GAHC010100752021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./121/2021

THE STATE, NATIONAL INVESTIGATION AGENCY
MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, REPRESENTED BY THE SUPT. OF POLICE, NIA, BRANCH OFFICE, GUWAHATI ASSAM

VERSUS

AKHIL GOGOI AND 3 ORS
S/O LATE BOLURAM @BOLU GOGOI
RESIDENT OF LUKRAKHANGAON SEINGHAT, PS TEOK, DIST JORHAT, ASSAM 785636

2:SHRI DHIRJYA KONWAR @ DHAIJA KONWAR @ DHAJYA KONWAR
S/O NIREN KONWAR
R/O RUPAHIBAM GAON
PS DEMOW
PO UDAIPUR
DIST SIVASAGAR
ASSAM 785640

3:SRI MANAS KONWAR @ MANASH PRATIM KONWAR @
S/O DEBEN KONWAR @ DEVENDRA NATH KONWAR
RESIDENT OF CHETIA HANDIQUE
PO SILASAKU
PS SIMALGURI
DIST SIVASAGAR
ASSAM
785640

4:SHRI BITTU SONOWAL @ BITTU SONWAL @ BITU SONOWAL
S/O ROBIN SONOWAL
RESIDENT OF ASHOK NAGAR
NEAR 2ND AP BN. PS MAKUM
DIST TINSUKIA
ASSAM 78612

Advocate for the Petitioner : MR. R K D CHOUDHURY

Advocate for the Respondent : MS. P BORAH (R-2,3,4)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MRS. JUSTICE MALASRI NANDI

Dates of hearing : 04.01.2023, 06.01.2023 & 09.01.2023.

Date of judgment : **09.02.2023.**

JUDGMENT &ORDER (CAV)

(Suman Shyam, J)

This appeal, preferred by the National Investigation Agency (NIA), is directed against the judgment and order dated 01.07.2021 passed by the learned Special Judge, NIA, Assam, Guwahati, in Special (NIA) Case No.02/2020 arising out of RC-13/2019/NIA/GUW whereby, all the four respondents/ accused persons were discharged by holding that there was no material available on record so as to frame charge against them.

2. The basic allegations brought against the accused persons are to the effect that the accused/respondent No.1 Sri Akhil Gogoi, (A-1), who is the leader of an organization called Krishak Mukti Sangram Samiti (KMSS), had conspired with the other three accused persons impleaded as respondent Nos. 2,3 and 4 i.e. A-2, A-3 and A-4, so as to commit terrorist acts in association with the banned terrorist organization CPI (Maoist) and thereby indulged in mass mobilization of public so as to

cause economic blockade and paralyse the Government machinery. In the process, they have disrupted essential services and disturbed the harmony between the various communities. On 13.12.2019 the Sub-Inspector of Police, Chandmari Police Station had lodged a complaint alleging merger of KMSS with the banned organization CPI(Maoist) alleging that the respondents have abated, conspired, advocated and incited acts preparatory to commission of terrorist acts. It appears that the complaint dated 13.12.2019 was primarily triggered by the State wide protests and agitations launched by various organizations including the KMSS protesting against the CAB/CAA which had ultimately led to sporadic incidents of violence in different parts of the State.

3. Initially, a police case being Chandmari P.S. Case No.1688/2019 was registered on the basis of the complaint dated 13.12.2019 treating the same as an F.I.R. and the matter was taken up for investigation by the Assam Police. However, the investigation in the aforesaid case was subsequently handed over to the National Investigation Agency (for short –NIA). Consequently, RC-13/2019/NIA/GUW came to be registered whereafter, NIA had carried out the investigation in connection with the aforesaid case. During the course of investigation, NIA had collected oral, documentary as well as technical evidence. On completion of investigation, NIA had submitted charge-sheet against all the four accused persons on 29.05.2020. The charges brought against the four accused persons were under Section 18 read with Section 39 of the Unlawful Activities (Prevention) Act, 1967 read with Sections 120(B)/124-A/153A/153B of the Indian Penal Code (IPC).

4. The gist of the charges brought against the accused persons, as appearing from the charge-sheet submitted on 29.05.2020 is reproduced herein below for ready reference :-

