... Respondent

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

For the Appellant : Mr. Balaji Srinivasan, Advocate
Mr. Lukesh Kumar, Advocate
Ms. Aakriti Priya, Advocate
Mr. Sidharth Sudhanshu, Advocate
For the Respondent : Mr. Amit Kumar Das, Advocate
Mr. Saurav Kumar, Advocate

C.A.V./Reserved on 11.12.2024 Pronounced on 28/01/2025
Per Sujit Narayan Prasad, J.:

1. The instant appeal has been preferred under Section 28 of the Unlawful Activities (Prevention) Act, 1967, for setting aside the order dated 27.03.2024 passed by the AJC XVI-cum- Special Judge, NIA, at Ranchi in Criminal Appeal No. 57/2020 arising out of Special NIA Case No. 10003 of 2018 corresponding to R.C. Case No. 06/2018/NIA/DLI, whereby the learned Special Court has rejected the Appeal filed by the Appellant under Section 25(6) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAPA Act' for short] for setting aside the order dated 07.12.2018 passed by Respondent, wherein the order of seizure passed by the Investigating Officer of the case bearing RC-06/2018/NIA/DLI has been confirmed and further prayer for releasing the article/property seized by NIA in connection with the said case has also been rejected.

Factual Matrix

2. The prosecution story in brief which requires to be enumerated, is as under:

3. The case was originally instituted for the offences under Sections 414, 384, 386, 387 & 120-B of the Indian Penal Code, Sections 25 (1-B) (a), 26 & 35 of the Arms Act and Section 17 (1) (2) of the CLA Act, on the basis of a secret information received by the Police, regarding realization / extortion of levy by the banned unlawful association / terrorist gang Tritiya Prastuti Committee (for short 'TPC'), in the coal region of Amarpali / Magadh Projects of Central Coalfield Ltd., (in short 'CCL') from the contractors, transporters, D.O. (Delivery Order) holders and coal traders. On such information, the house of one Binod Kumar Ganjhu was raided on 11.01.2016, from where, an amount of Rs.91,75,890/- and two mobile phones were recovered. Two other persons, Birbal Ganjhu and Munesh Ganjhu were also found there in suspicious condition, and loaded firearms and cartridges were recovered from them. All the three were apprehended by the police, who confessed their proximity with the banned unlawful association / terrorist gang TPC.

4. On the basis of the disclosure of Binod Ganjhu, the house of one Pradeep Ram was raided, from where also, Rs.57,57,710/- and four cell phones were recovered. Accordingly, Tandwa P.S Case No. 02 of 2016 was instituted for the offences under Sections 414, 384, 386, 387 & 120-B of the Indian Penal Code, Sections 25 (1-B) (a), 26 & 35 of the Arms Act and Section 17 (1) (2) of the CLA Act, and investigation was taken up.
5. In the aforesaid F.I.R., a Charge- sheet was initially submitted by the Police, being Charge Sheet No. 17 of 2016 dated 10th March, 2016, for the alleged offence under Sections 414, 384, 386, 387 and 120-B of the Indian Penal Code read with Section 25(1-B)a, 26 and 35 of the Arms Act and under Section 17(1)(2) of the Criminal Law Amendment Act, 1908, against the persons, who were members of

banned outfit TPC and investigation was also continued against certain accused persons.

6. Subsequently, taking into consideration the gravity of the offence, the Central Government, vide order dated 13.02,2018, under Section 6 sub section (5) of NIA Act 2008, directed the N.I.A. to take over the investigation of the case, and Sections 16, 17, 20 & 23 of the UA(P) Act were also added.
7. It is stated that the Appellant is the Director of company being M/s. Esskay Concast & Minerals Private Limited and is carrying the business of coal trading
8. And a raid was conducted by NIA on 09.10.2018 in the office and house of the Appellant and accordingly search and seizure of amount Rs. 9,95000/- was made. Thereafter, order contained in Letter No. DG/NIA/MHA/NEW DELHI NO. 11011/08/2018/NIA dated

11.10.2018 was passed by the designated authority under Section 25(5) of the UAP Act allowing the Chief Investigating Officer to retain the said seized cash beyond 48 hours.

9. Thereafter, the appellant filed representation on 25.10.2018 against the order dated 11.10.2018 before the designated authority of Respondent i.e. Joint Secretary, MHA Designated Authority, NIA. But Respondent-NIA passed order dated 07.12.2018 which was served to the Appellant on 12.12.2018, wherein an order was passed confirming the seizure of cash/currency so seized at the time of the raid by NIA Officials and as such, the seizure was confirmed in terms of Section 25(3) of Unlawful Activities (Prevention) Act, 1967.
10. The Appellant being aggrieved by the aforesaid order 07.12.2018, wherein the designated authority confirmed the order of seizure in terms of Section 25(3) of the UAPA Act, had filed an appeal being Criminal Appeal No.57 of 2020, in terms of Section 25(6) of the UAPA Act, 1967 before the Special Judge, NIA.
11. It has been stated before the Special Judge that NIA after taking over the investigation has submitted first supplementary charge-sheet on 21.12.2018 against several original accused persons. In the said first supplementary charge-sheet the Appellant was not impleaded as an

Accused, rather, the Appellant was arrayed as one of the witnesses being PW-35. However, the Respondent submitted a second supplementary charge sheet dated 10.01.2020 and the Appellant has been arrayed as one of the accused as Accused-19 (A-19).

12. The learned Special Judge after appreciation of the evidences had rejected the said appeal being Criminal Appeal No.57 of 2020 vide order dated 27.03.2024. against which the instant appeal has been preferred.
13. It is evident from factual aspects that the instant case was originally instituted for the offences under Sections 414, 384, 386, 387 & 120-B of the Indian Penal Code, Sections 25 (1-B) (a), 26 & 35 of the Arms Act and Section 17 (1) (2) of the CLA Act, on the basis of a secret information received by the Police, regarding realization / extortion of levy by the banned unlawful association / terrorist gang Tritiya Prastuti Committee (for short 'TPC'), in the coal region of Amarpali / Magadh Projects of Central Coalfield Ltd., (in short 'CCL') from the contractors, transporters, D.O. (Delivery Order) holders and coal traders. On such information, the house of one Binod Kumar Ganjhu was raided on 11.01.2016, from where, an amount of Rs.91,75,890/- and two mobile phones were recovered. Two other persons, Birbal Ganjhu and Munesh Ganjhu were also found there in suspicious condition, and loaded firearms and cartridges were recovered from them. All the three were apprehended by the police, who confessed their proximity with the banned unlawful association / terrorist gang TPC.
14. Accordingly, Tandwa P.S Case No. 02 of 2016 was instituted for the offences under Sections 414, 384, 386, 387 & 120-B of the Indian Penal Code, Sections 25 (1-B) (a), 26 & 35 of the Arms Act and Section 17 (1) (2) of the CLA Act, and investigation was taken up.
15. In the aforesaid F.I.R., a Charge- sheet was initially submitted by the Police, being Charge Sheet No. 17 of 2016 dated 10th March, 2016,

for the alleged offence under Sections 414, 384, 386, 387 and 120-B of the Indian Penal Code read with Section 25(1-B)a, 26 and 35 of the Arms Act and under Section 17(1)(2) of the Criminal Law

Amendment Act, 1908, against the persons, who were members of banned outfit TPC and investigation was also continued against certain accused persons.

16. It needs to refer herein that prior to taking over the investigation by the NIA, the case was investigated by the district police and subsequent to the decision taken by the Central Government in view of the provision of Section 6 (5) of the NIA Act, the investigation has been taken over by the NIA by registering the case being R.C. Case No.06/2018/NIA/DLI.

17. The appellant was made a witness in the charge sheet but after taking over the investigation by the NIA, incriminating material has been surfaced, said to be committed by the appellant, and based upon that, he has been arrayed as accused no.19 and accordingly, charge sheet has been submitted.

18. The investigating office after finding the material available against the present appellant has found a sum of Rs.9,95,000/- at the time of raid of his house and accordingly, the aforesaid sum has been seized. The investigating officer has come across the connecting material of handing over the money to the banned organization TPC. The investigating officer having found the cogent material, has come to the belief that the said amount is to be seized and prior to taking such decision, he has followed the stipulation made as per the requirement contained as under Section 25 by making an application in writing for approval of the Director General of Police of the State.

19. The investigating office, thereafter, has duly informed by the designated authority and upon such information, the authority has confirmed the order of attachment within the period prescribed therein.

20. The designated authority has passed an order on 07.12.2018 by giving a finding regarding the prima facie satisfaction based upon the decision taken by the designated authority under Section 2(1)(e) of the UAP Act, 1967 and has recorded the finding that the aforementioned cash was intended to be used for purposes of

terrorism in India and formed part of resources of terrorist organization and accordingly, confirmed the order of seizure made by the investigating officer in terms of Section 25(3) of the UAP Act, 1967.

21. The appellant has preferred appeal against the order passed by the designated authority in terms of the provision as contained under Section 25(6) before the learned Special Judge.

22. The learned Special Judge has passed the order on 27.03.2024 declining to interfere with the decision so taken by the designated authority. The aforesaid order is under challenge by preferring the present appeal under Section 28 of the UAP Act.

Submission of the learned counsel for the appellant:

23. Mr. Balaji Srinivasan, learned counsel for the appellant has taken the following grounds in assailing the impugned order dated 27.03.2024 passed by the AJC XVI-cum-Special Judge, NIA at Ranchi in Criminal Appeal No.57 of 2020.

(i) The argument has been advanced that there is no allegation said to be committed by the appellant so as to come to the conclusion that the aforesaid seizure of sum of Rs.9,95,000/- is the proceeds of terrorism.

Such submission has been made in view of the observation so made by the Hon'ble Apex Court in the case of present appellant at the time of consideration of his prayer for regular bail wherein it has been observed by coming to the prima facie satisfaction of the allegation said to be untrue under the parameter of Section 43-D(5) of the UAP Act, 1967 that the recovery of the said amount of Rs.9,95,000/- cannot be said to be the proceeds of terrorism rather the appellant has been made victim of circumstances and of extortion.

Learned counsel for the appellant has submitted that when the Hon'ble Apex Court has come to the conclusion on the basis of consideration of prayer for regular bail in the touchstone of Section 43-D(5) of the Act, 1967 which equally

applied herein since the aforesaid amount has been held to be not proceeds of terrorism then by virtue of the said observation so made by the Hon'ble Apex Court in the said order, the amount so seized is fit to be released and when this point was raised before the appellate court, then also the same has not been taken into consideration in right perspective rather while considering the observation so made by the Hon'ble Apex Court, it has been observed in the order impugned that the same is only with respect to the issue of bail and having no nexus with the issue of seizure/attachment of the money in question.

Learned counsel for the appellant, therefore, submitted that either the order of the designated authority or the appellate authority cannot be said to be in consonance with the observation so made by the Hon'ble Apex Court while considering the bail application of the appellant.

(ii) Learned counsel for the appellant has further submitted that the order passed by the designated authority in terms of the provision of Section 25(3) of the Act, 1967 is not having with the specific reason which would be evident from the face of the order and as such, said order being cryptic in nature is not fit to stand.

The ground has been taken that the issue of order being cryptic in nature having been passed by the designated authority has not been considered by the appellate Court while exercising the power conferred under Section 25(6) of the Act, 1967.

