

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2022

PRESENT

THE HON'BLE Mr. JUSTICE K. SOMASHEKAR

AND

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL No. 673/2021

BETWEEN :

1. Irfan Pasha

2. Mohammed Mujeeb Ulla

... APPELLANTS

(By Sri. S. Balakrishnan, Adv.)

AND :

National Investigating Agency
Represented by
Special Public Prosecutor (NIA)
High Court Building
Bengaluru – 560 001.

... RESPONDENT

(By Sri. P. Prasanna Kumar, SPL.PP)

This Criminal Appeal is filed under Section 21(4) of the NIA Act with a prayer to set aside the judgment and order passed by the Court below in Spl.C. No. 181/2017 for the offence punishable under Section 302 read with Section 34 and Sections 109, 120-B, 150, 153A, 201 of IPC and Sections 3, 27 of the Arms Act and Sections 15, 16, 17, 18 and 20 of Unlawful Activities (Prevention) Act pending on the file of XLIX Additional City Civil and Sessions Judge and Special Court for NIA Cases, Bengaluru and etc. .

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

J U D G M E N T

This appeal is filed by accused Nos. 1 and 4 challenging the order dated 21.04.2021 passed in Spl.C.C. No. 181/2017 on the file of XLIX Additional City Civil and Sessions Judge and Special Court for NIA Cases, Bengaluru rejecting their bail application filed under Section 439 of Cr.P.C..

2. Brief facts of the case are that, on the complaint filed by one Sri. Jairam a case was registered at the first instance against two unknown persons for having committed the brutal murder of one Sri. Rudresh on 16.10.2016 near Srinivas Medical Stores, Shivajinagar. Later it is the case of prosecution that accused Nos. 1 to 4 conspiring with accused No. 5 came on two motorbikes, accused No. 2 being the pillion rider of Pulsar Motor Bike which was driven by accused No. 3 struck on right side of neck with sharp lethal weapon machete and they fled

away. The said Pulsar motorbike was followed by Apache motorbike on which accused Nos. 1 and 4 were moving. As a result, Sri. Rudresh succumbed to the injuries. Subsequently, on 27.10.2016 accused Nos. 1 to 4 have been arrested. At the first instance crime No. 124/2016 was registered for the offence punishable under Sections 302, 201 read with Section 34 of IPC. Based on the statement of accused No. 4, accused No. 5 was arrested on 02.11.2016. Union of India, Ministry of Home Affairs, Internal Security - 1 Division, North Block, New Delhi in their order No. 11011/33/2016-IS/IV dated 07.12.2016 entrusted the investigation to the National Investigating Agency (hereinafter referred to as 'the NIA' for brevity) as per the powers conferred under 6(5) read with Section 8 of the NIA Act, 2008. In pursuance of the aforesaid order, the NIA, Hyderabad Branch registered the case as RC-04/16/NIA/Hyderabad under Sections 120B, 109, 150, 153-A, 302, 201 read with Section 34 of IPC, Sections 3 and 27

of the Arms Act and Sections 15, 16,17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UAP Act' for brevity). The NIA after conducting investigation has filed charge sheet for the aforesaid offences citing 117 exhibits and produced 90 documents.

3. Appellants - accused Nos. 1 and 4 filed bail application under Section 439 of Cr.P.C. before the trial/Special Court contending that assailants were two unknown persons who had come in an unnamed motorcycle, out of whom the pillion rider assaulted the victim with machete, there is nothing on record to show any connection or link of accused Nos. 1 and 4 with the crime; C.W.2 and C.W. 3 have not uttered anything regarding presence of accused Nos. 1 and 4 on the spot; P.W.1 - Jairam whose statement was recorded on 20.10.2016 has mentioned that after the assailant left the place of