> "*16.17 After going through the oral, documentary and technical evidences brought on record during the course of investigation, it is established that accused A-1 had several secret meetings with members of CPI (Maoist) and had sent around 15 cadres/members of KMSS in batches of 05 each to train in camps of CPI (Maoist). They were imparted with training in their ideology, handling of arms & explosives, tactics of mass mobilization to carry seditious activities in garb of opposing lawfully established Government. A-1 along with his associates for a long period has been organizing seditious activities disrupting Government works in the state of Assam, in the name of dissent activities in democracy, which have a tactical resemblance with the modus operandi of the CPI (Maoist), a proscribed organization.*
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> *Further, accused A-1, A-2, A-3 and A-4, along with others had organized various meetings in the month of November, December 2019, and conspired to commit terrorist act, by using inflammable substances, to strike terror in section of people, by causing widespread blockade in the State of Assam, thereby paralyzing the Government machinery, causing economic blockade and disruption of services essential for life of community. The conspiracy and their subsequent provocative speeches caused enmity between groups, disruption of public peace and causing widespread disharmony and disaffection towards the Government established by the law. In pursuance of this conspiracy the mobs were provoked leading to damaging of public property and grievous injury to officials on their official duties. The accused conspired to promote public disharmony, unlawful assembly in violation of Section 144 Cr.P.C., obstruction of public ways including Railways, National Highway, State Highway and internal roads in various places in Assam, thus blocking supplies essential for life of community in India using inflammable substances and thus*

subsequently causing damage to public utilities."

5. There are 76 witnesses, ninety documents (D-1 to D-90) besides some technical evidence, which have been referred to in the charge-sheet submitted on 29.05.2020. It appears that after the service of summons on the accused persons, cognizance of the charge-sheet was taken whereafter, hearing on framing of charges had commenced on 16.03.2021. The arguments advanced on behalf of the prosecution for framing of charge went up to 10.06.2021. Thereafter, the defense side was heard and the arguments were concluded on 24.06.2021. It further appears from the materials available on record that on 29.06.2021, additional charge-sheet was submitted by the prosecution, bringing on record, additional materials for framing charge against the accused persons. On 01.07.2021 the impugned judgment containing 207 paragraphs, spanning over more than 120 pages, was passed by the learned Special Judge, NIA discharging all the four accused persons on the reasons recorded therein.

6. The appellant has assailed the impugned judgment primarily on two counts. Firstly, the impugned judgment has been delivered in utter disregard to the principles of natural justice whereby, the prosecution was not granted a fair opportunity to present its case. Secondly, on the face of the bulk of evidence brought on record by the prosecution in the charge-sheet dated 29.05.2020 as well as the additional charge-sheet submitted on 29.06.2021, the learned Special Judge, NIA had erred in law in holding that there was no material to frame charge against the accused persons.

7. By inviting the attention of this Court to the materials available on record, Mr. D. Saikia, learned senior counsel appearing for the appellant (NIA) has argued that on 29.06.2021 the prosecution had submitted additional charge-sheet bringing additional materials in the form of evidence of protected witness 'C' as well as document "D-91" so as to argue that there was sufficient evidence available against the accused persons to establish that they were the members of a "terrorist gang". Such evidence, according to Mr. Saikia, would unequivocally go to show that the accused persons have indulged in terrorist acts within the meaning of Section 15 of the Unlawful Activities (Prevention) Act, 1967 (herein after referred to as the UA(P) Act and hence, were liable to be punished under Section 18 of the UA(P) Act. Mr. Saikia further submits that on 29.06.2021, the counsel for the accused persons had submitted a written argument consisting of 1225 pages by serving a copy upon his assisting counsel. The prosecution had sought 10 days time to go through the documents and make submissions responding to the written arguments submitted by the accused persons and also in support of the additional charge-sheet. According to Mr. Saikia, on 30.06.2021, when the matter came up before the Court, the learned Special Judge had verbally agreed to grant 7 days time to the prosecution to make submissions in support of the additional charge-sheet and also to respond to the written submission of the defence counsel but by a post-dated order, the prayer for adjournment made by the prosecution was rejected and on 01.07.2021 the impugned judgment was delivered. Mr. Saikia submits that there is no valid reason for the learned court below to deny fair opportunity to the prosecution side to place its case. Learned senior counsel, therefore, submits that the impugned judgment was

delivered by the learned trial court in hot haste, by denying fair opportunity to the prosecution to argue its case. The learned senior counsel submits that the impugned judgment is vitiated on account of violation of the principles of natural justice and as such, is liable to be set aside on such count alone.

8. Mr. Saikia has also taken us through the various documents available on record including the statement of the protected witnesses 'A', 'B' and 'C', the other witnesses including the injured witness PW-3 Sri Dipak Mudoi, photographs brought on record, the Call Detail Record (CDR) and the translated versions of the intercepted phone calls involving the accused persons submitted along with the charge-sheet to argue that there are statements of various members of the organizations led by accused No.1 who have themselves stated about the conspiracy hatched by the accused persons to indulge in terrorist acts by causing economic blockade and resorting to violent activities such as arson and stone pelting and also burning down of Government properties which would establish without any doubt that there are good grounds to proceed against the accused persons for committing terrorist act. Notwithstanding the same, the learned court below has discharged the accused persons in respect of the charge brought under Section 18 of the UA(P) Act without properly considering that aspect of the matter. It is also the submission of Mr. Saikia that since the learned trial court did not give an opportunity to the prosecution to place its case in the proper perspective, hence, it could not be argued before the learned trial court that the petitioners were the members of a "terrorist gang" within the meaning of Section 2(l) of the UA(P) Act and that they were also involved in organized form of terrorist act by resorting to violent activities. Contending that the

