

(2003) 03 BOM CK 0093

In the Bombay High Court

Case No : Criminal Appeal No's. 3 and 679 of 2002

Mohammad Gayasuddin

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Arms Act, 1959 — Section 25, 3
Bankers Books Evidence Act, 1891 — Section 4
Criminal Procedure Code, 1973 (CrPC) — Section 149, 154, 156(3), 162, 164
Evidence Act, 1872 — Section 24, 27, 30, 34
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 325
Prevention of Terrorism Act, 2002 — Section 18, 21(2), 22, 22(2), 22(3)
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 15, 15(1)
Terrorist and Disruptive Activities (Prevention) Amendment Act, 1993 — Section 15

Citation : (2003) BomCR(Cri) 1727 : (2003) CriLJ 2994

Hon'ble Judges : S.T. Kharche, J;D.D. Sinha, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; Bharti Dangre, Additional Public Prosecutor, for the Respondent

Judgement

D.D. Sinha, J.—Heard Mr. Manohar, learned counsel for the appellant and Mrs. Dangre, learned Additional Public Prosecutor for the respondent.

2. The appellant has preferred Criminal Appeal No. 679 of 2002 against the order, dated 16/11/2002, passed by Additional Sessions Judge, Gadchiroli, whereby the application moved by the petitioner for grant of bail in view of Section 167(2) of the Criminal Procedure Code/Section 439 of the Criminal Procedure Code came to be dismissed. The appellant filed another Criminal Appeal No. 3 of 2003 against the order, dated, 17/12/2002, whereby the applications made by the appellant below Exhs. 11, 12 and 5 came to be dismissed. Since both these orders deal with rejection of the bail application of the appellant, both these appeals were heard together and disposed of by the common order.

3. Mr. Manohar, learned counsel for the petitioner, contended that the appellant is a reputed businessman and also a trustee of a Medical Trust and was also given an award by the Income Tax Department for being the highest tax payer of the circle and as such he is a respectable citizen. The appellant is a victim at the hands of the investigating agency apart from the fact that there is no evidence, whatsoever, to connect the appellant with the crime.

4. Mr. Manohar, learned counsel for the appellant, contended that a report was lodged by one Bapu Reddy on 21/6/2002 with the Police Authorities alleging that he along with one Narendra Reddy was abducted by the members of Bakanna group on the gun point from Kaleshwar Unit in the forest of Navegaon. Bapu Reddy, who was threatened by Bakanna, to collect an amount of Rs. 9,84,000-00 from the Tendu Unit Contractors, was also compelled to write a chit/note. Narendra Reddy was sent with the said chit to the other Tendu Leaves Contractors. Bapu Reddy, however, in the meanwhile, managed to flee from the clutches of the Bakanna gang. In the said report, dated 2/6/2002, it was stated by Bapu Reddy that a truck of Tendu leaves was also burnt by a gang of Bakanna (Naxalite). On the basis of the said report, Police Station Officer, Sironcha, registered offences under Sections 363, 368, read with Sections 143, 147, 148, 149 and 325 of the Indian Penal Code, as well as Sections 3, 25 of the Arms Act vide Crime No. 27/2002. Mr. Manohar, learned counsel, contended that at a later point of time, the Police Authorities applied provisions of Sections 3(3), (5), 21(2) and 22(3) of the Prevention of Terrorists Act, 2002 (hereinafter referred to as "The POTA" for brevity).

5. Mr. Manohar, learned counsel, contended that the appellant Gayasuddin surrendered before the court on 6/11/2002. A charge-sheet in the case is filed on 2/12/2002.

6. Mr. Manohar, learned counsel for the appellant, contended that allegations against the appellant are that on 2/5/2002, the appellant attended a meeting with Bakanna (Naxalite) and as such he is guilty u/s 21(2) of the POTA. It is contended that Section 21(2) lays down that a person commits an offence if he arranges, manages, or assists in arranging or managing a meeting which he knows is to support terrorists organization, to further the activities of the terrorists organization, or to be addressed by a person who belongs or professes to belong to a terrorists organization. It is contended that in order to substantiate these allegations, the witnesses relied on by the prosecution are Tulsigiri and Pocham. It is contended that Tulsigiris statement is recorded on 9/6/2002. Tulsigiri, at the relevant time, was working as a Police Patil of Chittoor and in his statement he has stated that on 2/5/2002, the appellant along with other contractors came to the village and went to the house of this witness Tulsigiri and the witness was informed that the appellant and other Tendu Patta contractors wanted to discuss about the rate of plucking of Tendu leaves with the villagers and, therefore, this witness - Police Patil convened a meeting of villagers wherein 32 to 35 villagers were present. Mr. Manohar, learned counsel,

contended that the statement of Tulsigiri further reveals that when Tendu leaves contractors, including the appellant, were discussing with the villagers regarding rate for plucking of Tendu leaves, 20 to 25 Naxalites, armed with guns, arrived on the spot and Bakanna (Naxalite) thereafter discussed with the contractors and declared that the rate of Rs. 147/- shall be paid to the villagers for plucking the Tendu leaves.

7. Mr. Manohar, learned counsel, contended that another witness Pocham also disclosed the similar story in his statement and from the statements of these two witnesses, it is clear that the appellant along with other Tendu leaves contractors had neither arranged, nor had managed or assisted in arranging or managing a meeting, but the Naxalites intruded in the meeting held by the appellant and other Tendu leaves contractors with the villagers and as such it cannot, by any stretch of imagination, be said that the appellant-accused is prima facie guilty for the offence punishable under Sub-section (2) of Section 21 of the POTA.

8. Mr. Manohar, learned counsel further contended that it is alleged by the prosecution that the appellant is responsible for funding the terrorists organization and, therefore, has committed an offence under Sub-section (3) of Section 22 of the POTA. It is contended that under Sub-section (3) of Section 22, a person commits an offence if he provides money or other property, and knows or has reasonable cause to suspect that it will or may be used for the purpose of terrorism. It is contended that the prosecution, in order to substantiate this charge, placed reliance on a chit which, according to the prosecution, was seized at Perimili in the district of Andhra Pradesh. On the chit, there are certain calculations made which, according to the prosecution, reveal that an amount of Rs. 36,60,000-00 was paid by the appellant to the Naxalite group. It is contended by Mr. Manohar that the said entry and/or chit is inadmissible in evidence as it could be seen that u/s 34 of the Evidence Act, it is only the entries in the books of accounts regularly kept in the course of business are admissible. It is submitted that the chit produced by the prosecution is an inadmissible piece of evidence. It could further be seen that the said chit is seized in a different offence, and neither from the appellant, nor from any individual, but is claimed to have been lying in the jungle. It is contended that the author of the said chit is also not known, nor the chit reveals that any amount is paid by the present appellant to any Naxalite. It is contended that u/s 34 of the Evidence Act, only a Book of Accounts, which is regularly kept in the course of business is admissible and the loose sheets or loose papers cannot be termed as a book and as such the same is an inadmissible piece of evidence.

9. Mr. Manohar, learned counsel for the appellant, further submitted that apart from the said fact that the chit, which was produced by the prosecution, was not admissible, the prosecution has no evidence to show that the entries made in the said chit are trustworthy and the transaction has taken place in view of the recitals in the same chit and the appellant has parted with the amount as claimed by the prosecution and shown and described in the said chit. It is

contended that the prosecution has not at all produced any evidence to show that any payment of an amount as represented by the entries in the chit was made by the appellant and the same was received by a Naxalite group of Bakanna. In order to support the contention, reliance is placed by the learned counsel on the judgment of the Apex Court in case of Central Bureau of Investigation Vs. v.C. Shukla and Others, which holds that loose sheets are not admissible in evidence and the entries in such sheets are not even a prima facie evidence.

10. Mr. Manohar, learned counsel, states that according to the prosecution there is a confessional statement recorded by one of the co-accused Mr. Kamlakar, according to whom, certain amount was paid by the appellant to Bakanna through another co-accused Alimuddin. It is contended that the said confessional statement of the co-accused is not a substantive piece of evidence against the present appellant. In order to substantiate this contention, reliance is placed by the learned counsel for the appellant on the judgments of the Apex Court in (1) Kalpnath Rai Vs. State (through CBI) AIR 1998 SC 201, (2) Param Hans Yadav and Sadanand Tripathi Vs. State of Bihar and Others, , and (3) Nathu Vs. State of Uttar Pradesh, . Mr. Manohar, learned counsel, contended that in view of this legal position, there is no prima facie evidence to show that the present accused had provided any money or other property which he has reasonable belief or knowledge that the same would be used for any terrorists activities.

11. Mr. Manohar further states that mens rea is the important facet as far as the criminal law is concerned. It is submitted that mens rea is a state of mind and unless it is found that the accused has an intention to commit crime, he cannot be held guilty of committing the crime. In order to substantiate the contention, reliance is placed on the decision of the Supreme Court in Director of Enforcement Vs. M/s. MCTM. Corporation Pvt. Ltd. and others, . It is contended that it is not the case of the prosecution that the present appellant has intentionally aided or abetted the commission of any crime and as such the accused cannot be held responsible for any offence punishable under Sections 21(2), 22(3) or 3(3) of the POTA.

12. Mr. Manohar argued that other evidence relied upon by the prosecution is the telephone call made from the telephone which was in possession of Bakanna to the present appellant. It is submitted that the calls were alleged to have been made to the appellant on 4/5/2002, 6/5/2002, 9/5/2002, 18/5/2002 and 22/5/2002 and it could be seen that the duration of the calls is less than a minute, except the last call which was made on 22/5/2002. It is submitted that the calls, according to the prosecution, were made by Bakanna to the appellant. It is submitted that the appellant cannot have a control over the calls made on his telephone by any person. It is further submitted that on 25/5/2002, the appellant lodged a report with the Superintendent of Police, Aheri, and stated therein that the appellant had received threats from Bakanna and requested for protection. It is contended that no protection was granted to the appellant in

spite of his written complaint. On the other hand he is being falsely implicated in the crime in question and came to be arrested. It is contended that this is a case wherein a victim is being prosecuted as an accused and the accused are moving scot free. It is contended that the telephone number from where calls were received is in the name of another co-accused Kamlakar and, therefore, there is no evidence with the prosecution to show that the calls are made by Bakanna from the telephone number of Kamlakar. It is, therefore, contended that the evidence in respect of these calls alleged to have been made by Bakanna does not remotely connect the accused with the crime in question.

13. Mr. Manohar, learned counsel, contended that provisions of Section 50 of the POTA lay down that no court shall take cognizance of any offence under this Act without the previous sanction of the Central Government, or the State Government, as the case may be. It is submitted that in the present case, a charge-sheet has been filed by the prosecution on 2/12/2002 without there being any valid sanction from the appropriate Government. It could be further seen that the trial court, which is the Special Court under the POTA, has taken cognizance of the matter and it could be seen from Para 29 on internal page 26 of the trial courts order, wherein the Special Court has verified the charge-sheet and has registered a case as a special case under the provisions of POTA. It is submitted that the Court has to apply its mind before registering the case under the provisions of the POTA. The Court has taken cognizance of the matter having verified the charge-sheet and having registered the matter under the provisions of the POTA. It is submitted that in view of the express bar u/s 50, the trial court ought to have discharged the present appellant. It is contended that the question of sanction has to be raised at the earliest and the court has to decide the said question at the earlier juncture. In the present case after the Special Court took cognizance of the matter, the accused moved an application for discharge and raised an objection as to the validity of the prosecution in absence of a sanction from the competent authority, i.e., the State Government. The trial court ought to have considered the issue and in absence of a sanction, ought to have discharged the accused. It is contended that the question of sanction has to be raised at the earliest and it is held by the Bombay High Court in a decision in *The State Vs. Laldas and Others*, as also by the Apex Court in a decision in *Abdul Wahab Ansari Vs. State of Bihar* Another, . Mr. Manohar submits that it is categorically laid down in the judgment of the Apex Court in *Ajit Kumar Palit Vs. State of West Bengal*, that where a statute prescribes material on which alone a judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled. It is submitted that in the present case the court has taken a judicial notice of the charge-sheet filed by the prosecution and thereby had directed to register the case under the POTA. It is submitted that before registering the case under POTA, a Special Judge has to apply his mind as to whether the case falls under POTA or not and in a given situation, if the case does not fall under the provisions of POTA, the matter will have to be referred to the ordinary Criminal Court. It is submitted that the court having registered the

matter under POTA, there was an application of mind by the Special Judge and the Court has taken a judicial notice of the charge-sheet filed by the prosecution and as such the Court has taken cognizance of the matter. It is submitted that in view of Section 50 of the POTA, the cognizance taken by the trial court is bad and no prosecution could have been launched against the present appellant in absence of a sanction from the State Government. In order to substantiate this aspect of the matter, reliance is placed on the judgments of the Apex Court reported in *Ajit Kumar Palit Vs. State of West Bengal*, and *Dr. Anand R. Nerkar Vs. Smt. Rahimbi Shaikh Madar and others*, . Similarly, it is contended by the learned counsel for the appellant that so far as prosecution under Sub-section (5) of Section 3 of the POTA is concerned, there is no evidence with the prosecution other than the evidence referred to hereinabove which is inadequate to connect the appellant with the offence contemplated under Sub-section (5) of Section 3.

