

Rep by Spl Public  
Prosecutor  
Office at  
High court complex  
Opp to Vidhan Soudha  
Bangalore – 560 001.

...RESPONDENT

(By Sri Prasanna Kumar P, Spl P P)

This Criminal Appeal is filed under Section 21 of NIA Act read with 375(B) CR.P.C. praying to set aside the impugned order dated 27.08.2021 and granting regular bail to appellant in Spl. C.C.No.141/2021 U/S. 16, 18, 20 of the UA (P) Act 1967 Section 120-B, 143, 145, 147, 188, 353, 427 R/W Section 34 and 149 of IPC and Section 2 of the prevention of damage to public property Act 1981 wherein this appellant is arrayed as accused No.3 same is pending on the files of 49<sup>th</sup> additional city civil and sessions judge and Special court for NIA cases at Bengaluru (CCH-50).

These Criminal Appeals having been heard and reserved for orders, this day, **Shivashankar Amarannavar J**, delivered the following;

### **J U D G M E N T**

These appeals under Section 21(4) of the National Investigation Agency Act, 2008 (for short '**NIA Act**') are directed against orders dated 27.08.2021 and 25.03.2022 passed by XLIX City Civil and Sessions Judge and Special Court for NIA cases, Bengaluru in Spl. C.C. No. 141/2021

and 152/2021 whereunder the bail applications filed by the appellants/accused under Section 439 Cr.P.C. came to be dismissed.

2. For the purpose of convenience, details of the appeals filed by the respective appellants/accused are tabulated herein below:

<b>Name of appellant/s (sriyuths)</b>	<b>CrI. A No.</b>	<b>Special C.C. No.</b>	<b>Complainant</b>	<b>Rank of Appellants in Spl. CC.</b>
Syed Abbas	788/2022	141/2021	K.G Halli PS	A3
1) Atteeq Ahmad	814/2022	152/2021	D.J. Halli PS	A16
2) Shafi Khan				A17
3) Shahid Pasha Vali				A18
4) Tabreez				A23
5) Abdul Baseer				A24

3. The gist of the prosecution case is that on the night of 11<sup>th</sup> August, 2020, a mob resorted to arson and created a horrifying and terror situation in the area of D.G. Halli and K.G. Halli Police station limits, after one Sri. Naveen P, nephew of Sri. R. Akhanda Srinivas Murthy, Indian National Congress M.L.A. from Pulakeshinagar had allegedly posted a comment insulting prophet Mohammad in his Facebook account and said mob was demanding his arrest. It is the further case of the prosecution said mob invited for registration of a case against Sri. P. Naveen and others and despite registration of same in NCR 384/2020, mob did not disperse and in spite of Police resorting to lathi charge, the mob became very aggressive and started attacking the Police and public property on large scale. It is also stated that accused persons were found shouting slogans and also attacking the Police Station and Police personnel who were on duty. It is further stated this has resulted in violence in Kadugondanahalli (K.G. Halli) and

Devarajeevanahalli (D.J. Halli) Police Stations and in other places including Kaval Byrasandra.

4. It is the further case of the prosecution that on 11.08.2020 at about 07.45 p.m., one Moulvi named Sri. Firdous Pasha lodged a complaint against Sri. Naveen, nephew of sitting MLA of Pulakeshinagar constituency allegedly posting a derogatory remarks on Prophet Mohammed on his Facebook as aforesaid. Based on the said complaint, FIR came to be registered at D.J. Halli Police Station in Crime. No. 195/2020 against Sri. Naveen and around 08.00 p.m., about 50 to 100 persons had gathered at the said Police station which group was led by Sri. K.M. Wajid Pasha, member of Janata Dal (Secular) party and they demanded D.J. Halli Police to arrest Sri. Naveen. Gradually, assembly of persons swelled up and even registration of FIR against Sri Naveen did not pacify the agitating mob. It is alleged that initially, they started shouting slogans and pelted stones at the Police station and

the Police personnel that too after the Police team that had been dispatched to detain Sri. Naveen had returned empty handed. It is further alleged that number of persons who had assembled grew large and after equipping themselves with dangerous weapons like iron rods, wooden sticks and improvised petrol bombs, stormed into the Police station and vandalized the interiors of the Police station and also torched number of vehicles using petrol. It is stated that in the midst of Police action to thwart the crowd, resulted in another mob which had gathered moved towards K.G. Halli Police station and they attempted to enter the Station and Police quarters and they were met with stiff resistance following which, they set fire to the vehicles outside the Police station. Investigation revealed that around 127 vehicles were set ablaze which included 27 Government vehicles and in addition to the acts of vandalizing, the local M.L.A's house was attacked, damaged and set ablaze, as a result of which, entire house of MLA was burnt down.

5. Complaint came to be lodged by the Police Inspector, D.J. Halli Police and registered as Crime No. 195/2020 on 12.08.2020 at 01.00 a.m. against certain named accused persons and other unknown persons for the offences punishable under Sections 143, 147, 307, 332, 333, 353, 427, 436, 504, 506 read with Sections 34 and 149 IPC, Section 4 of the Prevention of Damage to Public Property Act, 1984 (for short '**PDPP Act**') and Section 2 of the Karnataka Prevention of Destruction and Loss of Property Act, 1981 (for short "**KPDLP Act**"). Similar complaint was also registered in K.G. Halli Police station in Crime No. 229/2020 against some known as well as some unknown persons for the offences punishable under Sections 143, 147, 148, 332, 333, 353, 427, 436 read with Section 149 IPC and Section 4 of PDPP Act.