occurrence in their motorcycle, another motorcycle followed them; one more motorcycle was introduced on 20.10.2016, but, nothing is mentioned attributing any overt acts or their presence in the said statement. Accused Nos. 1 and 4 were arrested on 27.10.2016 and at that time investigating agency did not collect any material connecting accused Nos. 1 and 4 with the case except a bald allegation brought on record on 20.10.2016. Based on the statement of accused No. 4 one Samsung Mobile, Vodafone SIM card, one AirCel SIM card and one button knife was seized. The name of Apache motorcycle was not part of record till the arrest of the accused. Recovery made on the disclosure statement of accused Nos. 1 and 4 are not relevant for appreciation while considering the bail application. The appellants are not members of PFI (Popular Front of India) organization to connect them with the said organization. There are number of CCTV cameras installed by various commercial establishments but the images of accused Nos. 1 and 4 are

not found in any of the CCTV footage either at the relevant time of incident or the entire day of the incident. Test Identification Parade held in the Central Prison, Parappana Agrahara by C.W. 26 – Sri. Manjunatha is not connecting accused Nos. 1 and 4 to the alleged offences. It is the case of the prosecution that the witnesses have seen accused Nos. 1 and 4 from their back at a distance of more than 60 feet which prima facie indicates that they have not seen facial features or facial identification or facial steps at the time of incident. Accused Nos. 1 and 4 are languishing in Central Prison, Bengaluru, for a period of 5 years 6 months and still the prosecution has to examine several witnesses and it may require more than five years to conclude the trial. The accused Nos. 1 and 4 being innocent have been unlawfully implicated based on the phone calls, CCTV footage and they are ready to obey the conditions that would be imposed on them for their release. The trial Court after giving an opportunity to the Special Public Prosecutor

of NIA heard the matter and rejected the said application. Hence, they have filed the present appeal seeking setting aside the said order and grant of bail.

4. In the appeal memorandum it is stated that on 16.10.2016 statements of C.W.2 and C.W.3 were recorded and they have not uttered anything regarding the presence of accused Nos. 1 and 4. On 20.10.2016 the statement of P.W.1 – Jairam was recorded in which he has mentioned that after the assailants left the place of occurrence on their motorcycle another motorcycle followed them. Nothing is mentioned attributing any overt acts or their presence. C.W.2 and C.W.3 have referred to another motorcycle in their statement recorded on 20.10.2016. On 27.10.2016 accused Nos. 1 and 4 were arrested and the investigating agency did not collect any shred of material connecting accused Nos. 1 and 4 with the case. Based on the disclosures made by accused No. 1, one Apache bike, one

Samsung mobile with Airtel and Idea SIM cards, one shirt, one pant, one T-shirt, one cap and passport have been seized. Based on disclosure statement of accused No. 4 one Samsung Mobile, one Vodafone SIM card, one AirCel SIM card and one button knife were seized. The name of Apache motorcycle was not part of the record till the arrest of the accused. The recoveries effected based on the disclosure statements of accused Nos. 1 and 4 are not relevant for appreciation while considering the bail application. Accused Nos. 1 and 4 are not members of PFI organization. Accused Nos. 1 and 4 are not found in any of the CCTV cameras installed by commercial establishments in the area. Test Identification Parade held by P.W.76 – Sri. Manjunatha is not connecting accused Nos. 1 and 4 to the alleged offence as the eye witnesses have seen the rider and pillion rider of Apache motorcycle at their back when the vehicle was moving at about 60 feet. Accused Nos. 1 and 4 are in incarceration for a period of five years six months. The

prosecution has cited in all 90 witnesses and 86 witnesses are yet to be examined and over a period of five years the prosecution has examined only four witnesses and it may take more than five years to complete the trial. Even though the appellants/ accused Nos. 1 and 4 altogether are standing on different footing, the trial Court while rejecting their bail application heavily relied upon the observations made on the application filed by accused No. 5 and rejected the bail application. There are absolutely no prima facie material against the appellants/accused Nos. 1 and 4 for the alleged offence.

5. Heard the arguments of learned counsel for the appellants and learned Spl.P.P. appearing for the NIA and perused the records.