14. Mr. Manohar, learned counsel for the appellant, contended that as far as offences under Sections 363, 368, read with Sections 143, 147, 148, 149, 325 of the Indian Penal Code as well as Section 3/25 of the Arms Act are concerned, there is absolutely no evidence produced by the prosecution in order to connect the appellant with the crime in this regard. The report of Bapu Reddy, dated 2/6/2002, does not even remotely implicate the present appellant in any of the crimes under the provisions of the Indian Penal Code as well as Arms Act and, therefore, there is absolutely no evidence against the appellant produced by the prosecution in order to connect the appellant with the crimes alleged to have been committed by the appellant under the provisions of the Indian Penal Code and Arms Act.

15. Mrs. Dangre, learned Additional Public Prosecutor, on the other hand, contended that there is evidence available with the prosecution to establish a prima facie case against the appellant for the offences charged. It is contended that so far as Section 21(2) of the POTA is concerned, the prosecution is relying on the statements of Tulsigiri Somaiya (Police Patil), resident of Chittoor and Pocham Madavi, resident of Chittoor, Tq. Sironcha, as well as confessional statement of Kamlakar Olala.

16. The Additional Public Prosecutor stated that as far as statement of Tulsigiri is concerned, the same was recorded by the Investigating Officer on 9/6/2002. Recitals in the said statement reveal that on 2/5/2002, the present appellant along with his manager and two other Tendu Patta contractors along with their managers came to village Chittoor at about 8-00 p.m., in two jeeps. In the said statement, it is further stated that the present appellant asked the Police Patil, i.e., Tulsigiri, to collect the villagers for the purpose of discussion in relation to deciding the rate of plucking of Tendu leaves. Accordingly, Tulsigiri, Police Patil, called the villagers and about 30 to 32 villagers gathered at the place and engaged in discussion in respect of plucking of Tendu leaves (Pattas). In the meantime, one Kalim Sheikh, resident of Sironcha, came on the spot and

informed that nobody should leave the place as Bakkanna is going to visit the spot and fix the Tendu Pattas plucking rate. Thereafter, after a gap of about half an hour, 20 to 25 Naxalites with guns wearing bluish-green dresses arrived at the spot and the Head of the said group Bakanna introduced himself to the people gathered there. Bakanna took aside three Tendu Patta contractors including the present appellant and had a discussion with them for about half an hour and later on disclosed to the people of the villages who gathered there that the contractors will pay Rs. 147/-. Thereafter the contractors also disclosed that they will pay the said amount and the people should start work of plucking of Tendu Pattas.

17. The Additional Public Prosecutor further contended that as far as the statement of Pocham Madavi is concerned, he has stated in his statement that the present appellant had reached village Chittoor by a jeep and had asked Police Patil to collect people for having discussion in respect of fixing of rate of plucking of Tendu leaves. Police Patil summoned the people of village Chittoor. This witness Pocham Madavi also participated in the said meeting. He has further stated in the said statement that when the meeting was in progress, Naxalites visited the spot and they took aside the contractors and had a discussions with them for about half an hour. Thereafter the Naxalite leader Bakanna disclosed the rates fixed for plucking of Tendu Pattas.

18. Mrs. Dangre, learned Additional Public Prosecutor, contended that so far as the confessional statement of another co-accused Kamlakar Olala is concerned, the same was recorded by Additional Superintendent of Police on 10/6/2002 u/s 32 of the POTA, and has been forwarded to the Chief Judicial Magistrate, Gadchiroli. The person making confessional statement as well as original statement of confession was sent to the Chief Judicial Magistrate, Gadchiroli, within forty-eight hours as required u/s 32 of the POTA. The said statement was thereafter recorded by the Chief Judicial Magistrate as per the provisions of Section 32(3). Kamlakar Olala in his confessional statement had stated that around 1st May, 2002, Bakanna had called the present appellant and other Tendu Patta contractor Umesh Poreddiwar. Accordingly they had a meeting with Bakanna for about one hour and after fixing of Tendu Patta plucking rate, it was agreed at Rs. 147/-. Kamlakar in his confessional statement further stated that Bakanna told the contractor Poreddiwar and the present appellant Gayasuddin that they should pay a party fund which was agreed by the contractors. Kamlakar further stated that he visited Chittoor where present appellant also arrived by a jeep. Kamlakar further stated that he had gone to Hyderabad and had purchased one cordless phone which was connected to the telephone of his residence bearing no. 33212 and he had handed over one handset of the said cordless connection to Bakanna and it was used by Bakanna. In his confessional statement, Kamlakar further stated that on a message from Krishna to collect amount of Rs. 3,00,000-00 from the contractor - present appellant Gayasuddin, he visited Alapalli and Gayasuddin was not there. However, the amount of Rs. 3,00,000-00 was kept ready and it was delivered to Kamlakar by one Alim.

19. Ms. Dangre, learned APP, contended that the above two circumstances, i.e., the statement of Tulsigiri Pocham and confessional statement of Kamlakar, would reveal that the present appellant Gayasuddin had arranged for a meeting on 2/5/2002 and the meeting was to support the terrorists organization and further the activities of terrorists organization as it was in connivance with Bakanna which is clear from the confessional statement of Kamlakar. That, prior to the meeting at Chittoor, the present appellant Gayasuddin had a meeting with Bakanna and the rate was already decided. Thus, there is a prima facie evidence available against the appellant for the offence punishable u/s 22(2) of the POTA.

20. The Additional Public Prosecutor contended that for implicating the appellant Gayasuddin for an offence punishable u/s 22(3) of the POTA, the prosecution relies on the following material :-

a) Confessional statement of Kamlakar is recorded u/s 32 of the POTA. It is contended that Kamlakar in his confessional statement has stated that he had collected the amount of Rs. 3 lakhs from the depot of appellant Gayasuddin and the amount of Rs. 3 lakhs was handed over to him by one Alim at the instance of appellant.

b) Recovery of chit from dumps. The APP states that during the course of investigation, it was found that Umesh Poreddiwar was working as a contractor for plucking of Tendu leaves and on his involvement in the said offences, the Superintendent of Police, Alapalli, wrote to the Police Station, Teremalli about any record in respect of Umesh Poreddiwar in a mission "Anand-II" operated against Naxalites in the month of May, 2001. One dump was found and the material found in it demonstrates that Tendu Patta contractors had given financial assistance to the Naxalites. Therefore, in order to verify whether Umesh Poreddiwar or his relatives had entered into any transaction with Naxalites, the record of recovery of material from dump was called for by Additional Superintendent of Police, Aheri. The Recovery Panchanama, dated 29/7/2002 was perused which reveals a chit showing names of some Tendu Patta contractors and specifying the standard bag and the amount vide Document Nos. 8M and 8Q. The said chit as well as writing in the form of 8M and 8Q showing the amount to be collected from Tendu Patta units operating in the region written in Telgu language demonstrate that Tenddu Patta contractors operating unit-wise had supplied money to Naxalites. The said documents were taken into custody by the Additional Superintendent of Police, Aheri, from the Superintendent of Police, Perimalli. The Document 8M shows the name of present appellant Gayasuddin, against whom the standard bags 36,000 and amount of Rs. 36,06,000-00 are mentioned.

21. The Additional Public Prosecutor further contended that the present appellant was issued with the notice u/s 149 of the Criminal Procedure Code in the month of January, 2002 on allotment of a contract of plucking of Tendu Pattas, asking him to refrain from aiding any person who is associated with Peoples War Group (PWG), which was declared as a terrorists organization under the POTA. It was

further informed that if he suspects any person indulging in such activity, he should immediately report the said matter to the police authorities.

22. Mrs. Dangre, learned APP, therefore, contended that recovery of a chit from dump as well as confessional statement of Kamlakar reveal that the present appellant had provided money to the terrorists organization which was used for the purpose of terrorizing, as the Peoples Ward Group is declared as a terrorists organization under the POTA. It is further contended that in spite of notice u/s 149 of the Criminal Procedure Code issued in the month of January, 2002, the appellant, for the first time, reported the matter about having threats on 25/5/2002, i.e., after a long gap between the meeting, dated 2/5/2002 and, therefore, it is an afterthought. It is contended that from the above material, it can be seen that there is a prima facie evidence available against the appellant for the offence u/s 22(3) of the POTA.

23. Mrs. Dangre, learned APP, contended that so far as Sub-Section (3) of Section 3 of the POTA is concerned, the prosecution is relying on the following material :- a) In the confessional statement of Kamlakar, it is stated that Telephone No. 33212 was operated by Bakanna. In the list of telephone calls from this telephone number, calls have been detected to be made to Telephone No. 66356, which was used by the present appellant who was residing in the house of Sampoorna Singh and who had stated in his statement that he had given the telephone number to be used by the present appellant Gayasuddin. Thus, it can be seen that Bakanna had called the present appellant on several dates and the dates are very relevant as the phone calls have been detected from the months of March to May. b) Mrs. Dangre further contended that Sampoorna Singh is the resident of Alapallii. He had given the house on rent to the present appellant Gayasuddin and his Telephone bearing No. 66356 was also given to the present appellant Gayasuddin for his use. It is contended that all these facts are finding place in the statement of Sampoorna Singh. c) It is further contended by learned APP that in the statement of Somaiya Lachchu, he had stated that he was working as a carrier of messages for Naxalite leader and on one occasion, he had taken a message from commander Nootan to the appellant Gayasuddin and Gayasuddin on the said letter had come to visit the said commander Nootan and had a discussion with him for about an hour. It is, therefore, contended that the above referred material does show that the present appellant was associated with the Naxalite movement of PWG, which is operating in Gadchiroli district and has been declared as a terrorists organization and the present appellant had voluntarily aided and promoted the objects of the terrorists organization and is, therefore, liable to be prosecuted under Sub-section (3) of Section of the POTA.

24. The Additional Public Prosecutor lastly contended that it is, no doubt, true that there is a bar in the form of Section 50 of the POTA, which prevents the court from taking cognizance of any offence without previous sanction of the Central Government or the State Govt., as the case may be. However, the

question is what is the point of time when the court is said to have taken cognizance of offence. The word cognizance means to become aware of the facts and to take notice judiciously. As per the scheme formulated in the Criminal Procedure Code, the initiation of proceedings against the person commences on the cognizance of the offence by the Magistrate in any of the following three categories contemplated in Section 190 of the Criminal Procedure Code, which deals with initiation of proceedings, and they are as follows :-

- i) in respect of cognizable offence on a complaint by the aggrieved person;
- ii) on the police report in cognizable offence when the police has completed their investigation and come to the Magistrate for issuance of process;
- iii) when the Magistrate himself takes notice of the offence and issues process.