6. Investigation by the Central Crime Branch was conducted on 21.09.2020. Government of India, Ministry of

Home Affairs, New Delhi issued an order under Section 6(4) read with Section 8 of the NIA Act directing National Investigating Agency (for short '**NIA**') to take up investigation of the said case. Accordingly, FIR No. 229/2020 and 195/2020 registered by K.G. Halli and D.J. Halli Police stations respectively were re-registered as R.C. No. 34/2020/NIA/DLI and R.C. No. 35/2020/NIA/DLI. On conclusion of investigation by NIA, it resulted in filing of the charge sheet for the offences punishable under Sections 143, 147, 307, 436, 353, 332, 333, 427, 504, 506, 149 and 34 of IPC, Sections 15, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 (for short '**UAP**' Act) read with Section 4 of Prevention of Damage to Public Property Act, 1984 and Section 2 of the Karnataka Prevention of Destruction and Loss of Property Act, 1981 in RC-34/2020/NIA/DLI and for the offences punishable under Sections 143, 147, 148, 353, 333, 332, 427 and 149 IPC, Sections 15, 16, 18 and 20 of UAP Act and Section 4 of the

Prevention of Damage to Public Property Act, 1984 in RC-35/2020/NIA/DLI on 05.02.2021 before the Special Court, NIA in Special C.C. Nos. 141/2021 and 152/2021 respectively.

7. Appellants who had been apprehended and had been remanded to judicial custody, moved for grant of bail by filing application under Section 439 Cr.P.C. for being enlarged on bail. Learned trial Judge after considering the rival contentions and on perusal of the charge sheet material, rejected the application on the ground of allegations made against them are serious in nature and overt act committed by each of them prima-facie indicate that they form terrorist acts as defined under Sections 15 and 20 of UAP Act. It was also held that in view of the law laid down by Hon'ble Apex Court in **NATIONAL INVESTIGATION AGENCY Vs. ZAHOOR AHMAD SHAH WATALI** reported in **2019 (5) SCC 1** whereunder Hon'ble Apex Court had held that if prima facie material placed by



prosecution does not entitle the accused for bail apart from other ingredients specified thereunder. Hence these appeals.

8. We have heard the arguments of Sri. Mohammad Tahir, learned counsel for appellants and Sri. P. Prasanna Kumar, learned Special Public Prosecutor appearing for respondent-NIA.

9. Sri. Mohammed Tahir, learned Advocate appearing for appellants has contended that statement of certain witnesses found in the charge sheet filed by NIA is not corroborated by the very same witnesses who have given statements before CCB as a part of charge sheets filed against other accused persons. He would further contend that NIA has fabricated witness statements to suit their narratives. On account of this available evidence having not been tendered to establish the active participation of appellants on the scene of the riots, there is

no terrorist act attributable to the appellants. Hence, he prays for appellants being enlarged on bail on such terms and conditions as deemed fit which would be complied by the appellants. In support of his submissions, he has relied upon the following judgments:

- (1) **2011 (1) SCC 784**  
STATE OF KERALA Vs. RANEEF
- (2) **2021 (3) SCC 713**  
UNION OF INDIA Vs. K.A.NAJEEB
- (3) WUTHIKARAN NERUENERTWANCH  
Vs. NIA (**CRL.A. 40/2017**)
- (4) ZAHID Vs. STATE (NCT DELHI)  
(**Bail Application No.1967/2021**)

10. He would contend that facts involved in **NIA Vs. ZAHOOR AHMED SHAH WATALI** reported in **2019 (5) SCC 1** is identical to the facts on hand. He would further contend that guidelines laid down for deciding bail applications under the provisions of UAP Act cannot be extrapolated and applied generally. He has also contended

that material collected against the appellant during investigation was not incriminating particularly, when the allegations are vague and bereft of material particulars and contains inadmissible material and there was nothing to show that appellant was either member of any banned organisation or he having participated in an activity which would fall within the meaning of Terrorist Act, 1967, he cannot be tried for the offences punishable under UAP Act. He would also elaborate his submission by contending that even if material appended to the charge sheet are assumed to be admissible, it would not disclose prima-facie involvement of the appellants. Hence, he has prayed for appeals being allowed.

11. Sri. P. Prasanna Kumar, learned Special Public Prosecutor has contended that under Section 43D(5) UAP Act, the court will have to decide if accusations made against accused persons are based on the reading of 'Case Diary' and 'final report' and court would refrain from looking

beyond the said material. As what would suffice for arriving at a prima-facie satisfaction, he has drawn the attention of the court to the provisions of UAP Act and particularly, to Section 2(1)(a) which defines "assembly" and Section 2(1)(k) which defines "terrorist act" for its meaning and Section 15 of UAP Act which explains the said term.

12. Repelling the contention of the accused that UAP act had been selectively invoked against accused Nos.1 to 25 as they are opposed to the present political regime, would demonstrate the application of mind on the part of Investigating Agency by contending that intention of the prosecution was based on material evidence collected during course of investigation and nothing beyond this. The very fact that provisions of UAP Act has not been invoked against entire mob or other accused persons would prima-facie establish that there is no in-discrimination invocation of said Act but is invoked only against those persons who conspired to turn peaceful assembly of protestors into an

unruly blood thirsty mob. He would submit that investigation had revealed that around 128 vehicles including 27 Police vehicles had been burnt using highly inflammable substances. He would further contend that K.G. Halli Police station was at a distance of 2.5 kms from D.J. Halli Police station and if the purpose of protest was to lodge complaint and seek consequential action against Sri. Naveen at D.J. Halli Police station, the purpose came to be achieved when FIR came to be registered against said Sri. Naveen around 08.45 p.m. at D.J. Halli Police station and there was no reason for the accused persons to assemble and cause large scale destruction of property both movable and immovable in K.G. Halli Police station and the surrounding areas.

