

(2016) 08 CAL CK 0005

In the Calcutta High Court

Case No : C.R.A. Nos. 197, 345 of 2014 and C.R.A. No. 257 of 2016

Sadanala Ramakrishna

APPELLANT

Vs

National Investigation Agency

RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Limitation Act, 1963 — Section 12(3)

National Investigation Agency Act, 2008 — Section 21(4)

Citation : (2016) 4 CalCriLR 281 : (2016) 4 CalLT 627

Hon'ble Judges : Aniruddha Bose and Sankar Acharyya, JJ.

Bench : Division Bench

Advocate : Mr. B.R. Ghoshal, (Senior Advocate), Mr. Sanjoy Bardhan, Mr. Sundeep Kashinathrao Sadawarle, Mr. Shyamal Kumar Ghosh and Mr. Subrata Mukherjee, Advocates, for the NIA; Mr. Sekhar Basu (Senior Advocate), Mr. Subhasish Roy, Mr. Avik Ghosh and Mr. Moyukh Muk

Final Decision : Dismissed

Judgement

Aniruddha Bose, J. - These three appeals under the provisions of sub-Section (4) of Section 21 of The National Investigation Agency act, 2008 (the 2008 Act) have been preferred against three orders passed by the Learned Chief Judge, City Sessions Court, Calcutta, (the First Court) rejecting the prayers of the appellants for bail. The prayer for bail of the appellants has been rejected on 17th February 2014, by Order No. 77 of that date in CRA 197 of 2014. CRA 345 of 2014, the appeal is against the order of rejection of bail of the appellant by the same Court on 31st March 2014. The appellant in CRA 257 of 2016 has assailed the order of rejection of his bail by the same Court on 29th February 2016. In Criminal Appeal No. 197 of 2014, there are three appellants, being Sadanala Ramakrishna (AP 1), Sukumar Mondal (AP 2) and Paru Patel @ Arka Paru Arjun Patel (AP 3). In CRA 345 of 2014, the appellant is Sambhu Charan Pal (AP 4). The appellant in CRA 257 of 2016 is Bapi Mudi (AP 5). All the appellants have been implicated in different offences under the provisions of Indian Penal Code 1860 (the 1860 Code), Arms Act 1959, (the 1959 Act) Explosive Substances Act, 1908 (the 1908

Act) and Unlawful Activities (Prevention) Act, 1967 (the 1967 Act). Initially, the case from which these appeals originate, was registered on 1st March, 2012 in Jorasanko police station, Kolkata, numbered 138 of the same date. On 29th March, 2012, in exercise of powers under Sections 6(3) read with 6(4) and 8 of the 2008 Act, the Central Government had directed the National Investigation Agency (NIA) to take up the investigation. The order was issued by Dharmendra Sharma, Joint Secretary to the Government of India, Ministry of Home Affairs. On this Order, point has been taken on behalf of the appellants that the same is invalid not having been made and executed in the name of President of India. We shall deal with this argument later in this judgment. The case was registered as Regular Case No. 1/2012/NIA/New Delhi by the NIA. Charge Sheet in the case has been submitted on 23rd August, 2012, followed by a Supplementary Charge Sheet on 27th December 2012. In the main Charge Sheet, AP 1, AP 2, AP 4 and AP 5 have been arraigned as accused, whereas AP 3 has been arraigned as an accused in the Supplementary Charge Sheet. A composite Paper Book has been filed in CRA 197 of 2014 and CRA No. 257 of 2016. No Paper Book has been filed, however, in CRA No. 257 of 2016. But these three appeals arise in connection with orders passed in the same case, and we chose to proceed with hearing of CRA 257 of 2016 on the basis of petition of appeal only, as there is a common Case Diary in connection with these appeals. We accordingly dispense with the formal requirement of filing of Paper Book in this appeal and also compliance of the formalities by consent of the learned counsel for the parties.

2. AP 1, along with another accused, Rajesh Kumar Sahu were arrested on 29th February 2012 near Mohammed Ali Park in the Central part of Kolkata by a police team formed by the men of Special Task Force Kolkata on the basis of source information. It appears from the Case Diary that various incriminatory materials were recovered from them, including Maoist literature, forged driving licence and documents showing purchase of certain other items as also 25 rounds of prohibited ammunitions and cash of Rs. 2,48,125/-. It has been alleged that AP 1 was using a forged driving licence identifying him as Swagat Kasturi. From possession of the co-accused, documents and drawings relating to Rocket Launchers, accounts showing maintenance of a flat were recovered, along with cash of Rs. 2,50,130/- and explosive materials which were later certified by the forensic laboratory, CFSL to be Urea Nitrate. Further investigation led the police team to a workshop at 49, B.T. Road, Kolkata. Prosecution case is that this workshop was established by the aforesaid arrested accused persons, and in presence of AP 2, AP 4 and AP 5, several components and parts of Rocket Launchers and other weapons were being manufactured there. Sukumar Mondal (AP 2) had taken the room on rent, whereas Sambhu Charan Pal (AP 4) and Bapi Mudi (AP 5) used to work in the said workshop as per the prosecution case. AP Nos. 2, 4 and 5 were also arrested on the same day, that is 29th February 2012. The raiding team, continuing investigation reached two flats, one at Gayenbari, Rajchandrapur, Bally, Howrah and the other at Moinak Apartments, Ajodhyanagar, APC Road, Kolkata. From the former flat, drawings, literature and