25. The act of cognizance requires an overact on the part of the Magistrates, who is taking cognizance of the offence. The police machinery in the form of a final report files a charge-sheet u/s 173 of the Criminal Procedure Code and the said act is the end of initiation of proceedings at the instance of police machinery which are initiated pursuant to filing of First Information Report u/s 154 of the Criminal Procedure Code. On filing of charge-sheet, the police/investigating agency declares that its investigation is complete and whatever has been found in the form of investigation, is submitted before the competent court in the form of a final report which also is known as a charge-sheet. Therefore, mere filing of a charge-sheet could not be said to be a part of judicial act, but it is only when there is an application of mind on the part of judicial authority, it could be said that the cognizance is taken on the report of the investigating officer. Therefore, it is not mandatory for the Magistrate to approve the police report and the Magistrate may even disagree with the police report and direct further investigation u/s 156(3) of the Criminal Procedure Code by the police machinery before it can take cognizance of an offence.

26. It is further contended that before it can be said that the Magistrate has taken cognizance of any offence u/s 190 of the Criminal Procedure Code, he must not have only applied his mind, but he must have done so for the purpose of proceeding in a particular way as indicated in subsequent provisions of Chapter XIV of the Criminal Procedure Code. This position of law is enumerated in the judgment of the Apex Court in *Jamuna Singh and Others Vs. Bhadaai Sah*, .

27. Mrs. Dangre, learned Additional Public Prosecutor, further contended that the act of taking cognizance is defined from filing of complaint, which can be seen from the judgment of the Apex Court in *Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another*, . Similar is the another judgment of the Apex Court in *Kishore Kumar Gyanchandani Vs. G.D. Mehrotra and Another*, . It is contended that in the present case the act of registering the case under POTA is merely an administrative act committed by the Additional Sessions Judge and there is no application of mind to the final report submitted by the police and as such it could not be said that he has taken cognizance of the offence under the

provisions of POTA. The requirement of Section 50 in obtaining sanction before cognizance is taken in the present case is not violated in absence of application of judicial mind by the Special Court and, therefore, the proceedings cannot be vitiated on this count.

28. Mrs. Dangre, learned Additional Public Prosecutor, contended that Section 32 of the POTA is analogous to Section 15 of the TADA and the validity of Section 15 of the TADA has been upheld by the Supreme Court in case of Kartarsingh Vs. State of Punjab reported in 1994 SCC 569. It is, therefore, contended that the confessional statement of Kamlakar is admissible and can be relied upon. It is contended that when the statement of Tulsigir Pocham coupled with confessional statement made by Kamlakar is considered, there is a prima facie case made out against the appellant for the offence under the provisions of the POTA.

29. Before we advent to the facts of the present case, we would like to express that necessity to evolve this legislation by the Central Government was felt because of the method of madness, which is adopted by the various terrorist Organizations to attack the symbol of power to destabilise sovereign nations. If it does not work, terrorists change strategy to attack religious symbols. Their sinister plan is to provoke the sectarian and communal violence. These are not fanatics on the loose, but pawns of mastermind bent upon to destabilise our country. Terrorists always have the advantage of surprise attack combined with suicidal zeal, which makes the job of security personnel extremely difficult, specially if the strategy is focussed to soft targets like helpless innocent children, women and citizens. To curb these terrorist violence, the new enactment "Prevention of Terrorism Act, 2002 (POTA) has been enacted. The object of enacting this Act from the statements and objects and reasons appended to Prevention of Terrorism Bill, 2002 reads thus :

"The country faces multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross border terrorist activities and insurgent groups in different parts of the country. Very often, organized crime and terrorist activities are closely inter-linked. Terrorism has now acquired global dimensions and has become a challenge for the entire world. The reach and methods adopted by the terrorist groups and organizations take advantage of modern means of communication and technology using high-tech facilities available in the form of communication systems, transport, sophisticated arms and various other means. This has enabled them to strike and create terror among people at will. The existing criminal justice system is not designed to deal with the types of heinous crimes with which the proposed law deals with.

30. In view of the situation, as stated above, it was felt necessary to enact a legislation for prevention of, and for dealing with, terrorist activities. However, sufficient safeguards are sought to be provided in the proposed law to prevent the possibility of its misuse.

31. In the instant case, the prosecution has filed charge-sheet against appellant Gayasuddin for the offences under Sections 3(3)(5), 21(2) and 22(3) of the Prevention of Terrorism Act in addition to the offences under the Indian Penal Code. Before we consider the material/evidence collected by the prosecution at this stage of proceedings whether adequate or inadequate for the purpose of holding prima facie case against appellant Gayasuddin for the offences charged under POTA, it would be appropriate to consider the ingredients of these provisions.

32. The "terrorist act" is defined in clause (g) of Section 2 of the Prevention of Terrorism Act, which reads thus :

"terrorist act has the meaning assigned to it in sub-section (1) of Section 3, and the expression "terrorist" shall be construed accordingly." Sub-section (1) of Section 3 of the Prevention of Terrorism Act reads thus :

"3) (1) Whoever - (a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (3 of 1967), or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act. Explanation -For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism."

33. While considering the provisions of sub-section (1) of Section 3, the prosecution must have evidence to show that person has engaged himself in the following activities :

- 1) he intended to threaten the unity, integrity, security or sovereignty of India,
- 2) he intended to strike terror in the people,

3) any section of people does any act or thing by using bombs, dynamites or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature,

4) similarly such person by any other means whatsoever in such a manner as to cause or likely to cause death of or injuries to any person or persons,

5) or such person causes loss or damage to or destruction of property or disruption of any supplies or services essential to the life of the community or cause damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their Agencies,

6) such person detains any person and threatens to kill or injure such person in order to compel Government or any other person to do or abstain from doing any act,

34. Clause (a) of sub-section (1) of Section 3, therefore, contemplates above referred situation and if there is evidence to show that the person is indulging in these activities, would be a person alleged to have committed a terrorist act.

35. Similarly clause (b) of sub-section (1) of Section 3 further provides that - (1) person who is or continues to be a member of the Association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 or (2) person voluntarily does an act aiding or promoting in any manner the objects of such Organization, (3) and such person is in possession of unlicensed firearms, ammunition, explosives or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes a significant damage to any property, commits a terrorist act.

36. The above referred provision provides various contingencies and if prosecution has evidence to show that the person is involved or carrying on one of the above referred activities, he can be said to commit a terrorist act. It is not necessary that person must be involved or carrying on or used to carry on all the activities referred to hereinabove. However, the fact remains that prosecution must possess the evidence to show that the person is involved or carrying on one of the activities referred to in clauses (a) and (b) of sub-section (1) of Section 3 or is involved or carrying on more than one of these activities before person can be said to have committed a terrorist act. Explanation to sub-section (1) of Section 3 reads thus :

"For the purposes of this Section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism."

Plain reading of the explanation contemplates that raising of funds in India for the purpose of terrorism, is an act, which is included in the definition of a "terrorist act" and the person shall be committing a terrorist act contemplated in sub-section (1) of Section 3 irrespective of the fact that he is not involved or

carrying out any of the activities mentioned in clause (a) and (b) of sub-section (1) of Section 3 of the Prevention of Terrorism Act. Sub-section (3) of Section 3 of the Prevention of Terrorism Act reads thus :

"3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life and shall also be liable to fine."

The ingredients of sub-section (3) of Section 3 of the Prevention of Terrorism Act will have to be considered on the backdrop of definition of terrorist act mentioned in sub-section (1) of Section 3 of the Prevention of Terrorism Act since all the circumstances and factors enumerated in sub-section (3) are ultimately related to the terrorist act and, therefore, under the scheme of sub-section (3) of Section 3, it needs to be considered accordingly. While applying ingredients of sub-section (3) of Section 3, the prosecution must have evidence to show that person has conspired to commit a terrorist act, attempted to commit terrorist act, or advocated, abetted and advised to commit terrorist act and incited or knowingly facilitated commission of terrorist act. Even at the cost of repetition, we would like to mention here that terrorist act consists of factors and circumstances shown and described in clauses (a) and (b) of sub-section (1) of Section 3 of the Prevention of Terrorism Act. Therefore, in that context, each factor mentioned in sub-section (3) of Section 3 will have to be considered and prosecution has to show that the person has conspired to commit the terrorist act as defined in clauses (a) and (b) of Section 3 or attempted to commit or advocated, abetted, advised or incited or knowingly facilitated commission of a terrorist act. Even the preparatory aspect, which is likely to be culminated into a terrorist act is made punishable accordingly under the provisions of sub-section (3) of Section 3 of Prevention of Terrorism Act.

37. On the backdrop of these legal provisions, it will be proper to scrutinise the prosecution evidence in order to decide as to whether material/evidence produced by the prosecution is sufficient to deny or grant bail to the appellant.

38. Another provision, which is relevant and attracted according to prosecution is Section 21(2) of the Prevention of Terrorism Act. In order to understand the scheme of this Section, it will be proper to reproduce whole of Section 21, which reads thus :

"21) Offence relating to support given to a terrorist organization -

(1) A person commits an offence if -

(a) he invites support for a terrorist organization, and

(b) the support is not, or is not restricted to, the provisions of money or other property within the meaning of Section 22.

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting, which he knows is -

(a) to support a terrorist organization, or

(b) to further the activities of a terrorist organization, or

c) to be addressed by a person who belongs or professes to belong to a terrorist organization.

(3) A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organization or to further its activities.

(4) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding ten years or with fine or with both. Explanation - For the purpose of this section, the expression "meeting" means a meeting of three or more person whether or not the public are admitted."

In the present case we are concerned with sub-section (2) of Section 21 only. The title of Section 21 clearly contemplates that this Section relates to offences pertaining to support given by the individual or anybody for that matter to the terrorist organization. What is meant by terrorist organization is defined in Chapter III of the Prevention of Terrorism Act. Sub-section (1) of Section 18 contemplates that for the purposes of this Act, an organization is a terrorist organization if -

(a) it is listed in the Schedule or, (b) it operates under the same name as an organization listed in that Schedule. Sub-section (2) of Section 18 contemplates that the Central Government is vested with the power, which may by order in the Official Gazette - (a) add an organization to the Schedule, (b) remove an organization from that Schedule, (c) amend that Schedule in some other way. As far as sub-sections (3) and (4) of Section 18 are concerned, we are not much concerned in the controversy in issue.

39. The purport of Section 21 of the Prevention of Terrorism Act needs to be construed on the backdrop of the provisions of Chapter III and Section 18. It must be noted that Schedule contemplated u/s 18 gives names of various Organizations declared by the Central Government as terrorist Organizations and anybody giving support to such Organizations, will be a person or body of persons committing an offence u/s 21. With this background, let us analyse the provisions of sub-section (2) of Section 21 of the Prevention of Terrorism Act, which is applied by the prosecution on the appellant.

40. Plain reading of the said provision makes it clear that in order to attract this provision, prosecution needs to have an evidence to show that a person has arranged, managed or assisted in arranging or managing a meeting, which he knew is -

1) to support a terrorist organization, which means an organization or one of the organizations enlisted in Schedule contemplated u/s 18 of the Prevention of

Terrorism Act

2) to further the activities of a terrorist organization enlisted in the Schedule,

3) the said meeting is addressed by a person who belongs or professes to belong to a terrorist organization. On the backdrop of above ingredients of sub-section (2) of Section 21, it will be proper to scrutinise the evidence available with prosecution.

41. Now let us analyse the ingredients of sub-section (3) of Section 22 of the Prevention of Terrorism Act. However, for better understanding of the provisions of this Section, entire Section is reproduced below, which reads thus :

"22) Fund raising for a terrorist organization to be an offence -

1) A person commits an offence if he -

(a) invites another to provide money or other property; and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(2) A person commits an offence if he -

(a) receives money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism,

(3) A person commits an offence if he -

(a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

(5) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding fourteen years, or with fine or with both."

