IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1144 OF 2024

Yusuf Khan s/o. Bahadur Khan
Age-46 years, Occ-Veterinary Doctor,
R/a Opposite Wahed Khan D.S. College,
Bilal Colony, Amravati. .... Appellant
(Org. Accused No.6)

V/s.

1) The State of Maharashtra

2) The National Investigation Agency
(Through its Ld. Spl. Public Prosecutor
for NIA, Mumbai) .... Respondents

Dr. Yug Mohit Chaudhry a/w. Mr. Sharif Shaikh, Ms. Afrin Khan, Mr. Muzammil Shaikh, Mr. Ejaz Shaikh, Mr. Anush Shetty, Ms. Muskan Shaikh, Adv. Benazir Khan i/b. Adv. Mateen Shaikh for the Appellant.
Smt. Madhavi H. Mhatre, APP for the Respondent No.1 – State.
Mr. Anil C. Singh, The Additional Solicitor General of India a/w. Mr. Chintan Shah, Mr. Aditya Thakkar, Mr. Sandeep Sadawarte, Adv. Prasanna Bhangale, Mr. Krishnakand Deshmukh for the Respondent No.2– NIA.
Mr. Manish Prabhune, DYSP, NIA, Mumbai, present.
Mr. Akhilesh Singh, P.I., NIA, Mumbai, present.

CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.

RESERVED ON : 08th JANUARY, 2026
PRONOUNCED ON : 20th JANUARY, 2026

JUDGMENT : [PER SHYAM C. CHANDAK, J.] :-

1) Present Appeal is directed against the impugned Order dated 12.07.2023, passed below Exh.12, in Special Case No.1493 of 2022, by the learned Special Judge, City Civil and Sessions Court, Greater Mumbai,

thereby, the said Application (Exh.12) filed by the Appellant/Original Accused No.6 for grant of bail, was rejected. Said case arises out of RC No.02/2022/NIA/MUM, under Sections 109, 120B, 302, 153-A, 201 & 505 of the Indian Penal Code ("IPC") and Sections 16, 18 & 20 of the Unlawful Activities (Prevention) Act, 1967 ("UAPA").

The Respondent-NIA has filed an Affidavit-in Reply and opposed the Appeal.

2) Heard Dr. Chaudhry, the learned counsel for the Appellant, Ms. Mhatre, the learned APP for the Respondent No.1-State and Mr. Singh, the Additional Solicitor General of India for the Respondent No.2-NIA. Perused the record.

3) The prosecution case is that, on 26.05.2022, the ex-spokesperson of a political party named "BJP", made a controversial comment in a TV debate. Her said statement went viral on social media, which caused outrage in the Muslim community at Amravati. Therefore, on 08.06.2022 Accused Nos.7, 9 and others went to Nagpuri Gate Police Station at Amravati and requested registration of an FIR on account of that comment. The police refused to register such an FIR as number of FIRs were already registered in that regard at other Police Stations. As alleged, on 09.06.2022, a special meeting of the Muslim community was called by A-7 and A-9, through a WhatsApp group "Meeting Only", at Roshan Hall, Amravati, to discuss the issue of the controversial comment and to take a

call to appeal for “Bharat Band” but for the intervention of the local police, the said call was not taken. However, the A-7, A-9 and A-10 were not satisfied with that resolution. Thereafter, a chain of messages in support and against that controversial comment went viral on social media. Between 09.06.2022 to 11.06.2022, certain persons had supported the controversial comment through social media. Therefore, they were threatened by A-1 and A-10 and asked to post an apology.

