

Cri. Bail Appln. No.3994/2018 CNR No.MHPU01-013462-2018

Cri. Bail Appln. No.3999/2018 CNR No.MHPU01-013547-2018

Cri. Bail Appln. No.4030 /2018 CNR No.MHPU01-013588-2018

**1) Smt. Sudha Bharadwaj**

**2) Vernon s/o Stanislaus Gonsalves3) Mr.  
Arun Thomas Ferreira**

**Vs.**

**State of Maharashtra**

**(Vishrambag Police Station Crime  
No. 04/2018)**

**Common Order below exh. 1 in Cri. Bail Appln. No.3994/2018  
Cri. Bail Appln. No.3999/2018 and Cri.  
Bail Appln. No.4030/2018**

1. Cri. Bail Appln. No.3994/2018 filed by **Smt. Sudha Bharadwaj**, Cri. Bail Appln. No.3999/2018 filed by **Vernon s/o Stanislaus Gonsalves**, and Cri. Bail Appln. No.4030/2018 filed by **Mr. Arun Thomas Ferreira**, under section 439 of the Code of Criminal Procedure Code, are arising out of the same Crime bearing No.04/2018, registered with Vishrambag Police Station for the offences punishable u/s.153-A, 505(1) (B), 117, 34, 120B of the Indian Penal Code, and under section 13, 16, 17, 18, 18B, 20, 30, 40 of the Unlawful Activities Prevention Act, therefore, they are heard simultaneously and decided by way of common order.

2. Prosecution case is that on 08/01/2018, one Tushar Ramesh Damgule lodged complaint at Vishrambag Police Station, Pune, alleging in that Sudhir Dhavale and other members of 'Kabir Kala Manch' organized 'Yalgar Parishad on 31/12/2017 at Shaniwarwada, Pune , in which, Sudhir Dhawale and other organizers have presented objectionable songs as well as slogans, which are disputable, objectionable,

and tried to incite disputable words, sentences between two society groups..... imposed wrong and false history, and misguided the society, and same had been disputable and stone throwing and arson incidents converted into disputable and cast clashes in society's specific groups occurred. Statement of Tushar Ramesh Damgule is recorded in Marathi and its translation in English is as below-

### **Translation FIR Copy**

1. Tushar Ramesh Damgule (age -37 years), Occupation - Reconstruction, Residing at Survey No.70, Santosh Nagar, Katraj, Pune-411016, Mobile No.-98500 65423, personally states that I am residing at the above mentioned address from last 20 years. I am completed Masters in Arts(History). I am running construction business by the name of Rao Enterprises, from last 4 years, Somewhere in last week of December, I read one post of Facebook, that Elgar Parishad organized 31/12/2017 at Shaniwar Wada. Therefore, on 31<sup>st</sup> December 2017, I personally went to Shaniwar Wada, opposite Ground Pune, on around 2'O clock in this concern programme conduct by Sagar Gokhale, role describer Sudhir Dhavale, singer and artist Jyoti Jagtap, Ramesh Gaychor and other speakers like Jignesh Mewani, Umar Kahlid, Vinay Ratansingh, Prasanth Dontha etc orators were seated on the stage. The said ground was crowded fully. I had read information and news related Kabir Kala Manch and their representatives by social media and newspapers. So known them. On the programme of following other subjects, had express statement again and again malice statement such as "Bhima Koregon ne Diladhada, Navi Peshawar Mainatgada, Udavathikrya Rai Rai re, Gadun Taka Peshwai Re Garjana Sidnakache, Aalee Nvyane Peshwai re Garaj Tila Thokyachee, Re Saimka Garaj Tila Thokyachee" After this, some other orators had their speeches, as well as in that, Kabir Kala Much's artist such as Jyoti Jagtap, Ramesh Gaichor and other six seven person sing the son again "Bhima Koregaon ne diladhada, Navi Peshwa Navi Peshawar Mainat Gada, Udavathikrya Rai Rai re, Gadum Taka Peshwai Re Garjana Sidnakache, Aalee Nvyane Peshwai re Garaj Tila Thokyachee, Re Samika Garaj Tila Thokyachee...", as well as, the same had presented in the form of Pathnatya (Raadarmaj) and Dance Event with malice and enmity intentions. After in second Session, said Sudhir Dhavale while expressing role, he made the