The title of Section 22 is totally unambiguous and contemplates that fund raising for a terrorist organization is an offence under this Section. In the instant proceedings, we are only concerned with sub-section (3) of Section 22. Before we consider purport of sub-section (3) of Section 22, we feel it necessary to express that once again analogous situation to that of Section 21 is emerging from the provisions of Section 22 of Prevention of Terrorism Act, where raising fund for terrorist organization means organization, which is enlisted in Schedule of Section 18, is made an offence under this provision. Sub-section (3) of Section

22 contemplates that a person commits an offence if he ?

(1) provides money or other property, and

(2) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism. The word terrorism cannot be construed in isolation and will have to be considered as per scheme of Section 22 and, therefore, will have to be given a requisite meaning, i.e. terrorism created by such terrorist organizations, which are enlisted in Schedule of Section 18 of the Prevention of Terrorism Act.

42. On the backdrop of these provisions, prosecution must have evidence to show that a person has provided money or property or knows or has reasonable cause to suspect that such money or property will or may be used for the purposes of terrorism by such organization. The sum and substance of this provision is that prosecution must show in order to attract the provisions of sub-section (3) of Section 22 of the Prevention of Terrorism Act that the person has provided money or property to the terrorist organization and/or at least he knew or had reasonable cause to suspect that it may be used for terrorism either by the organization or by individual, who is member of such terrorist organization. It is no doubt true that explanation to sub-section (1) of Section 3 provides that raising fund intended for the purpose of terrorism either by the terrorist organization or by individual is a terrorist act and is punishable u/s 3 of the Prevention of Terrorism Act. However, offence u/s 22 is in respect of fund raising for the terrorist organization and, therefore, it will have to be viewed and construed accordingly. With these ingredients in mind, we will have to scrutinise the prosecution evidence brought on record by the prosecution.

43. Another provision, i.e., Sub-section (5) of Section 3 of the POTA needs consideration, since the appellant is also prosecuted under this Section. For our convenience and for ready reference, the same is reproduced below :-

"Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both. Explanation - For the purposes of this sub- section, "terrorist organization" means an organization which is concerned with or involved in terrorism."

The plain reading of this Section contemplates that before imposing a criminal liability under this Section, the person has to be the member of a terrorist gang or a terrorist organization and that organization should be involved in terrorist act as contemplated under Clause (a) of Sub-section (1) of Section 3 of POTA. Therefore, the prosecution must possess evidence to show that the accused is a member of terrorist gang or organization which is involved in terrorist act. In absence of such evidence, no criminal liability can be fastened on a person prosecuted under this provision. It is, no doubt, true that explanation to Sub-section (5) of Section 3 of POTA carves out a different definition of terrorist

organisation distinct than what is contemplated u/s 18 of Chapter-III of POTA. In view of the explanation to Sub-section (5) of Section 3, terrorist organization means an organization which is concerned with or involved in terrorism. This terrorist organisation need not necessarily be the one contemplated u/s 18 of POTA. For the purpose of Sub-section (5) of Section 3 of POTA, the definition of terrorist organization means any organization which is concerned with and involved in terrorism. The definition of terrorist organization contemplated in the explanation to Sub-section (5) of Section 3 has a restrictive meaning and is relevant only in the context of provision of Sub-section (5) of Section 3 of the POTA. 44. Similarly, important legal provision, which is of a vital importance, is Section 32 of the POTA. In order to appreciate the scheme of the Section, we have reproduced the whole Section, which reads thus :-

"32. Certain confessions made to Police Officers to be taken into consideration .-

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of such sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1) explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, "such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody."

This provision is analogous to Section 15 of the TADA, 1987 as it stood before Amending Act 43 of 1993. For the convenience of considering the purport of these two Sections, we are reproducing the relevant provisions of Section 15 as

it stood then, which reads thus :-

"Section 15 - Certain confessions made to Police Officers to be taken into consideration - (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this Section, a confession made by a person before a Police Officer not lower in rank than a Superintendent of Police and recorded by such Police Officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds of images can be reproduced, shall be admissible in the trial of such person for the offence under this Act or Rules made thereunder."

45. In the year 1993, by the Amending Act 43 of 1993, Section 15 is amended and the following words are inserted in the main Section 15 after the words "in the trial of such person; co-accused, abettor or conspirator". Similarly, by the same Amending Act, proviso is also added which reads thus :-

"Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused."

46. While considering the purport of Section 32 of the POTA, there are two vital aspects which need consideration - one is whether the regular Rules relating to confession under the Indian Evidence Act, 1872 vide Sections 24 to 27 as well as Sections 162, 164, 281 and 463 of the Criminal Procedure Code, which have a bearing on the question of recording of statement/confession of a person whether stands excluded, and second whether the confession u/s 32 of the POTA made by a person is admissible only against such person or is also admissible in the trial of such person, or co-accused, abettor, or conspirator for an offence under this Act and Rules framed thereunder:

Provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

47. The plain reading of provisions of Section 32 of the POTA makes it clear that Sections 162, 164, 281 and 463 of Criminal Procedure Code, which have a bearing on the question of recording statement/confession of a person and Sections 24 to 30 of the Evidence Act which deal with various aspects of confession of an accused stand excluded - vis-a-vis Sub-section (1) of Section 32 of the POTA, and cannot be called in aid to invalidate recording of confession of an accused by a Police Officer of the specified rank and /or its admissibility in the trial of such person. It must be made clear that non-obstinate clause in Section 32(1) of the POTA does not exclude application of all the provisions of Criminal Procedure Code and the Indian Evidence Act in the trial of offences under POTA. A similar question fell for consideration before the Apex Court in respect of Section 15(1) in case of State of Tamilnadu Vs. Nalini (1999 Criminal Law Journal 3324) and in Para 680, Their Lordships of the Apex Court observed thus :-

"The difference between Section 30 of the Indian Evidence Act and Section 15(1)

of the TADA Act may also be noticed here. Whereas the former provision requires that the maker of the confession and others should be tried jointly for the same offence, the latter provision does not require that joint trial should be for the same offence. Another point of distinction is that u/s 30 of the Evidence Act, the Court is given discretion to take into consideration the confession against the maker as well as against those who are being tried jointly for the same offence, but Section 15(1) of TADA Act mandates that confession of an accused recorded thereunder shall be admissible in the trial of the maker of confession or co-accused, abettor or conspirator, provided the co-accused, abettor or conspirator is charged and tried with the accused in the same case. Both Section 30 of the Evidence Act as well as Section 15 of the TADA Act require joint trial of the accused making confession and co-accused, abettor or conspirator."

Similarly, another relevant observations of Their Lordships in case of Nalini are in Para 681 of the Judgment which read thus :-

"Having excluded the application of Sections 24 to 30 of the Evidence Act to a confession recorded u/s 15(1) of the TADA Act, a self-contained scheme is incorporated therein for recording confession of an accused and its admissibility in his trial with co-accused, abettor or conspirator for offences under the TADA Act or the rules made thereunder or any other offence under any other law which can jointly be tried with the offence with which he is charged at the same trial. There is thus no room to import the requirements of Section 30 of the Evidence Act in Section 15 of the TADA Act."

In the instant case, Section 32 also provides a self-contained scheme for recording of confession of an accused by the specific police officer and its admissibility in trial of such a person, i.e., the maker of the confession and, therefore, in view of above referred observations of the Apex Court, there is no room to import the requirements of Section 30 of the Evidence Act in Section 32 of the POTA.

48. Lastly, the observations made by the Apex Court in Para 694 of Nalinis case are also very relevant and read thus:-

"I have already pointed out the difference in the phraseology of S. 15 of the TADA Act. The Parliament used the expression "shall be admissible in the trial of such person or co-accused, abettor or conspirator" in S. 15 which is different from the language employed in S. 30 of the Evidence Act which says that the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. It has to be presumed that the Parliament was aware of the interpretation placed by the Courts including Privy Council and Supreme Court on S. 30 of the Evidence Act but chose to frame S. 15 differently obviously intending to avoid the meaning given to the phrase the Court may take into consideration such confession as against such other person.... used in S. 30 of the Evidence Act. On the language of S. 15(1), it is clear that the intention of the Parliament is to make the confession of

an accused substantive evidence both against the accused as well as the co-accused."

49. On the backdrop of the above referred law laid down by the Apex Court in Nalinis case in respect of the analogous provisions of the TADA Act, we can safely conclude that in the phraseology used in Section 32(1) of the POTA, the Parliament used the expression "shall be admissible in trial of such person" which is different from the language used in Section 30 of the Act. From the language of Section 32(1), it is clear that the intention of the Parliament is to make such confession of the accused substantive evidence in the trial of such accused only. This differentia in respect of admissibility of confession is based on the intention of the Parliament as well as the language used in Sub-section (1) of Section 30 of the POTA, which clearly demonstrates that confession made by a person before the specific police officer shall be admissible in trial of such person for an offence under this Act and Rules made thereunder. While dealing with the case in hand, we will have to keep this aspect in mind while considering the grant or refusal of bail to the appellant.

50. Similarly, another important aspect, which we have to consider, is whether the confession u/s 32(1) is a substantive piece of evidence against the co-accused. This proposition of law necessarily would depend upon two things. Firstly whether under the scheme and in view of language of Section 32(1), keeping in view the legislative intent, such confession is admissible in trial of such person for the offence under this Act and Rules made thereunder, or the same is admissible against co-accused, abettor or conspirator as in the case of amended Section 15(1) of the TADA Act. Secondly, it will also have to be considered as to whether confession contemplated u/s 32(1) of POTA is a substantive evidence against co-accused, abettor and conspirator as in the case of amended Section 15(1) of the TADA Act.

51. In view of Nalinis case, we have already held keeping in view the phraseology used in Section 32(1) of the POTA, legislative intent of the Parliament in using the words "shall be admissible in trial of such person only". Therefore, it can safely be inferred that such confession made by a person contemplated u/s 32(1) of POTA is admissible in law in the trial of such person and, therefore, by necessary implication, it cannot be admissible against co-accused, abettor, conspirator, who is being tried jointly for the same offence.

52. In view of the above legal position, it further emerges that if the confession u/s 32(1) of POTA is admissible in law in the trial of such person, by necessary implication, it cannot be a substantive piece of evidence against the co-accused, abettor or conspirator, who is being tried jointly for the same offences.

53. Another important as well as relevant provision, which needs our consideration, is Section 50 of the POTA. For the purpose of convenience and ready reference, the same is incorporated below :- "50.Cognizance of offences.- No Court shall take cognizance of any offence under this Act without the previous

sanction of the Central Government or as the case be, the State Government." This provision is analogous to provisions of Section 20-A of the TADA Act, 1987 with the only difference that under TADA Act, 1987, for taking cognizance, previous sanction of Inspector General of Police or as the case may be, the Commissioner of Police, was mandatory. However, in POTA, previous sanction of the Central Govt., or State Govt., is required.

54. The law is well settled when a statute requires a sanction of a competent authority as a pre-condition for taking cognizance by the Court and the relevant sanction order is produced which itself indicates that the material is considered and then after applying mind, the sanctioning authority accorded sanction, the same would be sufficient to hold that there is a valid sanction. Besides, when the sanction order itself is not sufficient to indicate that the sanctioning authority applied his mind, then the prosecution is entitled to adduce evidence aliunde of the person who accorded sanction and that would be a sufficient compliance. After going through the said evidence, the court can come to the conclusion that the relevant materials were considered by the sanctioning authority and it is thereafter he accorded sanction in question.

55. So far as Section 50 is concerned, sanction is a condition precedent for taking cognizance, since the Section opens with the non-obstante clause. Taking cognizance is the act which the Special Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for former. We must bear in mind that sanction is not granted to the Special Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the person arraigned in the report. Thus, a valid sanction is sine quo non for enabling the prosecuting agency to approach the court to enable the court to take cognizance of the offence under POTA as disclosed in the report. The corollary is that if there was no valid sanction, the designated court gets no jurisdiction to try a case against any person mentioned in the report, as the court is forbidden from taking cognizance of the offence without such sanction. If the Special Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will be without jurisdiction. This, in fact, is the legal position which emerges from the provisions of Section 50 of the POTA.