3.1) As the prosecution case goes further, deceased Umesh Kolhe, was a Veterinary Medical Shop owner. The Appellant is a Veterinary Doctor and he used to visit the deceased’s shop to get medicines. Therefore, the two were acquainted with each other. Additionally, they both were members of a WhatsApp group, namely “Black Freedom” where many other veterinary chemists and medical representatives were members. On 14.06.2022, deceased posted one photo of the said ex-spokesperson alongwith certain text message from his mobile in support of her comment, in that WhatsApp group. The Appellant, who was the only Muslim member in that WhatsApp group, got offended by that post. The Appellant, therefore, decided to avenge the deceased and hence, he took a screenshot of that message of the deceased, typed his own instigating message, tagged it to the screenshot of the post by deceased and finally posted it in other WhatsApp group and to many individuals with the intent to expose the deceased, spread hatred against him and to avenge the deceased for his act

of posting that supporting message. But before taking such screenshot, the Appellant changed the second-last digit of the mobile number of the deceased saved in his contact list and then re-saved the mobile number, thereafter took the screenshot of the WhatsApp post of the deceased displaying the changed mobile number. This the Appellant did to expose the identity of the deceased and to achieve the objective behind his instigating message. The instigating message posted by the Appellant reads:

> "*Amit Medical Prabhat Takiz Tehsil ke Samane isko batana hain ke jin logon ke bharose kamai ki unse hi dushmani ka anjam kya hota hai, is message ko zyada se zyada group or gore walo ko send kare*".

3.2) It is alleged that, the Appellant then, with criminal intent, visited at A-5, who was already known to A-6 as his client. A-5 was already aware of and equally miffed by that post of the deceased. In this meeting, the criminal conspiracy to eliminate the deceased began. Accordingly, on 18.06.2022, A-4 and A-5 met at Gausiya Hall and discussed about the disputed post forwarded by the deceased. A-5 then told about that post to A-7, who was also the recipient of that post from the Appellant and A-3, being a member of other WhatsApp groups. On 19.06.2022, another meeting was held between the accused persons, wherein it was decided to behead (kill) the deceased because he had committed a crime against their faith. With that common objective, the accused persons formed a terrorist gang under the leadership of A-7 to kill the deceased and to strike terror in the general public, who supported the controversial comment. In

furtherance of the conspiracy, on 20.06.2022, at around 21.30 hours, A-4 and A-11, at the instance of A-5 and A-7, went on a motorbike to kill the deceased. However, on that day, the deceased's medical shop was closed.

3.3) It is alleged that, on 21.06.2022, as pre-decided with the co-accused, A-1 to A-3 went near the medical shop of the deceased for Recce on instructions from A-5 and A-7 and, took their positions. In the meantime, A-4, A-5 and A-11 went to the lane of the incident and took their positions. At about 22.20 hours, after closing his medical shop, when the deceased was proceeding home riding his scooter, A-4 and A-11 wrongfully restrained him and stabbed in his neck with a sharp knife with an intention to behead him. As a result, the deceased suffered a serious injury and died.

3.4) On receipt of the information of the murder, an FIR bearing C.R. No.306 of 2022 dated 22.06.2022 under Section 302 and 34 IPC was registered with City Kotwali Police Station Amravati, against 3 unknown persons. During investigation, Section 153-A, 153-B and 120-B of IPC and section 16, 18, 20 of UAPA, came to be added. The Central Government directed the NIA to investigate the case. The NIA re-registered the crime *vide* RC-02/2022/NIA/MUM and investigated into the same. The sanction was accorded on 15.12.2022, by the Ministry of Home Affairs, CTCR Division under Section 45 (1) of UAPA against the Appellant and his co-accused. The Appellant was arrested on 01.07.2022. On completion of investigation, charge sheet was filed against the Appellant and others.

4) Dr. Chaudhry, the learned Counsel appearing for the Appellant, at the outset, pointed out the instigating message which the Appellant had attached to the screenshot of the subject post and circulated through WhatsApp amongst his acquaintances. Further, Dr. Chaudhry submitted that, like the Appellant, several other veterinary doctors used to purchase medicines from the deceased and thus were giving him the business. The post of the deceased was not approved by the conscience of the Appellant. He, therefore, only wanted to adversely affect the business of the deceased by persuading the other veterinary doctors to stop purchasing medicines and giving him an earning. Except this, the Appellant had no other intention behind sending that message.