malice and disputable statement that "Jab julm Ho to, Bagawat Honi Chahiye Shahar mein, Jab Julm Ho to Bagawat honi chahiye shar mein aur agar bagawat na ho to, behatar hai kee, rat dhalane se phle ye shahar jalke rakh ho jaye, ye shahar jalke rakh ho jaye....." Then he said some other malice statement that "ye jo satrahai, ye satra hia, tayat hi apane aap mein ladai ka ellanhai, ye nave peswai ko haemin sSamshan ghat mein, kabrastan meindajana hai" Afterwards, other speakers also expressed themselves in grudge words in the same programme, some objectionable and provokable books kept for selling. After ending the programme, I left from there. On the date of 1<sup>st</sup> January 2018 as usual year, huge crowd gathered to salute and honour the victory stambh/monument at Bheema Koregaon. But because of the Elgar Parishad, which was held at Shaniwar Wada on 31<sup>st</sup> December 2017, Kabir Kala Munch's Sudhir Dhavale, Sagar Gokhale, Harshal Potdar, Jyoti Jagtap, Ramesh Gaychor and other six seven persons tried to express malice statement and tried to incite disputable words, sentences between two society groups, raise some provokable slogans, songs and road drama imposed wrong and false history above mentioned Sudhir Dhavale, Harshali Potdar and other Kabir Kala Manch's Activists been interrogated by legal inspection and sources. Therefore, I state that, banned Maoist Organization (CPI) gave organized role is to boast and implicate the strong Maoist thoughts in depressed class and misdirect or misguide them and turn them towards unconstitutional violence activities, carrying the same thoughts, Kabir Kalal Manch's Sudhir Dhavale and his other activists had presented different areas in Maharashtra, malice speeches, had spread false History, disputable statements and incite objectionable slogans, sung songs and road dramas. They distributed some objectionable and provokable pamphlets, books too. So remarkably it reflected at Bheema Koregaon and nearer places by stone throwing , castes clashes and arson incidents. Therefore, an Organization- Elgar Parishad, on the day of 31<sup>st</sup>

December, 2017 at 2-00 p.m. to 10.00 p.m. at Shaniwar Wada, Pune role defines Kabir Kala Much's Sudhir Dhavale, programme conductor Sagar Gokhale, and other artists Harshali Potdar, Jyoti Jagtap, Ramesh Gaichor and others had presented objectionable songs as well as " Jab julm Ho to, Bagawat Honi Chahiye Shahar mein, Jab Julm Ho to Bagawat honi chahiye shahar mein aur agar bagawat na ho to, behatar hai kee, rat dhalane se phle ye shahar jalke rakh ho jaye, ye shahar jalke rakh ho jaye....." such type of disputable, objectionable passing statements, tried to incite disputable words, sentences between two society groups, raised some provokable slogans, songs and road drama, imposed wrong and false history, misguided the society. The same had been disputable and stone throwing and arson

incidents converted into disputable and cast clashes in society's specific groups, with human injuries, violence severe damages etc.

Therefore, I lodged the complaint against (1) the role definer Kabir Kala Much's Sudhir Dhavale, 2) Progamme Conductor-Sagar Gokhale, 3) Harshali Potdar 4) Ramesh Gaichor, 5) Deepak Dengir, 6) Jyoti Jagtap. I read this typed statement and whatever I stated is same true ans correct.