56. Now, another important aspect, which needs our consideration, is which act constitutes taking of cognizance by the Court. In order to consider this proposition, relevant observations in some of the judgments of the Apex Court are the guiding principles which would enable us to reach the conclusion in this regard.

57. In case of Anil Saran Vs. State of Bihar and another, , in Para 4 the Apex Court has observed thus :-

"We find no force in the contention. Thus the Code defines "cognizable offence" and non-cognizable offence, the word cognizance has not been defined in the Code. But it is now settled law that the Court takes cognizance of the offence and not the offender. As soon as the Magistrate applies his judicial mind to the offence stated in the complaint or the police report etc., cognizance is said to be taken. Cognizance of the offence takes place when the Magistrate takes judicial notice of the offence. Whether the Magistrate has taken cognizance of offence on a complaint or on a police report or upon information of a person other than the police officer, depends upon further (sic) taken pursuant thereto and the attending circumstances of the particular case including the mode in which case is sought to be dealt with or the nature of the action taken by the Magistrate. Under sub-section (1) of Section 190 of the Code, any Magistrate may take cognizance of an offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

Similarly, in case of *Ajit Kumar Palit Vs. State of West Bengal*, of the Judgment, Their Lordships of the Apex Court have observed thus :-

"The provisions of S. 190(1) being obviously, and on its own terms, inapplicable, the next question to be considered is whether it is the requirement of any principle of general jurisprudence that there should be some additional material to entitle the Court to take cognizance of the offence. The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means - become aware of and when used with reference to a Court or Judge, to take notice of judicially. It was stated in *Gopal Marwari and Others Vs. Emperor*, by the learned Judges of the Patna High Court in a passage quoted with approval by this Court in *R.R. Chari Vs. The State of Uttar Pradesh*, that the word cognizance was used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in *Emperor v. Sourindra Mohan*, ILR 37 CAI 412 , "taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence." Where the statute prescribes the materials on which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled. Thus, a sessions judge cannot exercise that original jurisdiction which magistrates specified in Section 190(1) can, but the material on which alone he can apply his judicial mind and proceed under the Code is an order of commitment. But statutory provision apart, there is no set material which must exist before the judicial mind can operate. It appears to us therefore that as soon as a special judge receives the orders of allotment of the case passed by the State Government it becomes vested with jurisdiction to try the case and when it receives the record from the Government it can apply its mind."

The law laid down by the Apex Court in the above referred judgments clearly demonstrates that taking of cognizance merely means, become aware of and when used with reference to a Court or Judge, to take notice of judicially. Similarly the word "cognizance" used in the Code indicates the point when the Magistrate or a Judge takes judicial notice of an offence.

58. The law laid down by the Apex Court in case of State of West Bengal and another Vs. Mohammed Khalid and others, also throws light on the issue in question. Their Lordships of the Supreme Court in Para 28 have observed thus :-

"A cognizance which is barred cannot be overcome by a sanction. The Court must look at the validity of sanction. In this case, the sanction was never produced before the Court. On the contrary, the Court took cognizance automatically. The specific case of these respondents before the High Court was, there was no such sanction. The burden that the sanction was granted in relation to the facts constituting the offence has not been discharged. While taking cognizance perusal of sanction is not mentioned. This order is conclusive."

The other relevant observations of the Apex Court are made by Their Lordships in Para 41 of the Judgment, which read thus :-

"Similarly, when Section 20A(2) of TADA makes sanction necessary for taking cognizance - is only to prevent abuse of power by authorities concerned. It requires to be noted that this provision of Section 20A came to be inserted by Act 43 of 1993. Then, the question is as to the meaning of taking cognizance. Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence of taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word "cognizance" indicates the point when a Magistrate or a judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

In case of State of West Bengal Vs. Mohd. Khalid, the Apex Court has, in no uncertain terms, mandated that the word "cognizance" indicates the point when the Magistrate or a Judge takes judicial notice of an offence, and is different from initiation of proceedings. Order of sanction is the condition precedent to the initiation of proceedings by the Magistrate or the Judge and the cognizance is always taken of a case and not of a person. If on the backdrop of these legal propositions emerging from the Judgments of the Apex Court and in view of provisions of Section 50 of the POTA, it will be necessary for us to consider the material on record in order to see whether the Court in the instant case has taken cognizance of the offence or not under this Act without previous sanction of the appropriate Government.

59. In order to appreciate the case of the prosecution as well as the prosecution evidence in respect of chit/note seized at Perimili in Andhra Pradesh, wherein there are certain calculations made, is admissible in the evidence in view of the provisions of Section 34 of the Evidence Act. The observations of the Apex Court in case of Central Bureau of Investigation Vs. v.C. Shukla and Others, are very relevant. Their Lordships of the Apex Court in Para 17 observed thus :-

"17.From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be show that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability."

It is thus seen that while the first part of the Section speaks of relevancy of entry as evidence, the second part speaks in a negative way of its evidentiary value for charging a person with liability. Similarly, Their Lordships in Para 34 have observed thus :-

"34.The rationale behind admissibility of parties books of account as evidence is that the regularity of habit, the difficulty of falsification and the fair certainty of ultimate detection given them in a sufficient degree a probability of trustworthiness (Wigmore on evidence § 1546). Since, however, an element of self interest and partisanship of the entrant to make a person - behind whose back and without whose knowledge the entry is made liable cannot be ruled out the additional safeguard of insistence upon other independent evidence to fasten him with such liability, has been provided for in Section 34 by incorporating the words such statements shall not alone be sufficient to charge any person with liability.

In para 35, Their Lordships have observed thus :-

"35.The probative value of the liability created by an entry in books of account came up for consideration in Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., . That case arose out of a suit filed by Gauhati Bank against Chandradhar (the appellant therein) for recovery of a loan of Rs. 40,000/-. In defence he contended, inter alia, that no loan was taken. To substantiate their claim the Bank solely relied upon certified copy of the accounts maintained by them u/s 4 of the Bankers Book Evidence Act, 1891 and contended that certified copies became prima facie evidence of the existence of the original entries in the accounts and were admissible to prove the payment of loan given. The suit was decreed by the trial court and the appeal preferred against it was dismissed by the High Court. In setting aside the decree this Court observed that in the face of the positive case made out by Chandradhar that he did not ever borrow any sum

from the Bank, the Bank had to prove the fact of such payment and could not rely on mere entries in the books of account even if they were regularly kept in the course of business in view of the clear language of Section 34 of the Act. This Court further observed that where the entries were not admitted it was the duty of the Bank, if it relied on such entries to charge any person with liability, to produce evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence."

60. On the backdrop of the above referred proposition laid down by the Apex Court - vis-a-vis Section 34 of the Evidence Act, it will be necessary for us to first ascertain whether the entries in the document/chit with which we are concerned fulfil the requirements of Section 34 as laid down by the Apex Court and is admissible in evidence. The question of probative value of such document will come only after we prima facie reach the conclusion about admissibility of such document in evidence in view of the law laid down by the Apex Court - vis-a-vis Section 34 of the Evidence Act. We feel it necessary to express that while interpreting and construing the purport of the criminal statute, regard must be had to the fact that it must be interpreted strictly according to the language used in such statute, object and purpose for which the statute is evolved and the legislative intent for creating such statute. There is no scope for interpreting criminal statute broadly, liberally and progressively. The overriding principle must be an adherence to the specific object presented by such legislation, into which each individual provision must fit in order to maintain essential details which the framers would have intended, had they been faced with circumstances of today. To hold otherwise would be stultify not only the object of such legislation, but also the legislative intent. What we feel is that a stultification of legislation must be prevented if this is possible without doing violence to the language of the statute and the criminal law needs to be interpreted strictly according to the object which it has to achieve as well as the purpose for which it is evolved, keeping in view the legislative intent. Keeping in view the above referred principles in mind, we have interpreted the above referred relevant provisions of the POTA and the fact of grant or refusal of bail will have to be considered on the basis of evidence which is available with the prosecution agency at this stage in the light of the interpretation arrived at by us of the relevant provisions of the POTA mentioned hereinabove.

61. Another important aspect which needs our consideration, before we consider the facts and circumstances of the present case, is to appreciate the concept of mens rea. It is one of the principles of English Criminal Law that a crime is not committed if the mind of the person doing the act in question be innocent. It is stated that actus non facit reum, nisi mens sit rea (the intent and act must both concur to constitute the crime). Although, prima facie, and as a general rule, there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether there has been any intention to break the law or

otherwise to do a wrong or not. Mens rea of mind stigmatized as wrongful by the criminal law which when compounded with relevant prohibited conduct constitutes a particular crime. Crimes involving mens rea are of two types, (i) crimes of basic intent and (ii) crimes of specific intent. In the former clause of crimes, the mens rea does not go beyond the actus reus. In the second, it goes beyond the contemplation of prohibited act and foresight of its consequence has a purposive element.

62. As stated by Williams : What does legal mens rea means? It refers to the mental element necessary for the particular crime, and this mental element may be either intention to do immediate act or bringing about the consequence or (in some crimes) recklessness as to such act or consequence. In a different and more precise language, the mens rea means intention or recklessness as to the element constituting actus reus. These two concepts, intention and recklessness, hold a key to the understanding of large part of criminal law, some crimes require intention and nothing else will do, but some can be committed either intentionally or recklessly. Some crimes require particular kind of intention or knowledge [Williams on Criminal Law (General/part page 30)]. Referring to the elements of mens rea, Glanville Williams states : the mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of more serious crime. This generally require, in addition, some element of wrongful intent or other fault. The Apex Court in the case of Director of Enforcement Vs. M/s. MCTM. Corporation Pvt. Ltd. and others, observed thus :

"Mens rea" is a state of mind. Under the criminal law, mens rea is considered as the "guilty intention" and unless it is found that the accused had the guilty intention to commit the crime he cannot be held guilty of committing the crime."

Their Lordships of the Apex Court in para 8 of the above referred judgment considered the breach of civil obligation by the accused which attract penalty under the FERA and observed thus :

"It is true the breach of "civil obligation" which attracts penalty u/s 23(1)(a), FERA, 1947 and a finding that the delinquent has contravened the provisions of Section 10, FERA, 1947 that would immediately attract the levy of penalty u/s 23, irrespective of the fact whether the contravention was made by the defaulter with any "guilty intention" or not. Therefore, unlike in a criminal case, where it is essential for the prosecution to establish that the accused had the necessary "guilty intention" or in other words the requisite mens rea to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement, in cases of contravention of the provisions of Section 10 of FERA, would be discharged where it is shown that the "blameworthy conduct" of the delinquent had been established by wilful contravention by him of the provisions of Section 10, FERA, 1947."

The above referred observations of the Apex Court would demonstrate that under

the criminal law unless it is found that the accused had guilty intention to commit the crime, he cannot be held guilty of committing the crime. Similarly even in case of breach of civil obligations, it is required to be proved before imposing penalty that the delinquent had wilfully contravened the provisions of the Act.

63. On the backdrop of the legal proposition vis-a-vis mens rea, the relevant provisions of POTA needs consideration. Clause (a) of Sub-section (1) of Section 3 of POTA starts with the following words - "Whoever with intent to threaten the unity, integrity, security or sovereignty of India ... would be a person committing terrorist act. Plain reading of clause (a) of sub-section (1) of Section 3 of POTA contemplates that whoever commits an offence in respect of the contingency enumerated in clause(a) of sub-section (1) of Section 3 of POTA needs to have intention (mens rea) to commit such offence mentioned therein.

64. So far as clause (b) is concerned, the situation is slightly different and contemplates that whoever voluntarily does an act of aiding or promoting in any manner the object of such association, would be a person committing a terrorist act. We are not concerned so far as other provisions of clause (b) are concerned in the present case. The act of aiding and promoting the object of such association must be a voluntary act and not under duress or threat.