finished components of Rocket launchers and other weapons, transaction documents pertaining to certain firms including a fictitious firm by the name of "M/s Durga Technical Services, purchase documents of certain items as also cash of Rs. 70,000/- Rs. 36,98,000/- and Rs. 18,00,500/- in different packets were recovered. From the latter premises also, prosecution alleges recovery of different purchase and transport documents involving different firms in the State of Chattisgarh, cash of Rs. 16,00,000/- and Rs. 20,00,000/-. Maoist literature, laptop and other computer related items, certain identity cards, and deed of conveyance pertaining to the said flat as also substantial quantities of metal slabs and metal hardware and several other items are also alleged to have been recovered therefrom.

3. The NIA had registered the case as FIR No. 01/2012/NIA/DLI dated 12th April 2012 under Sections 120B, 121, 121A and 122 of the 1860 Code, Section 25(1A) of the Arms Act, 1959 Section 5 of Explosive Substance Act, 1908 and Sections 18, 20, 40(1)(b) (c) of the 1967 Act. The NIA had thereafter obtained sanction of the Central Government under the provisions of Section 196 of the Code of Criminal Procedure, 1973, Section 45 of the 1967 Act and Explosive Substances Act for prosecution of AP 1, AP 2, AP 4 and AP 5 along with another accused in terms of an Order dated 22nd August 2012 (No. I-11011/21/2012-IS-IV), issued by the Central Government. Sanction was given for prosecution of AP 1 and another accused for offences punishable under Sections 120B, 121, 121A, 122, 419, 467, 468 and 471 of the 1860 Code, Sections 25(1)(a), 25(1A), 25(1AA) and 25(1B)(a) of the Arms Act, 1959 Section 5 of the Explosive Substance Act and Sections 17, 18, 20, 21 & 40(2) of the 1967 Act. Sanction under the aforesaid provision was accorded against AP 2 for offences punishable under Sections 120B, 121, 121A and 122 of the 1860 Code, Sections 25(1)(a), 25(1A), 25(1AA) and 25(1B)(a) of the Arms Act, 1959 Section 5 of the Explosive Substance Act and Sections 17, 18, 20, 21 and 40(2) of the 1967 Act. Sanction was accorded for prosecution of AP 4 and AP 5 for the offences punishable under Sections 120B, 121, 121A and 122 of the 1860 Code, Section 5 of the Explosive Substance Act and Sections 18 and 20 of the 1967 Act.

4. The AP 3 has been arraigned as an accused in the Supplementary Charge Sheet filed in connection with the same case on 27th December 2012. She has been arrested on 6th July 2012 from an apartment in Ram Chandra Nagar under Manpada police station in the district of Thane, Maharashtra. She was arrested along with two other accused persons on the basis of raid carried out by the SIB, Maharashtra. Prosecution story is that operation similar to that carried on from Kolkata for transporting components or parts of Rocket Launchers and other weapons were being carried on from the State of Maharashtra also, and AP 1 was the main person behind such operation, who had co-conspirators in the State of Maharashtra. Personnel of transport firms and traders were examined in the State of Maharashtra in course of investigation.

5. The NIA has sought to link the operations in Maharashtra with Kolkata and

Raipur through frequent visits of AP 1 in those States, call details of accused persons and also similar modus operandi of sending the metal components from Kolkata and Mumbai to the State of Chattisgarh. The extent of involvement of the AP 3 in the alleged offences, as it transpires from the Supplementary Charge Sheet is:-

"That from the investigation of the case and the aforementioned discussion, it is established that Vijaya @ Jyoti @ Laxmi @ Arku Paru Bai @ Paru Arjun Patel (A-9) as a member of terrorist organisation CPI (Maoist), and as the close associate of Sadula Ramakrishna (A-1) and Asim Kumar Harnath Bhattacharya (A-6) entered into a criminal conspiracy along with the other co-conspirators for waging war against Government of India, with the intent to threaten the unity, integrity, security and sovereignty of India, with intent to strike terror amongst the people of India, by causing death and injuries to persons, loss, damage and destruction to the property. In furtherance to the said conspiracy she assisted in the maintenance of the den/hideout in Maharashtra from where components of sophisticated arms and ammunition including Rocket Propelled Grenade, Rocket Launcher and others were being manufactured and transported along with procured raw materials, processing dies and tools to the jungles in Dandakaranya, Chattisgarh for being assembled and for usage by the armed cadres of the CPI (Maoist) against the armed forces of the state. The said accused person along with the co-conspirators i.e. A-1, A-6, A-7 and A-8, conspired for the manufacture and transportation of components of sophisticated arms and ammunition for causing death, injuries to people, loss, damage and destruction to the property in India, thus, has committed offences under Sections 18 and 20 of UA (P) Act 1967 as amended in Act 35 of 2008."