Date -08/01/2018

This statement given in  
front of  
(M.B.Talware)  
Police Sub Inspector  
Vishrambag Police Station  
Pune

3. Initially, investigation was conducted by Vishrambaug Police Station, and subsequently, same was hand over to Assistant Commissioner of Police-Mr. Shivaji Pawar of Swargate Division, Pune City, Pune. Thereafter, on 06/03/2018, section 120-B of the Indian Penal Code was added. On 17/04/2018, investigating agency conducted search of houses and work places of the accused-Surendra Gadling, Shoma Sen, Sudhir Dhavale, Harshali Potdar, Sagar Gokhale, Deepak Dengir, Ramesh Gaichor etc., and conducted panchanama through video graph of entire procedure of conducting search right from the said agency knocked at the doors of the respective individuals till the material recovered were seized, sealed and panchanamas were drawn in the presence of individual panchas. During the search of houses and work places of the accused persons, electronic devices i.e. computers, lap-tops, memory cards, pen-drives etc., were seized, and same were sent to Forensic Science Laboratory (FSL), who gave clone copies/mirror images to investigating agency, so as to ensure that pendency of report of Forensic Science Laboratory does

not hamper the investigation. Moreover, the case of prosecution is that material found in the electronic devices, which are seized from the houses of the accused and other persons reflect that the accused persons are having nexus with Banned Origination, and they are involving in recruiting students of elite Universities, for commission of terrorist act along with other unlawful activities of Banned Organization. On 17/05/2018, section 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the Unlawful Activities(Prevention) Act came to be added. Thereafter, on 06/06/2018, investigating machinery have arrested five accused persons- Surendra P. Gadling, Rona Wilson, Smt. Shoma Sen, Sudhir Dhavale, Mahesh Raut, and also searched and seized electronic devices from Smt. Shoma Sen, Mahesh Raut by following due process of law, and thereafter clone copies from Forensic Science Laboratory. Moreover, the prosecution case is that present accused and other co-accused on or prior to 31/12/2017, in pursuance in their criminal conspiracy, where the active member of Banned Organization, Communist Party of India(Maoist) hatched the conspiracy against Government of India and Government of Maharashtra, with the intention to threaten unity, integrity, security, sovereignty of India, or with the intention to strike the terror in the people, or any section of the people, and more particularly to achieve the object of the said Banned Organization, viz. CPI (Maoist), and to shake and reduced the faith of common citizen in its democratic Government by large scale violence, destruction of a property and thereby destabilized the system of Government established by law, and with the intention to spread rebellious thoughts of Communist Party of India(Maoist) arranged the meeting of Elgar Parishad on 31/12/2017 through Frontal Organization of Kabir Kala Manch.

4. On 28/08/2018, investigating machinery arrested to Gautam Navalakha, Sudha Bharadwaj, Varavara Rao, Arun Ferreira and Vernon Gonsalves from their respective homes situated in different cities. However, on 28/09/2018, the Hon'ble Apex Court in Writ Petition (Criminal) No.260 of 2018 made order of house arrest of the said persons.
5. Respective learned advocates for applicants/accused submitted that applicants/accused have no concerned with the alleged offence, and Elgar Parishad, which was organized on 31/12/2017 at Pune, name of the all the accused are not mentioned in the FIR. They further submitted that FIR dated 02/01/2018 at Pimpri Police Station was registered vide crime No.09/2018 against Hindutva right Wing Learders-Milind Ekbote and Sambhajirao Bhide based, on an eye witness account that they along with fringe groups had incited violence against the Dalit congregation, and instead of taking action against those who were behind the Bhima Koregaon violence, a false and fabricated FIR bearing Crime No.04/2018 came to be registered on 08/01/2018 at Vishrambaug Police Station, Pune. They further submitted that the applicants/accused are well known human rights activists, journalists, advocates and political worker, with a view to kill independent voices differing in ideology from the party in power, and to stifle the honest voice of dissent. They further submitted that they have litigated cases for poor workers, tribals and marginalized sections of the community including farmers facing land acquisition and mining, tribals seeking forest rights, dalits, adivasis and women in respect of atrocities faced by them, and industrial workers, and as their ideology is to aid and help to