4.1) Dr. Chaudhry, urged that there is no material on record against Appellant that he was radicalised Islamist. As alleged, first the Appellant met A-5 to discuss the subject post of deceased and it was at that point of time that the alleged conspiracy to kill the deceased began. However, as to exactly what was discussed in that meeting about the conspiracy, not an iota of evidence exists. He submitted that, thereafter, allegedly a couple of meetings were held by the co-accused to deepen the conspiracy and give its intended effect, but the Appellant was not part of those meetings which according to the prosecution, led to killing of the deceased. Therefore, according to Dr. Chaudhry, the Appellant cannot be blamed for the conspiracy and the murder.

4.2) Dr. Chaudhry, the learned counsel emphatically submitted that, the main evidence against the Appellant is in the form of extra-judicial confessions, allegedly made by his co-accused before certain individuals and the police. However, said confessions are very belated, which indicates that the confessions are outcome of a pressure exerted by the police and therefore, non-voluntary. Moreover, such confessions by co-accused have limited acceptance in law.

4.3) Lastly, raising the ground of incarceration, Dr. Chaudhry urged that since last more than three and half years, the Appellant is in the jail. His further detention is not required for any purpose. Till date, no charge is framed against the accused. If such charge is framed, the prosecution will examine many witnesses, as the number of witnesses are 254. Thus, the trial would take its own time. As such, and having regard to the quality of the evidence against the Appellant, his continued detention in jail will be nothing but a per-trial punishment, which is against Article 21 of the Constitution of India and the settled principles of law relating to grant of bail in such cases. He therefore, prayed for grant of bail.

4.4) To substantiate these submissions, Dr. Chaudhry, has relied upon following reported decisions. We have carefully perused the same.

i) *Pancho Vs. State of Haryana, (2011) 10 SCC 165* and ii) *Vernon Vs. State of Maharashtra and another, (2023) 15 SCC 56*.

5) Mr. Singh, the learned ASG, on the other hand, strongly

opposed the Appeal. He submitted that, the Appellant was the only Muslim member in the WhatsApp group in which the deceased had posted his message, supporting the controversial comment. The Appellant felt that message to be offending, he therefore prepared his mind to avenge against the deceased. He took a screenshot of the WhatsApp post of the deceased, added his instigating message to that and finally forwarded that post of the deceased to other individuals and another WhatsApp group namely "Kalim Ibrahim" of Muslim members to disclose the name and create hatred against the deceased. The Appellant then met A-5, who was equally offended by the message of the deceased. Prior to that meeting, a large number of messages in support of and against the controversial comment were posted on social media. Certain individuals, who had supported that comment like the deceased, were threatened and made to post their apology. The learned ASG submitted that the meeting of the Appellant and A-5 was the first step taken towards the conspiracy to avenge against the message posted by the deceased. Accordingly, the conspiracy was taken further with the aid of the co-accused in a designed manner and finally the deceased was murdered. As such there is a prima facie case of a very serious offence against the Appellant. Therefore, upholding the rejection of the bail by the trial Court is the only option in this Appeal.

5.1) To buttress these submissions, the learned ASG relies upon the decision in *Union of India rep. by the Inspector of Police, National*

Investigation Agency, Chennai Branch Vs. Barakathullah, etc., *2024 SCC OnLine SC 1019*.

6) In the backdrop of aforestated rival submissions and the settled position of law, we have considered the material on record enclosed with report of police under Section 173 of Cr.P.C. This exercise surfaces that, the Appellant was a member in the WhatsApp group namely "Black Freedom" in which deceased had posted the message supporting the controversial comment. If that post by the deceased is read in juxtaposition with the alleged instigating text message that Appellant added to the screenshot of that post of the deceased coupled with the statements of the witnesses, it is clear that the Appellant got upset and angry, and he wanted to avenge the deceased for his said act. The Appellant, therefore, drafted his message in such a manner that, on reading it any individual or group of individuals would easily get angry and make up their mind to avenge the deceased.