(iii) The argument has been advanced that when the very seizure has been found to be in cloud by the Hon'ble Apex Court on the basis of the observation so made by the Hon'ble Apex Court at the time of consideration of bail then in no stretch of imagination the amount of Rs.9,95,000/- ought to have been release and seizure is nothing but in disobedience with the order passed by the Hon'ble Apex Court.

(iv) The learned counsel for the appellant has further submitted that the amount so recovered from the house of the appellant, the details is there as per the statement of account which was filed at the time of filing of representation in terms of the provision of Section 25(3) of the Act, 1967 before the designated authority and the said representation is also being enclosed with the supplementary affidavit along with the statement of account. The said statement of account clarifies that the amount so seized and sought to be attached is for the purpose of disbursement of the salary of the employees of the company but the said aspect of the matter has not been taken into consideration in right perspective.

(v) The contention has been raised that the proceeds of terrorism as defined under Section 2(1)(g) of the Act, 1967 defines that the said aspect of the matter is to be proved that funds or property seized is from commission of any terrorist act or have been acquired through funds traceable to a terrorist act. In the present case, the seized money is not part of terrorist act which would be evident from the observation so made by the Hon'ble Apex Court.

(vi) Learned counsel for the appellant, in support of his contention, has relied upon following judgments rendered by the Hon'ble Apex Court and the High Courts.

(i) Sudesh Kedia Vs. UOI (2021) 4 SCC 704

(ii) Ramchandra Mandal Vs. State of West Bengal 2021 SCC Online Pat 670.

(iii) G. M. Bhat Vs. State of J&K & Anr. (OWP 734 of 2009).

(iv) Tamil Nadu Development Foundation Trust Vs. ACP, Chennai &Ors. W.P. No. 821 of 2023.

(v) Fuleshwar Gope Vs. UOI 2024 INSC 718.

(vi) A.S. Krishnan & Ors. Vs. State of Kerala, (2004) 11SCC 576.

(vii) Arvind Kejriwal Vs. CBI, 2024 INSC 512

24. Learned counsel for the appellant, based upon the aforesaid grounds supported by the judgments as referred hereinabove, has submitted that it is a fit case where the impugned order is fit to be set aside.

Submission of the learned counsel for the Respondent:

25. Mr. Amit Kumar Das, learned counsel for the respondent has taken the following grounds in defending the act of the investigating officer, order passed by the designated authority under Section 25(3) of the Act, 1967 and the order passed by the appellate authority.

(i) The observation so made by the Hon'ble Apex Court at the time of consideration of bail of the present appellant is not applicable in the facts and circumstances of the issue reason being that the Hon'ble Apex Court itself has clarified that whatever observation has been made, that is for the purpose of consideration of the bail within the parameter of Section 43-D(5) of the Act, 1967 and will not be taken into consideration at the time of discharge of the trial, as such, submission has been made that the observation so made by the Hon'ble Apex Court at the time of consideration of the issue of regular bail will not be applicable herein since it is a case of release of seized amount which is under different chapter, that is the subject matter of Chapter-V.

The Hon'ble Apex Court for the aforesaid purpose has clarified the issue that whatever observation has been made that is with respect to consideration of the issue of bail and while taking into consideration the fact that the appellant has also been made victim of the circumstances will only be applicable for the purpose of consideration of the issue of regular bail in the touchstone of Article 21 of the Constitution of India and that is the reason the issue has been clarified that the same will not affect the discharge or the trial in any way.

(ii) It has been submitted that at this stage, the discharge application preferred by the appellant has already been

rejected, charge has already been framed and the trial is going on.

(iii) The argument has been advanced that the question of bail for which the consideration is to be given in view of the provision of Section 43-D(5) of the Act, 1967 is altogether in different chapter having no nexus with Chapter-V which would be evident from bare perusal of Section 24-A wherein it has been provided that the proceeds of terrorism, whether held by a terrorist organization or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter. The aforesaid provision, therefore, suggests that even though the person has not been prosecuted or convicted then only if the proceeds of terrorism whether held by a terrorist organization or terrorist gang or by any

other person, the same is to be forfeited.

(iv) The observation which has been made by the Hon'ble Apex Court since is with respect to consideration of bail within the parameter of consideration as per the provision of Section 43-D(5) of the Act, 1967 which is under Chapter-VII, related with Chapter-IV which contains punishment for terrorist activities and under the miscellaneous provision, i.e., power to arrest, search; procedure of arrest, seizure; application of provisions of Code; Modified application of certain provisions of the Code has been referred which has got no nexus with the subject matter as referred in Chapter-V, as such, whatever observation has been made by the Hon'ble Apex Court in the case of Sudesh Kedia vs. Union of India, (2021) 4 SCC 704 at the time of consideration of bail, is not fit to be considered at the stage of release of the seized amount having in two different chapters for two different connections.

(v) So far as the argument advanced on behalf of the appellant that the money so seized is not the proceeds of terrorism, is not to be considered at this stage by giving a final conclusion rather the same is to be considered at the time of trial for which evidence is required to be led and that is the reason while making observation in the judgment by the Hon'ble Apex Court even though bail has been granted by coming to the conclusion that the allegation levelled against the appellant prima facie held to be untrue which is for the purpose of grant of bail and coupled with the observation that such observation will not govern the trial which itself suggest that the Hon'ble Apex Court was also of the view that the culpability of the appellant regarding the cash amount which has been seized in course of investigation from his house is yet to be determined that whether it is proceeds of terrorism, which will be determined at the stage of trial. Therefore, the search and seizure cannot be governed with the observation so made by the Hon'ble Apex Court.

(vi) The argument which has been advanced on behalf of the appellant that such observation is only not been applicable for trial and as per the appellant the same will be applicable at the time of consideration of release of the seized amount cannot be said to be a proper argument, reason being that even if the person concerned if not prosecuted or convicted but the material has come in course of investigation regarding the holding of proceeds of terrorism by any person, the same is liable to be forfeited, however, as per the procedure laid down under Chapter-V of the Act.

(vii) The argument which has been advanced on behalf of the appellant that the order passed by the designated authority as per the reference made in the written notes of argument appears to be on misconception reason being that under Chapter-V, the investigating officer, the designated authority

are two different identities. It would be evident from the

aforesaid provision particularly, Section 25 thereof, that if an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State, can seize the property subject to confirmation by the designated authority. Therefore, the amount of seizure depends at the instance of the investigating officer depending upon the reason to believe subject to confirmation by the designated authority, hence, there are two functionaries, first is the investigating officer and second is the designated authority, i.e., the confirming authority.

Therefore, the argument and the submission that the entire exercise has been done by the same authority, i.e., investigating officer being the designated authority, appears to be on misconception of law.

(viii) The argument which has been advanced that the order passed by the designated authority is cryptic and the appellate authority was exercising the power conferred appears to be not sustainable.

(ix) Learned counsel, in response to the argument advanced on behalf of the learned counsel for the appellant that the appellate court has not exercised the judicial function as per the conferment of power reason being that if the specific issue of the order mechanical in nature has been raised said to be passed by the designated authority, then the same ought to have been taken into consideration and at that stage itself the order passed by the designated authority ought to have been quashed and the matter ought to have been remitted before the designated authority for passing order afresh but instead of doing so, the order itself has been improved, hence, the order passed by the appellate court cannot be said to be proper.

It has been submitted by the learned counsel for the respondent that the said argument is not fit to be accepted reason being that the appellate for the first time under Chapter-V is the forum available to exercise the judicial function and prior to that at the stage of designated authority or the investigating officer, while taking decision either under Section 25(1) or 25(3), they have discharged their administrative function and the designated authority is only to affirm the decision taken by the investigating officer on the basis of the principle of reason to believe based upon the material collected in course of investigation.

The investigating officer has found the material against the appellant which led the investigating officer to come to the

belief said to be based upon the reason so far as the attributability said to be committed by the appellant and which having been placed before the designated authority for its affirmation, the same has been affirmed.

The appellate court while exercising the power under Section 25(6) since has exercised the judicial power for the first time under this chapter, hence, he in order to come to the conclusion has gone through the material surfaced in course of the investigation as recorded under Section 161 Cr.P.C. which has been taken note and as such, it is incorrect on the part of the appellant to take the ground that the matter ought to have been remitted before the designated authority by the concerned court is not under the scheme of statutory provision rather the judicial scrutiny is required to be done at this stage based upon the material surfaced in course of investigation in order to come to the finding by making assessment of the decision taken by the designated authority on the principle of reason to believe and the order of confirmation by the designated authority.

The court after going through the material available in the case diary has exercised the judicial function.

26. It has been contended that the said aspect of the matter will be apparent from the judgment passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar in G.M. Bhat and Anr. vs. State of JK through SHO Police Station Udhampur and Ors. (OWP No.734/2009) upon which the learned counsel for the appellant has relied upon. The relevant is paragraph-23 and 26.

27. Learned counsel has submitted that the judgment upon which the reliance has been placed, i.e., in the case of G.M. Bhat and Anr. vs. State of JK through SHO Police Station Udhampur and Ors. (supra) is not applicable in the facts and circumstances.

28. It response which has been given to the applicability of the judgment passed in Sudesh Kedia vs. Union of India (supra) cannot be said to be fit for consideration in the matter of release since the said judgment is only for the purpose of consideration of bail on the parameter of the applicability of Section 43-D(5) of UAP Act . It has been submitted that the said aspect of the matter itself has been clarified that the finding so recorded are restricted only for the purpose of grant of bail to the appellant and the trial court shall not be influenced by these observations. It has been submitted that the moment the observation of any nature whatsoever have been restricted only for the purpose of bail, it is not fit to be accepted that the observation so made in the case of Sudesh Kedia vs. Union of India (supra) at the time of grant of bail is to be made applicable in the context of release which is having no nexus with the prosecution or conviction as per the provision of Section 24-A of the Act, 1967.

29. So far, the applicability of the judgment rendered in the case of G.M. Bhat and Anr. vs. State of JK through SHO Police Station

Udhampur and Ors. (supra) is concerned, the same is also not applicable in the facts and circumstances of the case which would be evident from the factual aspect wherein the High Court has taken into consideration the issue of remanding the matter before the designated authority by giving a finding that the appellate court is to

decide the issue instead of remitting the matter before the designated authority.

The High Court, in that respect, has come out with the view that the remand as was made by the appellate court cannot be said to be proper rather it is the duty casted upon the appellate court to decide the issue instead of remitting the matter before the designated authority. Herein, that is not the fact of the present case.

30. So far as reliance placed upon the judgment rendered by the Patna High Court in the case of Ramchandra Mandal and Ors. vs. State of Bihar and Ors., 2021 SCC OnLine Pat 670 is concerned, the factual aspect is quite different since the said case the case was not under Chapter-IV or Chapter-VI of the UAP Act and even then, the seizure was made by the investigating officer.

The Patna High Court in the aforesaid factual aspect has passed the order that the Section 25 has been held to be wholly without jurisdiction.

So far as the reliance placed upon paragraph-11 of the said judgment is concerned that the consideration regarding the reason to believe as stipulated under Section 25 of the UAP Act is to be taken into consideration with respect to the fact that any property in relation to which an investigation is being conducted represents proceeds of terrorism.

It is evident from paragraph-11 that the investigating officer has not assigned any reason to believe the aforesaid fact nor the authority who confirmed the seizure applied its mind that there was no material to substantiate that the seizure was consistent with the law contained in Section 25 of the UAP Act.