12.1. He would further elaborate his submissions by contending that actions of the appellants qualifies as 'terrorist act' under Section 15(1)(a)(ii) & (iv) of UAP Act since their actions of using highly inflammable substances

to cause large destruction of property reflected an 'intent to strike terror among the people or section of the people' . In support of his submissions, he has relied upon the following judgments:

- (1) **2019 (5) SCC 1**  
NIA Vs. ZAHOOR AHMED SHAH WATALI
- (2) **2020 SCC ONLINE 792**  
PRADEEP RAM Vs. UNION OF INDIA
- (3) ASIM SHARIFF Vs. STATE BY NIA  
HYDERABAD (**CRL.A.No.12/2019**)
- (4) **1998 SCC ONLINE ALL 2978**  
SUNEEL ROY Vs. STATE OF UP
- (5) **2020 (3) SCC 321**  
VARINDER KUMAR Vs. STATE OF  
HIMACHAL PRADESH
- (6) **2016 (9) SCC 443**  
CHANDRAKESHWAR PRASAD Vs.  
STATE OF BIHAR

13. Whereas, Sri Mohammed Tahir, learned Advocate appearing for appellants has contended that names of accused Nos.1 to 25 against whom UAP Act has been invoked does not find a place in the original FIR or in

FIR No.208/2020 and the fact of mob shifting from D.J. Halli Police station to K.G. Halli Police station was attributable to rumor that Sri. Naveen had been arrested and had been put up in the lock-up and there being no CCTV footage to prove the presence of appellants which even according to the prosecution was available in the Police station would indicate that best evidence has been withheld by prosecution and as such, provisions of UAP Act could not have been invoked against appellants. He would also submit that CDR location based identification is doubted and as such, appellants would be entitled for being enlarged on bail.

14. Having heard the learned Advocate appearing for the appellants and learned SPP appearing for respondent - NIA, following points would emerge for our consideration:

"(1) Whether impugned order passed by the Special Court rejecting the bail applications

filed by the appellants deserves to be interfered with or liable to be affirmed?

(2) Whether charge sheet material would disclose that there are reasonable grounds for believing that accusations against appellants are prima-facie true?

**RE. POINT Nos.(1) & (2):**

15. It requires to be noticed at this stage itself that against all the appellants or in other words, accused Nos.1 to 25 which also includes the appellants, charge sheets have been filed for the offences punishable under the provisions of Indian Penal Code and also under the provisions of NIA Act namely, Sections 15, 16, 18 and 20 of UAP Act and the learned trial Judge for rejecting bail applications filed by appellants has taken note of Section 43D(5) of UAP Act and held the same is attracted to the facts on hand. Hence, we are of the considered view that



said provision requires to be extracted for immediate reference and it reads:

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

- (1) xxx
- (2) xxx
- (3) xxx
- (4) xxx
- (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 sub-section (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 any 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."

16. A plain reading of sub-section (5) of Section 43D of UAP Act would indicate that apart from the barring special court from releasing the accused on bail without affording Public Prosecutor an opportunity of being heard on the application filed seeking release of an accused, proviso thereto places complete embargo on the powers of the special court to release an accused on bail. It mandates that if the court 'on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure' is of the opinion that there are reasonable grounds for

believing that accusations made against such person, as regards commission of offence or offense under the Chapter IV and/or Chapter VI of UAP Act is prima-facie true, such accused person shall not be released on bail or on his own bond.

17. It would be of relevant to note at this juncture that there is no similar or analogous provision traceable in any other statute to the one found in Section 43D(5) of UAP Act. In other words, the language employed for grant of bail adopted under the said enactment remains unique to the said enactment. The source of power for the court to grant bail in respect of non-bailable offence punishable with death or life imprisonment is traceable to Section 439 Cr.P.C. Sub-section (5) of Section 43D is an exception to the application of the general bail provision in respect of the offence punishable under Chapter IV and VI of the UAP Act.

18. Bail is the rule and jail is the exception - is the conventional idea or thinking while considering the application for grant of bail in respect of the penal offence. The exercise of general power to grant bail under UAP Act is severely restrictive in scope. The use of the words under proviso to Section 43D(5) "shall not be released" in contrast with the words found in Section 437(1) of Cr.P.C. "may be released" suggest or indicates the intention of the legislature is to take a departure from the general principle or in other words, to make the bail being exception and jail being the rule. The courts are therefore burdened with the sensitive task in dealing with bail applications in UAP Act while considering the prayer for grant of bail when filed by an accused who is charge sheeted for the offences punishable under UAP Act. "Justification" must be searched from the case diary and final report submitted before the special court. The legislature has prescribed a low "prima facie standard" as a measure of degree of

satisfaction to be recorded by such court when scrutinizing the material on record for its justification. The standard can be contrasted with the standard of "strong suspicion" which is used by courts while hearing the applications for discharge. In fact, Hon'ble Apex Court in **NATIONAL INVESTIGATION AGENCY Vs. ZAHOOR AHMAD SHAH WATALI** reported in **2019 (5) SCC 1** has noticed this difference and has opined thus:

"23. By virtue of the proviso to sub-section (5), xxx under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

19. Hon'ble Apex Court in WATALI's case supra has laid down elaborate guidelines on the approach that courts must undertake while considering the application for grant

of bail and the limits prescribed under UAP Act. It has been held by Hon'ble Apex Court that there is a statutory bar for grant of bail under proviso to Section 43D(5) for offences punishable under Chapter IV and Chapter VI of UAP Act where the court on appreciation of totality of evidence is satisfied that accusations are prima-facie true, it has been held by Hon'ble Apex Court:

**"23.** By virtue of the proviso to subsection (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and McoCa. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, McoCa and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be

recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.