7) According to Dr. Chaudhry, the words in the message of the Appellant, *i.e.*, "*zyada se zyada gore walo ko send kare"* make it very much clearer that the Appellant only wanted to damage the business and earning of the deceased, as many Muslims were his customers. But, Dr. Chaudhry could not point out such customers from the record. On the contrary, the word "*group*" suffixed to the words "*zyada se zyada*", clearly depicts the otherwise intention "to avenge" behind that message. The use of the words "*Amit Medical Prabhat Takiz Tehsil ke Samane isko batana hain*" also

indicates that the deceased was specifically selected to target. Because unlike others, he was not told to post an apology for his supporting post. Dr. Chaudhry could not justify as to why the use of said words was necessary. In this context, Section 14 of the Evidence Act is relevant and it reads :

> **14. Facts showing existence of state of mind, or of body or bodily feeling.–** Facts showing the existence of any state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.
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> [*Explanation 1*. - A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.
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> *Explanation 2*. - But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be relevant fact.]

8) If indeed, the Appellant only wanted to limit the impact of his message to adversely affect the business of the deceased, firstly; he would have drafted his message with that angle. Secondly, which is most important having regard to the investigation material, the Appellant would have forwarded his message only to those who were customers of the deceased. However, instead of that, which, according to us was quite natural and normal, what the Appellant did, he circulated the post crafted by him in the WhatsApp group namely “Kalim Ibrahim” as well as to many individuals, irrespective of whether the recipients were customers of the

deceased or not. Soon thereafter, the Appellant met with A-5, and immediately thereafter, as perceivable from the statement of the witnesses, the conspiracy was hatched.

9) Considering the text of the message posted by Appellant and its circulation through WhatsApp but not before suitably altering the mobile number of the deceased to be displayed in that message it is evident that, at a time the Appellant wanted to unwrap the deceased to many individuals, so that some individual or a group of persons would immediately come in action and avenge against the deceased in a short time.

10) Perusal of record indicates that, there was already an outrage due to the controversial comment and the societal situation was very tense. Meantime, several individuals were threatened for they had posted the messages supporting that comment like the deceased and therefore, were commanded to post their apology. The Appellant being a literate and most importantly a veterinary doctor, was capable of understanding that delicate situation in the interest of public at large and to maintain the orderly society. But he believed in sending his message to take revenge of the deceased and to meet A-5 for that end.

11) Additionally, what appears significant to us is the phone calls exchanged between the Appellant and A-5. Record indicates that, in all 25 phone calls were exchanged by them before and after the commission of the crime. Therefore, and having regard to their acquaintance with each other,

the contention of the prosecution that after sending his instigating message the Appellant had met with A-5 appears probable. Looking at the material on record it appears that, A-5 was the main conduit between the Appellant and the other co-accused. Because like the Appellant, A-5 had also exchanged a large numbers of phone calls with the co-accused. In the meanwhile, the A-5 took steps for meetings to make the conspiracy work. Thus, it prima facie appears that those calls and the meeting were for the purpose of hatching conspiracy.

12) In this context we have noticed that, after the meeting with the Appellant, the A-5 met with A-4 at Gausiya Hall and discussed about the post sent by the deceased. A-5 then intimated about that post to A-7 in person, who was already aware of it being recipient from the Appellant and A-3. It can be noticed that A-7 was already aggressive over the spokesperson's issue alongwith A-1, A-9 and A-10. Further, A-5 and A-7 decided to meet at Gausiya Hall on 19.06.2022. Accordingly, in the evening, A-4, A-5, A-7 and A-11 assembled at Gausiya Hall to discuss the matter of the deceased and decided that, there should be only one punishment of beheading the deceased, which act A-4, A-5 and A-11 voluntarily agreed to do and A-7 agreed to support till it accomplished.

13) Considering the material on record, prima facie it appears that, a terrorist gang was formed by the accused persons under the leadership of A-7 to avenge the alleged dishonour of their faith by the deceased, by

brutally killing him and to strike terror into the hearts and minds of general public irrespective of whether they supported the spokesperson's comment or not. Therefore when the deceased was not found on the previous day, the accused found him on the very next day and committed his murder.