Here, in the instant case, the investigating officer has found ample evidence as has been referred in the charge sheet wherein the specific attributability has been surfaced in course of investigation, hence, the said judgment is not applicable so far as the facts of the present case is concerned.

31. So far as the applicability of the judgment rendered by the High Court of Judicature at Madras in W.P. No. 11821 of 2023 and Ors.

(M/s Tamil Nadu Development Foundation Trust vs. The Assistant Commissioner of Police, Vepery Range, Greater Chennai Police, Vepery, Chennai) particularly at paragraph-7 and 11 thereof. But, the said judgment is in connection with prohibitory order as provided under Section 7 of UAP Act which is a prohibition in using funds of an unlawful association but herein, that is not the case rather it is the case of seizure of the money.

32. The reliance has been placed upon the judgment rendered in the case of Fuleshwar Gope vs. Union of India and Ors., (2024) 10 SCR 315, particularly upon paragraph-30, 31.4, 35 and 38 but the said paragraphs in any way is not in aid of the contention of the appellant, however, paragraph-41 of the said judgment is applicable wherein it has been held by the Hon'ble Apex Court that an order passed by an administrative authority is not to be tested by way of judicial review on the same anvil as a judicial or quasi-judicial order. While it is imperative for the latter to record reasons for arriving at a particular decision, for the former it is sufficient to show that the authority passing such order applied its mind to the relevant facts and materials. It is not incumbent upon such authority to record detailed reasons to support its conclusion.

Herein also, the order passed by the investigating officer on the basis of the material surfaced in course of investigation in order to come to the conclusion of reason to believe which is based upon the material collected in course of investigation and based upon that the permission has been sought for from the Director General to place it before the designated authority for its affirmation. The designated authority has considered the reason to believe as has been arrived at by the investigating officer and thereafter, it has been affirmed. Hence, the investigating officer or the designated authority being to discharge administrative function, as such, detailed reason is not there and that is the reason the Court while hearing the matter under the appellate jurisdiction has taken into consideration, hence, the judgment passed in Fuleshwar Gope vs. Union of India and Ors. (supra) is also not applicable in the facts of the case.

33. The other judgment upon which reliance has been placed, i.e., Javed Gulam Nabi Shaikh vs. State of Maharashtra and Anr., (2024) 7 SCR 992; Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh, (2024) 7 SCR 1054; A.S. Krishnan and Ors. vs. State of Kerala, (2004) 11 SCC 576 and; Arvind Kejriwal vs. Directorate of Enforcement (Criminal Appeal No.2493 of 2024) are on the interpretation of the words "reason to believe".

34. Herein, the reason to believe is there which is on the basis of the material collected in course of investigation having been referred in the charge sheet.

35. Learned counsel for the respondent, based upon the aforesaid ground, has submitted that there is no illegality in the impugned order passed by the authority concerned as also the court has exercised the power under Section 25(6).

Response of the learned counsel for the appellant:

36. Mr. Balaji Srinivasan, learned counsel for the appellant after conclusion of the hearing has appeared in the Court in the post recess session and has submitted that the error has been committed in the written notes of argument by making reference of the investigating officer being designated authority. It has been submitted that the

investigating officer and the designated authority are two different identities.

37. Since it has been submitted in the Court, as such, the same is being taken note herein.

Analysis:

38. We have heard the learned counsel for the parties, gone across the finding recorded in the impugned order.

39. It is evident from the factual aspects that Chatra Police received credible information regarding extortion/levy collection/money laundering by Naxal cadres in LWE affected states of Jharkhand &Bihar. Some locals have formed an operating committee in the coal bearing region of Amrapali/Magadh, PS-Tandwa. This operating

committee was having relation with banned Naxalites organization, Tritiya Prastuti committee (TPC). Some people of the operating committee were threatening the contractors, transporters, DG holders and coal businessmen for extorting/collecting levy in the names of the operative of banned TPC organisation, hence on this information police raided the house of Binod Kumar Ganjhu and recovered Rs. 91,75,890/- from his house along with Munesh Ganjhu and Birbal Ganjhu with Loaded pistol and cartridges.

40. Hence the initial FIR has got instituted. Thereafter Tandwa PS case no.02/2016 was registered and investigation was taken up. There is further allegation that appellant is running a private limited company in the name and style of M/s ESSKAY CONCAST & MINERALS PRIVATE LIMITED and during the course of investigation a raid by the NIA was conducted on 9.10.18 and during this course cash amounting to Rs. 9,95,000/- in INR has been seized by the NIA officials from the office cum house of the appellant.

41. Thereafter, order contained in Letter No. DG/NIA/MHA/NEW DELHI NO. 11011/08/2018/NIA dated 11.10.2018 was passed by the designated authority under Section 25(5) of the UAPA Act allowing the Chief Investigating Officer to retain the said seized cash beyond 48 hours.

42. Thereafter, the appellant filed representation on 25.10.2018 against the order dated 11.10.2018 before the designated authority of Respondent i.e. Joint Secretary, MHA Designated Authority, NIA. But Respondent-NIA passed order dated 07.12.2018 which was served to the Appellant on 12.12.2018, wherein an order was passed confirming the seizure of cash/currency so seized at the time of the raid by NIA Officials and as such, the seizure was confirmed in terms of Section 25(3) of Unlawful Activities (Prevention) Act, 1967.

43. The Appellant being aggrieved by the aforesaid order 07.12.2018, wherein the designated authority confirmed the order of seizure in terms of Section 25(3) of the UAPA Act, had filed an appeal being Criminal Appeal No.57 of 2020, in terms of Section 25(6) of the UAPA Act, 1967 before the Special Judge, NIA.

44. The learned Special Judge after appreciation of the evidences had rejected the said appeal being Criminal Appeal No.57 of 2020 vide order dated 27.03.2024. against which the instant appeal has been preferred.

45. It needs to refer herein that during course of the investigation, the appellant has been arrested and the application with the prayer for the bail of the appellant has been preferred before this Court, but the same has been dismissed by this Court vide order dated 24.06.20 passed in Cr. Appeal (DB) No. 187 of 2020. During pendency of the aforesaid criminal appeal the petitioner had preferred Criminal Appeal being Crl. Appeal No.57 of 2020 before learned Special Judge against the order dated 07.12.2018 by which seizure has been confirmed by the authority concerned.

46. Thereafter, petitioner/appellant had moved to the Hon'ble Apex Court against the order of rejection of Bail passed by this High Court. The Hon'ble Apex Court in SLP(Crl) 6259-60 of 2020 vide order dated 09.04.2021 had granted bail to the appellant. The relevant paragraphs of the aforesaid order are being quoted as under:

> "13. While considering the grant of bail under 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.
>
> 15. For the aforementioned reasons, the judgment [Sudesh Kedia v. Union of India, of the High Court is set aside and the appellant is directed to be released on bail subject to the satisfaction of the Special Court. The appeals are allowed, accordingly."

47. It is evident from the aforesaid order that the Hon'ble Apex Court has taken note that the money which has been said to be seized is by way of victimization of the present appellant since he claimed that he has been subjected to extortion for the purpose of carrying out his business.

48. The Hon'ble Apex Court has come out with the prima facie opinion while considering the aforesaid submission in view of the provision of Section 43-D(5) of the Act, 1967 that the money which has been recovered to the tune of Rs.9,95,000/- cannot be said to be proceeds of terrorism.

49. The Hon'ble Apex Court, based upon the aforesaid observation, has come to the view in view of the provision of Section 43-D(5) of the Act, 1967 that the allegation against the appellant appears to be prima facie untrue, accordingly, he has been directed to be released on bail, however, in the same paragraph it has been clarified that the observation so made for the purpose of coming to the conclusion of the case to be prima facie untrue is 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.

50. It is evident from the material available on record that the search has been made in the house of the appellant from where Rs.9,95,000/- has been recovered.

51. The investigating officer, thereafter, has resorted to the provision of Section 25 for the purpose of seizure of the money and for that

purpose, as per the requirement of provision as contained under Section 25, the reason to believe is there to the effect that any property to which investigation is being conducted, represents the proceeds of terrorism.

52. The investigating officer, based upon the material collected against the appellant regarding his connection with the banned organization, has sought for permission from the Director General of NIA for making an order to seize such property and thereafter, for permission it was placed before the designated authority.

53. Thereafter vide order dated 11.10.2018 while using his power as conferred under Section 25(5), the designated authority allowed the investigating officer to retain seized cash beyond 48 hours and further had given the opportunity to the appellant/petitioner in terms of Section 25(3) of the Act 1967 to explain recovery of alleged amount seized on 09.10.2018 during raid conducted at petitioner/appellant house. For ready reference, the reference of the contents of the said order is being reproduced as under:

No 11011/08/2018/NIA
Government of India Ministry of Home Affairs
CTCR Division
North Block, New Dell Daled, the 11 October, 2018
ORDER

Whereas on 10 10.2018, Shri Deependra Kumar, DSP, Chief Investigating Officer, National Investigation Agency (NIA) intimated that an amount of Rs 67,65,705/- (Rupees sixty seven lakh sixty five thousand seven hundred five only) plus Hong Kong dollar 6760, Singapore Dollar 10,000, China Yuan 5200 and US Dollar 1390, has been seized by him on 09.10.2018 in NIA case no RC-06/2018/NIA/DLI, having reasons to believe that the said amount is intendent to be used for the purposes of terrorism and it forms a part of resources of terrorist organization:

21 Cr. Appeal (DB) No. 641 of 2024 Whereas, I, the Designated Authority, under section 2 (1) (e) of the Unlawful Activities Prevention) Act, 1967, after examining the maternal on record, am prima face satisfied that the Cash of Rs. 67,65,705/- (Rupees sixty seven lakh sixty five thousand seven hundred five only) plus Hong Kong dollar 8760, Singapore Dollar 10,000, China Yuan 5200 and US Dollar 1390 zed by the Chief Investigating Officer is intended to be used for the purposes of terrorism and forms the part of the resources of a terrorist organization, And now, therefore, in exercise of the powers conferred under the proviso of sub-section 5 of Section 25 of the Unlawful Activities (Prevention) Act, 1967, I hereby allow the Chief Investigating Officer to retain the seized cash beyond 46 hours:

And now, therefore, before confirming the order of the seizure of the said cash by the Chef Investigating Officer, 1, the Designated Authority give an opportunity in terms of proviso to section 25(3) of the Untawful Activities (Prevention) Act, 1967, to the persons whose property have been seized by the aid order for making representation

to the undersigned within 15 days from the date of issue of this order and if no representation is received within the prescnbed pened, a considered order under section 25(3) of the Unlawful Activities (Prevention) Act, 1967 would be passed, based on the facts brought before this Authority ISSUED UNDER MY SEAL AND SIGNATURE (PRAVEEN VASHISTA) JOINT SECRETARY, MHA & DESIGNATED AUTHORITY

54. Thereafter, the Designated Authority, under section 2 (1) (e) of the Unlawful Activities (Prevention) Act 1967, having examined the representations received and on being prima facie satisfied that the aforementioned cash was intended to be used for purposes of terrorism in India and formed part of resources of terrorist organization, confirm the order of seizure in accordance with section 25(3) of the Act, 1967,for ready reference, the same is being referred as under:

No. 11011/08/2018/NIA Government of India Ministry of Home Affairs CTCR Division North Block, New Delhi Dated, the 7 December, 2018 ORDER Whereas on 10.10.2018, Shri Deependra Kumar, DSP, Chief Investigating Officer, National Investigation Agency (NIA), intimated that an amount of Rs. 67.65,705/- (Rupees sixty seven lakh sixty five thousand seven hundred five orily) plus Hong Kong dollar 8760, Singapore Dollar 10,000, China Yuan 5200 and US Dollar 1390, has been seized by him on 09.10.2018 in NIA case no. RC-06/2018/NIA/DLI, having reasons to believe that the said amount was intended to be used for the purposes of 22 Cr. Appeal (DB) No. 641 of 2024 terrorism and it forms a part of resources of terrorist organization, Whereas, I, the Designated Authority, under section 2 (1) (e) of the Unlawful Activities (Prevention) Act, 1967, after examining the material on record, am prima facie satisfied that the Cash of Rs. 67,65,705/- (Rupees sixty seven lakh sixty five thousand seven hundred live anly) plus Hong Kong dollar 8760, Singapore Dollar 10,000, China Yuan 5200 and US Dollar 1390, seized by the Chief Investigating Officer, was intended to be used for the purposes of terronsm and formed the part of the resources of a terrorist organization, had passed an order No. 11011/08/2018/NIA dated 11 October, 2018 in terms of section 25(5) of the Unlawful Activities (Prevention) Act, 1967 allowing the CIO to retain the seized cash beyond 48 hours:

And whereas, I had given an opportunity to the persons/parties aggrieved or likely to be affected by the order of seizure of the said cash in accordance with the previso to section 25 (3) of the Unlawful Activities (Prevention) Act, 1967 vide order No 11011/06/20)gated 11th October, 2018 for making representation within 15 days from the date of issue of the said order, And whereas, representations dated 24.10.2018 and 25.10.2018 were received from Bipin Mishra and Sudesh Kedia respectively against the order of forfeiture of the cash mentioned above within the specified period of 15 days, And whereas, three requests dated 29 11 18 were received on 3.12.2018 from Sonu Agarwal Amit Agarwal and Shyam Bihan Makharia & Bishnu Agarwal seeking extension of time to file their response, which could not be agreed to

in view of the time Irmit of 60 days specified under Section 25(3) of the Unlawful Activities (Prevention) Act, 1967, as per which seizure order has to be confumed or revoked by the designated authority within a period of 60 days ie by 8.12 2018.

And whereas, no representation have been received from Sonu Agarwal @Amit Agarwal even after expiry of more than 15 days from his stated date of receipt of this Ministry's order dated 16.11.2018,.

Now therefore, I, the Designated Authority, under section 2 (1)

(e) of the Unlawful Activities (Prevention) Act 1967, having examined the representations received and the matenal/comments of CIO and on being prima facie satisfied that the aforementioned cash was intended to be used for purposes of terrorism in India and formed part of resources of terrorist organization, confirm the order of seizure made by the Investigating Officer of the case No RC-06/2018/NIA/DLI in accordance with section 25(3) of the Unlawful Activities (Prevention) Act, 1967, And whereas, under section 25 (6) of the Unlawful Activities (Prevention) Act 1967, the aggrieved party is entitled to prefer an appeal to the court within thirty days from the date of receipt of this order.

ISSUED UNDER MY SEAL AND SIGNATURE JOINT SECRETARY, (MHA & DESIGNATED AUTHORITY) 23 Cr. Appeal (DB) No. 641 of 2024

55. The appeal in view of the provision of Section 25(6) of the Act, 1967 had been preferred before the special Court after lapse of one and a half years even though the period to prefer an appeal has been provided of 30 days from the date of receipt of the order for the purpose of confirmation of the decision taken by the designated authority regarding the order of attachment of the property or seizure so made or revoke such order and release the property.

56. The contention has been raised on behalf of the learned counsel for the appellant that the delay in filing the said appeal has been condoned by the learned Special Judge.

57. Mr. Amit Kumar Das, learned counsel for the respondent-NIA has made objection that challenging the order after lapse of one and a half years is only by way of afterthought in order to make out a ground to use it in the trial.

58. This Court, therefore, is of the view that the period of 30 days has been made in preferring the appeal but the same has been condoned by the learned Special Judge and the same having not been challenged by the NIA, hence, we are not going on the said issue.

59. The learned Special Judge vide order dated 27.03.2024, has passed order under sub-section (6) of Section 25 by upholding the decision taken by the designated authority after taking note of the statement recorded of the witnesses under Section 161 Cr.P.C. The relevant paragraph which has been taken into consideration is being reproduced as under:

> I have gone through the para 17.11 of the chargesheet which disclosed that appellant Sudesh Kedia (A-19) the proprietor of M/s Essakay Concast & Minerals Pvt. Ltd., his transporting company was engaged for transportation of coal on behalf of GVK Power and Godavari Commodities. He used to attend meetings with TPC leaders and had paid levy to TPC and village committee for smooth running of his business in Amrapali and Magadh collieries. Investigation has established that he used to pay Rs.200/ - (a)) tonne levy to TPC leader Akraman (A-14), Village Committee members namely Amlesh Das, Arvind Singh and Triveni Yadav. Sudesh Kedia used to send money from his current bank account for making payment to Village Committee and others and cash to Akramanji (A-14) TPC. Therefore, it is brought on record by NIA that Sudesh Kedia (A-19) colluded with members of terrorist gang, TPC, and 24 Cr. Appeal (DB) No. 641 of 2024 others and abetted/ promoted/ thereby strengthened TPC, in criminal conspiracy with members of the terrorist gang, with an intent to raise funds for the above said terrorist gang through co-accused Bindu Ganjhu (A-5) Subhan Mian (A-7) Ajit Kumar (A-10), Prem Vikas Mantu Singh (A-11) and Akraman(A-14) for smooth running of his business He possessed cash amounting to Rs 9,95,000/- Indian currency, which was seized from his residential premises and demonetized Indian currency of face value of Rs. 86,000/- seized from his office cum residential premises. Cash amounting to Rs.9,95,000/- seized from his residential premises has been established as "Proceeds of Terrorism". The seized cash 9,95,000/- had been forfeited and confirmed u/s 25(3) of the UA(P) Act by the Designated Authority.

I have gone through the order of designated authority MHA, Government of India order no.11011/08/2018/NIA North block, New Delhi dated 11/10/2018 by which designated authority passed order in the matter of investigating officer of NIA case no RC 06/2018/NIA/DLI. The designated authority specified by the Central government order under section 2(1)(e) of the UA(P) Act, 1967 has confirmed the order of attachment of Rs.67,65,705/- (Sixty seven lac sixty five thousand and seven hundred five only) + Hongkong dollar Rs.8,760/-, Singapore dollar Rs.10,000/-, china Yuan Rs.52,00/- and US dollar Rs.1390/- has been seized by him on 09.10.2018 and intimated to designated authority on 10/10/2018, having reason to believe that the said amount is intended to be used for the purpose of terrorism and it forms a part of resources of terrorist organization. The designated authority after examining the material on record prima facie satisfied that the order of attachment of CIO of Rs.67,65,705/- (Sixty seven lac sixty five thousand and seven hundred five only) +Hongkong dollar Rs.8,760/-, Singapore dollar Rs.10,000/-, china Yuan Rs.52,00/- and US dollar Rs.1390/- has been seized by the Chief Investigating officer is intended to be used for the purpose of terrorism and forms part of the resources of a terrorist organisation.

In exercise of power conferred under the proviso of sub section 5 of section 25 of UA(P) Act, 1967, designated authority allowed Chief Investigating officer to retain the seized cash beyond 48 hours. The designated authority given opportunity in terms of proviso to section 25(3) of the Unlawful activities Act, 1967, to the appellant and other persons whose property has been seized by the said order for making representation to the designated authority within fifteen days from the date of issue of this order and if no representation is received within the prescribed period a considered

order u./s 25(3) of the UA(P) Act, 1967 would be passed. Accordingly designated authority forwarded copy of the order to the CIO Dipendra Kumar of NIA and six other persons whose property has been seized namely 1. Bipin Mishra S/o of late Rakesh Chandra Mishra 2. Sudesh Kedia son of Gauri Kedia R/o- Ratu Road, Ranchi (petitioner) 3. Vishnu Agarwal son of Malgopal Agarwal R/o- First floor above HDFC bank Booty More branch 4. Vishnu Agarawal son of Malgopal Agarwal M/s Hindalco company, Apurva Ratan Apartment, Deepatoli, 5. Sonu Agarwal plot no B-77 Kavikarkar Mukandaram Sarini sector-II , Vidhan Nagar, Durgapur-12, 6. Sonu Agarwal son of Shyam Sundar Agarwal at Munsi Prem 25 Cr. Appeal (DB) No. 641 of 2024 chand Sarini, Durgapur, Paschimi Vardhman. Copy of the order was also sent to DGP, NIA, New Delhi.

The said retention order dated 11.10.2018 was served to the appellant Sudesh Kedia who submitted his representation on 25.10.18, against the said order of forfeiture of the cash against his name. The designated authority after examining the representations received from appellant and the materials / comments of CIO and on being prima facie satisfied that the aforementioned cash was intended to be used for the purpose of terrorism in India and formed part of resources of terrorist organisation. Accoringly he confirmed the order of seizure made by CIO in RC-06/2018/NIA/DLI vide his order dated 07.12.2018 in accordance with section 25(3) of the UA(P) Act, 1967 and the said order of designated authority was served upon appellant to prefer an appeal to the court within thirty days from the date of receipt of the order u/s 25(6) of UA(P) Act, 1967. Now, I am scrutinising the documents furnished by appellant in support of his claim. With regard to Annexure-2 it appears that the cash Rs.9,95,000/- alleged to be seized from the office cum house of appellant was withdrawn from account of Esskay Concast and Minerals Pvt Ltd. On 18.09.2018 Rs.9,90,000/- and Rs.5,00000/- again on 19.09.2018 Rs.5,00000/- was withdrawn. The appellant has claimed that it was kept as liquid money for the purpose of business, payment of salaries of employees and for family expenses. Appellant has also submitted in his reply to designated authority that he has disclosed the same fact but the designated authority without giving any sound reasons rejected his representation vide order dated 07.12.2018 and the same was communicated to him. It further appears from record that designated authority passed order on 07.12.2018 and the present appeal was filed after lapse of one and half year on 11.05.2020. the appellant has submitted that as his name was shown as PW-35 in the first chargsheet submitted by NIA, he presumed that he has been exonerated from the charges, that is why filed this appeal belatedly.