65. Sub-section (3) of Section 3 of POTA also needs to be understood in its right perspective. The section contemplates that whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act, shall be punishable Under the scheme of the provision, conspiring, attempting, advocating, abating, advising and facilitating must be for commission of a terrorist act and, as we have observed hereinabove, clause (a) of sub-section (1) of Section 3 defines what is meant by terrorist act and requires intention to commit such acts and, therefore, by necessary implication the person who is charged with criminal liability under Sub-section (3) of Section 3 of POTA must possess requisite criminal intention in conspiring, attempting, advocating, abating, advising, facilitating and inciting to commit terrorist act. In absence thereof, the entire bearing of the criminal liability under these provisions would change.

66. So far as sub-section (2) of Section 21 of POTA is concerned, it is the knowledge which is requisite to commit an offence under this provision. Without such requisite knowledge mere arranging, managing or assisting in arranging or managing a meeting by itself is not enough to fasten the criminal liability as contemplated under this provision. As far as sub-section (3) of Section 22 of POTA is concerned, similar situation emerges from this section. The person must have a requisite knowledge or at least has reasonable cause to suspect that the money or property will be used for the purpose of terrorism, without such knowledge it will be difficult to fasten criminal liability under this Section. As far as provisions of Sections 21(2) and 22(3) are concerned, the word knowledge used in these provisions needs to be construed on the backdrop of the concept of

mens rea. In case of other criminal offences, mens rea and intention are required. So far as the offences contemplated under sub-section (2) of Section 21 and sub section (3) of Section 22 of POTA are concerned, the offender needs to have knowledge without which it will be difficult to fasten criminal liability on a person under these provisions of POTA. Absolute liability is not to be lightly presumed but has to be clearly established. The concept of mens rea is aptly described by Their Lordships of Apex Court in the case of Nathulal Vs. State of Madhya Pradesh, . In para no.4 of the judgment Their Lordships observed thus :

"The law on the subject is fairly well settled. It has come under judicial scrutiny of this Court on many occasions .It does not call for a detailed discussion. It is enough to restate the principles. Mens rea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the objection of the statute would otherwise be defeated."

The above referred observations of the Apex Court in no uncertain terms mandate that mens rea is an essential ingredient of a criminal offence unless the statute excludes the element of mens rea. Applying the principles to the relevant provisions of POTA with which we are concerned in the present case referred to hereinabove and under which the appellant is prosecuted, it is evident that for committing terrorist act, as contemplated in clause (a) of sub-section (1) of Section 3, mens rea is necessary to commit an offence mentioned therein. Insofar as sub-section (3) of Section 3 of POTA is concerned and as far as offences contemplated under sub-section (2) of Section 21 and sub section (3) of Section 22 of POTA are concerned, it is knowledge which is requisite before committing the crime under these provisions.

67. We are well aware that at the stage of bail this Court examines the matter from the stand point of prima facie case and does not enter into threadbare analysis of the merits of the evidence. It is undoubtedly left to the trial Court to consider the same at the appropriate stage. However, in the present case, the appellant has filed an appeal u/s 34 of POTA against the order passed by the designated Court. It is the duty of the Appellate Court to look into the material/ evidence collected by the prosecution at this stage of the trial and consider the same in order to arrive at a conclusion as to whether the said evidence is sufficient prima facie to connect the accused with the crime or not and is admissible one in evidence. We are also aware that judicial approach in dealing with the case where the accused is charged of an offence of serious nature

should be cautious, circumspect and careful and this Court needs to consider the matter carefully and examine all the relevant and material circumstances before granting/refusing the bail to the accused.

68. At the same time, it must be borne in mind that while considering the statutory provisions and their effect, this Court is required to interpret them correctly keeping in view the object and intent of the legislature. It is the duty of the Court to apply the correct interpretation of the relevant provisions to the evidence collected by the prosecution and is further required to find out whether, in the circumstances, the accused had made out a case for grant of bail or not. In the instant case, since this Court is exercising appellate power u/s 34 of POTA, the Court is also required to consider the validity of the impugned orders passed by the designated Court whereby the bail has been refused, since this Court ultimately would be required to confirm or set aside the impugned orders passed by the designated Court. Similarly, sub-section (7) of Section 47 contemplates that where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any Rule made thereunder, shall be released on bail unless the Court is satisfied that there are grounds for believing that he is guilty of committing such offence and in order to reach such satisfaction, though prima facie in nature, the Court is required to scrutinize the material/evidence available on record in the form of Charge-sheet.

69. On the backdrop of the above referred legal propositions propounded by the Apex Court, it is necessary for us to consider the material/evidence produced by the prosecution before the Special Court in the light of these propositions of law in order to conclude whether the appellant has made out a case for grant of bail, or the material is adequate to connect the accused with the crime in question justifying the impugned order of rejection of bail application of the appellant.

70. In the instant case, the appellant is charge-sheeted for the offences punishable under Sections 363, 368, 143, 147, 148, 149, 121, 364(A), read with Section 34 of the Indian Penal Code, u/s 3/25 of the Arms Act and under Sections 3(2), (3), (5), 21(2), 21(3) of the POTA, 2002. In order to connect the appellant with the crime in question and for the offences charged, the prosecution is relying on the following evidence :-

(a) Report, dated 26/6/2002, lodged by one Bapu Reddy in the Police Station, Sironcha;

(b) Statement of witness Tulsigir Samaiya (Police Patil) of Chittoor recorded on 9/6/2002;

(c) Statement of witness Pocham Madavi, resident of Chittoor;

(d) Confessional Statement of co-accused Kamlakar Olala u/s 32 of the POTA;

(e) Recovery of chit from the dump, on the basis of which the prosecution claims that the recitals in the chit reveal that the appellant has given financial

assistance to the Naxalites.

(f) Statement of Sampoorna Singh in order to corroborate that the telephone no. 66365, at the relevant time, was used by appellant Gayasuddin, on which number the calls were received from telephone no. 33212 alleged to have been made by Bakanna as per recitals in the confessional statement of Kamlakar. The Additional Public Prosecutor categorized the above referred evidence in order to show availability of prima facie evidence against the appellant for the respective offences under POTA in the following manner :-

For Sub-section (3) of Section 3 of the POTA, the prosecution is relying on following evidence :-

(i) Phone calls/Telephone List. In the confessional statement of Kamlakar, it is stated that Telephone No. 33212 was operated by Bakanna (Naxalite). In the list of telephone calls from this telephone number, the calls have been detected to be made on telephone no. 66356, which was used by present appellant who was residing in the house of Sampoorna Singh and who had stated in his statement that he had given the telephone to be used by the present appellant Gayasuddin. The prosecution, therefore, alleged that Bakanna had called the present appellant on several dates and the dates are every relevant as the phone calls have been detected from the months of March to May.

(ii) Statement of Sampoorna Singh : Sampoorna Singh is the resident of Alapalli. He had given the house on rent to the present appellant Gayasuddin along with his telephone no. 66356, which was, at the relevant time was under use of the appellant.

(iii) Statement of witness Somaiya Lachchu : In his statement, Somaiya had stated that he was working as a carrier of message from a Naxalite leader and on one occasion, he had taken a message from Commander Nootan to the appellant Gayasuddin and Gayasuddin on the said letter had come to visit the Commander and had a discussion with him for about an hour.

71. So far as prosecution of the appellant for the offence u/s 21(2) of the POTA is concerned, the prosecution is relying on the following evidence :

- a) Statement of Tulsigiri, which was recorded by the Investigating Officer on 19/6/2002
- b) Statement of witness Pocham Madavi, and
- c) Confessional statement of Kamlakar Olala u/s 32 of the POTA.

72. So far as prosecution of the appellant u/s 22(3) of the POTA is concerned, the prosecution is relying on the following evidence :-

- (1) Confessional statement of Kamlakar Olala recorded u/s 32 of the POTA.
- (2) Recovery of a chit from dump.

(3) Notice u/s 149 of the Criminal Procedure Code.

73. Similarly, so far as Sub-section (5) of Section 3 of the POTA is concerned, there is no specific independent evidence available as such with the prosecution in this regard which has been fairly conceded by the Additional Public Prosecutor and the prosecution is relying on the above referred evidence only even for the offence under Sub-section (5) of Section 3 of the POTA.

74. It will be appropriate for us now to scrutinize the above referred material/evidence available with the prosecution in the form of a charge-sheet in order to find out whether a prima facie case is made out for connecting the appellant-accused with the crime in question. The said evidence needs to be considered in the light of interpretation arrived at by us of the provisions of POTA as well as law laid down by the Apex Court in this regard. So far as Sections 363, 368, 143, 147, 148, 149, 121, 368-A, read with Section 34 of the Indian Penal Code are concerned, the prosecution is relying on the statement/report, dated 26/6/2002, lodged by witness Bapu Reddy in the Police Station, Sironcha. The recitals in the report reveal that the author of the report, i.e., Bapu Reddy along with one Narendra Reddy was abducted by members of Bakanna group on the gunpoint from Kaleshwar unit in the forest of Navegaon. Bapu Reddy, who was threatened by Bakanna to collect an amount of Rs. 9,84,000-00 from Tendu unit contractors, was also compelled to write a chit/note. Narendra was sent with the said chit to other Tendu leaves contractors. Bapu Reddy, however, in the meanwhile, managed to free himself from the clutches of Bakanna gang, and lodged a report, dated 2/6/2002. It is also stated in the report that one truck of Tendu leave was also burnt by the ganga of Bakanna. "

75. So far as offences under the Indian Penal Code as well as under the Arms Act are concerned, for which the appellant is prosecuted, the above referred report of Bapu Reddy is the only piece of evidence available with the prosecution at this stage. This fact has not been disputed by Mrs. Dange, learned APP. The plain heading of the above referred report of Bapu Reddy does not implicate the present appellant for the offences alleged to have been committed by the appellant under the provisions of Indian Penal Code as well as Arms Act. The recitals in the said report reveal that Bapu Reddy was abducted by members of the gang of Bakanna, and he was made to write a note in order to collect the amount from the other Tendu leaves contractors, and one Narendra Reddy was sent with the said note to the other Tendu leaves contractors. Apart from these allegations, there is absolutely nothing in the said report in order to show the complicity of the appellant in the crime in question so far as it relates to the offences under the Indian Penal Code and the Arms Act.

76. Now it will be appropriate for us to consider the evidence/material available with the prosecution under the provisions of POTA.

77. So far as Section 3 of the POTA is concerned, the prosecution is relying on the confessional statement of another co-accused Kamlakar, wherein co-accused

Kamlakar has stated that his telephone bearing no. 33212 was operated by Bakanna (Naxalite) and the list of telephone calls reveals that the telephone calls were made from telephone no. 33212 on telephone no. 66356, which was used by the present appellant who was residing in the house of Sampoorna Singh. The prosecution, on the basis of the recitals in the confessional statement of co-accused Kamlakar, which was recorded on 10/6/2002 by the Additional Superintendent of Police u/s 32 of the POTA, wanted to connect the accused with the offence u/s 3(3) of POTA along with the statement of witness Sampoorna Singh.

78. For the purpose of prosecuting the appellant u/s 21(2) of the POTA, the prosecution has relied on the following material :-

1) Statement of Tulsigiri Somaiya, Police Patil of Chittoor recorded on 9/6/2002. Perusal of the statement of Tulsigiri would reveal that he is the Police Patil of village Chittoor and on 2/5/2002, the present appellant along with his manager and two other Tendu Patti contractors along with their managers came to village Chittoor at about 8-00 p.m., in two jeeps. In the said statement, he has further stated that the present appellant asked Tulsigiri Somaiya to gather villagers for discussion on plucking of Tendu pattas. Accordingly Tulsigiri called the villagers for this purpose and within a short time about 30 to 32 people gathered and participated in the discussion on fixing of rate for plucking of Tendu Pattas. The statement further reveals that in the meantime one Kalim Sheikh, resident of Sironcha came on the spot and informed that nobody should leave the place as Bakanna is going to visit the spot and fix the Tendu Patta plucking rate. About half an hour thereafter 20 to 25 Naxalites with guns wearing bluish-green dresses arrived at the spot and the head of the said group Bakanna introduced himself to the people who gathered there. Bakanna took aside three Tendu Patta contractors and had a discussion with them for about half an hour and later on disclosed the people who had gathered there that the contractors will pay Rs. 147/- (one hundred and forty seven). Thereafter the contractor also disclosed that they would pay the said amount and the people should start the work of plucking of Tendu leaves.