Nevertheless, we may take guidance from the exposition in *Ranjitsing Brahmajeetsing Sharma* wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paras 36 to 38, the Court observed thus : (SCC pp. 316-17)

"36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.

38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail



must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. ... What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea."

And again in paras 44 to 48, the Court observed : (SCC pp. 318-20)

"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of McoCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction

and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like McoCa having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding

that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In *Kalyan Charidra Sarkar v. Rajesh Ranjan* this Court observed : (SCC pp. 537-38, para 18)

'18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in *Puran v. Rambilas* (SCC p. 344, para 8)

"8. ... Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. ... That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."

We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court

while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.'

48. In *Jayendra Saraswathi Swamigal v. State of T.N.* this Court observed : (SCC pp. 21-22, para 16)

'16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State v. Jagjit Singh* (UT of Delhi) and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.'"

**24.** A priori, the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.

**26.** Be it noted that the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the investigating agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) CrPC, until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses, etc. However, once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual

ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

**27.** For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is."

(Underlining by us)

20. It would be also be apposite at this juncture to note the directions issued by Hon'ble Apex Court in the case of **DEVENDER GUPTA Vs. NATIONAL INVESTIGATING AGENCY** reported in **2014 (2) ALD Cri 251** whereunder the Division Bench of High Court of Andhra Pradesh strove to strike a balance between the mandate under Section 43D on the one hand and the rights of the accused on the other. It has been held as under:

"The following instances or circumstances, in our view, would provide adequate guidance for the Court to form an opinion, as to whether the accusation in such cases is **"prima facie true"**:

- 1) Whether the accused is/are associated with any organization, which is prohibited through an order passed under the provisions of the act;
- 2) Whether the accused was convicted of the offenses involving such crimes, or terrorist activities, or though acquitted on technical



grounds; was held to be associated with terrorist activities;

3) Whether any explosive material, of the category used in the commission of the crime, which gave rise to the prosecution; was recovered from, or at the instance of the accused."

21. Learned Advocate appearing for appellants have vociferously contended that there are no eye witnesses to the incident alleged against the appellants and mechanical device such as CCTV camera had not indicated the involvement or presence of the accused in or around the scene of occurrence. This contention will have to be examined in the background of whether the conditional limitations prescribed under Section 43D(5) and proviso thereto of UAP Act are attracted to the facts of the present case.

22. The expression "terrorist act" has been defined under Section 2(k) and Section 15 indicates as to what amounts to terrorist act. Whereas, Section 16 provides for punishment for commission of offence of terrorist act and Section 18 prescribes punishment for conspiracy in the commission of terrorist act. As such, said provisions are extracted herein below:

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

**15. Terrorist act.**—[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, [economic security] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means

of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country 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

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or

causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State

Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

[*Explanation.*—For the purpose of this sub-section,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.]

[(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.]

**16. Punishment for terrorist act.**—(1) Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or

imprisonment for life, and shall also be liable to fine;

(b) in any other case, 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.

**16A. Punishment for making demands of radioactive substances, nuclear devices, etc.]** Omitted by the Unlawful Activities (Prevention) Amendment (Repealing and Amending) Act 2013 (3 of 2013), section 5.]

**18. Punishment for conspiracy, etc.—**Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directly or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of 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.

**18A. Punishment for organising of terrorist camps.—**Whoever organises or causes to be organised any camp or camps for imparting training in terrorism 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.

**18B. Punishment for recruiting of any person or persons for terrorist act.—**

Whoever recruits or causes to be recruited any person or persons for commission of 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."

23. In the backdrop of the contentions raised in this regard, the scope of UAP Act requires to be noticed. A plain reading of sub-section (1) of Section 15 would indicate that whoever does any Act with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India through any of the modes specified under clauses (a), (b), (c) amounts to terrorist act. Likewise, who ever does any act with intent to strike terror or likely to strike terror in the people or any section of the people in India or in foreign country by any of the acts mentioned in clauses (a) to (c) is stated to have committed

terrorist act. Thus, it would emerge from sub-section (1) of Section 15 that even if the act is "likely to strike terror", the absence of "intent to strike terror" will not by itself make invocation of Section 15 unjustified. As such, accused cannot limit his arguments to say that he or she lack the necessary intent to strike terror. In other words, accused will have to go one step further and demonstrate that his actions even if lacking any intent does not carry any likelihood of striking terror in the minds of the people. Clause (a) of sub-section (1) of Section 15 illustrates some of the means by which unity, integrity, security, economic security or sovereignty of India would be threatened or terror can be struck in people or any section of the people in India or in any foreign country. It can be seen from the said clause that using bombs, dynamite or any explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological

radioactive, nuclear or otherwise) by a hazardous nature, the unity, integrity etc. of the nation could be threatened or terror could be struck in people or any section of the people in India or in any foreign country.