dalit, poor persons, therefore, Ruling party has falsely involved them in this crime. They further submitted that none of the alleged sections attracted against them, but only due to political rivalry, police have arrested them. They further submitted that the applicants/accused have never authorized or received any letter of any member or leader of CPI (Maoist), therefore, any mention of applicants' name in any such letter, or or as author or recipient, is totally fabricated so as to criminalize the applicants/accused's legal activities, programmes, public lectures. They further submitted that arresting officer violated fundamental guaranteed right of Constitution of India and Articles seized at the house of the applicants/accused, were seized through faulty procedure. They further submitted that the applicants/accused arrested on 28/07/2018 and since 29/08/2018 they were in house arrest, and allegedly material has been seized from them by police, therefore, there remains no scope for applicants/accused to tamper with the evidence, which is now in sole custody of the police. They further submitted that majority and minority judgments of the Hon'ble Supreme Court, which is relevant to the present applicants/accused is the non-acceptance of the contention of the respondent that the accused would resort to destruction of evidence and alerting of potential accused and cause substantial damage.

6. Per contra, learned District Government Pleader- Smt. Ujjawala Pawar submitted that initially house search of some of the accused was done on 17/04/2018, conducted panchanama through video graph entire procedure of conducting search were done and some electronic devices were seized, and the same were sent to Forensic Science

Laboratory, who gave clone copies to the Investigating Officer. She further submitted that from material in electronic devices at the house of accused, it reflects that the accused persons are having nexus with Banned Organization CPI (Maoist), and they are involving in recruiting student of Elite Universities for commission of terrorist act long with the Unlawful Activities of

Banned Organization, therefore, sections of Unlawful Activities (Prevention) Act came to be added. She further submitted that on 06/06/2018, investigating machinery have arrested some of the accused and also searched and seized electronic devices from their houses, and entire panchanamas were done with video graph shooting. She further submitted that the impugned devices sent to FSC, and clone copies were obtained, from which, it reveals that involvement of the applicants/accused in the alleged commission of offence, and they have hatched conspiracy against the Government of India and Government of Maharashtra, with intent to threaten unity, integrity, security, sovereignty of India, or with the intention to strike the terror in the people, or any section of the people, in order to achieve object of the said Banned Organization viz. CIP (Maoist). She further submitted that thereafter on 28/07/2018, Investigating machinery carried raid to the houses of present applicants/accused, and other accused at their respective homes in different towns, seized electronic devices and other material in entire proceeding and panchanamas are carried with videographic shooting. She further submitted that from the clone copies obtained from FSL, name of the present applicants/accused and their involvement in the alleged commission of offence are revealed. She further submitted that from the material gathered from the present applicants/accused and other coaccused shows their involvement in selecting and encouraging cadres to go underground in struggle area, mobilizing and distributing money, facilitating selection and purchase of



arms, deciding the rates of such arms and suggesting the routes and ways of smuggling such arms into India for its onward distribution amongst cadres. Some of them have suggested training and laying of booby traps and directional mines. She further submitted that material collected by Investigating machinery prima facie shows that the present applicants/accused are involved in the alleged commission of offence punishable under Unlawful Activities(Prevention) Act also. Names of present applicants/accused is specifically revealed in E.mail and other electronic data collective by Investigating machinery. She further submitted that investigation is at crucial stage, and if applicants/accused are released on bail, there is every possibility of tampering the prosecution witnesses.