6. Sanction for prosecution of the AP 3 was given by the Central Government in terms of Section 45 of the 1967 Act on 26th December 2012 (No. I-11011/21/2012-IS-IV) issued by the Ministry of Home Affairs, Government of India under Sections 18 and 20 of the 1967 Act. This was a composite order in which similar sanctions under provisions of different statutes accorded against three other accused persons, also arraigned as accused in the same case. In a separate order passed under Section 25(3) of the 1967 Act, the total sum of cash of Rs. 96,66,755/- alleged to have been seized from the accused persons has been directed to be retained by the Designated Authority, on being satisfied that the money seized are part of proceeds of terrorism.

7. Main allegation against the appellants is that they are all members of the banned Communist Party of India (Maoist), and they, with other persons had entered into a criminal conspiracy to wage war against the Government of India. The main allegation is against AP 1, who according to the prosecution has been declared as an underground extremist. He is alleged to be a Maoist leader based in Andhra Pradesh and Chattisgarh and Secretary of the Central Technical Committee of CPI (Maoist). He is alleged to have been involved in formation of a Technical Development Committee of the said organisation whose aim was to

develop sophisticated arms and ammunition including "area weapons" like Rocket Launchers for intensifying war against the Government of India. It was in pursuance of the above objective, he conspired with the other accused persons in the same case.

8. AP 2 (Sukumar Mondal) is alleged to have owned the workshop at 49, B.T. Road, which was styled at "Durga Technical Services". The AP 4 (Sambhu Charan Pal) and AP 5 (Bapi Mudi) were his employees and associates and in their presence from the said workshop components, parts of Rocket Launchers, Rocket Propelled Grenade and other weapons were being dealt with and manufactured. AP 1 used to regularly visit the tenanted premises of AP 2. In pursuance of the conspiracy large quantity of components or parts of weapons manufactured and procured were being sent to Raipur, Chattisgarh from Kolkata through different transport agencies. Such activities relating to the conspiracy extended to Mumbai and other cities and towns in India through other members connected with CTC/TRM of the CPI (Maoist). AP 1 also visited Mumbai to meet other co-accused persons there for the purpose of procuring raw materials in Mumbai and sent those materials to Raipur through different transport companies. So far as AP 3 is concerned, according to the prosecution, she hails from Adilabad District, which at present is in the State of Telengana. We have reproduced in earlier part of this judgment the substance of allegations against her from the Supplementary Charge Sheet.

9. The First Court rejected the prayer for bail so far as the appellants in CRA No. 197 of 2014 is concerned by an order dated 17th February 2014 considering the charge against the applicants and further considering the fact that on completion of investigation, Charge Sheet had been submitted against the accused persons. The ground for rejection of the prayer for bail of the appellant in CRA No. 245 of 2014 (Sambhu Charan Pal, AP No. 4) is broadly similar. The learned First Court found allegations against the appellant in CRA 257 of 2016, to be extremely serious in nature. One of the grounds on which prayer for bail was made by him was that he suffers from physical disability. The First Court considered the fact that Charge Sheet had been submitted against him on completion of investigation suggesting his prima facie involvement in the alleged offence.

10. Mr. Ghosal, learned Senior Counsel appearing for the NIA has raised a preliminary objection on maintainability of the appeal registered as CRA 345 of 2014 on the ground that the said appeal is time-bared. On this point, our attention has been drawn to sub-Section (5) of Section 21 of the National Investigation Agency Act, 2008, which contains provisions relating to appeal. Section 21 of the 2008 Act stipulates:-

"21. Appeals.- (1) notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges

of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from: Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

11. In CRA 345 of 2014, the order which is appealed against was passed on 31st March 2014. We find from the endorsements made on the certified copy of the order that application was filed for certified copy of the order on 3rd April 2014. The date fixed for notifying the requisites stamps was 16th April 2014 and the requisite stamps were delivered on the very next day, i.e. 17th April, 2014. The certified copy of the order was made ready for delivery on the same date i.e. 17th April, 2014. It was on this date only the copy was made over to the applicant thereof. The appeal was filed on 13th May, 2014. Mr. Ghosal has argued that the appeal was preferred beyond the prescribed period of thirty days, when computed from the date on which the order was passed, and hence is not maintainable. As regards the proviso to that sub-section, Mr. Ghosal's contention is that in absence of an application showing sufficient cause for not preferring the appeal within the prescribed time, the said proviso could not be invoked. In the event the days lost in obtaining the certified copy are taken into consideration, which is the prescribed mode under Section 12(3) of Limitation Act, 1963 for computing delay, then the appeal would not be hit by the limitation period. Mr. Ghosal's submission, however, is that every appeal under the aforesaid provision of the 2008 Act would have to be filed within the period of thirty days from the date of the judgment, sentence or order appealed against. The 2008 Act being a special statute, Mr. Ghosal has argued, provisions of the Limitation act would not apply. He has referred to two authorities, reported in AIR 1970 SC 716 and [(1991)1 SCC 174] in support of his submissions on this point.