79. Another evidence in this regard is the statement of Pocham Madavi, who had stated the similar facts as stated by Tulsigiri in his statement. Pocham Madavi has stated that the appellant had reached village Chittoor in the evening hours by a jeep and he had asked the Police Patil to collect people for having a discussion in respect of rates. The Police Patil gathered some people. Pocham Madavi also participated in the said meeting. This witness further stated that when the meeting was in progress, Naxalites visited the spot and they took aside contractors and had a discussion with them for half an hour. Thereafter the Naxalite leader Bakanna disclosed the rates fixed for plucking of Tendu Pattas.

80. It is not disputed by learned APP that the appellant is prosecuted for the offence u/s 21(2) of the POTA on the basis of statements of Tulsigiri Samaiya and Pocham Madavi as well as confessional statement of co-accused Kamlakar Olala.

So far as confessional statement of Kamlakar Olala is concerned, we will deal with this piece of evidence at a later point of time. However, it is necessary to consider the recitals in the statements of Tulsigiri as well as Pocham Madavi, and needs to find out whether it fulfils the requirement of Section 21(2) of the POTA, and connect the accused with the offence under this Section in the light of interpretation arrived at by us which is referred to hereinabove. The title of Section 21 of the Act clearly contemplates that this Section relates to the offences pertaining to support given by an individual or a body or anybody for that matter to the terrorist organization. The purport of Section 21 has already been considered by us as referred to hereinabove. However, at the cost of repetition, we reiterate the same. The plain reading of the provisions of Section 21 makes it clear that in order to attract this provision, prosecution needs to have an evidence to show that (1) a person has arranged, managed or assisted in arranging or managing a meeting which he knows is to support a terrorists organisation which means an organisation or one of the organisations enlisted in the schedule contemplated u/s 18 of the POTA, (2) to further the activities of a terrorists organisation enlisted in the Schedule, and (3) the said meeting is addressed by a person who belongs to or professes to belong to terrorists organisation. The recitals in the above referred statements prima facie do not show that the meeting, which was arranged by Tulsigiri, was for the purpose of supporting the terrorists organisation or to further the activities of the terrorists organisation in connivance with the appellant who was in the know of this aspect. Similarly, it will be difficult for us at this stage to conclude this issue one way or the other. However, in our considered view and in view of the interpretation arrived at by us of Sub-section (2) of Section 21 of the POTA as well as recitals in the statements of Tulsigiri and Pocham, we are prima facie of the view that the appellant has made out a case for grant of bail on this count.

81 The prosecution wants to take aid of confessional statement of co-accused Kamlakar Olala, which was recorded by the Additional Superintendent of Police on 10/6/2002 u/s 32(1) of the POTA in order to substantiate its charge against the appellant for an offence u/s 21(2) as a piece of evidence in addition to the statements of Tulsigiri and Pocham. Before we consider the recitals in the confessional statement, it will be appropriate for us to keep in mind the interpretation arrived at by us of Section 32 of the POTA referred to hereinabove. We are quite aware of the fact that since we are dealing with the issue of grant or refusal of bail to the appellant, it will not be possible for us to conclude this aspect one way or the other. However, in view of the interpretation arrived at by us regarding Section 32 of the POTA and the legal propositions emerging in this regard on the basis of the law laid down by the Apex Court referred to hereinabove, in our considered view, bail cannot be refused to the appellant in view of the confessional statement of Kamlakar for the offence punishable u/s 21(2) of the POTA.

82. The appellant is prosecuted for an offence u/s 22(3) of the POTA and in order to sustain the charge under this Section, prosecution is relying on the following

evidence :-

(a) Confessional statement of Kamlakar recorded u/s 32 of the POTA and recovery of a chit from dumps. So far as confessional statement of Kamlakar u/s 32 of the POTA is concerned, we are faced with the similar situation in respect of admissibility of the said confessional statement against the appellant. However, at this stage of the proceedings, it will not be possible to conclude this issue one way or the other. However, in view of the interpretation arrived at by us regarding Section 34 of the POTA and the legal proposition emerging in this regard on the basis of the law laid down by the Apex Court referred to hereinabove, the recitals in the confessional statement against the appellant cannot be a ground to refuse bail to the appellant.

83. The evidence produced by the prosecution, i.e., recovery of a chit from dump which reveals that firstly the said chit or note is not seized or recovered during the course of investigation of the present crime, but was recovered during investigation of some other crime in Andhra Pradesh. On the said chit, there are certain calculations made, which, according to the prosecution, are that an amount of Rs. 36,60,000-00 was paid by the appellant to the Naxalite group. It is not dispute that the chit is not seized during investigation of the present crime. Similarly, the same is also not seized from anybody, but from the dumps in Andhra Pradesh while conducting some other investigation. Similarly, the admissibility of this document will have to be considered in view of the provisions of Section 34 of the Evidence Act before we consider the question of probative value of such document. We have considered the purpose of Section 34 in detail and interpreted the same on the basis of the law laid down by the Apex Court in the above referred judgments and also recorded our interpretation of Section 34 hereinabove. From the plain reading of Section 34, it is manifest that to make an entry relevant thereunder, it must be shown that it has been made in a book. That book is a book of accounts and that book of accounts has been regularly kept in the course of business. In view of this interpretation, the loose paper/chit and the entries made thereunder, in our view, are insufficient to connect the accused with the crime in question keeping in view the admissibility of this document in evidence on the basis of interpretation arrived at by us of Section 34 of the Evidence Act.

84. Lastly the prosecution is relying on the notice issued u/s 149 of the Criminal Procedure Code in the month of January, 2002, which reveals that on allotment of a contract of plucking of Tendu Pattas, the appellant and other contractors were asked to refrain from aiding any person, who is associated with Peoples War Group (PWG), which was declared as a terrorists organisation under POTA. It was further informed that if the appellant suspected any person, he should immediately report the said matter to the Police Authorities during the course of business activities. The contention of the prosecution is that in spite of the said notice issued to the appellant, the appellant, for the first time, reported the matter to Police on 25/5/2002, i.e., after a long gap between the meeting, dated

2/5/2002, wherein Bakanna (Naxalite) came and declared the rates to be paid to the labourers for plucking Tendu Pattas and, therefore, this is a piece of evidence which connects the appellant with the offence punishable u/s 22(3) of the POTA. It is not disputed that the appellant has lodged a report dated 25/5/2002 with the Additional Superintendent of Police, Aheri, wherein he has stated that he had received threats from Bakanna to transfer Penti Paka and Wardham units or he would be killed. The appellant has expressed a strong apprehension about the safety of his collection centres and damage to his bags since he has received threats from the Naxalites. The report further reveals that earlier also when he had gone to Chittoor with his managers Umesh Poreddiwar and Kamlakar, Khaleel, he had seen some persons in "Khaki" dresses with weapons who threatened them to give rate of Rs. 150/- for collection or face consequences. The appellant has expressed a threat to his life in the said report. Recitals in the said report, in no uncertain terms, reveal that the conduct of the appellant by lodging a report, dated 2/5/2002, would show that the appellant reported the matter to the police and, therefore, complied with the directions issued in the notice u/s 149 of the Criminal Procedure Code. The recitals in the report not only demonstrate that the appellant has received threats from the Naxalites, but has also made a reference to the threats given to the appellant by Naxalites at Chittoor where the meeting was arranged by Tulsigiri with the villagers for the purpose of discussing the rates for plucking the Tendu Pattas to be given to village labourers. The conduct of the appellant, therefore, does not prima facie reveal that he had voluntarily or otherwise provided money or property to the Naxalites which he knew, will be used for the purpose of terrorism. On the other hand, recitals in the report are otherwise. In view of these aspects, we are of the view that the applicant has made out a case for grant of bail even in respect of offence u/s 22(3) of the POTA.

85. While considering this aspect, few other circumstances are necessary to consider. The prosecution case is that Bakanna made telephone calls to the appellant from 4/5/2002 to 22/5/2002. Similarly, the list of telephone bill shows that duration of each call is less than a minute, except the last call, which is alleged to have been made by Bakanna on 22/5/2002, is of two minutes and fifteen seconds. The prosecution has not undertaken a procedure contemplated under Chapter-IV of POTA which deals with interception of communications in certain cases. There is nothing on record to show that whether there was any conversation between the person calling from telephone on 33212 to telephone no. 66356, except that the list of telephone bill which shows that the calls were made between 4/5/2002 to 22/5/2002 from phone bearing no. 33212 to telephone no. 66356. Phone no. 33212, as per the prosecution, is in the name of Kamlakar, the other co-accused and in his confessional statement, he has stated that cordless handset of this telephone number was given to Bakanna at the relevant time and, therefore, the prosecution wants us to presume that the call must have been made by Bakanna to the appellant. The purport of Section 32(1) of the POTA has been considered by us as referred to hereinabove and on the

backdrop of the legal proposition emerging from the same, it would be difficult for us to give any weightage to the recitals in the confessional statement of Kamlakar.

86. So far as Section 3, Sub-section (3) of POTA are concerned, the prosecution is relying on the confessional statement of co-accused Kamlakar in order to show that telephone no. 33212, which was in his name at the relevant time, was operated by Bakanna. The list of telephone calls from his telephone number reveal that calls have been made from his telephone number to telephone no. 66356, which was used by the present appellant who was residing in the house of Sampoorna Singh and, therefore, this aspect is inadequate to connect the appellant with the offence u/s 3(3) of the POTA. Similarly, the statement of witness Sampoorna Singh only reveals that this witness is a resident of Alapalli and he had given his house on rent to the present appellant with telephone no. 66356 and nothing more. If the recitals in the confessional statement in view of the interpretation arrived at by us in respect of Section 32(1) of the POTA cannot be called in aid to support the prosecution case, then the simplicitor statement of Sampoorna Singh is also prima facie difficult to connect the accused with the offence punishable u/s 3(3) of the POTA.

87. Another statement, which is relied on by the prosecution, is that of witness Samaiya Lachchu. However, recitals in the statement would show that he was working as a carrier of messages from Naxalite leader and on one occasion he had taken a message from Commander Nootan to the appellant and the appellant on the said letter had come to visit the Commander and had a discussion with him for about half an hour. It is pertinent to note that the so called commander Nootan is not the accused in the present case, nor the appellant is charged with aiding and abetting or giving financial aid to commander Nootan who is associated and related to Naxalite movement of Peoples War Group (PWG). Therefore, there is no prima facie evidence that the appellant in the present prosecution can be said to be connected with the offence punishable u/s 3(3) of the POTA.

88. Lastly, so far as provisions of Sub-section (5) of Section 3 of POTA are concerned, there is no other evidence available with the prosecution apart from the above referred evidence to connect the appellant with the offence under Sub-Section (5) of Section 3 of the POTA. In view of the purport of Sub-section (5) of Section 3 of the POTA, the above referred evidence available with the prosecution, in our view, prima facie does not connect the appellant with the offence under Sub-section (5) of Section 3 of the POTA. 89. Another argument, which is advanced by learned counsel for the appellant in the present case is that the charge-sheet has been filed by the prosecution on 2/12/2002 without there being any valid sanction from the appropriate Govt., and the Special Court under POTA has taken cognizance of the matter, which could be seen from Para 29 of internal page 26 of the trial courts order, which reads thus :-

"ORDER

Chargesheet presented by Dy.S.P. Aheri (S.D.P.O.) through Shri Dilip Zalake, S.D.P.O.Aheri. It is verified. Sd/- Superintendent Court of the Additional District Judge and Addl. Sessions Judge, Gadchiroli 443 605 Dt. 2/12/2002 at 12-00 p.m. Special Case No. 1 of 2002 Filed on 2/12/2002. O It be registered as Special Case under provisions of POTA 2002. Sd/- ASJ 2/12/2002"

It is, therefore, contended by Mr. Manohar that the above referred order-sheet reflects the application of mind by the Additional Sessions Judge and after due application of mind, the Judge of the said court has taken cognizance by ordering registration of case under the provisions of POTA. It is, therefore, contended that in the instant case the court has taken cognizance de hors of the provisions of Section 50 of the POTA and, therefore, the prosecution, which is launched against the appellant, is invalid in law.