Now the question arises if a company has to pay the salary of his employees, it would be presumed to be paid in the account of the employees. It is also surprising that salaries to employees is used to being paid on monthly basis in the first week of the month. Then why on 18th and 19th of theSeptember about Rs.15,00,000/- was withdrawn and was kept in the office and house of appellant. On the other hand there is serious allegation against appellant that he was involved in paying levy to the members of Terrorist gang TPC. Appellant was part of the criminal conspiracy with co-accused persons Akraman Ji A-14, Bindu Ganjhu A-5, Prem Vikash A-11 for ensuring smooth business of his transport company M/s Esskay cocast and Minerals Pvt Ltd. The protected witness in his his statement u/s 164 Cr P.C disclosed that Sudesh Kedia with co-accused Subhan Miya attended meeting with Akraman Ji and made payment of levy. He also attended meeting with A.K.Thakur A- 10 Bindu Ganjhu A-5, Prem Vikah @ Mantu Singh A-11 and others for starting of coal transport works. NIA duirng investigation collected evidence that appellant was in contact with

Akraman Ji A-14 who is repeatedly calling on his mobile for demand of levy. Appellant held a meeting with A-5 Bindeshwar Ganjhu and Prem Vikash A-11 at Hotel Le Lac, Ranchi in last month of 2016 and the protected witness paid 26 Cr. Appeal (DB) No. 641 of 2024 Rs.40 lakhs in six -seven installments to members of village committee and A-14 Akraman Ji. During 2016-17 the said protected witness received Rs.25 lakhs from Ranchi office of appellant and the same amount was paid to village committee/ TPC on the direction of accused Mantu Singh. Appellant by bank statement of his transport company is trying to establish that the cash seized from his house was withdrawn from his bank account which not appears to be sustainable. In the circumstance when there is serious allegation against appellant that to run his coal transport business he used to supply levy to TPC and its top brass Akraman Ji A-14 with help of A-5 Bindeshwar Ganjhu, A-11 Prem Vikash @ Mantu. The time gap between withdrawal of money and seizure of money not appears to be satisfying and it speaks some other story. Therefore, in my view appellant has not been able to explain properly that how a cash amount of Rs.9,95,000/- was recovered from his house and for what purpose it was kept. Appellant has also not produced his regular books and account of transport company and the documents that his firms has got how many employees, how much is the turn over of his firm. Entire explanation not appears to be sustainable.

It is further argued by ld counsel of appellant that petitioner was granted bail by the Hon'ble supreme court in which Hon'ble supreme court observed that payment of extortion money does not amount to terror funding. If the appellant would be presumed to be had paid levy to TPC terrorist organization that would not come under purview of terror funding. Accordingly on the observation of Hon'ble supreme court money recovered from house of Sudesh Kedia will not come under purview of proceeds of terrorism. It was withdrawn from his account and was kept for personal use and the same was seized as proceeds of terrorism and confirmed by designated authority without having any sound reason.

Ld Special P.P, NIA submitted that observation of Hon'ble supreme court with regard to sudesh Kedia is just related with section 43D(5) of UA(P) Act. It was only for the purpose of bail. Observation given by the Hon'b;e supreme court in Sudesh Kedia case should not be interpreted in other way. I have gone through the observation of Hon'ble Supreme court in Sudesh Kedia case in which Hon'ble supreme court observed that the observation is just concerned with bail of a person and not for other purpose. There is strong evidence against appellant that for smooth running of his coal transport business he provided levy to TPC top brass, he attended meetings and during raid when Rs.9,95,000/- was seized from his office cum house, he failed to make proper explanation before the CIO who made the seizure u/s 25(1) of the UA(P) Act on 09.10.2018 and informed to the designated authority on 10.10.2018 and designated authority vide order dated 11.10.2018 directed the CIO to retain the cash seized by CIO u/s 25(2) of the UA(P) Act and information was sent to the appellant to make his representation which was represented by appellant on 25.10.2018. By the said representation, designated authority after being dissatisfied confirmed the order by his order dated 07.12.2018. Hence, the plea taken by the appellant not appears to be sustainable.

Lastly ld counsel of appellant submitted that designated authority by his order dated 07.12.2018 confirmed the order of 27 Cr. Appeal (DB) No. 641 of 2024 CIO of seizure dated 09.10.2018 in which an amount of Rs.67,65,705/-, Hongkong dollar Rs.8,760, Singapore dollar 10000, china Yuan

Rs.52,00 and US dollar 1390/-. Even in his order of conformation he has not mentioned what amount was seized of appellant. The order of designated authority is completely vague and out of purview of reason to believe. Order passed by designated authority is unreasoned and not appears to be sustainable in the eye of law.

On the other hand Ld. special PP, NIA in his argument submitted that it is true that order not speaks clearly that how much amount was recovered and seized from house of Sudesh Kedia and others separately. But it is very much clear from perusal of the seizure list dated 09.10.2018, that raid was conducted in the house of Bipin Mishra, Sudesh Kedia, Vishnu Agarawal and Sonu Agarwal separately and Rs.9,95,000/- cash was recovered and seized from the house of Sudesh Kedia. The explanation submitted by appellant itself is not satisfying therefore only on that ground that order of designated authority dated 07.12.2018not ventilates clear amount the benefit should not be given to the appellant seeing the evidence against him. In this regard I have gone through the search list dated 09.10.2018 which is D-49(seven sheets), it appears that on 09.10.2018 (6.30 hours to 19.00 hours) search was conducted in the office cum residential premises of Sudesh Kedia situated at Ratu road, Ranchi. Cash (Rs.2000X 168, 500X1200, 200X37, 100X400, 50X92, 20X100, 10X500, 1000X61 and 500X50) of denomination total Rs.9,95,000/- and old currency note of Rs.86,000/- alongwith other articles were seized and copy was supplied to Sudesh Kedia. On 10th October, 2018 CIO Dipendra Kumar, Dy.S.P/ NIA/Jammu and CIO of the instant case sent one letter to joint secretary (CTCR Division), Ministry of Home Affairs, Govt of India, North Block, New Delhi with request to allow him to retain proceeds of terrorism as per section 25(5) of UA(P) Act in connection with NIA case no RC 06/2018/ NIA/DLI which is D-67 mentioned in the chargesheet. On perusal of letter of CIO to designated authority it appears that he mentioned recovery of cash to the tune of Rs.67,65,705/-, Hongkong dollar Rs.8,760/, Singapore dollar Rs.10,000/-, China Yuan Rs.5200 and US dollar Rs.1390/- and it was recovered from (a) Bipin Mishra Copy of search list Annexure-A

(b) office and presmises of Sudesh Kedia Ratu Road Ranchi Rs.9,95,000/- annexure B (c) residential premises of Vishnu agarwal near Booty chowk, Ranchi, Jharkhand cash amounting Rs.8,60,405/- copy of search list attached vide annexure C. (d) office premises of Vishnu Agarawal M/s Hindalco company, Deepatoli Ranchi cash amounting to Rs.40,700/- copy of seizure list annexure D (e) resdential premises of Sonu Agrwal situated in Durgapur, Pachhim Vardman cash amountining to Rs.7,91,000/- and Singapore dollar Rs.10,000/- were seized, search list Annexure-E. (f) office premises of Sonu Agarwal Son of Shyam Sundar Agarwal at Durgapur Pachim Vardman cash amounting Rs.3,72,750/- and Hongkong Dollar Rs.8760 with seizure list annexure-F was forwarded to designated authority. Accordingly, after going through the documents and the respective seizure list A to E, ld designated authority permitted CIO to retain the said seized amount R.67,65,705/- Hongkong dollar Rs.8760/-, Singapore dolar Rs.10,000/-, China Yuan Rs.52,00 and US dollar Rs.1390/- in his custody. Accordingly, Sudesh Kedia and other persons from whom recovery was made 28 Cr. Appeal (DB) No. 641 of 2024 were directed to submit their representation. Sudesh Kedia vide his representation received to Designated authority on 25.10.2018 explained his stand, which was not found prima facie satisfying to the designated authority. Accordingly he vide order dated 07.12.2018 confirmed the order of seizure made by C.I.O dated 09.10.2018 and communicated to him vide letter no.65 dated 10.12.2018. Therefore, in my view designated authority was provided sufficient documents before him to peruse alongwith

representation of Sudesh Kedia alongwith other evidences, documentary and oral and on that basis, he confirmed the order of CIO and found money (Rs.9,95,000) recovered from house of sudesh Kedia as proceeds of terrorism. Therefore, I do not found any force in the argument of ld counsel of appellant that order passed by designated authority is not reasoned order.

In this case CIO made search in the house and office of appellant on the basis of search warrant issued by this court u/s 93 Cr P.C on 06.10.2018 as there was evidence produced before the court that extortion/ levy amount so collected TPC was being used for purchase of weapons, recruitment of new cadres to expand TPC and training of activists to conduct anti national activities including terrorist activities. The CIO after reason to believe that Rs.9,95,000/- the attached property of Sudesh Kedia appears to be proceed of terrorism, obtained approval from Designated authority on 11.10.2018, which was confirmed latter on by designated authority vide order dated 07.12.2018. Therefore, the argument of appellant that there was no reason to believe not accepted.

Considering the above facts and circumstances and after going through the argument advanced by the ld. counsel of the appellant and opposite parties NIA and going through the documents produced in support of the appellant. In my considered view the appellant has failed to produce any valid documents in support of his claim that the amount Rs.9,95,000/- was withdrawn from his bank account and received from other sources and it was not proceed of terrorism. In my considered view, designated authority, MHA has rightly confirmed the order of seizure/attachment made by the Investigating officer of RC 06/2018/NIA/DlI in accordance with section 25(3) of the UA(P) Act 1967 dated 07/12/2018, the appeal fails, the order of designated authority dated 07/12/2018 is hereby confirmed. The appeal requires no interference accordingly the appeal is hereby dismissed u/s 25(6) of the UA(P) Act. Other petitions, if any filed in this connection by the appellant and O.P are also deemed to be disposed off.

60. The said order dated 27.03.2024 is under challenge by filing the present appeal under Section 28 of UAP Act, 1967.

61. This Court, in order to appreciate the argument advanced on behalf of the parties, deems it fit and proper to first refer the object and some statutory provisions regarding the scheme of the Act.

62. The U.A.(P) Act is now the primary anti-terrorist law in force in India. It was enacted by Parliament in 1967. The original Act was 29 Cr. Appeal (DB) No. 641 of 2024 targeted at unlawful activities of a general nature, and stringent provisions on terrorism were added only later through various amendments starting in 2004, following POTA's repeal. It was subsequently amended in 2008 in response to the Mumbai terrorist attacks. The amended UAPA incorporated the definition of a □terrorist act under Section 15 and created new terrorist offence. The most recent amendments were made in 2013, which dealt largely with the economic and financial aspects of terrorism. By virtue of Unlawful Activities (Prevention) of Amendment Act, 2012, the □terrorist act has been defined under U.A.(P) Act, 1967 under Section 2(k) which reads as under :-

> "□2(k) □terrorist act has the meaning assigned to it in section 15, and the expressions □terrorism and □terrorist shall be construed accordingly."

63. The terrorist organization has been defined under Section 2(m) which reads as under :-

> "□(m) □terrorist organisation means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed."

64. The unlawful activity has been defined under Section 2(o) which reads as under :-

> □(o) □unlawful activity , in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India.

65. It is evident from the definition of □terrorist organization that it means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed, meaning thereby, the applicability of penal offence as mandated under the provision of U.A.(P) Act, 1967 will only be applicable to a terrorist organization which has been listed in Schedule-I. 30 Cr. Appeal (DB) No. 641 of 2024

66. The terrorist gang means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act. If the definition of □terrorist organization as contained under Section 2(m) and □terrorist gang, as stipulated under the provision of Section 2(l) are read conjointly, it would be evident that if the organization has not been listed in Schedule as contained in U.A.(P) Act, 1967, even then the penal offence would be attracted against a gang which is concerned with, or involved in, terrorist act.

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

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

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

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

71. The terrorist act has been defined under Section 2(k) has the meaning assigned to it in Section 15. Section 15 contains the activities which will be treated to be a terrorist act.