12. We are of the opinion, however, that principles incorporated in Section 12(3) of the Limitation Act, 1963 ought to apply in an appeal under Section 21 of the 2008 Act also. We form this opinion upon considering the ratio of these two authorities. It is the right of an appellant, in particular whose bail prayer has been rejected, to get the certified copy of a judgment or order of rejection of his or her bail plea. It is only on perusal of the certified copy of a judgement or order

a party to a proceeding can have full knowledge of the order, its reasoning, finding and the direction. Thereafter, the party to such proceedings could decide whether to appeal against such order, or to accept the same. Thirty days" time prescribed by the legislature in Section 21(5) of the 2008 Act, within which an appeal can be preferred, is intended to give a potential appellant time for decision making and completion of preparation for instituting the appeal. Time taken for obtaining the certificate copy ought to be deducted from the prescribed period of thirty days, as without the certified copy, the potential appellant would not be in a position to take an informed decision as to whether an appeal would be preferred or not. If any time is wasted before application is made for certified copy of the judgment or order, then such time obviously would be deducted from computing prescribed period of thirty days, which is the course specified under the above-referred provision of the Limitation Act, 1963. In the event time for obtaining certified copy is not excluded from the stipulated period of thirty days, then the appellants would in substance be deprived of his right to prefer the appeal within the period prescribed by the statute. Mr. Ghosal's submission is also that the appellant ought to have made application for admission of appeal beyond the prescribed period by showing sufficient cause as the proviso to Section 21(5) of the 2008 Act permits filing of appeal beyond thirty days from the date of judgment or order, provided such extended time does not go beyond ninety days. We have considered this proviso also. But we do not think the aforesaid proviso ought to be invoked or attracted to preserve right of appeal in cases where time beyond thirty days is lost in obtaining certified copy of a judgment or order passed under the 2008 Act. If under some unusual circumstances certified copy of a judgment or order is not made available to an aggrieved party under the 2008 Act within ninety days, then even if we accept Mr. Ghosal's argument on this count, in such a situation the appellant would lose his right of appeal altogether. Secondly, sub-Section (5) of Section 21 confers on an appellant right to appeal. Now if a potential appellant is to apply to the appellate forum in substance for leave to maintain the appeal with prayer for treating the time lost in obtaining certified copy as "sufficient cause", then he would lose his substantive right to appeal. It would be then within the discretionary jurisdiction of the appellate forum to decide whether to permit filing of the appeal or not. That would defeat the legislative intent. In any event, the provisions of sub-Section (2) of Section 29 would apply in respect of these appeals, as principle incorporated in Section 12(3) of the Limitation Act, 1963 is not expressly excluded by the 2008 Act. In course of his submissions, Mr. Ghosal has relied on three authorities which require the Court to apply the principle of purposive construction while interpreting statutory provisions under certain circumstances. These authorities are (i) Board of Mining Examination v. Ramjee (AIR 1977 SC 965) (ii) Yash Ahuja & Ors. v. Medical Council of India & Ors. [(2009)10 SCC 313] and (iii) Bharat Prasad v. State of Bihar & Ors. [(2009)6 SCC 698]. Though these decisions were cited in a different context, we choose to apply the ratio of these authorities on this particular point as well.

13. In the given context of this particular appeal, it is our opinion that the prescribed time limit for thirty days ought to be construed with an inbuilt provision of excluding therefrom time taken for obtaining certified copy, as is postulated in Section 12(3) of the Limitation Act, 1963. We accordingly hold that for computing the period of thirty days as stipulated in Sub-Section (5) of Section 21 of the 2008 Act, the principles embodied in Section 12(3) of the Limitation Act, 1963 which provides for exclusion of time for obtaining certified copy for computing the period of limitation for filing an appeal would be applicable. The interpretation which Mr. Ghosal wants us to give to the aforesaid provision of 2008 Act, if accepted, might cause erosion of the right of appeal itself, conferred by the aforesaid provision. We find the above referred principle of Limitation Act, 1963 implicit in Section 21(5) of the 2008 Act.