charge brought against the accused persons under Section 39 of the UA(P) Act is distinct and different from the charge under Section 18 of the said Act and would have to be independently assessed by the court while framing charge but no such exercise has been undertaken in this case, Mr. Saikia has further argued that even if the notification dated 22.06.2009 is ignored, even then, there were sufficient materials available on record to show that the accused persons were members of "terrorist organization" coming within the meaning of Section 2(m) of the UA(P) Act and to that extent, the learned trial court had committed manifest illegality in premising the entire argument as regards the applicability of Section 39 of the UA(P) Act only on the notification dated 22.06.2009.

9. By inviting our attention to the statements of the witnesses, Mr. Saikia has argued that PW-4, who is the Chief Advisor and a founder member of KMSS has stated that the accused No.1 himself called him to join the march and stop the National Highway and that the A-1 had also announced over the mike asking people to shut down the whole of Sivasagar; PW-6, Sri Tulumoni Duarah has stated that the associates of A-1 had damaged a white Bolero vehicle on duty under the CRPF and had turned the vehicle on its head over the road; PW-7, Sunil Sonowal, who is also a member of the KMSS, has stated that the A-1 Akhil Gogoi was leading the protest in Assam and he had delivered speeches to provoke the public as a result of which, violent activities had started in Chabua area leading to damage of Government vehicles and injury being caused to the Officer-in-Charge of the Chabua Police Station; PW-8, Rahul Chetry, who was the General Secretary of Dibrugarh University Postgraduate Students Union has stated that the A-1 (Akhil Gogoi) had told him that

there is only one option and that is to shut down Assam completely and when he asked A-1 whether the economic blockade has started, he replied in the affirmative and encouraged the protesters to shut down Assam.

10. The learned senior counsel for the appellant has also taken us through the transcript of intercepted telephonic conversations between the accused No.1 and his associates including the other accused persons, which are accompanied by the certificates as required under the law, to show that there are materials to indicate that the A-1 was giving calls to completely block the National Highway; to break the Government; and to gherao the house of some Ministers including the Chief Minister, Assam.

11. By referring to the decision of the Supreme Court rendered in the case of **Union of India vs. Prafulla Kumar Samal** reported in **(1979) 3 SCC 4** Mr. Saikia has argued that while exercising jurisdiction under Section 227 of the Cr.P.C. for framing of charge, the Court is required to weigh the evidence for the limited purpose of ascertaining as to whether or not a prima-facie case exists against the accused persons and not to indulge in a mini trial. According to Mr. Saikia, the learned court below has indulged in a mini trial and has discharged the accused persons in respect of all the charges by erroneously holding that the evidence is insufficient to frame charge against them by entering into the merit of the case.

12. By referring to the decision of the Supreme Court in the case of **State of MP vs. S B Johari** reported in **AIR 2000 SC 665** Mr. Saikia has argued that while framing charge, the court is not required to appreciate evidence and arrive at a conclusion

as to whether the materials are sufficient or not for convicting the accused but should confine the enquiry only to find out if there are sufficient grounds to proceed against the accused persons. Mr. Saikia submits that in view of the bulk of materials brought on record by the prosecution side there was sufficient basis to conclude that there is a strong suspicion leading the court to think that the accused had committed the offence alleged but the learned trial court had misinterpreted the law and discharged the accused by recording findings which were perverse on the face of the record. In support of his above argument Mr. Saikia has also relied on the decisions rendered in the case of **Rajbir Singh vs. State of UP** reported in **(2006) 4 SCC 51**, **Sajjan Kumar vs. CBI** reported in **(2010)9 SCC 368**, **State vs. S Selvi** reported in **(2018) 13 SCC 455** and **Dr. Nallapareddy Sridhar Reddy vs. State of AP** reported in **(2020)12 SCC 467**, **Stree Atyachar Virodhi Parishad vs. Dilip Nathumal Chordia and another** reported in **(1989) 1 SCC 715**, **Minakshi Bala vs. Sudhir Kumar and others** reported in **(1994) 4 SCC 142** and **State of Maharashtra vs. Som Nath Thapa** reported in **(1996) 4 SCC 659.**