7. At the outset, I would like to mention here that one Romila Thapar and others have filed Writ Petition (Criminal) No.260 of 2018 before Hon'ble Supreme Court, in respect of arrest of present applicants/accused and other co-accused in Crime No.04/2018 registered at Vishrambaug Police Station, in which, Hon'ble Apex Court by passing interim order, granted house arrest of present applicants/accused, and thereafter, by the order dated 28/09/2018 disposed off the said Writ Petition. While disposing the said Writ Petition, Hon'ble Apex Court directed appropriate court to decide application before them on its own merits uninfluenced by any observations made in the judgment of said Writ Petition. Therefore, with due respect to the observations made by Hon'ble Apex Court while disposing the said Writ Petition, I am deciding the present bail applications on own merits, uninfluenced by the observations made in the judgment of said Writ Petition.

8. It is settled principle of law that at the time of deciding bail application, it is necessary to take into consideration whether the prosecution has made prima facie case against the accused persons, in respect of offence alleged against them.

9. Contention of applicants/accused is that they are well known human rights activists, journalists, advocates and political worker, with a view to kill independent voices differing in ideology from the party in power, and to stifle the honest voice of dissent, therefore, they are falsely implicated in this crime. It is not disputed fact that applicant/accused-Sudha Bharadwaj is professor of Law in National Law University, and she is nominated at different body o educational organization. Moreover, applicant/accused-Arun Ferreira is an Advocate and Cartoonist writer, and working for human rights activity. Moreover, applicant-accused-Vernon Gonsalves is social activist. Doing work for tribal, downtrodden, poor persons, dalit, minority persons, farmers, who are economical backward, is good work for upgrading level of said economical backward persons. However, under the pretext of doing social work, human right work for social and economical backward persons, doing work for Banned Organization and involvement in the activities, with intent to threaten to unity, integrity, security, sovereignty of India, is illegal and same is an offence.
10. As per the prosecution case, applicants/accused along with other co-accused and absconding underground accused, as a part of well thought out criminal conspiracy and being active members of Banned Communist Party of India(Maoist), arranged a public meetings under the banner of "Elgar Parishad", and thereby played with sentiments of particular community. Moreover, contention of prosecution is that the role of present applicants/accused was not merely peripheral, but they were found to be playing vital role in the criminal offence committed and planned by others.

11. On perusing case diary, prima facie, it reveals that the Investigating officer has collected some documents from the present applicants/accused and other co-accused, indicate that after merger of CPI (ML) People's war (PW) and Maoist Communist Centre (MC) and newly formed party as the Communist Party of India (Maoist) formed strategy and tactics which further the activities of guerilla army. Moreover, one of the letter dated-18/04/2017 seized from the computer device of the applicants/accused, collected by investigating machinery during investigation, indicates reference the names of applicants/accused-Vernon Gonsalves and Arun Ferreira. Moreover, in the said letter, it is mentioned requirement of 8Cr annul supply of M4's i.e. weapon with 400000 rounds.
12. Moreover, from one document dated-02/01/2018, seized by investigating machinery during investigation, it reveals that applicant/accused-Sudha Bharadwaj had attending meeting held by WS Maoist Front on 02/01/2018 and minutes of the said meeting clearly indicates about discussion " to intensify tactical training for women PLGA members including laying of booby traps/ Directional mines" .
13. Moreover, one letter dated -30/07/2017 addressed by Sudarshan to Gautam, seized by investigating machinery during investigation, which is about work activities and fact and finding mission being organized at the instance of CPI (Maoist) to all over country.
14. Moreover, from letter, seized by investigating machinery during investigation, it indicates that demand of Rs.10,50,000/- to cover the expenses of IAPL and CRPP were made to under ground comrade-Sudarshan da.