90. It is, no doubt, true that it will not be possible for us to record our conclusive finding in this regard at this stage. However, since this issue has a positive bearing on the overall prosecution and the same needs to be prima facie considered by us at this stage, particularly keeping in view the provisions of Section 49(7) of the POTA, whereby the court is required to reach the requisite satisfaction before releasing the accused on bail.

91. We have already discussed hereinabove in detail the legal proposition propounded by the Apex Court in respect of what is meant by taking cognizance by a Court or a Judge and the clear position, which emerges from the said scenario, is that taking of cognizance merely means to become aware and when used with reference to the Court or a Judge, to take notice of judicially. The word "cognizance" used in the Code indicates the point when the Magistrate or a Judge takes judicial notice of the offence. It is necessary to mention that this is a special legislation and, therefore, offences committed under this special legislation are to be tried by the Special Court. In other onwards, the Special Court gets jurisdiction to try the criminal case only when the Judge is of the view, after going through the charge-sheet or the papers of investigation which are filed in the court, that the provisions of POTA are attracted and the case against such offender can be registered under the provisions of POTA. That means the Judge is aware of and has taken the judicial notice of the offence and it is only thereafter he has ordered registration of the offence. In the context of the present case, in our view, the above referred factors prima facie would show that this is not the case where it can be said that the Judge has not taken a judicial notice of the offence.

92. It is undisputed fact that the prosecution has not obtained sanction for prosecution required u/s 50 of the POTA till this date. Similarly, we cannot ignore the fact that Section 50 opens with the non-obstante clause and prohibits the Special Court from taking cognizance without valid sanction from the appropriate Govt.. Prima facie taking into consideration the above referred factors, we are of the view that the appellant has made out a case for grant of bail.

93. Since we are dealing with the appeal filed by the appellant, it will be necessary for us to consider the validity of the impugned orders passed by the Special Court. In the instant appeals, we are not concerned with the provisions of Section 167(1) and (2) of the Criminal Procedure Code, since the appellant is seeking a bail on merits and challenged the impugned orders accordingly and, therefore, it is not necessary for us to adjudicate upon this aspect of the matter. We have perused the impugned order, dated 16/11/2002, which is the subject-matter of challenge in Criminal Appeal No. 679 of 2002 as well as the order, dated 17/12/2002, which is the subject-matter of challenge in Criminal Appeal No. 3 of 2002. Perusal of order, dated 16/11/2002, would show that in para 28 the Judge of the Special Court in view of Section 53(2) of the POTA, which reads thus :-

"53(2) - In a prosecution for an offence under sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused." has held that there is a presumption available in favour of the prosecution and against the accused. The very finding of the Special Court is misconceived, since this presumption is only available when the prosecution first proves the offence under Sub-section (3) of Section 3 of the POTA, and not otherwise. The very approach of the trial court is misconceived and devoid of substance and, therefore, cannot be sustained in law. Similarly, the trial court did not take into consideration the legal requirements of Section 32(1) of the POTA as per the scheme of that provision as well as Section 50 of the POTA. It is, no doubt, true that at the time of grant or refusal of bail, the considerations are different and no decisive conclusion can be drawn at this stage. However, it cannot be ignored that what is inadmissible in law at this stage cannot become admissible at the later point of time unless it depends upon further evidence to be adduced by prosecution and, therefore, such issues and such legal aspects are prima facie required to be considered by the Judge of the Special Court, particularly keeping in view the mandate of Section 49(7) of the POTA. Similarly, at this stage evidence cannot be appreciated in that sense of the term. However, admissibility/inadmissibility of evidence will have a positive bearing in considering the aspect of grant or refusal of bail and, therefore, this aspect cannot be ignored by the court. While passing the impugned order, dated 16/11/2002, the Judge of the Special Court has not considered all these issues in the light of the law laid down by the Apex Court in this regard and, therefore, the order is unsustainable in law.

94. So far as another impugned order, dated 17/12/2002, is concerned, the said order also suffers from the same vice and in addition to that the observations made by the learned Judge of the Special Court in Para 27 while interpreting Section 50 of POTA are prima facie misconceived. Similarly, we are of the prima facie view that the approach of the trial court so far as aspect of taking cognizance is concerned is also not sustainable in law. Though the Special Court

has passed very lengthy orders while refusing bail, however, the sum and substance of the observations and the findings recorded thereunder prima facie do not warrant rejection of bail application of the appellant.

95. We wish to record our concern regarding investigation and prosecution of the offenders under Special Acts by the prosecution. The special legislations are evolved by the Parliament in order to take care of extraordinary situation arising out of certain categories of extremely serious offences which cannot be taken care of and dealt with by the general criminal law of the land, which is in force. We expect that prosecution agency should be extremely careful, vigilant and effective while conducting investigation in respect of such offences and the same should be strictly according to the requirements of provisions of such special legislations like POTA, TADA Act etc.; otherwise the very purpose and object of such legislations would be defeated.

96. Similarly, we expect the prosecuting agency to be aware of the law regarding recording of confession of the person as per the mandate of Section 32(1) of the POTA. We have interpreted this Section in our present judgment keeping in view the relevant law laid down by the Apex Court in this regard as well as language used in this provision, legislative intent and purpose of the Act. The situation is not new to the prosecuting agency as TADA Act was enacted by the Parliament in the year 1987 and the aspect of confession and its admissibility against co-accused jointly tried in the same trial was considered by the Parliament insufficient to deal with the extraordinary situation emerging from the offences under TADA. Therefore, the Parliament by Amending Act 43 of 1993 amended Section 15(1) of TADA Act and inserted certain provisions making confession of the co-accused recorded under the provisions of the TADA Act admissible in evidence against the co-accused, abettors, conspirators who are jointly tried in the same trial, and is treated as substantive evidence against the co-accused. On the backdrop of these facts, we expect prosecuting agency to be aware of these legal aspects of provisions of Section 32(1) of the POTA and should conduct investigation keeping in view all these vital aspects in respect of admissibility of confession recorded u/s 32(1) of the POTA, and not to repeat such mistake of solely relying on the confessional statement of the accused, time and again, to prove the offence/offences against the co-accused and regard must be had to the provisions of Section 32(1) of the POTA. Prosecuting agency is expected to collect independent evidence to connect the offender with the crime under the provisions of POTA and should not rely solely on confessional statement of co-accused for this purpose in order to bring home the guilt of the accused under the provisions of the Special Act.

97. Similarly, we fail to understand what prohibits the prosecuting agency to comply with the mandatory requirements of law as contemplated by Section 50 of POTA. The Special Courts are constituted to deal with these extraordinary situations. At the same time, the Legislature has provided certain safeguards in order to avoid misuse or abuse of the provisions of this Act, and made it

mandatory for the prosecution to obtain previous sanction of the Central Govt., or the State Govt., as the case may be, and prohibited the Special Court from taking cognizance of any offence under this Act without previous sanction of the Central Government or State Government, as the case may be. The purport of Section 50 of POTA is two-fold. Firstly it casts a duty of obtaining sanction for prosecution of the offences under provisions of POTA by prosecution from the appropriate Government and secondly the Courts are debarred from taking cognizance of the offence under this Act without previous sanction of the appropriate Government. We have already interpreted this Section in the earlier paragraphs of this Judgment and, therefore, we do not wish to reiterate the same. However, we fail to understand as to why these mandatory requirements are not fulfilled by the prosecution in such cases. At the same time, we deprecate the approach of the Judge of Special Court to treat these proceedings under Special Act casually. The Judges of the Special Courts are expected to keep in mind the purport of the fact of taking cognizance of an offence under this Act and consequence thereof. If the Court as well as prosecuting agency fail to act according to the mandate of this Section, the whole object of the Act is likely to be frustrated and the purpose for which such Special Acts are enacted would be defeated. Similarly, we expect the appropriate Government to complete procedural mandatory formality of granting sanction, if necessary, without wasting any time and fulfil the mandatory requirement of Section 50 of POTA. The appropriate Government is expected to keep in mind the far-reaching consequences in case the procedural requirement mandated by provisions of Section 50 is not fulfilled. Inaction or delay on the part of the appropriate Government in this regard shall, undoubtedly, not only frustrate the object of the Act, but also result in giving benefit to the unscrupulous elements.

98. We cannot turn the Nelsons eye to the fact that the necessity to evolve this legislation by the Central Govt., was felt because of the method of madness which is adopted by various terrorist organizations to attack the symbol of power to destabilize the sovereign nation and our nation faced multifarious challenges in the management of its internal security. Similarly, there was an upsurge in terrorists activities, insurgent groups in different parts of the country. In such situation, the prosecuting agency, while doing investigation of the offences under such special legislation, should strictly conduct the investigation according to the provisions of such legislation and are expected to conduct the investigation in a more responsible manner keeping in view the mandate of the provisions of POTA, since they are accountable to the country for their lapses.

99. Another aspect, which we feel, needs attention of the prosecuting agency is that there are broadly three categories of offences which can be dealt with by different criminal laws. The categories mentioned herein are illustrative in nature and not exhaustive in character. The first category of offences is those which can be adequately dealt with by general criminal laws of this nation which are in force. The second category of offences is those which cannot be dealt by general criminal laws and for which special legislations are evolved by the Parliament or

State Legislatures, as the case may be and special Acts are enacted to deal with such situation. These are the special legislations and, therefore, procedure evolved for investigation in respect of such offences in many ways is different than the regular/normal procedure of investigation in the regular criminal offences. The investigating agency, in our view, is duty bound to keep such procedure in mind and investigate the offences under the Special Acts strictly according to provisions of such Special Acts in order to achieve the object and purpose for which Special Acts are enacted by the Parliament. The third category of offenders is, who, in fact, are not criminals, but are common people consisting of professionals like doctors, chartered accountants, businessmen etc., who are under coercion, duress or threat from the criminals are required to part with monetary consideration. However, their such conduct is made punishable under the Special Act. In our view, in such situation, it is the duty of the investigating agency to find out whether raising of funds or providing monetary assistance to the criminals or criminal organizations is done by such persons voluntarily or with the knowledge that such money would be used for furthering the object of such criminal organization. If the prosecution agency fails to take into consideration these aspects while conducting investigation under the provisions of the special legislation, then there is a possibility that such investigation would invariably culminate into prosecuting the common man and the hard core criminals or terrorists would go scot free which will frustrate the very object and purpose of the Act. Similarly, there is a duty cast upon the citizens to approach police authorities as soon as they receive threats from such criminals for parting with monetary consideration, in order to help the police authorities to arrest and prosecute such unscrupulous elements. We cannot ignore the contemporary law and order situation in our country. However, we hope and trust that in future the prosecuting agency will keep in mind the interpretation arrived at by us in respect of certain important provisions of POTA and the observations made by us in the present judgment in order to achieve the purpose for which the Parliament has evolved the special legislation to fulfil the object of the Special Act. For the reasons stated hereinabove, we hereby quash and set aside the impugned order, dated 16/11/2002, passed by Additional Sessions Judge, Gadchiroli, in Misc. Criminal Application No. 12 of 2002, and the order, dated 17/12/2002, passed in Special Case No. 1 of 2002 by the Additional Sessions Judge, Gadchiroli, so far as it relates to rejection of grant of bail to the appellant, and release the appellant on bail on the following terms and conditions :-

The appellant be released on bail subject to furnishing a cash surety of Rs. 5,00,000-00 (Rupees five lakhs only) and one surety in the like manner. He shall not enter jurisdiction of Gadchiroli District till the trial is over, and shall stay at Warangal and report to Police Station, Mathwada (Warangal) three times a week, i.e., on every Monday, Wednesday and Sunday between 4.30 p.m., and 7.30 p.m..