6. Learned counsel appearing for the appellants/accused Nos. 1 and 4 contended that there is no

iota of material against accused Nos. 1 and 4 with the murder of the deceased – Sri. Rudresh. There are no overt acts alleged against accused Nos. 1 and 4 in commission of the murder of the deceased except stating their presence on a motorbike near the spot without attributing any overt acts against them. Till 20.10.2016 there were only two assailants with one bike and subsequently another bike and two other persons were implicated. C.W.1 to C.W.3 never said that the deceased was a RSS worker and was in Uniform at the time of incident. One of the offence alleged is under Section 15 of the UAP Act but there is no charge on that offence. The sanction accorded to prosecute accused Nos. 1 and 4 under UAP Act is not by a competent authority and therefore on that ground the appellants are entitled for grant of bail. On that point the learned counsel for the appellants relied on the decisions of this Court in the case of **Sadik Shariff Vs. State by Vijayanagar P.S., Mysore, Crl.R.P. No. 98/2009** decided on **06.11.2009** and

contended that the Under Secretary is not the authorized authority for according sanction. If there is no valid sanction, the designated Court gets no jurisdiction to try any person mentioned in the report as the Court is forbidden from taking cognizance of the offence and without such previous sanction the proceedings will be without jurisdiction and on that point placed reliance on the decision of the Apex Court in the case of **Rambhai Nathabhai Gadhvi – Vs. State of Gujarat** reported in **1997 (7) SCC 744**. Learned counsel for the appellants would contend that the Court has considered the bail applications filed by the accused under Chapter IV and VI of UAP Act and in that has placed reliance on the decision of coordinate Bench of this Court in the case of **Saleem Khan and another Vs. State of Karnataka, Suddaguntepalya Police Station, Crl.A. No. 130/2021** decided on **21.04.2022** wherein this Court has observed thus :

"18. While considering the application filed by the accused, against the offences under Chapter IV AND VI of the UA (P) Act have been alleged, the Court has to consider, whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied, after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. It is also well settled that the scope of inquiry is to decide whether prima facie material is available against accused Nos. 11 and 20 of commission of offences alleged under the provisions of section 120B of IPC, sections 18, 18A, 18B, 19, 20, 38 and 39 of the UA(P) Act, which comes under Chapters IV and VI of the UA(P) Act and the grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds."

7. Learned counsel for the appellants contended that PFI and SDPI (Social Democratic Party of India) are not banned organizations and on that point placed reliance on the decision of the Apex Court in the case of **State of Kerala Vs. Raneef** reported in **AIR 2011 SC 340** wherein it is held as under:

"9. It is further alleged in the counter affidavit that the Popular Front of India (PFI) or the Social Democratic Party of India (SDPI) are not militant or terrorist organizations. There is no history of crimes against the party or its workers. They are not banned organizations. The SDPI is a political party recognized by the Election Commission and the PFI is registered under the Societies Registration Act."

8. Learned counsel for the appellants also placed reliance on the decision of Andhra Pradesh High Court in the case of **Devendar Gupta and others Vs. National Investigation Agency, Crl.A. No. 795/2013** decided on

12.03.2014, [2014 (2) Crimes 177 (AP)] with regard to what are the parameters required to be considered to ascertain whether the accusations are 'prima facie true'. In the said decision it is held thus

"35. 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 offences 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;*
- 4) *Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or around the scene of occurrence; and*
- 5) *Whether the accused was/were arrested, soon after the occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies.”*

9. Learned counsel for the appellants also placed reliance on the decision of the Apex Court on the case of ***Union of India Vs. K.A. Najeed, Crl.A. No. 98/2021*** decided on **01.02.2021** wherein it is held thus:

"18. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of Page 11 the Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

10. Learned counsel for the appellants would contend that the trial Court has failed to consider the material on record and no material is available to connect the appellants to the crime and to reject the application seeking bail. Hence, he prayed this Court to set the impugned order and enlarge the appellants on bail.