24. The effects produced by such acts are dealt with under sub-clauses (i) to (iv) of clause (a) thereunder namely, if by using bombs, dynamites or any other explosive substances etc., would cause or likely to cause death or injury to any person or persons, it will be a terrorist act under sub-clause (i). Likewise, under sub-clause (ii), by using bombs, dynamites etc., it would cause or likely to cause destruction of property or disruption of any supplies or services essential to the life of the community in India or in any foreign country and it would also fall within the definition of terrorist act.

25. We may also notice that phrase 'cause or likely to cause' occurring in sub-clause (a) of sub-section (1) of



Section 15 would clearly explain the "width" in which said provision operates. It gets triggered not only on the actual happening of a resultant effect of such terrorist act but also possibility or probability of having the result as enumerated under sub-clauses (i) to (iv) of clause (a) of sub-section (1) of Section 15 of UAP Act.

26. The prosecution has made an endeavour to bring itself case against the appellants in all or anyone of Section 15(1)(c)(a) or Section 15(1)(c)(b) of UAP Act to establish that "acts" of appellants constitutes terrorist act within the meaning of Section 15 of UAP Act. Alternatively, prosecution has tried to contend that even if mens rea element of "intention to strike terror" is not proved, the case can be brought under or any one of Section 15(1)(a)(i) or (ii) or (iv) or Section 15(1)(c) of the UAP Act. In other words, prosecution has made an attempt to contend that acts of appellants qualified as "terrorist act", since there was an intention to strike terror attracting Section 15(1)(c),

using inflammable substances attracting Section 15(1)(a), which cause or likely to cause loss or damage to property attracting Section 15(1)(a)(ii), damage or destruction of property in connection with State Government and Section 15(1)(a)(iv) or overawed by means of criminal force or attempts to do so or attempts to cause death of any public functionary - Section 15(1)(b) and alternatively, such actions would be likely to strike terror attracting Section 15(1) in the people or section of people on the same grounds as mentioned herein before. Thus, it will have to be the endeavour of the court to discern the term "intent to strike terror" in the people from an ordinary crime affecting "public order" from an act of terror having more serious ramifications and to understand the same separately. Hence, it is necessary to discern the meaning of the words "terrorism" and "acts of terror". Thus, it would be worthwhile to notice the authoritative principles of the

Hon'ble Apex Court laid down in the context of anti-terror legislation such as, TADA and POTA.

27. Hon'ble Apex Court in the case of **HITENDRA VISHNU THAKUR & OTHERS Vs. STATE OF MAHARASHTRA & OTHERS** reported in **1994 (4) SCC 602** has held:

"7 . 'Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary

penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fail out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of 'terrorism', aims to achieve for himself acceptability and respectability in the society because unfortunately in the States affected by militancy, a 'terrorist' is projected as a hero by his group and often even by the misguided youth. It is therefore, essential to treat such a criminal and deal with him differently

than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land. Even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the requisite intention as contemplated by Section 3(1) of the Act by use of such weapons as have been enumerated in Section 3(1) and which cause or are likely to result in the offences as mentioned in the said section."

28. In the matter of **PEOPLE'S UNION FOR CIVIL LIBERTIES AND ANOTHER Vs. UNION OF INDIA** reported in **2004 (9) SCC 580**, Hon'ble Apex Court while examining the constitutional validity of various provisions of Prevention Of Terrorism Act, 2002 - POTA has held that it would be necessary to understand the contextual backdrop

that led to enactment of POTA which aims to combat terrorism as it has become most worrying feature of contemporary life, has held that anti-terrorist statutes do not define "terrorism" but only defines "terrorist acts" and has relied upon on what Paul Wilkinson, an authority on terrorism related works has culled out five major characteristics of terrorism.

"1. It is premeditated and aims to create a climate of extreme fear or terror.

2. It is directed at a wider audience or target than the immediate victims of violence.

3. It inherently involves attacks on random and symbolic targets, including civilians.

4. The acts of violence committed are seen by the society in which they occur as extra-normal, in literal sense that they breach the social norms, thus causing a sense of outrage; and

5. Terrorism is used to influence political behavior in some way - for example to force opponents into conceding some or all of the perpetrators demands, to

provoke an over-reaction, to serve as a catalysis for more general conflict, or to publicize a political cause."

It has been further held that our country has been a victim of an undeclared war by epicentres of terrorism with the aid of well-knit and resourceful terrorist organisations engaged in terrorist activities in different States. Hon'ble Apex Court has broadly categorised the terrorist strikes under three headings:

1. "Attack on the institution of democracy, which is the very basis of our country. (By attacking Parliament, Legislative Assembly etc). And the attack on economic system by targeting economic nerve centers.
2. Attack on symbols of national pride and on security / strategic installations. (eg. Red Fort, Military installations and camps, Radio stations etc.)
3. Attack on civilians to generate terror and fear psychosis among the general populace. The attack at worshipping places to injure sentiments and to whip communal passions. These are designed to position the people against the government by creating a feeling of insecurity."