72. As per the provision of Section 15, whoever has acted with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country would be covered under the definition of terrorist act. This provision, therefore, stipulates that any activity with an intent to strike terror or likely to strike terror will come under the fold of terrorist act if done to threaten the unity, integrity, security, sovereignty of India or economic security, which has been inserted by way of Act 3 of 2013 with effect from 01.02.2013. The main objective of the Act 1967 is to make powers available for dealing with activities directed against the integrity and sovereignty of India. As per Preamble, Act 1967 has been enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. Therefore, the aim and object of enactment of UAPA is also to provide for more effective prevention of certain unlawful activities.

73. It is evident from the contents of Section 17 of the Act, 1967 that whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist 32 Cr. Appeal (DB) No. 641 of 2024 gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, the same would be covered under the aforesaid provision.

74. Meaning thereby, raising of funds directly or indirectly to commit a terrorist act by a terrorist organization or by terrorist gang or by an individual terrorist, irrespective of the fact whether this was actually used for commission of such act, would be punishable under Section

17.

75. Sub-section (c) of Section 17 of the Act, 1967 enlarges the scope of the terrorist act since the same provides that any act for the benefit of an individual terrorist, terrorist gang or terrorist organisation even if not specifically covered under Section 15 shall also be construed as an offence.

76. Further it is evident from the Section 22 of the Act 1967, that where an offence under this Act has been committed by a company, every person (including promoters of the company) who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Meaning thereby, the main ingredient for attracting the aforesaid provision will be in the case when the offence has been committed by a company and in those circumstances, whoever is connected with the affairs of the company shall be deemed to be guilty of the offence.

77. Thus, it is evident from the scheme of the Act that Chapter-I deals with definition; Chapter-II deals with power conferred either to the Central or State Government to declare the association to be unlawful and other provisions are there; Chapter-III deals with offences and penalties; Chapter-IV deals with punishment for terrorist activities; Chapter-V deals with forfeiture of proceeds of terrorism or any property intended to be used for terrorism.

33 Cr. Appeal (DB) No. 641 of 2024 The words "any property intended to be used for terrorism"

> has been inserted in the statute by way of Act 3 of 2013 by way of Section 9 w.e.f. 01.02.2013.
>
> 78. Under Chapter-V, provision starts from Section 24 and ends at Section 34. The said provisions are being reproduced as under:
>
> "[24. Reference to proceeds of terrorism to include any property intended to be used for terrorism.--In this Chapter, unless the context otherwise requires, all references to "proceeds of terrorism"

shall include any property intended to be used for terrorism. 24A. Forfeiture of proceeds of terrorism.--(1) No person shall hold or be in possession of any proceeds of terrorism. (2) Proceeds of terrorism, whether held by a terrorist organisation or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

(3) Where proceedings have been commenced under this section, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to, or, the value of the proceeds of terrorism involved in the offence.]

25. Powers of investigating officer and Designated Authority and appeal against order of Designated Authority.--(1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has

reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

> Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given. (4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority. (5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that--
>
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>
> (a) it is intended to be used for the purposes of terrorism; or
>
> (b) it forms the whole or part of the resources of a terrorist organisation:
>
> Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.
>
> Explanation.--For the purposes of this sub-section, "cash" means--
>
> (a) coins or notes in any currency;
>
> (b) postal orders;
>
> (c) traveller's cheques;
>
> [(ca) credit or debit cards or cards that serve a similar purpose;]

(d) banker's drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

26. Court to order forfeiture of proceeds of terrorism.--Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

27. Issue of show cause notice before forfeiture of proceeds of terrorism.--(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter. (2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of property seized or attached,--

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the court.

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28. Appeal.--(1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated. (2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest

calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

29. Order of forfeiture not to Interfere with other punishments.-- The order of forfeiture made under this Chapter by the court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

30. Claims by third party.--(1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

> Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.
>
> (2) Where an appeal has been preferred under sub-section (6) of section 25 and any claimant or objector establishes that the property specified in the notice issued under section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

31. Powers of Designated Authority.--The Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a civil court required for making a full and fair inquiry into the matter before it.

32. Certain transfers to be null and void.--Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

33. Forfeiture of property of certain persons.--(1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter.

(2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

36 Cr. Appeal (DB) No. 641 of 2024 (3) Where any person is accused of an offence concerning high quality counterfeit Indian currency, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to the value of such high quality counterfeit Indian

currency involved in the offence including the face value of such currency which are not defined to be of high quality, but are part of the common seizure along with the high quality counterfeit Indian currency.

(4) Where a person is accused of an offence punishable under Chapter IV or Chapter VI, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to or the value of the proceeds of terrorism involved in the offence. (5) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the property, movable or immovable or both, belonging to him shall, where the trial under the Act cannot be concluded on account of the death of the accused or being declared a proclaimed offender or for any other reason, be confiscated on the basis of material evidence produced before the court.

34. Company to transfer shares to Government.--Where any share in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the court, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share."

79. Section 24 provides that unless the context otherwise requires, all references to "proceeds of terrorism" shall include any property intended to be used for terrorism.

Section 24-A has been inserted by Act 3 of 2013 by way of Section 10 w.e.f. 01.02.2013 wherein it has been provided that (1) no person shall hold or be in possession of any proceeds of terrorism; (2) proceeds of terrorism, whether held by a terrorist organisation or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter and; (3) where proceedings have been commenced under this section, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to, or, the value of the proceeds of terrorism involved in the offence.

37 Cr. Appeal (DB) No. 641 of 2024 Section 25 deals with powers of investigating officer and Designated Authority and appeal against order of Designated Authority wherein it has been provided that (1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned; (2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property; (3) The Designated Authority before whom the seized or

attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production; (4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority; (5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that--

(a) it is intended to be used for the purposes of terrorism; or (b) it forms the whole or part of the resources of a terrorist organization and; (6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

38 Cr. Appeal (DB) No. 641 of 2024 Section 26 provides that where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

Section 27 provides that (1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter; (2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism; (3) It shall be competent for the court to make an order in respect of property seized or attached,-- (a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale; (b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the court.

Section 28 provides that 1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated and; (2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if 39 Cr. Appeal (DB) No. 641 of 2024 it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

Section 29 provides that the order of forfeiture made under this Chapter by the court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

Section 20 provides that (1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection and; (2) Where an appeal has been preferred under sub- section (6) of section 25 and any claimant or objector establishes that the property specified in the notice issued under section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

Section 31 provides that the Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a civil court required for making a full and fair inquiry into the matter before it.

Section 32 provides that where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Section 33 provides that (1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the properties, movable or 40 Cr. Appeal (DB) No. 641 of 2024 immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter; (2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances; (3) Where any person is accused of an offence concerning high quality counterfeit Indian currency, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to the value of such high quality counterfeit Indian currency involved in the offence including the face value of such currency which are not defined to be of high quality, but are part of the common seizure along with the high quality counterfeit Indian currency; (4) Where a person is accused of an offence punishable under Chapter IV or Chapter VI, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to or the value of the proceeds of terrorism involved in the offence and; (5) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the property, movable or immovable or both, belonging to him shall, where the trial under the Act cannot be concluded on account of the death of the accused or being declared a proclaimed offender or for any other reason, be confiscated on the basis of material evidence produced before the court.

Section 34 provides that where any share in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the court, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share.

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80. The "proceeds of terrorism" also needs to be referred herein which as per the definition provided under Section 2(1)(g) means (i) all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found; or (ii) any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organization.

The explanation under this Section provides for the purposes of this Act, it is hereby declared that the expression "proceeds of terrorism" includes any property intended to be used for terrorism;

81. Section 24-A, thus, provides widening scope for forfeiture of proceeds of terrorism or any property intended to be used for terrorism, as such, it is not that only proceeds of terrorism which has come through the outcome of the terrorist activities will come under the fold of forfeiture but also such property which is intended to be used for terrorism.

82. It is further evident from the perusal of Section 24(2) that the proceeds of terrorism, whether held by a terrorist organization or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, meaning thereby, that it is not required that only in a case of prosecution of a person concerned or if such person has been convicted, provision for forfeiture of proceeds of terrorism is to be resorted to rather in absence of any prosecution or conviction also, steps for forfeiture of the proceeds of terrorism can be taken.

83. On the basis of such interpretation of the statutory provision and adverting to the factual aspect of the present case, it is evident that the emphasis which has been made by the learned counsel for the appellant on the observation made by the Hon'ble Apex Court in the 42 Cr. Appeal (DB) No. 641 of 2024 case of Sudesh Kedia vs. Union of India (supra) that the amount of Rs.9,95,000/- cannot be said to be proceeds of terrorism but this Court needs to refer herein that the judgment passed by the Court of law particularly the Hon'ble Apex Court is to be taken into consideration in entirety and it is not fit to pick one part of the judgment which suits the party rather judgment is to be considered in entirety that too if the judgment is having binding effect.

84. Further, this Court is conscious with the settled position of law that the Article 141 of the Constitution of India has the effect, in addition to investing the decisions of the Supreme Court with a binding force, of creating a constitutional organ whose declaration of law shall be binding on all

courts in the Republic.

85. In the case of Union of India v. Raghubir Singh (AIR 1989 SC 1933), the Hon'ble Supreme Court held that "the doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law.

86. The Hon'ble Apex Court at the same time has also emphasized in the case of Sukhwant Singh v. State of Punjab, 1995 (3) SCC 367, that observations from a judgement of the Supreme Court should not be read in isolation and it is improper for any court to take out a sentence from the judgment of this Court divorced from the context in which they are made, for ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

> "20. --- The observations from a judgment of this Court cannot be read in isolation and divorced from the context in which the same were made and it is improper for any court to take out a sentence from the judgment of this Court, divorced from the context in which it was given, and treat such an isolated sentence as the complete enunciation of law by this Court.----."

87. This Court after taking in to consideration of the aforesaid settled position of law has gone to the order passed by the Hon'ble Apex Court rendered in the case of Sudesh Kedia vs. Union of India (supra), at the time of consideration of the prayer for regular bail, has found that the observation has been made that the appellant has been 43 Cr. Appeal (DB) No. 641 of 2024 victimized and the amount so recovered cannot be said to be proceeds of terrorism.

The said observation has been made under the underlying object of the provision of Section 43-D(5) of the Act, 1967 wherein it has been provided that for the purpose of consideration of bail to be granted in favour of the accused person facing prosecution under the UAP Act the parameter as provided under Section 43-D(5) is to be followed, i.e., if the allegation is found to be prima facie true then the bail is to be rejected, however, if the allegation is found prima facie untrue, then concerned person is to granted bail.

88. The provision of Section 43-D (5) is the parameter for consideration of bail which has also been interpreted by the Hon'ble Apex Court in the case of National Investigation Agency v. Zahoor Ahmad Shah Watali [(2019) 5 SCC 1] wherein at paragraph 23 it has been held by interpreting the expression "prima facie true" as stipulated under Section 43D(5) of the Act, 1967 which would mean that the materials/evidence collated by the investigation agency in reference to the accusation against the accused concerned in the First Information Report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It has further been observed that it must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. The degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. For ready reference, paragraph 23 of the aforesaid judgment is required to be quoted herein which reads hereunder as :-

> "23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while 44 Cr. Appeal (DB) No. 641 of 2024 considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable 11 grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act...."

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

90. Thus, it evident that while considering the grant of bail under Section 43D(5) of the Act, 1967 the prima facie satisfaction faction of the Court is sufficient enough.

91. It needs to refer herein that Prima facie is a Latin term that translates to "at first sight" or "based on first impression." The phrase "prima facie" is used as an adjective or an adverb. As an adjective, prima facie describes a fact or presumption that is sufficient to be regarded as true unless otherwise disproved or rebutted. A prime example of the adjective use of prima facie would be "prima facie evidence."