11. Per contra, learned Spl.P.P. appearing for the NIA in his arguments contended that the charge sheet material clearly discloses that prior to and after the incident accused Nos. 3 and 4 were in contact with accused No. 5 over mobile phone. Mobile phone numbers of accused No. 4 are 9066864362 and 9986092884 and the mobile numbers of accused No. 5 are 9900584923 and 0686618754 and the said mobile phones are seized from the custody of accused Nos. 4 and 5 respectively. The fact as to those SIMs are not standing in the name of accused Nos. 4 and 5 is immaterial. He contends that from CDR analysis report of accused No. 5

it can be gathered that accused Nos. 3 and 4 were in touch with accused No. 5. The learned counsel has referred to the provisions of Section 43-D of the UAP Act and would contend that there is a clear bar to grant bail and the very purpose of introducing Section 43-D of the UAP Act was to take note of the gravity of the offence that become triable under the provisions of the said Act. The learned counsel would contend that on perusal of the proviso to Section 43-D(5) of the UAP Act it is clear that the Court while dealing with a case shall not grant bail to any person if on perusal of the charge sheet material it is of the opinion that there are reasonable grounds for believing that accusations against such person is prima facie true. The learned counsel places reliance on the decision of the Apex Court in the case of ***National Investigating Agency Vs. Zahoor Ahmed Shah Watali***, reported in ***2019 (5) SCC 1***, wherein it is held as under:

"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 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 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 concerned accused 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 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.”

12. The learned Spl.P.P. further argued that call details are important piece of evidence and on that point placed reliance on the decision of the Apex Court in the case of ***Siddhartha Vasisht Vs. State (NCT of Delhi)***, reported in **2010 (6) SCC 1**.

13. The learned Spl.P.P. further argues that under Sections 16, 18 and 20 of the UAP Act any individual who commits terrorist act can be prosecuted for the said offence and it is not necessary that he should be a member of any banned organization which is mentioned in first schedule of UAP Act as terrorist organization. It is his further contention that to prosecute a person for offence under chapters IV and VI of the UAP Act previous sanction by the Central Government or as the case may be the State Government is required as per the provisions contained in Section 45(i)(2)

of the UAP Act. The learned Spl.P.P. further contends that previous sanction accorded is in the name of the President of India and it is signed by the Under Secretary to the Government of India and it is not accorded only by the Under Secretary and therefore previous sanction is valid. The learned counsel further contends that the accusations against appellants/accused Nos. 1 and 4 and other accused are prima facie true and therefore the trial Court has rightly rejected the bail application by considering the proviso of sub-section (5) of Section 43-D of the UAP Act. It is his further submission that there are no grounds for interfering with the impugned order of rejection of bail and there are no grounds made out for grant of bail to the appellants/accused Nos. 1 and 4.

14. Having heard the arguments of the learned counsel appearing for the appellants/accused Nos. 1 and 4 and the learned Spl.P.P. appearing for the respondent –

State, on perusal of the material on record and decisions relied on the by learned counsel for the parties, the point that arises for our consideration in this appeal is:

"Whether the appellants have made out ground to set aside the impugned order and to enlarge them on bail?"

15. In view of the principles laid down in the judgment rendered by the High Court of Judicature at Hyderabad in the case of **Devendar Gupta**, (Supra) and also by the Apex Court in **National Investigation Agency Vs. Zahoor Ahmed Shah Watali** reported in **(2019) 5 SCC 1**, it is clear that after filing the charge sheet under Section 173 of Cr.P.C. the Court has to consider the material on record and ascertain whether there are reasonable grounds for believing that the accusations against the accused persons is prima facie true and if it is not, then the Court can exercise its discretion and also

there is a rider that the burden is high on the accused in terms of the proviso contained in Section 43-D(5) of the UAP Act to demonstrate that the prosecution has not been able to show that there exists reasonable grounds to show that the accusations against them is prima facie true and does not alter the legal position to the effect that the charge sheet need not contain detailed analysis of the evidence.