14. We reject the plea of the respondent NIA on maintainability of the appeal registered as CRA 345 of 2014 on the ground that the appeal is not maintainable, being time-barred. We shall now proceed to deal with the submissions of the appellants in support of their prayer for bail, large part of which is founded on procedural flaws in applying certain provisions of the 1967 Act. Mr. Basu, learned Senior Counsel has argued that the order dated 29th March 2012 by which investigation was handed over to the NIA by the Central Government is invalid and unconstitutional as that order was not made or executed in the name of the President of India and not having been authenticated in proper manner. In this regard, Articles 77(1) and 77(2) of the Constitution of India has been referred to by Mr. Basu. He has also referred to Section 3(8) of the General Clauses Act, 1897 under which the Central Government has been defined to mean the President. The decisions relied upon by Mr. Basu on this point are (i) Raghavendra Singh v. Superintendent District Jail, Kanpur (AIR 1986 SC 356) (ii) Sethi Auto Services Station v. DDA [(2009)1 SCC 180], (iii) Shanti Sports Club and Another v. Union of India and Others [(2009)15 SCC 705 (iv) MRF Limited v. Manohar Parrikar and Others [(2010)11 SCC 374] and (v) State of Uttaranchal and Anr. v. Sunil Kumar Vaish and Ors. [(2011)8 SCC 56]. His argument on this point is that the entire prosecution case ought to fail for this reason. It has been further submitted by Mr. Basu that in breach of the provisions of Section 43 of the 1967 Act, certain officers have recorded some of the witness statements and prepared seizure lists, which officers held ranks below that of an Assistant Commissioner of Police. He pointed out that these acts constituted part of investigation, and since the offences alleged in the case include those under Chapter IV and VI of the 1967 Act, involvement of such officers investigation process is a fatal flaw in the process of investigation. Referring to provisions of Sections 43A and 43C of the 1967 Act, he has submitted that the provisions of the 1967 Act relating to arrest ought to have been followed in respect of all the appellants. The next point urged by him is that there is no evidence regarding independent assessment or review by an authority appointed by the Central Government of the evidence gathered in course of investigation before granting sanction under Section 45 of the 1967

Act. Mr. Basu has drawn our attention to the provisions of Sections 17/18/20/21/40(2) of the 1967 Act, which are the Sections with which the appellants have been charged with, either under all of them or some of them. It is argument of Mr. Basu that an act would constitute a terrorist act, as envisaged in Section 15 of the 1967 Act when such act is done with an intent to threaten or likely to threaten the unity, integrity security or sovereignty of India or if it is done with an intent to strike terror or likely to strike terror in the people. To invoke Sections 17, 18, 20, 21 or 40 of the 1967 Act, the underlying requirement is linking the acts alleged to have been committed by the appellants with terrorist act. He has taken us through the Charge Sheet and has submitted that evidence collected during investigation did not demonstrate that the acts alleged to have been committed by the appellants/accused were done with the intention of disrupting the sovereignty or security or integrity of India or done with an intention to strike terror.

15. Mr. Ghosal has resisted the appellants' stand both on procedural grounds and on merit. He has contended that these points were never urged before the Trial Court. Nor these points were incorporated in grounds of appeal. In this perspective, according to him, the appellants cannot be permitted to urge these grounds for the first time at the appellate stage. As regards the constitutionality of the order passed on 29th March 2012 is concerned, he has referred to Article 53 of the Constitution of India. Sub-Clause (1) of this Article stipulates:

"53. Executive power of the Union.- (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution."

16. Mr. Basu's response to argument advanced on behalf of NIA that these points cannot be permitted to be raised for the first time in appeal is that appeals under Section 21(1) of the 2008 Act lie both on points of law and facts and argument on legality of the investigation would constitute legal arguments only. On this point, our opinion is that in the event an appeal is filed against an order rejecting prayer for bail, the points of law which can be urged ought to be in relation to the legal principles relating to granting an order of bail and not in respect of legal issues which will require detailed examination of the investigation process. Of course, if at this stage, i.e. the stage of granting of bail, some glaring statutory breach is brought to our notice which would go to the very root of the prosecution case, we shall be taking cognizance of those issues and if the prosecution case is found to be fatal on the ground of there being any ex facie legal error or omission, that would have an impact on our judgment in these three appeals. We shall examine the argument of Mr. Basu on procedural flaws in initiation and continuance of investigation within the parameter we have specified in this paragraph.