45 Cr. Appeal (DB) No. 641 of 2024 When used as an adverb, prima facie means that it is regarded as true on first appearance but subject to additional examination or investigation. The main example of the adverb use would be "prima facie valid." Therefore, many uses of the phrase prima facie are generally subject to further evidence or information.

92. The order upon which reliance has been placed to release the seized amount, the observation so made by the Hon'ble Apex Court that sum of Rs.9,95,000/- cannot be said to be proceeds of terrorism based upon which the appellant has been directed to be released on bail, according to our considered view, the said observation of the Hon'ble Apex Court, will not be applicable herein so far as consideration which pertains to seizure of proceeds of terrorism or any property intended to be used for terrorism subject to compliance of the requirement as provided under Section 25(1)(2)(3) of the Act, 1967, reason being that the fact has already been clarified by the Hon'ble Apex Court as would be evident from paragraph-14 of the said order wherein it has been observed that the observation so made is 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.

93. Further the learned counsel for the appellant based his argument on the part of aforesaid judgment taking it in isolation in order to release the seized amount but it is settled connotation of law that the observations from a judgment of the Hon'ble Apex Court cannot be read in isolation and it must be taken into entirety and further will be improper for any court to take out a sentence from the judgment of this Court, divorced from the context in which it was given, and treat such an isolated sentence as the complete enunciation of law by the Hon'ble Apex Court.

94. It needs to refer herein that the consideration of bail is with respect to commission of offence which is altogether in different chapter while the subject matter of seizure of proceeds of terrorism is under Chapter-V of the Act,1967 having self-contained code since all the 46 Cr. Appeal (DB) No. 641 of 2024 provisions have been made right from the authority conferred to the investigating officer, the concept of Director General of Police, the affirmation is to be taken from the designated authority. The designated authority has also been defined under Section 2(1)(e). Thereafter, the appeal under Section 25(6) and again the appeal u/s 28 before the High Court to be heard by the Division Bench.

95. It further needs to refer herein that any order passed under UAP Act is amenable by preferring appeal under Section 21(4) of the NIA Act, 2008 but the provision to file appeal under Section 28 of the Act, 1967 only and not under Section 21(4) of the NIA Act, 2008, as such, procedure of forfeiture as under Chapter-V of the Act 1967 is a self-contained having no bearing with other issues like bail or trial.

96. It further needs to refer herein that since the forfeiture of money is also from those persons who has/have not been prosecuted or convicted which means that even without prosecution, the money can be forfeited but there must be reason to believe by the investigating officer as would be evident from Sections 24-A and 25 of the UAP Act.

97. Further, the material has been surfaced in course of investigation as would be evident from para 17.11 of the chargesheet which disclosed that appellant Sudesh Kedia (A-19) used to attend meetings with TPC leaders and had paid levy to TPC and village committee for smooth running of his business in Amrapali and Magadh collieries. Investigation has established that he used to pay Rs.200/ - (a)) tonne levy to TPC leader Akraman (A-14), Village Committee members namely Amlesh Das, Arvind Singh and Triveni Yadav. Sudesh Kedia used to send money from his current bank account for making payment to Village Committee and others and cash to Akramanji (A-

14) TPC. Therefore, it is brought on record by NIA that Sudesh Kedia (A-19) colluded with members of terrorist gang, TPC, and others and abetted/ promoted/ thereby strengthened TPC, in criminal conspiracy with members of the terrorist gang, with an intent to raise funds for the above said terrorist gang through co-accused Bindu 47 Cr. Appeal (DB) No. 641 of 2024 Ganjhu (A-5) Subhan Mian (A-7) Ajit Kumar (A-10), Prem Vikas Mantu Singh (A-11) and Akraman(A-14) for smooth running of his business He possessed cash amounting to Rs 9,95,000/- Indian currency, which was seized from his residential premises and demonetized Indian currency of face value of Rs. 86,000/- seized from his office cum residential premises.

98. Such material has come on the basis of examination of the witnesses at the stage of recording their statement under Section 161 Cr.P.C. The investigating officer is to take decision with respect to seizure of the property and in the present case, amount of Rs.9,95,000/- has been recovered from the house of the present appellant.

99. Further the requirement as stipulated in the Act 1967 is there that the investigating officer is to reach to the conclusion of reason to believe. When, we speak of "reason to believe" we mean a conclusion arrived at as to the existence of a fact. Of course, "reason to believe" does not amount to positive knowledge nor does it mean absolute certainty but it does convey conviction of the mind founded on evidence regarding the existence of a fact or the doing of an act.

100. Further, the expression "reason to believe" is not synonymous with subjective satisfaction of the Officer. The belief must be held in good faith, it cannot merely be a pretence and it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief.

101. It needs to refer herein that Section 26 of the IPC, defines the expression "reason to believe" as sufficient cause to believe a thing and not otherwise. In Joti Parshad v. State of Haryana 1993 Supp 2 SCC 497, referring to Section 26 of the IPC, the Hon'ble Apex Court has observed that:

> "5... "Reason to believe" is not the same thing as "suspicion"

or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe 48 Cr. Appeal (DB) No. 641 of 2024 the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:"26.

'Reason to believe'.-- A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing..."

102. Further use of the expression 'not otherwise', in Section 26 of the IPC, refers to contrary evidence or material which would not support the "reason to believe". The definition extends and puts a more stringent condition in the context of penal enactment as compared to the civil law. Clearly, "reason to believe" has to be distinguished and is not the same as grave suspicion. It refers to the reasons for the formation of the belief which must have a rational connection with or an element bearing on the formation of belief. The reason should not be extraneous or irrelevant for the purpose of the provision.

103. As explained by the Hon'ble Apex Court in A.S. Krishnan v. State of Kerala (2004)11 SCC 576 Section 26 of the IPC in substance means that the person must have "reason to believe" if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of things concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such that it creates a chain of probable reasoning leading to the conclusion or inference about the nature of the thing.

104. The "reason to believe" has been interpreted by the Hon'ble Apex Court in the case of Arvind Kejriwal v. Directorate Enforcement, 2024 SCC OnLine SC 1703 wherein the Hon'ble Apex Court while dealing with the provisions of PML Act has held as under:

> 29. On the necessity to satisfy the preconditions mentioned in Section 19(1) of the PML Act, we have quoted from the judgment of this Court in Padam Narain Aggarwal (supra) and also referred to and quoted from the Canadian judgment in Gifford (supra). Existence and validity of the "reasons to 49 Cr. Appeal (DB) No. 641 of 2024 believe" goes to the root of the power to arrest. The subjective opinion of the arresting officer must be founded and based upon fair and objective consideration of the material, as available with them on the date of arrest. On the reading of the "reasons to believe" the court must form the 'secondary opinion' on the validity of the exercise undertaken for compliance of Section 19(1) of the PML Act when the arrest was made. The "reasons to believe" that the person is guilty of an offence under the PML Act should be founded on the material in the form of documents and oral statements.
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> 30. Referring to the legal position, this Court in Dr. Partap Singh v. Director of Enforcement, Foreign Exchange Regulation Act27 has observed:

> "9. When an officer of the Enforcement Department proposes to act under Section 37 undoubtedly, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, may be obtained through Intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the officer to disclose his material on the mere allegation that there was no material before him on which his reason to believe can be grounded. The expression "reason to believe" is to be found in various statutes. We may take note of one such. Section 34 of Income Tax Act, 1922 inter alia provides that the Income Tax Officer must have "reason to believe" that the incomes, profits or gains chargeable to income tax have been underassessed, then alone he can take action under Section 34. In S. Narayanappa v. CIT the assessee challenged the action taken under Section 34 and amongst others it was contended on his behalf that the reasons which induced the Income Tax Officer to initiate proceedings under Section 34 were justiciable, and therefore, these reasons should have been communicated by the Income Tax Officer to the assessee before the assessment can be reopened. It was also submitted that the reasons must be sufficient for a prudent man to come to the conclusion that the income escaped assessment and that the Court can examine the sufficiency or adequacy of the reasons on which the Income Tax Officer has acted. Negativing all the limbs of the contention, this Court held that "if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue notice under Section 34."

The Court in terms held that whether these grounds are adequate or not is not a matter for the court to investigate.

10. The expression "reason to believe" is not synonymous with subjective satisfaction of the Officer. The belief must be held in good faith; it cannot merely be a pretence. In the same case, it was held that it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent the action of the Income Tax Officer in starting proceedings under Section 34 is open to challenge in a court of law. (See Calcutta Discount Co. Ltd. v. ITO). In R.S. Seth Gopikrishan Agarwal v. R.N. Sen, Assistant Collector of Customs this Court repelled the challenge to the validity of the 50 Cr. Appeal (DB) No. 641 of 2024 search of the premises of the appellant and the seizure of the documents found therein. The search was carried out under the authority of an authorisation issued under Rule 126(L)(2) of the Defence of India (Amendment) Rules, 1963 (Gold Control Rules) for search of the premises of the appellant. The validity of the authorisation was challenged on the ground of mala fides as also on the ground that the authorisation did not expressly employ the phrase 'reason to believe' occurring in Section 105 of the Customs Act. Negativing both the contentions, Subba Rao, C.J. speaking for the Court observed that the subject underlying Section 105 of the Customs Act which confers power for issuing authorisation for search of the premises and seizure of incriminating articles was to search for goods

liable to be confiscated or documents secreted in any place, which are relevant to any proceeding under the Act. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned in the section. The Court further observed that though under the section, the officer concerned need not give reasons if the existence of belief is questioned in any collateral proceedings he has to produce relevant evidence to sustain his belief. A shield against the abuse of power was found in the provision that the officer authorised to search has to send forthwith to the Collector of Customs a copy of any record made by him. Sub-section (2) of Section 37 of the Act takes care for this position inasmuch as that where an officer below the rank of the Director of Enforcement carried out the search, he must send a report to the Director of Enforcement. The last part of the submission does not commend to us because the file was produced before us and as stated earlier, the Officer issuing the search warrant had material which he rightly claimed to be adequate for forming the reasonable belief to issue the search warrant."

105. Thus, the reason to believe means that sufficient material is to be there for coming to the conclusion before taking steps for forfeiture. It is evident from the statutory provisions as stipulated in UAP Act which are referred hereinabove that the Investigating Officer of the case could exercise the power of seizure only if the offence appears to have been committed as mentioned in Chapter IV or Chapter VI of the UAP Act.

106. It is well settled that expression "reasons to believe" must be conditioned on the existence of tangible material and that reasons must have a live link with the formation of the belief. Reference in this regard may be made to the case of Radha Krishan Industries v. State of H.P.; reported in (2021) 6 SCC 771 wherein at para 52 it has been held by the Hon'ble Apex Court as under:--

> "52. We adopt the test of the existence of "tangible material". In this context, reference may be made to the decision of this Court in CIT v. Kelvinator of India Ltd. [CIT v. Kelvinator of India Ltd., S.H. Kapadia, J. (as the learned Chief Justice then was) while 51 Cr. Appeal (DB) No. 641 of 2024 considering the expression "reason to believe" in Section 147 of the Income Tax Act, 1961 that income chargeable to tax has escaped assessment inter alia by the omission or failure of the assessee to disclose fully and truly all material facts necessary for the assessment of that year, held that the power to reopen an assessment must be conditioned on the existence of "tangible material" and that "reasons must have a live link with the formation of the belief". This principle was followed subsequently in a two-Judge Bench decision in CIT v. Techspan (India) (P) Ltd. While adverting to these decisions we have noticed that Section 83 of the HPGST Act uses the expression "opinion" as distinguished from "reasons to believe". However, for the reasons that we have indicated earlier we are clearly of the view that the formation of the opinion must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the government revenue."