16. At the first instance, case was registered against two unknown persons and the incident has taken place on 16.10.2016. On 27.10.2016 accused Nos.1 to 4 were arrested. Accused No. 5 was arrested on 02.11.2016 based on the voluntary statement of accused No. 4. It is the case of the prosecution that accused No. 5 - Asim Shariff is the president of PFI and he conspired with accused Nos.1 to 4 to kill two members of RSS in uniform to create terror among the members of RSS. Learned Spl.P.P. appearing for NIA has pointed out the call details records between

accused No.5, 1 and 4 prior to and subsequent to the date of incident. Accused No.5 has admitted in the affidavit that he is the president of PFI. Accused Nos.1 and 3 have stated in their voluntary statement that they are members of PFI. The learned Spl.P.P. has also pointed out the CCTV footages showing the movement of accused Nos. 1 and 4 on Apache motor bike on the date of incident, at the time of incident near the scene of offence and they speaking with accused Nos. 2 and 3 who used lethal weapon – machete to kill the deceased – Sri. Rudresh who was a member of RSS and was in uniform at the time of incident. The appellants-Accused Nos. 1 and 4 have been identified by the eye witnesses in the test identification parade conducted in Central Prison, Bengaluru. Accused No. 5 had filed an application before the trial Court invoking Section 227 of Cr.P.C. seeking discharge from the case and the same was rejected. Said order was challenged before this Court and this Court also dismissed the same. Accused No. 5

thereafter approached the Apex Court and the same was dismissed. The Apex Court in paragraph No. 22 of its judgment dated 01.07.2019 passed in CrI.A. No. 949/2019 (arising out of SLP (CrI.) No. 1253/2019) while considering the discharge application on merits has observed as under:

"22. That apart, we have also gone through the relevant record of extract of the charge-sheet placed on record for perusal, the fact reveals that the appellant-accused is the President of Bengaluru unit of Popular Front of India (PFI) and the other Accused 1 to 4 are also the members of PFI. It reveals from the charge-sheet that there was frequent telephonic/mobile conversation between the appellant (Accused 5) with other accused persons (Accused 1 to 4) prior and subsequent to 16.10.2016 (the alleged date of incident) which persuaded the Court to arrive to a conclusion that there is a prima facie material of conspiracy among the accused persons giving rise to sufficient grounds of subjective satisfaction of prima facie case of alleged

offences of conspiracy being hatched among the accused persons and truth and veracity of such conspiracy is to be examined during the course of trial. "

17. The Apex Court also observed in the judgment rendered in Crl.A. No. 949/2019 filed by accused No. 5 that there were phone calls between accused No. 5 and other accused persons (accused Nos. 1 to 4). It is relevant to refer to the decision of the Apex Court in the case of **Sidhartha Vashisht** (supra) wherein it is held that close association among the accused is an important piece of evidence in the case of circumstantial evidence. The evidence of phone call is a very important and admissible piece of evidence. Further it is observed in paragraph No. 226 of the said judgment that phone call details show that the accused were in touch with each other which resulted in destruction of evidence and harbouring.

18. Further, the Apex Court in the judgment rendered in the case of ***Prashant Bharathi Vs. State (NCT of Delhi)*** reported in **2013 (9) SCC 293** regarding details of mobile phone calls held that it is conclusive in nature and mobile data helps in connecting the accused to the crime.

19. Learned counsel for the appellants contended that even though the appellants were considered to be the members of PFI, it is not a terrorist organization enumerated in the first schedule of UPA Act and therefore they are not members of any terrorist organization and they cannot be prosecuted under the UPA Act.

20. It is relevant to refer to some of the provisions of UPA Act to consider the said contention of the learned counsel for the appellants.

2(1)(k) "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

2(1)(l) "terrorist gang" means any association, other than terrorist organization, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

2(1)(a) "association" means any combination or body of individuals

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*

***(iia)** 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 organization
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 authorized 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.*

17. Punishment for raising funds for terrorist act.—*Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be*

used, in full or in part by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, 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.