15. Moreover from one of the letter seized by investigating machinery during investigation, which shows that applicants/accused-Arun Ferreira and one Stanislaus Gonsalves, under the banner of Radical Students Union (RSU) recruited members (Mahesh and Nandu)) were sent in guerrilla zone.
16. Moreover one of the letter seized by investigating machinery during investigation, indicates reference in respect of arsoning of trucks in Surajgad mining area.
17. Moreover one of the letter dated 25/09/2017 address by comrade-Prakash seized by investigating machinery during investigation, indicates about "awaiting in put ----- local activists to gauge the strength of enemy forces/ROP around Kandulnar/Basaguda. Moreover, the said letter also indicates efforts taken by applicants-accused-Gonsalves and Ferreira to motivate research scholars and get them involved in the revolutionary movement of Banned Organization.
18. Moreover letter sent by Comrade-Prakash to his another comrade, seized by investigating machinery during investigation, which indicates that Arun Ferreira and Sudha Bharadwaj are directed to organize IAPL meeting in Hydraba, and the said letter further also indicates the name of Advocate-Parvez Imroz, who has cordial relation with terrorist of Kashmir.
19. Moreover, from one letter sent by Prakash to applicant/accused-Sudha Bharadwaj, seized by investigating machinery during investigation, from which, it indicates that Sudha recruited one degree passed-Shri. Chavan and sent to interior, carried out successful task, and he is to be given some

fund as promised to him. Thus, from this letter, it reveals that applicant/accused-Sudha has been given the responsibility of sending the new recruits from JNU and TISS, Mumbai to interior area and for , which she was in need of amount.

20. Moreover, E.mail dated 04/07/2018 sent by Chandrashekha, General Secretary of Banned Organization, seized by investigating machinery during investigation, indicates that he expressed to his concerned comrade for arrest made by police and asked one of comrade to assess damage caused by these assets and seizure of communication by police.

21. Moreover E.mail dated 13/07/2018 sent by one of comrade, seized by investigating machinery during investigation, indicates that he suggested about strict rules for using personal mobile phones and computers while segregating open work from secret work.

22. Thus from the above material seized by investigating machinery during investigation, prima facie it appears the link of present applicants/accused with Banned Organization and its activities.

23. Learned counsel for applicants/accused submitted that Elgar Parishad held at Shaniwar Wada, Pune, no any objectionable slogans or pamphlets books were published, but poem from Book Good person of Szechwan (1942) by Bertolt Brecht was seen. However, on on perusing FIR, it reveals that beside translation of above poem, some provokable slogan i.e. "**ye jo satra hai, ye satra hia, tayat hi apne aap mein ladai ka ellanhai, ye nave peswai ko haemin Samshan Ghat mein, kabrastan meindajana hai.**" Thus, from this words, intention of

organization of such Elgar Parishad, prima facie it reveals that they announced Elgar i.e. (War).

24. Learned counsel for applicants/accused submitted that police machinery have not followed due process of law while arresting the accused-persons, and they have seized impugned articles with stock panh witnesses, which were accompanied them since Pune, therefore, impugned seizure of the articles and arrest of applicants/accused, is not legal one. GR bearing No.DPP/2012/Pra. No.10/Pol-10, Mantralaya Mumbai, dated 12/05/2015 of State Government of Maharashtra, issued direction to the police officer while investigating any crime and at the time of panchanama, Government servant be taken as a panch. In the case in hand,

Investigating officer has chosen Government servant as panch witnesses as per Government Resolution of State of Maharashtra, therefore, Investigating officer has not committed any error. Moreover, Arrest panchanama shows that intimation to the relative and friend of the accused-persons, in respect of arrest of applicants/accused was immediately given.

25. Hon'ble Apex Court in the case- **Dharampal Singh Vs.**

**State of Punjab (2011 ALL SCR 16)** observed that -

" C) Criminal P. C.(1973), S.100- Search and seizure – Prosecution case found to be trustworthy – Mere absence of independent witness at the time of search and seizure will not render the case of the prosecution unreliable."