17. Mr. Basu had referred to the provisions of Sections 43, 43A and 43C to contend that the entire investigation process is flawed because certain witness statements were recorded and seizure lists were prepared by the officers below

the rank of Assistant Commissioner of Police. As we have already observed, the initial investigation was started by the officers of the STF, Kolkata Police and subsequently the Central Government had directed the NIA to take up investigation of the case in connection with which the appellants have been detained. Sanction to prosecute them under the provisions of 1967 Act came in two stages. Initially on 22nd August 2012 so far as AP 1, AP 2, AP 4 and AP 5 are concerned, and AP 3 on 26th December 2012. So far as Section 43C of the 1967 Act is concerned, we accept submission of the appellants that in respect of arrests, searches and seizure made under the 1967 Act, the provisions of 1967 Act shall prevail in the event the provisions of the 1973 Code covering these subjects are inconsistent with the provisions of 1967 Act. But barring the allegation that some of the statements of the witnesses were recorded and seizure lists were prepared by officers below the rank of Assistant Commissioner of Police, no other specific flaw in application the 1967 Act has been brought to our notice by Mr. Basu on this count. Application of the provisions of 1967 Act in relation to the appellants has been questioned on other grounds, which we have discussed earlier. We, however, do not find this submission to carry such strength which would compel us to enlarge the appellants on bail at this stage. In our view, this question could be urged by the appellants at the time of trial or can be a subject of a quashing proceeding under Section 482 of the 1973 Code or a writ petition under Article 226 of the Constitution of India. This cannot be the sole ground for releasing the appellants on bail.

18. The next point urged by Mr. Basu is on grant of sanction to prosecute in terms of Section 45 of the 1967 Act. The said provision stipulates:-

"45. Cognizance of offences.-(1) No court shall take cognizance of any offence-

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given without such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."

19. Referring to sub-Clause (2) of Section 45 of the 1967 Act, Mr. Basu has argued is that the prosecution for sanction can be given only after considering the report of the independent reviewing authority and on the basis of recommendation of such authority. He has taken us through The Unlawful

Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 and submitted that in terms of the said Rules the independent authority has to make its report containing the recommendation to the Central Government within seven working days of the receipt of the evidence gathered by the investigating officer under the 1973 Code. Mr. Basu's submission is that this provision is mandatory in nature. There is no specific case, however, of violation of this pre-sanction condition precedent in the grounds of appeal. In any event, we do not think we can examine that question while hearing an appeals against orders rejecting prayer for bail made on behalf of the appellants before the First Court, in the absence of such specific assertion or any other material which could clearly establish at this stage that there was no compliance of the aforesaid requirements of the statute.

20. The offences, which it is alleged have been committed by the appellants, so far as the 1967 Act is concerned, are under Sections 17, 18, 20, 21 and 40(2). Each appellant has not been charged with allegations of having committed offences attracting all these Sections, but these are the provisions under the 1967 Act involved in these three appeals. Mr. Basu's submission is that all the aforesaid offences involve the object of committing a terrorist act in terms of the provisions of Section 15 of the 1967 Act and the Charge Sheets against them do not attribute any intention of committing terrorists act to the appellants. The evidence collected during investigation, according to Mr. Basu does not demonstrate that these acts were done with an intention of disrupting the sovereignty, security, and integrity of India or acts done with the intention to strike terror. With this argument, Mr. Basu seeks to exclude applicability of the provisions of the 1967 Act on the appellants.

21. There is restriction on grant of bail to a person accused of an offence punishable under Chapter IV and VI of the 1967 Act. Sub-Section (5), (6) and (7) of Section 43D of the 1967 Act stipulates:-

"43D. Modified application of certain provisions of the Code.-?

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

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

(6) The restrictions on granting of bail specified in subsection

(5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

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

22. Mr. Ghosal has referred to four authorities being (i) Redaul Hussain Khan v. National Investigation Agency (2010 Cr.LJ 1413), (ii) Redual Hussain Khan v. Investigation Agency (2010 GLT) (iii) Mohammed Nainar & Anr. v. State of Kerala & Anr. (2011 CrI.J 1729) and (iv) National Investigation Agency, NIA Hyderabad v. Devendra Gupta & Anr. [(2014)1 Andhra Law Times (ALT) (Cri) 109] to contend that prima facie involvement of the appellants in offences specified under the 1967 Act ought to result in rejection of their prayer for bail. In the case of P. Jayarajan v. State (2016 Cri L. J. 1781), distinction was made by a Division Bench of the Kerala High Court between restrictive provisions on grant of anticipatory bail under Section 43D(4) of the 1967 Act and regular bail under Section 43D(5) of the same enactment. In this judgment it has been held:-

"The distinction between Section 43-D(4) and proviso to Section 43-D(5) is clear. For the purpose of attracting Section 43-D(4), it is sufficient if the Court is satisfied that prima facie there are allegations to attract the offence under the UAP Act. Under the proviso to subsection (5) of Section 43-D, the Court, on a perusal of the case diary or the report made under Section 173 of the Code, has to arrive at an opinion that there are reasonable grounds for believing that the accusation against the accused is prima facie true. If such a conclusion is arrived at, the accused persons shall not be released on bail or on his own bond. Under Section 43-D(4), it is not necessary for the Court to peruse the case diary statement, though the Court is not powerless to do so. The Court is not expected to arrive at an opinion as mentioned in the proviso to sub-section (5) of Section 43-D, while dealing with an application for anticipatory bail and considering the question whether the bar under Section 43-D(4) is attracted."