14) Dr. Chaudhry, the learned Counsel submitted that, as alleged, only once the Appellant had met with A-5. Thereafter, the Appellant was not involved in any the other meetings or activities. However, that itself is not sufficient to accept that the Appellant has been innocent or was not part of the conspiracy to eliminate the deceased. Because, from the material on record it appears that, after igniting the anger with his instigating message, the Appellant shrewdly kept himself away from co-accused till the commission of murder, so that he cannot be held responsible for the crime. The 25 phone calls exchanged between him and A-5, also indicates the same. Meaning, the Appellant was quietly active behind the curtain.

15) The Appellant was not present in a particular meeting with certain other accused is not material, as conspiracy can be inferred and proved by circumstantial evidence also. Conspiracies are secretary planned and direct evidence is therefore difficult to produce. However, the Court for the purpose of arriving at a finding as to whether the said offence has been committed or not, must bear in mind that meeting of the minds is essential; mere knowledge or discussion would not be.

15.1) In this context we have noticed that in order to avenge the

deceased, first, the Appellant changed the deceased's mobile no. in a suitable manner. He then added the instigating message to that, sent it to individuals and in the WhatsApp group. He then met with A-5, who was part of a couple of meetings which were also attended by some of the co-accused. Large numbers of phone calls were exchanged by the accused persons including the Appellant and the A-5, who was one of the mastermind of the crime. On 09.06.2022, the mobile location of the Appellant was found to be at Roshan Hall, where the meeting was held to discuss the issue of filing FIR against the controversial comment. All these circumstances show that there was a meeting of minds by the Appellant and the other accused persons to hatch the criminal conspiracy to kill the deceased which they did at the end. Thus, even independent of the extra judicial confessions of the co-accused, there is a prima facie case against the Appellant of having committed the alleged offence.

16) In case of *Vernon* (Supra), it was not possible for the Hon'ble Supreme Court to form an opinion that, there were reasonable grounds for believing that the accusation against the Appellant of committing or conspiring to commit terrorist act was prima facie true. That being the position, the apex Court held that, prima facie, neither the provisions of Section 18 nor Section 18-B can be invoked against the Appellants, therein at the stage of the bail. The actual involvement of the Appellants in any terrorist act was not surfaced from any of third-party communications. Nor

was there any credible case of conspiracy to commit offences enumerated under Chapters IV and VI of the 1967 Act. It is therefore held that, mere participation in seminars by itself cannot constitute an offence under the bail-restricting Sections of the 1967 Act, with which the Appellants were charged. In paragraph 39, the Hon'ble Supreme Court considered the applicability of Section 20 of the 1967 Act and held that, prima facie Section 20 cannot be made applicable against the Appellants, on the basis of the available materials. To form this view, it affirmed the interpretation given to Section 20 by the Division Bench of this Court in *Anand Teltumbde Vs. NIA, 2022 SCC OnLine Bom 5174*, which is as under:

> "**52.** Section 20 cannot be interpreted to mean that merely being a member of a terrorist gang would entail such a member for the above punishment. What is important is the terrorist act and what is required for the Court to see is the material before the Court to show that such a person has been involved in or has indulged in a terrorist act. Terrorist act is very widely defined under Section 15. In the present case, seizure of the incriminating material as alluded to hereinabove does not in any manner prima facie lead to draw an inference that the Appellant has committed or indulged in a "terrorist act" as contemplated under Section 15 of the UAP Act."

In paragraph 46, the Hon'ble Supreme Court observed that, "In *NIA Vs. Zahoor Ahmad Shah Watali*, *(2019) 5 SCC 1*, it has been held that 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 charge-sheet must prevail, unless overcome or disproved by other evidence and on the face of it, materials must show

complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. However, it would not satisfy the prima facie "test" unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the court of its worth.