29. Hon'ble Apex Court in the matter of **MOHD.IQBAL M SHAIKH Vs. STATE OF MAHARASHTRA** reported in **1998 (4) SCC 494** while acknowledging the inherent difficulty in defining the term "terrorism", has observed as under:

"7. In view of the rival submissions at the Bar, the first question that arises for our consideration is whether the activities can be held to be "terrorist activities" so as to bring them within the purview of TADA. The expression "terrorist act" has not been defined and, on the other hand, Section 2(h) stipulates that it would have the same meaning as has been assigned to it in sub-section (1) of Section 3. The expression "terrorism" has not been defined under the Act and as has been held by this Court, in the case of *Hitendra Vishnu Thakur v. State of Maharashtra* it is not possible to give a precise definition of terrorism or to lay down what constitutes terrorism. But... it may be possible to describe it as a use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it



produces or has the potential of producing on the society as a whole xxx if the object of the activity is to disturb harmony of the society or to terrorize people and the society, with a view to disturb even tempo, tranquility of the society, and a sense of fear and insecurity is created in the minds of a section of society at large, then it will, undoubtedly be held to be terrorist act."

30. In the case of **YAKUB ABDUL RAZAK MEMON Vs. STATE OF MAHARASHTRA THROUGH CBI, BOMBAY** reported in **2013 (13) SCC 1**, Hon'ble Apex Court has defined the term "terrorism" as under:

"809. The term "terrorism" is a concept that is commonly and widely used in everyday parlance and is derived from the Latin word "terror" which means the state of intense fear and submission to it. There is no particular form of terror, hence, anything intended to create terror in the minds of general public in order to endanger the lives of the members and damage to public property may be termed as a terrorist act and a manifestation of terrorism.

Black's Law Dictionary defines terrorism as: "Terrorism.--The use or threat of

violence to intimidate or cause panic, esp. as a means of affecting political conduct." (8th Edn., p. 1512.)

"810. Terrorism is a global phenomenon in today's world and India is one of the worst victims of terrorist acts. Terrorism has a long history of being used to achieve political, religious and ideological objectives. Acts of terrorism can range from threats to actual assassinations, kidnappings, airline hijackings, bomb scares, car bombs, building explosions, mailing of dangerous materials, computer based attacks and the use of chemical, biological, and nuclear weapons-- weapons of mass destruction (WMD).

"816. The United Nations Security Council in its 2004 Resolution [Ed.: UN Doc. S/RES/1566 (2004); Resolution 1566 (2004) adopted by the Security Council on 8-10- 2004.] denounced "terrorist acts" as follows" "criminal acts, inciuding against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organisation to do or abstain from doing any act, which constitute offences within the scope of and as defined in the international

conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature,..."

31. Thus, from the above authoritative principles of law, it can be summarised as under:

(1) There is no particular form or means only by which a state of terror can be struck in the minds of people.

(2) The purpose of terrorist act is to evoke a sense of "fear psychosis" and "insecurity" among general populace of a law abiding society.

(3) There is no specific target or set of identifiable targets intended to be attacked; the target audience is unknown persons part of a larger collective of society.

(4) Through their intended acts, such persons should indulge in "terrorist act" with a

aim to achieve dual object of single action. First is to inflict or effect physical violence on certain targets which may involve causing death or injury to persons or damage/destruction of property and other like events. Second objective is what characteristically sets apart a terrorist act from mere law and order or public order concerns.

(5) Such persons who indulge in these acts, aim to send out larger intimidating message to those not directly impacted by the physical violence.

(6) damage that would be caused by perpetration of such acts affects the "psychological balance" of the victim and it has a direct impact on their future actions or in other words, threat of future violence looms over their minds perpetually.

(7) By their intended activity, the offender attempts to create fear and panic amongst people in general or a section thereof.

32. The test for rejection of bail will be sufficiently met if the prosecution can, prima-facie, establish commission of terrorist act. For this, prosecution will have to demonstrate the acts as enumerated in clause (a) of sub-section (1) of Section 15 with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country and such acts has the effect of causing or likelihood of causing any of the result as enumerated in sub-clauses (i) to (iv) of clause (a) of sub-section (1) of Section 15.

33. In the aforesaid background, we proceed to examine if the allegations as found in the material on record attributed to each of the accused would prima-facie found within the four corners of Section 15 of UAP Act.

OVERT ACTS OF THE ACCUSED SPL.C. No. 152/2021 OF  
D.J. HALLI PS

<b>Accused</b>	<b>Role of the accused</b>
<p>Ateeq Ahmed (A-16)</p>	<p>Video : He was seen in videos of news channel (Digvijaya News)</p> <p><b>Witness – Ranganath J (LW-27)</b> : A-16 is a SDPI member who had actively participated in the violence on 11.09.2020 and was seen pouring petrol and burning the vehicles in the Police Station premises along with Shafi Khan and Shahid Pasha Vali.</p> <p><b>Beeresh (LW-30)</b> : A-16 was seen inside the Police Station premises. He was seen provoking crowd to attack Police Station and Police personnel. He was also seen pouring petrol on the vehicles and burning them.</p> <p><b>Anand G (LW-36)</b> : LW-36 seen that A-16 and A-8 setting fire to the vehicles parked in the cellar of the Police Station, when LW-36 had gone to close the gate between cellar and first floor.</p> <p><b>Umran Khan Suhail (LW-35)</b> : A-16 is a resident of DJ Halli and was very much present at DJ Halli Police Station area during the riots on 11.08.2020. He had seen A-16 coming with the bottle of petrol and he was pouring petrol and was burning vehicles in the cellar area.</p>