23. Mr. Ghosal's argument is that at this stage there are enough material which reveal prima facie involvement of the appellants in terrorist acts, and accusation against the appellants is prima facie true. On this point, he has relied on a decision of the Kerala High Court in the case of Kamarudheen v. Sho Muvattupuzha Police Station (2011 CrI.J 1938).

24. In the cases of Akula Bhoomaih & Anr. v. State of A.P. & Ors. (2013 CrI.J 1198) and National Investigation Agency, NIA Hyderabad (supra) the applicability of the 1967 Act has been discussed by the Hon'ble High Court of Andhra Pradesh. The case of Akula Bhoomaih (supra) dealt with the allegation of investigation by an officer below the rank of Deputy Superintendent of Police/

Assistant Commissioner of Police and in this particular case it was found that the First Information Report was made by a head constable but he did not take up any investigation. That was a case in which quashing of a proceeding was asked for, which plea was rejected. In the case of National Investigation Agency, NIA Hyderabad (supra) the scope of Section 43D(5) has been examined. It was held in this case, by a Division Bench of Andhra Pradesh High Court:-

"In the present case also, the Sessions Judge had held that there are reasonable grounds for believing that the accusations against the accused are prima facie true, yet he granted bail. Although this finding is not supported by reasons (as held by us supra), we are of the opinion that if there are reasonable grounds for believing that the accusations are prima facie true, in view of proviso to sub-Section (5) of Section 43D, the accused are not entitled to grant of bail. The Sessions Judge noticed the proviso to Sub-section (5) to Section 43D but perversely held, referring to sub-Section (7) of Section 43D that if persons who are not citizens of India can get bail in exceptional circumstances, citizens of India are certainly entitled to grant of bail and the law does not contemplate prohibition to grant of bail forever to citizens of India. In our opinion, it is not open to the Sessions Court to interpret the provisions of Section 43D in this manner and this reasoning is clearly erroneous."

25. The general principles on grant of bail has been laid down by the Supreme Court in the cases of *Puran v. Rambilas & Anr.* [(2001)6 SCC 338] and *Moti Ram and Ors. v. State of Madhya Pradesh* (1978 CrI.J 1703). The case of *Neeru Yadav v. State of Uttarpradesh & Anr.* (2015 Supreme Appeals Reports (Criminal) 220), was highlighted by Mr. Ghosal while referring to the extent of involvement of the appellants in other alleged offences or to their troubled antecedents. In *State of Uttaranchal v. Rajesh Kumar Gupta*, [(2007)1 SCC (Cri) 356] the question of bail of an accused under the Narcotic Drugs and Substances 1985 was examined. It was observed by the Supreme Court that the restricted provisions of bail contained in Section 37 thereof ought to be construed in a pragmatic manner and it could not be construed in such a way as to negate the right of party to obtain bail, which is otherwise a valuable right for all practical purposes. This mandate of the Supreme Court reaffirms the right of an accused to obtain bail in respect of alleged offences under special statutes in which restriction on grant of bail beyond that contained in the Code of Criminal Procedure have been imposed. The case of *Shah Mudassir v. State of Telengana* (2015 Cri L. J. 4208] was also cited by Mr. Ghosal. That is a case in which cancellation of bail of an accused under the 1967 Act was found to be improper by a Bench of Hyderabad High Court. In that case, Charge Sheet could not be filed within the prescribed time. There was no report submitted by the Public Prosecutor, and an application seeking extension of remand beyond the prescribed period was filed at the instance of investigating agency. In that context, it was held in this judgment that compliance of mandatory provision could not be ignored and indefeasible right accruing to the accused could not be defeated. In the case of *Mohammed Nainar* (2011 Cri L. J. 1729) the High Court of Kerala examined the provisions of

Section 43D(5) of the 1967 Act and observed, referring to various authorities, that nature of charge is a vital factor and the nature of evidence is also pertinent in considering the question of bail. Prayer for bail in that case was rejected and the Court found(in para 11 of the Report):-

"?we find that granting bail by imposing conditions, we may not be able to secure the presence of the appellants to face trial and receive sentence or to prevent the appellants, if released on bail, from interfering with the prosecution witnesses or intercepting with the process of justice. Therefore, imposing conditions may not yield any effect. The trial court was justified in declining to grant bail. We find no reason to interfere with."