In the wake of above, although the Appellants therein as undertrials had not crossed a substantial term of the sentence that may have been ultimately imposed against them on proof of the charges, it followed the fundamental proposition of law laid down in *Union of India Vs. K.A. Najeeb, (2021) 3 SCC 713*, that a bail-restricting clause cannot denude the jurisdiction of a constitutional court in testing if continued detention in a given case would breach the concept of liberty enshrined in Article 21 of the Constitution of India, would apply in a case where such a bail-restricting clause is being invoked on the basis of materials with prima facie low-probative value or quality. Therefore, bail was granted in the case.

16.1) In case of *Pancho* (Supra), on referring the earlier decisions in the field, the Hon'ble Supreme Court observed and held that, an extra-judicial confession can be used against its maker, but as a matter of caution, courts look for corroboration to the same from other evidence on record. An extra-judicial confession is a weak evidence and the Courts are reluctant in the absence of a chain of cogent circumstances to rely upon it for the

purpose of recording a conviction. In *Haricharan Kurmi Vs. State of Bihar, AIR 1964 SC 1184*, the apex Court observed that Section 30 merely enables the Court to take the confession into account. It is not obligatory on the Court to take the confession into account. A confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the Court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right. In paragraph 28, the Hon'ble Supreme Court observed that, in Haricharan (Supra) it is clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Act.

17) However, in our considered view these cited decisions are not applicable to the case in hand because, on a careful analysis of the probative value of the material on record, we are satisfied that a prima facie case has been made out against the Appellant showing his involvement in the crime since its inception. In so far as the extra-judicial confessions are concerned, majorly, it is an additional material against him.

17.1) In this context, it is apt to refer the decision in *Barakathullah,*

etc. (Supra). Therein the Hon'ble Supreme Court has considered the earlier decisions in *Gurwinder Singh Vs. State of Punjab 2024*, *SCC OnLine SC 109* and *NIA Vs. Zahoor Ahmad Shah Watali*, *(2019) 5 SCC 1*.

17.2) In *Barakathullah* (Supra), in paragraph 12, it is observed that in *Gurwinder Singh Vs. State of Punjab (supra)*, the apex Court has culled out following guidelines from Watali's Case :-

> "**34.** In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows :
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> • **Meaning of 'Prima facie true'** [para 23] : On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.
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> • **Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared** [para 23] : 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.

• Reasoning, necessary but no detailed evaluation of evidence [para 24]: 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.

• Record a finding on broad probabilities, not based on proof beyond doubt [para 24]: "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."

• Duration of the limitation under Section 43D(5) [para 26] : 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.

• Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27] : 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.

• Contents of documents to be presumed as true [para 27] : The Court must look at the contents of the document and take such document into account as it is.

• Admissibility of documents relied upon by Prosecution cannot be questioned [para 27] : The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by

> other evidence……. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

17.3) In paragraph 13, it is observed that, "… It is quite well settled position of law that the chargesheet need not contain detailed analysis of the evidence. It is for the concerned court considering the application for bail to assess the material/evidence presented by the investigating authority alongwith the report under Section 173 Cr.P.C. in its entirety to form its opinion as to whether there are reasonable grounds for believing the accusation against the accused is prima facie true or not."

In paragraph 19, the Hon'ble Supreme Court observed that, "as held in the case of *Watali* (Supra), the question of discarding the material or document at the stage of considering the bail application of an accused on the ground of being not reliable or inadmissible in evidence is not permissible. The Court must look at the contents of the documents and take such documents into account as they are and satisfy itself on the basis of broad probabilities regarding the involvement of the accused in the commission of the alleged offences for recording whether a prima facie case is made out against the accused.

18) In the wake of above and having considered the principles enunciated and noted in case of *Barakathullah* (Supra), we are of the view that there are reasonable grounds to believe that the accusation against the Appellant is prima facie true. Undoubtedly, the offence alleged is grave and

heinous in nature. Such offences affect the very core and conscious of the society, make it vulnerable and think to live in constant fear. Having reached to this prima facie opinion, we are not inclined to exercise the discretion of bail in favour of the Appellant.

18.1) In the result, the Appeal fails and is accordingly dismissed.

(SHYAM C. CHANDAK, J.) (A.S. GADKARI, J.)