	<p><b>Public Witness : Hassin Baig @ Mohin Baig (LW-119)</b> : - Identifies A-16 along with A-18 to have set fire to the vehicles parked in the cellar of the Police Station and provoking crowd to attack Police station and Police personnel.</p> <p><b>Protected Witness D-</b> States that A-16, A-17 &amp; 23 and others were setting fire to the vehicles parked in front of Police Station.</p>
Shafi Khan (A-17)	<p>Mobile Location : His mobile tower location during the incident is at the premises of DJ Halli PS.</p> <p><b>Police Witness -- Umran Khan Suhail (LS-35)</b> : During the riots on 11.08.2020, he was very much active in the violence. He was pouring petrol on two wheelers parked in the Police Station premises.</p> <p><b>Ranganath J (LW-27):</b> A-17 is a SDPI member who had actively participated in the violence on 11.08.2020 and was seen pouring petrol and burning the vehicles in the Police Station premises along with Ateeq Ahmed &amp; Shahid Pasha Vali.</p> <p><b>Umran Khan Suhail (LW-35):</b> A-17 is a SDPI member of Sagaipuram ward. During the riots on 11.08.2020, he was very much active in the violence. He was pouring petrol on two wheelers parked in the Police Station premises.</p> <p><b>Beeresh (LW-30) HC:</b> A-17 was present inside the Police station. He was chanting slogans against Police. He was seen pouring petrol on the vehicles inside the Police station compound</p>

	<p>and burning them.</p> <p><b>Anand G (LW-36), PC</b> : LW-36 saw that as per the directions of A-1, Syed Mascod (A-2), A-3, A-10, A-18 &amp; Shafi Khan who are SDPI members had brought petrol and burnt the vehicles.</p> <p><b>Public witness: Protected Witness D-</b> States that A-16,A-17,A23 and others were setting fire to the vehicles parked in front of Police Station.</p>
<p>Shahid Pasha Vali (A-18)</p>	<p><b>Mobile location:</b> His mobile tower location during the incident is at the premises of DJ Halli PS.</p> <p><b>Police Witness Umran Khan Suhail (LW-35):</b> A-18 is a member of SDPI Sagalpuram ward and used to be active in all their programmes. He was seen along with Shafi Khan pouring petrol and burning vehicle in the Police station premises.</p> <p><b>Ranganath J (LW-27):</b> A-18 is a SDPI member who had actively participated in the violence on 11.08.2020 and was seen pouring petrol and burning the vehicles in the Police Station premises along with Ateeq Ahmed, Shafi Khan.</p> <p><b>Beeresh (LW-30) HC:</b> A-18 was seen with group of people. surrounding Muzamil Pasha. He was very active in the violence at the Police station during the time of offence. He was seen burning vehicles with petrol, on the directions of</p>



	<p>A-1.</p> <p><b>Anand G (LW-36), PC</b> : LW-36 saw that as per the directions of A-1, Syed Masood (A-2), Syed Ayaz (A-3), Mudasir Ahmed (A-10), Shafi Khan (A-17) &amp; Shahid Pasha Vali (A-18) who are SDPI members had brought petrol and burnt the vehicles.</p> <p><b>Public witness: HassinBaig @ MohinBaig (LW-119)</b> - Identifies A-18 along with A-16 to have set fire to the vehicles parked in the cellar of the Police Station and provoking crowd to attack Police station and Police personnel.</p>
<p>Tabreez (A-23)</p>	<p>Incriminating Whatsapp chat is available.</p> <p>He is seen in videos at the scene of crime.</p> <p><b>Rakesh GN (LW-34)</b>: States that A-23 is a member of SDPI Sagaipuram ward. He was part of the riots at DJ Halli PS on 11.08.2020 and participated in violence, raising slogans against Police and vandalizing the government / private property. He was also burning vehicles using petrol.</p> <p><b>Manjunatha BH (LW-32)</b>: A-23 was a part of the riots at DJ Halli PS on 11.08.2020 and participated in violence, raising slogans against Police and vandalizing the government/private property. He was also burning vehicles using petrol.</p> <p><b>Public witness: Protected Witness D-</b> States</p>

	that A-16,A-17,A23 and others were setting fire to the vehicles parked in front of Police Station.
Abdul Baseer (A-24)	<p><b>Mobile location:</b> His mobile tower location during the incident is at the premises of DJ Halli PS.</p> <p>He is seen in videos at the scene of crime.</p> <p><b>Manjunatha BH (LW-32):</b> A-6 was seen pouring petrol and burning vehicles in the Police Station area.</p> <p><b>Public witness: Protected Witness A-</b> States that A-24 and other accused persons were holding knives and rods and attacking the Police at DJ Halli PS and the station.</p>

OVERT ACTS OF THE ACCUSED IN SPL.C.C.No.141/2021 OF  
K.G. HALLI PS

Accused	Role of the accused
Syed Abbas (A-3)	<p>Police Witnesses :</p> <ol style="list-style-type: none"> <li>i. Shri Babu Reddy, PSI</li> <li>ii. Shri Anil, PC</li> <li>iii. Shri Kariyappa, PC</li> </ol> <p>These Police witnesses identified that the Accused Syed Abbas (A-3) and Habeeb Ur Rehman (A-4) were giving direction to 5 – 6 young people for burning the bike parked at the</p>

premises of KG Halli PS. The witnesses state that along with the Appellant/A-3, Peer Pasha (A-5), Ziya Ur Rehman (A-6) and Firoz Pasha (A-7) also were standing with them and instigating the nearby people for burning more vehicles. These Police witnesses will also prove the presence and activities of the Appellant during the riot at KG Halli PS area.