26. Near identical questions of law to the ones which are involved in these three appeals were examined by a Coordinate Bench of this Court Kangujam Ravi Kumar Singh v. Union of India (2014 Cr.LJ 3103), although in a different context. Before the Coordinate Bench, point was taken that the initial order under Section 6(5) of the 2008 Act was not issued in the name of the President of India. Breach of Section 45(2) of the 1967 Act was alleged in relation to grant of sanction and bail was prayed for on the ground of non-disclosure of report of the independent authority reviewing the evidence and making its recommendations. There was also argument on behalf of the appellant in that case that investigation was conducted by an officer who was not empowered in law to perform such duty. The Coordinate Bench observed in that case:-

"The issue as to whether the prosecution has been sanctioned in accordance with the provisions of Section 6(5) read with Section 8 of the NIA Act need not be considered by us at this stage for more than one reason. This issue which goes to the root of the matter, according to Mr. Basu, was not raised by the accused Saraswati Rai who has been granted bail by this Court in *Saraswati Rai v. Union of India* reported in 2011 (4) CHN (Cal) 324. Further, when an application for bail was moved on behalf of Neera Tamang, one of the appellants in CRA 431 of 2011, no such ground was raised. The issue was not raised before the Sessions Court when the bail applications were decided. Even in the present appeal, no ground has been raised in the memo of appeal relating to this issue. It is true that a question of law can be raised at any point of time. We do not subscribe to the contention of Mr. Ghoshal that as we are considering whether bail should be granted to the appellants, we cannot consider the legality and validity of the orders issued under the NIA Act or under the UAP Act. It will have to be proved by the prosecution on the basis of evidence that the initiation of the prosecution was in accordance with law and within the ambit of the provisions of Section 6(5) of the NIA Act. Whether the Joint Secretary is empowered to issue such an order is a question of fact. In any event the action against the appellants has commenced in view of the order dated 7th September, 2010 issued by the Government of India, Ministry of Home Affairs in the name of the President of India. It is this order under which sanction had been accorded by the Central Government for prosecuting 7 accused including the appellants here under

Sections 121/121A/122/124A of the I.P.C. and Sections 17/18B/19/20/21/38/39 and 40 of the UAP Act in case no. 6 of 2010 of the NIA.

14. The argument of Mr. Basu, that in view of Section 45(2) of the UAP Act it is mandatory for the Respondents to place before the Court the report of the authority constituted, disclosing its independent review of the evidence garnered in course of investigation, is not tenable at this stage. In our opinion, this satisfaction of the authority or report recommending sanction for prosecution is not necessary to be placed before us when we are deciding a bail application."

27. It was also observed by the Coordinate Bench in that decision:-

"It has been argued by Mr. Basu that the investigation has not proceeded in accordance with law as the provisions of the UAP Act mandate that no police officer below the rank of Assistant Commissioner of Police can investigate any offence punishable under Chapters IV and VI of the Act. He points out that all the statements have been recorded by an Inspector of Police and this amounts to a breach of provisions of Section 43B of the Act. In support of his submission, Mr. Basu, has relied on the judgments of *Izharul Haq Abdul Hamid Shaikh & Another* (supra) and *State of Uttaranchal v. Rajesh Kumar Gupta* (supra). Prima facie, in our opinion, recording of the statements by a police officer below the rank of Assistant Commissioner of Police would not be barred. The investigation has been conducted under the command of the Assistant Commissioner of Police/ Superintendent of Police, NIA, New Delhi. Therefore, in our opinion, this submission is unacceptable."

28. These observations having been made by a Coordinate Bench on similar legal points, we do not find any reason to take a contrary view. The orders granting sanction to prosecute the present appellants were issued in the name of the President of India. It was also submitted on behalf of the NIA that the Chief Investigation Officer of this case is one Vikas Vaibhas, holding the rank of superintendent of Police, which is above the rank of Assistant Commissioner of Police. The officers below the rank of Assistant Commissioner of Police who recorded some of the witness statements were under the command authority, supervision and control of the Chief Investigation Officer. Now turning to the allegations against the appellants, we do not think we can go through the evidence disclosed at this stage in the Case Diary with a fine tooth-comb. There are materials prima facie showing involvement of the appellants in the offences alleged against them, and in our opinion formed on the basis of materials disclosed in the Case Diary that such allegations are prima facie true. Mr. Ghosal had relied on certain authorities to demonstrate that factors which could constitute prima facie case. We do not consider it necessary to refer to these authorities, as we have formed this prima facie opinion on the basis of materials disclosed in the Case Diary. We also do not consider it necessary in these appeals to further refer to the authorities cited by Mr. Ghosal on the point that there ought to be purposive construction of statutory provisions in cases where plain meaning can lead to more than one interpretation. We do not think having

regard to the provisions of Section 43D(5) of the 1967 Act, the appellants can be enlarged on bail at this stage. We are apprised by the learned counsel for the appellants that the case has reached the stage of framing of charge. We do not think there is any error in the three orders appealed against in these three appeals under these circumstances. These appeals shall accordingly stand dismissed and the orders passed by the learned First Court are sustained.

29. In course of hearing, it was submitted on behalf of the appellants that AP 1 and AP 3 are suffering from various ailments and require regular medical care. The AP 5, it was submitted is a physically challenged individual. We direct the Correctional Home Authority to ensure proper medical care to these appellants.

30. Urgent Photostat certified copy of this judgement be given to the parties expeditiously, if applied for.

Sankar Acharyya, J. - I agree.