26. Moreover Hon'ble Apex Court in the case of – **Safi Mohd Vs.**

**State of Rajasthan (2013 ALL MR (Cri) 2648 (S.C.)** observed

that -

" A) Criminal P. C.1973, Ss 100- Official Secrets Act 1923, Ss 3, 11- Search without warrant- validity search and seizure of army documents from house of appellant – Provisions of official Secrets Act are very sensitive and pertain to integrity and security of county- Testimony of witnesses to prove recovery of documents cannot be rejected on ground that they are police officials who are members of raiding party- Nor investigation made by Investigating officer becomes defective for want of search warrant to conduct search in house of appellant."  
"

Thus, taking into consideration the observations made by Hon'ble Apex Court in supra cases - **Dharampal Singh Vs. State of Punjab and Safi Mohd Vs. State of Rajasthan** , in my view, though in the case in hand, investigating officer made irregularity while conducting panchanama, same cannot be doubted because the panchanamas were done in Videograph shooting, therefore, in such circumstances, contention of the applicants/accused that seizure and their arrest are illegal, cannot be accepted. Moreover case laws, on which, learned advocate of applicants/accused is relied, are not applicable to the facts and circumstances of the case in hand, because facts of present case and quite distinguishable.

27. Moreover, in the case of conspiracy, there cannot be always much direct evidence about it, conspiracy can be inferred even from the circumstances giving rise to conclusion or irresistible inference of agreement between two or more persons committed offence. As per section 10 of the Evidence Act- ***"Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said done or written by any one of such persons in reference to their common intention , after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was party to it.***

*Since conspiracy is often hatched up in utmost secrecy it is mostly impossible to prove conspiracy by direct evidence. It has oftener than not to be inferred from the acts, statements and conduct of the parties to the conspiracy. Thus if it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of same act so as to complete it with a view to attainment of the object which they were pursuing, the Court is at liberty to draw the inference that they conspired together to effect that object."*

28. Hon'ble Chattisgarh High Court at Bilaspur in the case Asit Kumar Sen Gupta Vs. State of Chattisgarh ( Criminal Appeal No.86 of 2011) observed that -

" While dealing with the issue as to whether the accused is the member of any banned or prohibited or Scheduled Organization, the Court has to look at evidence as a whole because such organizations are neither registered nor they publish any list of their members nor one would expect issuance of receipt of membership to the members of such organizations. "

29. Moreover Larger Bench of Hon'ble Apex Court in the case – Sardul Singh Caveeshar Vs. State of Bombay ( AIR 1957 SC 747) observed that -

" The principle underlying the reception of evidence under section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is in the theory of agency. The rule in S. 10 Evidence Act, confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were "in reference to their common intention" that is to say " things said done or written, while the conspiracy was on foot" and carrying out the conspiracy ."

30. Learned counsel for applicants/accused submitted that mere membership of Banned Organization not amounts to any offence. In support



of their submission, they relied on ruling in case – **Sri. Indra Das Vs. State of Assam ( 2011 Cri. L. J. 1646)** . However with due respect of with the facts of above reported cases and that of case in hand, are quite distinguishable. In the case in hand, from material collected by Investigating officer, prima facie, it reveals the connection of the present applicants-accused with the Banned Organization.

31. Learned counsel for applicants/accused submitted that since the arrest of applicants/accused is illegal, therefore, applicants/accused are entitled for bail. In support of their submission, they have relied on the case – **Gautam Navlakha Vs.**

**State of Delhi ( W. P. (Cri.) 2559/2018) decided on 01/10/2018** . With due respect, the above case in respect of quashing transit remand, but, in the case in hand is in respect of bail of the accused, therefore, observations in supra case- **Gautam Navlakha Vs. State of Delhi** are not applicable.

32. Learned counsel for applicants/accused has also relied on the rulings in the case- **Madhu Limaye and other case (1969 (1) SCC 292) and Kehar Singh and others Vs. State of Delhi Administration (1988 SCC (Cri.) 711)** . However, with due respect to the facts and circumstances of the above supra cases are somewhat distinguishable than facts of the case in hand, therefore, observations in supra cases are not applicable to the case in hand as it is.