**Civil Witness:**

**CW143** (Protected Witness) : The said witness was present at the premises of KG Halli PS during the incident on 11.08.2020. His two-wheeler scooter was completely burnt by the mob and he lodged a complaint on dated 16.08.2020. He can prove the presence of accused Syed Abbas (A-3) at KG Halli PS area and his activities during the incident, besides the presence and activities of accused Sadiq Karchief, Habeeb Ur Rehman (A-4), Peer Pasha (A-5), Ziya Ur Remhan (A-6), Firoz Pasha (A-7), Syed Asif (A-16), Syed Ikramuddin (A-14) and few others. He can also prove that the protestors used petrol bomb (petrol packed in plastic covers) and other deadly weapons and burnt the vehicles parked around the Police station.

CDR of mobile number used by the accused will prove his contact with other accused and his location on 11.08.2020 at the place of conspiracy and then at KG Halli PS during the time of incident.

34. A plain reading of Section 18 of UAP Act would clearly indicate that it would take within its sweep or fold persons who abet, incite, knowingly facilitates the commission of terrorist act. Thus, while evaluating the specific roles and overt acts of the appellants, necessarily, Section 18 of UAP Act will have to be kept in mind along with Section 15 of UAP Act. The provisions of Section 15 makes it clear that usage of "flammable substances" to cause injuries to person or damage properties with an intention to strike terror amounts to terrorist act under Section 15 of UAP Act. The investigation material on hand reveals that petrol bottles were used while attacking Police personnel and the Police station and such material being highly inflammable substance would prima-facie attract the provisions of Section 15 of UAP Act.

35. The overt acts noted above would clearly indicate the actions of the accused persons in forming a

violent mob in front of the Police station, attacking the Police station and Police personnel using lethal weapons such as, clubs, rods, usage of petrol bottles and indulging in arson indicates that entire action was done with an intention to strike terror at the public at large. The charge sheet material would also prima facie indicate presence of the appellants at the spot of incident at the time of committing offence.

36. Accused No.19 was leading a group of people involving accused Nos.20, 21, 22, 23 & 24 and they all actively participated in attacking the Police station and Police personnel. The statement of the protected witness would clearly highlight the role played by accused No.19 whereunder it is stated that he had threatened the protected witnesses to leave the area immediately and as per the direction of SDPI, more cadres of SDPI were reaching K.G. Halli Police station area and something serious could happen as they cannot keep silent all the time

when someone insult Prophet Mohammed and religion of Islam and as such they were ready to martyrdom for their desired cause. It is in this conspiracy and motive accused Nos. 19 and 20 to 24 actively participated in the violent acts enumerated herein above. The charge sheet material would also indicate that accused Nos. 19, 20 to 24 set ablaze Innova car parked near K.G. Halli Police station by pouring petrol on it which act has been captured by accused No. 21 on his mobile and shared with others through whatsapp group. The role of accused persons - appellants has been established through prosecution witnesses, statement of protected witnesses, documentary/electronic evidence and CDRs of mobile numbers used by accused during the relevant point of time. Appellants with a common intention were part of unlawful assembly and with a common object to commit a terrorist act, destruction of public and private properties had disobeyed the promulgation of the orders issued under Section 144

Cr.P.C. In fact, any furtherance of the common objective to cause harm and destruction to the Police station, they have attacked the Police personnel who were on duty at the relevant date, time and place of incident. As a part of the conspiracy that was hatched with an intention to strike terror and cause fear in the mind of public, the appellants have acted accordingly. A perusal of the report made under Section 173 Cr.P.C and the charge sheet material, this court is of the considered view that accusations against accused persons are prima-facie true and proviso to Section 43D(5) is attracted to the facts on hand.

37. A coordinate Bench of this Court in CrI.A. No. 585/2021 a/w. CrI. No. 576/2021, 582/2021 and 745/2021 has confirmed the rejection of the bail application of accused Nos. 14, 15, 16, 18, 20, 21, 22, 23, 24, passed in Spl.C.C. No. 141/2021 and accused Nos. 9, 10, 11, 12, 13, 14, 15, 20, 21 in Spl.C.C. No. 152/2021 by judgment dated 15.09.2021 and the said judgment has been confirmed by

the Hon'ble Apex Court in SLA (Crl.) No. 848/2022 dated 28.02.2022.

38. A coordinate Bench of this Court in Crl.A. No. 1448/2021 has confirmed the rejection of the bail application of accused No. 25 in Spl.C.C. No. 141/2021 by judgment dated 30.03.2022 (2022 SCC Online Kar. 362)

39. A coordinate Bench of this Court has confirmed the rejection of the bail application of accused No. 8 in Spl.C.C. No. 141/2021 by judgment dated 22.12.2021 passed in Crl.A. No. 1640/2021.

40. Hence, we answer the points formulated herein above to the effect that impugned order passed by the Special Court rejecting the bail applications filed by the appellants would not call for interference and proviso to Section 43D(5) of UAP Act is squarely attracted to the facts on hand namely, charge sheet material would disclose the



accusations made against appellants are prima-facie to be believed as true.

For the reasons aforesated, we proceed to pass the following:

### **JUDGMENT**

- (1) Criminal Appeals are dismissed.
- (2) Orders dated 27.08.2021 and 25.03.2022 passed by XLIX City Civil and Sessions Judge and Special Court for NIA cases, Bengaiuru in Spl.C.C. Nos. 141/2021 and 152/2021 are affirmed.

**Sd/-  
JUDGE.**

**Sd/-  
JUDGE.**

LRS.