107. In the instant case from the chargesheet particularly para 17.11 it appears that there is ample material available on the record in order to fulfill the requirement of Section 25 of the UAP Act 1967.

108. Furthermore, Section 25 of the UAP Act requires that the Investigating Officer must have "reason to believe" that any property in relation to which an investigation is being conducted represents "proceeds of terrorism". "The reason to believe" must be on the basis of specific, reliable and relevant information.

109. Sub-section 1 of section 25 gives the power to the investigating officer with the prior approval in writing of the Director General of Police of the State to make an order for seizure of such property. The Director General of Police in terms of sub-section 1 of section 25 on being specified that the movable and immovable properties acquired by the petitioner was on account of the proceeds of terrorism had given his approval for attachment of the property. The act of the Director General of Police, therefore, cannot be said to be in contravention of section 25(1) of the Act.

So far as the later part of the provisions enumerated in section 25 of the Act is concerned, it is for the State authorities to follow as it is premature at this stage to come to a conclusion about any legality and/or illegality in view of the averments made in the second supplementary affidavit in which the State has resiled from the statement made in the first supplementary affidavit with respect to attachment of the properties. Section 25(1) further denotes that is for 52 Cr. Appeal (DB) No. 641 of 2024 the investigating officer to make an order for seizure of such property.

110. Thus, Section 25 of the UAPA is a complete scheme for dealing with seizure or attachment of proceeds of terrorism. No doubt if seized items are held to be 'proceeds of terrorism', the mandate of Section 25 of the UAPA would come into play. Reading of the whole of Section 25 of the UAPA conveys that the term "proceeds of terrorism" is used in the sense of some valuable movable or immovable, obviously acquired by the act of terrorism. Exhaustive provisions are made for the seizure and attachment of property, opportunity to make a representation, confirmation or rejection of the order of seizure or attachment and the right of appeal to the aggrieved person. The whole scheme conveys that it relates a valuable movable or immovable property which was acquired through the act of terrorism.

111. Herein, it is evident from the material collected during investigation based upon the statement of the witnesses, i.e., culpability has been shown of the present appellant and money has been recovered from his house.

112. It is evident that the witnesses have stated that the amount so far as it relates to levy was used to be paid in cash while other amounts are being paid through banking transactions, i.e., NEFT or RTGS.

113. The investigating officer based upon the aforesaid material has come to the conclusion on the basis of the principle of "reason to believe"

> and thereafter has sought for permission from the Director General of Police for forfeiture of the amount and accordingly, the order was passed which was placed before the designated authority for its affirmation and the designated authority has affirmed the same.

114. The question which has been raised that the order passed by the designated authority is cryptic and further submission has been made that the order passed by the appellate court under the appellate jurisdiction instead of remitting the matter before the designated 53 Cr. Appeal (DB) No. 641 of 2024 authority has improved the order by making reference of the material collected in course of investigation.

115. This Court, on the aforesaid ground, is of the view based upon the judgment as referred herein above and on the basis of the settled position of law that the investigating officer is to show "reason to believe" on the basis of the material collected in course of investigation having been taken note in the charge sheet and the same is referred herein above, he has taken decision for seizure of the money in order to maintain object of the Act 1967 particularly under Chapter-V thereof.

116. We have considered the order passed by the investigating officer and as per the charge sheet where material has been collected, it cannot be said that decision to come to the "reason to believe" is not available, rather ample evidences are there having been collected in course of investigation having been taken note and referred hereinabove.

117. Further, the designated authority has affirmed the seizure on the basis of material available during course of investigation as such the order of confirmation dated 07.12.2018 has been passed therefore, the same cannot be said to suffer from any perversity.

118. The question of order being cryptic in nature has been raised. The law is well settled that it is not required for the administrative authority to pass detailed order that too in the case of like nature where the accused is facing trial and as per the judgment passed by the Jammu and Kashmir High Court, detailed reason is not required to be passed and further as per the judgment passed in Fuleshwar Gope vs. Union of India and Ors. (supra) particularly at paragraph- 41, it has been laid down that the detailed reasoning is not required. For ready reference, paragraph-41 of the said judgment is being reproduced as under:

> 41. Having given our attention to the position of law as above, let us now turn to the instant facts. Simply put, the objection of the appellant arises from the short amount of time taken in recommending and granting sanction, against him which he claims to be sign of non-application of mind and lack of 54 Cr. Appeal (DB) No. 641 of 2024 independent review. We are unable to accept such a contention.

There is nothing on record to show that relevant material was not placed before the authorities. There is no question, as there rightly cannot be, on the competence of either of the authorities. Therefore, solely on the ground that the time taken was comparatively short or even that other orders were similarly worded cannot call the credibility of the sanction into question. As has been noted in Superintendent of Police (CBI) v. Deepak Chowdhary60, the authorities are required only to reach a prima facie satisfaction that the relevant facts, as gathered in the investigation would constitute the offence or not. In Mahesh G. Jain (supra) it has been held that the prosecution is to prove that a valid sanction has been granted. This needless to state, can only be done by adducing evidence at trial, where the defence in challenge thereto, will necessarily have to be given an

opportunity to question the same and put forward its case that the two essential requirements detailed above, have not been met. Furthermore, in Mohd. Iqbal M. Shaikh v. State of Maharashtra61, a case under the TADA, this Court was faced with a similar situation, the sanction wherein was granted by the competent authority, i.e., the Commissioner of Police, Greater Bombay on the same day that he received the papers in that regard. The contention of non-application of mind was not accepted by the Court observing that so long as the sanction was by a competent authority and after applying its mind to all materials and the same being reflected in the order, the sanction would hold to be valid. It was further held that when an order does not so indicate, the prosecution is entitled to adduce evidence aliunde of the person who granted the sanction and that would be sufficient compliance. The Court would then, look into such evidence to arrive at a conclusion as to whether application of mind was present or absent. In conclusion, we hold that independent review as well as application of mind are questions to be determined by way of evidence and as such should be raised at the stage of trial, so as to ensure that there is no undue delay in the proceedings reaching their logical and lawful conclusion on these grounds. As a result of the conclusion drawn by this Court on the first issue, it is also to be said that if the sanction is taken exception to, on the above grounds, it has to be raised at the earliest instance and not belatedly, however, law does not preclude the same from being challenged at a later stage. It is to be noted that the scheme of the UAPA does not house a provision such as Section 19 of the PC Act62 which protects proceedings having been initiated on the basis of sanctions which come to be questioned at a later point in time and, therefore, Courts ought to be careful in entertaining belated challenges. If it is raised belatedly, however, the Court seized of the matter, must consider the reasons for the delay prior to delving into the merits of such objections. This we may say so for the reason that belated challenges on these grounds cannot be allowed to act as roadblocks in trial or cannot be used as weapons in shirking away from convictions arising out of otherwise validly conducted prosecutions and trials.

An order passed by an administrative authority is not to be tested by way of judicial review on the same anvil as a judicial or quasi-judicial order. While it is imperative for the latter to record reasons for arriving at a particular decision, for the former it is sufficient to show that the authority passing such 55 Cr. Appeal (DB) No. 641 of 2024 order applied its mind to the relevant facts and materials [See : P.P. Sharma (supra); Navjot Sandhu (supra) and Mahesh G. Jain (supra)] That being the accepted position we find no infirmity in the order granting sanction against A-17. It is not incumbent upon such authority to record detailed reasons to support its conclusion and, as such, the orders challenged herein, cannot be faulted with on that ground.

119. It has also been questioned that the appellate court has got no jurisdiction to improve the order passed by the designated authority rather the appellate court ought to have remitted the matter before the designated authority.

120. The said argument is not acceptable reason being that the learned Special Judge has exercised the function for the first time in the judicial side while hearing the appeal under Sectio 25(6) of the Act, 1967. The learned Special Judge while exercising the jurisdiction of appeal is required to see all the incriminating material which has been collected in course of investigation which he has done which would be evident from bare perusal of the said order and the relevant paragraph of the said

order has already been referred herein.

121. The question of remitting back cannot be there since the order passed by the designated authority or the investigating officer have discharged their administrative function and the appellate court is having no power to remand the matter by quashing it rather the appellate court is to go into the fact in entirety for the purpose of consideration of affirmation of the decision taken by the designated authority or for revoking it.

122. Exactly similar view has been taken by the Jammu and Kashmir High Court in a case G.M. Bhat and Anr. vs. State of JK through SHO Police Station Udhampur and Ors (supra) wherein the special Judge while exercising the power of appeal under Section 25(6) has come to the conclusion that the designated authority has not discharged his duty properly; hence, the matter was remanded before the designated authority.

The order passed by the learned Special Judge under Section 25(6) of the Act, 1967 has been appealed before the Jammu and Kashmir High Court and there the view has been taken that it was 56 Cr. Appeal (DB) No. 641 of 2024 not proper for the learned Special Judge to remit the matter before the designated authority rather to pass the order on its own on the basis of the material available on record. For ready reference, relevant paragraph is being referred as under:

> 20. In the instant case, once the appellate authority has come to a conclusion that the order passed by the Designated Authority is without any reasoning, then the appellate authority ought to have exercised the power of giving a finding whether the seized property is proceeds of crime or not. According to the finding recorded by the appellate authority in the order of appeal, which is impugned in the instant petition, the said issue has not been adjudicated by the Designated authority while discharging the duty of considering the representation of the effected persons and exercising his power of confirming the seizure. As per the appellate authority, the designated authority must have recorded a finding as to how he is satisfied with the view taken by the investigating officer that the seized property/ items particularly items like passport, identity cards, cash memos, represent the proceeds of terrorism. The appellate authority was of the view that such onerous power and duty cannot be said to have been discharged by the designated authority by rejecting the explanation without assigning any reason, thereto. Once, the appellate authority was convinced that the order passed by the designated authority was bereft of any reasoning, then the appellate authority ought to have exercised the power under section 25 (6), by revoking such order of the designated authority and releasing the property. The appellate authority instead of acting in conformity with the provisions of Section 25(6), has remanded the case back to the designated authority for reconsideration and passing fresh order, which in a way tentamounts to extending the period of limitation of sixty days, provided under section 25(3) of the Unlawful Activities Prevention Act, 1967, which is not permissible under law.

123. Further it is evident from record that whatever has been stipulated under Section 24-A; 25(1)(2)(3) of the Act 1967 all the procedures have been followed. The same is also not being specifically raised, save and except, the order said to be cryptic in nature which we have already dealt with hereinabove.

124. Even the judgment where the "reason to believe" has been interpreted, applying the same in the facts and circumstances of the present case based upon the material collected in course of investigation, the reason to believe is there the objective satisfaction as has been arrived at by the authority concerned.

125. This Court, in view of the aforesaid discussion, is of the view that the order impugned needs no interference.

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126. Accordingly, the present criminal appeal stands dismissed.

127. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree,

(Navneet Kumar, J.)

(Navneet Kumar, J.)

High Court of Jharkhand, Ranchi
Dated: 28/01/2025
Saurabh/-
A.F.R.