33. Learned counsel for applicants/accused has submitted that alleged act for activities, under ordinary penal law by normal law enforcement agencies not come within the Terrorist Act. In support of their submission, they have relied on the ruling in the case of **Hintendra Vishnu Thakur Vs. State of Maharashtra (AIR 1994 SC 2623)**. in which, it is held that -

" A) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S. 3 (1) Terrorist activity -What is Activity has to be such as cannot be tackled as mere criminal activity under ordinary

penal law by normal enforcement agencies because the intended extent and reach of activity of terrorist travels beyond gravity of mere disturbance of public order even of virulent nature and at times transcend frontiers of locality- Antinational activity throwing challenge to very integrity of country- It is included in terrorist activity ."

However, material collected by Investigating Officer during investigation cumulatively shows that alleged act of accused, which travel beyond gravity of the mere disturbance of public order even of a 'virulent nature' and may at times transcend the frontiers of the locality and may include such anti national activities which throw, a challenge to the very integrity and sovereignty of the country and its democratic policy. Thus, supra case - **Hintendra Vishnu Thakur Vs.**

**State of Maharashtra** is not helpful to the applicants/accused.

34. One of the letter seized by Investigating officer during investigation indicates about red revolutionary, and further it indicates in respect of requirement of 8 Cr annual supply of M4's i.e. weapon with 400000 rounds.
35. Moreover, one of the letter dated 25/09/2017 issued by underground Comrade-Shri. Prakash, seized by Investigating officer during investigation, there is indication about strength of security forces and road opening parties around Kandulnar and Basguda area and also arrange for logistics like wire, nails, nitrate powder etc. , which indicates plan of Banned Organization(Maoist).
36. Moreover, investigation is at crucial stage. Material seized by Investigating officer during investigation cumulatively indicates involvement of present applicants/accused, in the alleged act i.e. unlawful activities against nation unity, integrity, security, sovereignty of India.

37. Learned counsel for applicants/accused submitted in Crime No.09/2018 registered at Pimpri Police Station, the accused are released on bail, therefore, on parity ground, the present applicants/accused are entitled to be released on bail. However present Crime No.4/2018 registered at Vishrambaug Police Station and Crime No.09/2018 registered at Pimpri Police Station, are different one. Therefore, applicants/accused are not entitled to be released on bail.
38. Learned counsel for applicants/accused filed on record copy of affidavit filed by Shri. Suvej Haq, Superintended of Police, Pune Gramin dated 16/07/2018 and submitted that the impugned affidavit shows that Koregaon Bhima violence happened suddenly and was result of violent mob. On perusing copy of the said affidavit, prima facie, it reveals that same is regarding necessary steps taken by police machinery to control the incident, which occurred at Koregaon Bhima on 01/01/2018. However, present Crime No.04/2018 registered at Vishrambaug Police station, and during investigation made by Assistant Commissioner of Police, Swargate Division, Pune, in which, involvement of present applicants-accused is disclosed.
39. Learned counsel for applicants/accused submitted that material collected by Investigating officer is false, bogus and fabricated, and having no evidentiary value. However, impugned material collected by Investigating officer is false, bogus and fabricated, is a matter of evidence. At this stage, from material collected by Investigating Officer, prima faice, it reveals involvement of the present applicants/accused. Moreover, investigation is at very crucial stage, therefore, in my view, the present applicants/accused are not entitled to be released on bail. Hence applications being devoid of merit, liable to be rejected. In the result, I pass following order.

**Order**

I. Criminal Bail Applications No. 3994/2018, 3999/2018, and 4030 /2018, are rejected.

Date : 26/10/2018  
Judge,

**(K.D.Vadane)**

Special

Pune

Under The Unlawful Activities(Prevention) Act,  
1967

“I affirm that the contents of the PDF file Order are same word to word as per original judgment.”

Name of Steno : Shri S. B. Gore, Stenographer Grade-I  
Court Name : K.D. Vadane , Addl. Sessions Judge, Pune  
Date : 26/10/2018  
Order signed by presiding officer on : 26/10/2018  
Order uploaded on : 26/10/2018