Explanation.—For the purpose of this section,—

(a) *participating, organizing or directing in any of the acts stated therein shall constitute an offence;*

(b) *raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and*

(c) *raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organization for the purpose not specifically covered under section 15 shall also be construed as an offence.*

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 organizing of terrorist camps.—

Whoever organizes or causes to be organized 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.

20. Punishment for being member of terrorist gang or organization.—Any person who is a member of a terrorist gang or a terrorist organization, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

21. What is 'terrorist act' has been enumerated in Section 15 of the UPA Act and the punishment for terrorist act is provided under Section 16 of the UPA Act. The said provision commences with the words 'whoever'. The dictionary meaning of 'whoever' is 'anyone or everyone'. Any person who is a member of terrorist organization contained in the Section 20 has not been used in the

definition of terrorist act (Section 15) or in the offence of conspiracy punishable under Section 18 of UPA Act. Therefore, an individual can be prosecuted for terrorist act defined under Section 15 of the UPA Act and it is not necessary that to prosecute any person under the UPA Act he should be a member of a terrorist organization. Being a member of a terrorist gang or organization which is involved in terrorist act itself is an offence under Section 20 of the UPA Act. Therefore, the contention of the learned counsel for the appellants that individuals who are not members of banned organization cannot be prosecuted for offence under UPA Act does not hold any substance. There was no animosity between accused Nos. 1 to 5 and deceased Sri. Rudresh. The alleged act of murdering the deceased Sri. Rudresh has been committed with an intention to create terror in the mind of members of RSS. As per the prosecution case the motive for the murder of deceased Sri. Rudresh who is a member of RSS is to create

terror in the mind of members of RSS. Considering all the charge sheet material the trial Court rightly came to the conclusion that there is a prima facie case against the accused persons to show their involvement in the crime. Therefore, as per the provisions contained under Section 43(D)(5) of the UAP Act the accused persons facing charge under the provisions of the said Act are not entitled for bail unless the Court comes to the conclusion that there is no prima facie case against them.

22. The Court cannot take cognizance of an offence under chapter IV and VI of the UPA Act without the previous sanction of the Central Government or as the case may be the State Government. The previous sanction has been accorded by order dated 19.04.2017 by the Union of India, Ministry of Home Affairs, Internal Security -1 Division, North Block, New Delhi. The said order has been passed in the name of the President of India and it is signed

by the Under Secretary to Government of India. 'Central Government' means Government of India. The conduct of business in the Government of India is provided under Article 77 of the Constitution of India which reads thus:

"Article 77. *Conduct of business of the Government of India.- (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.*

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules 1 to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the grounds that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

23. As per Article 77(1) of the Constitution all the executive action of Government of India is required to be taken in the name of the President. In the case on hand previous sanction has been passed in the name of President of India and it is signed by the Under Secretary to Government of India. Therefore, at this stage the said previous sanction appears to be valid and it is subject to the determination by the special Court at the trial.

24. Perusal of the material on record discloses that there is sufficient material against appellants/accused Nos.1 and 4. Prima facie case exists against accused Nos. 1 and 4. Hence, there is no merit in this appeal. There are no grounds to set aside the impugned order dated 21.04.2021 passed in Spl.C.C. No. 181/2017 on the file of XLIX Additional City Civil and Sessions Judge and Special Court for NIA Cases, Bengaluru whereunder the bail application of the appellants/accused Nos. 1 and 4 came to be rejected.

There are no grounds to grant bail to appellants/accused Nos. 1 and 4.

25. In view of the above discussion, we proceed to pass the following;

ORDER

- (i) The appeal is dismissed.
- (ii) The special Court is directed to expedite the trial. Both, prosecution and defence shall cooperate for speedy trial.

**Sd/-
JUDGE.**

**Sd/-
JUDGE.**