13. Responding to the above arguments, Mr. K. N. Choudhury, learned senior counsel appearing for the respondent No.1 (A-1)) has argued that the case projected by the prosecution is wholly untenable in the facts and circumstances of the case inasmuch as there are materials to show that the accused No.1 has not only invited the public to resort to peaceful protests but has also asked them to eschew violence. Therefore, the allegation brought against the accused persons of indulging in terrorist act is wholly unfounded in the facts of the case. According to Mr. Choudhury, the protests, which had erupted in various parts of the State of Assam in

the wake of the introduction of the Citizenship Amendment Bill (CAB) and the subsequent enactment of the Citizenship (Amendment) Act (CAA), were spontaneous and the same had triggered widespread resentment amongst the people of the State. Therefore, in exercise of the fundamental rights guaranteed to the citizens under Article 19(1)(a) of the Constitution, the public had the right to protest. According to Mr. Choudhury, this is precisely what had been resorted to by the accused No.1 and his colleagues. According to Mr. Choudhury, it is not only the accused persons but several other organizations in the State had also protested against the CAB/CAA and therefore, there is no justifiable ground for the State to single out the accused persons and prosecute them under the draconian law i.e. UA(P) Act.

14. By referring to the materials available on record Mr. Choudhury submits that there is not even an iota of evidence on record so as to enable the learned Special Judge, NIA to frame charge against the accused persons under Sections 18 and 39 of the UA(P) Act. Mr. Choudhury also submits that the learned Special Judge has elaborately dealt with the materials placed along with the charge-sheet to record his conclusion and there is no justifiable ground to disagree with such conclusions. Mr. Choudhury further submits that, law is well settled that even if two views are possible on the basis of the materials placed on record, the Appellate Court would not ordinarily disturb the view taken by the court of first instance in such matters.

15. In so far as the plea of violation of principles of natural justice is concerned, Mr. Choudhury has invited the attention of this Court to the observations recorded by the

learned court below in paragraph 174 of the impugned judgment to contend that proper reasons have been recorded by the learned trial court for rejecting the prayer for adjournment made by the prosecution side on 30.06.2021. Once the prayer for adjournment was rejected, it was open for the learned trial court to deliver the impugned judgment on 01.07.2021. Mr. Choudhury also submits that the prosecution side had sufficient opportunity to place their case before the learned trial court and therefore, it cannot be said that the prosecution has been denied a fair opportunity. Mr. Choudhury has, however, submitted in his usual fairness that in view of the observations recorded in the impugned judgment wherein the learned Special Judge, NIA has himself observed that there could be materials to frame charge against the accused persons under the penal provisions in the IPC, even though he disputes the correctness of such observation, the learned senior counsel submits that the correct approach for the learned trial court would have been to invoke jurisdiction under Section 20 of the National Investigation Agency Act, 2008 and transfer the case for trial by the court having jurisdiction to try the offences under the IPC. In view of the above, submits Mr. Choudhury, if the Court is of the view that the impugned order calls for correction, then the matter can be remanded back to the learned trial court only for the limited purpose of dealing with the aforesaid aspect of the matter and for transferring the case to the court competent to try offences under the IPC.

16. In support of his above submissions Mr. Choudhury has relied upon the decisions rendered in **Niranjan Singh Karam Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijjaya** reported in **(1990) 4 SCC 76, Yogesh vs. State of Maharashtra** reported

in **(2008) 10 SCC 394** and **Dipakbhai Jagdishchandra Patel vs. State of Gujarat** reported in **(2019) 16 SCC 547.**

17. Mr. S. Borthakur, learned counsel for the respondent Nos.2, 3 and 4 has by and large adopted the submissions advanced by Mr. K. N. Choudhury, learned senior counsel for the A-1 and has further argued that there is not even an iota of material available against his clients for framing charge under any of the provisions included in the charge-sheet and therefore, the learned Special Judge has rightly discharged the A-2, A-3 and A-4. In support of his above arguments Mr. Borthakur has relied upon and referred to the decisions of the apex court in **State vs. Nalini and others** reported in **(1999) 5 SCC 253, Hitendra Vishnu Thakur and others vs. State of Maharashtra and others** reported in **(1994) 4 SCC 602, Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra and others** reported in **(2010) 5 SCC 246** and **M/S Siddeshwari Cotton Mills (P) Ltd. vs. Union of India and another** reported in **(1989) 2 SCC 458.**

18. In his reply argument Mr. D. Saikia, learned senior counsel for the appellant, has submitted that once it is found that the impugned judgment and order dated 01.07.2021 suffers from error in exercise of jurisdiction, the entire matter ought to be remanded for a fresh decision so as to avoid prejudice being caused to either side. According to Mr. Saikia, the question of framing of charge has to be decided on overall assessment of the materials available on record and therefore, it would not be permissible for the appellate court to bAWWqq ifurcate the charges while remanding the matter for a fresh decision by the trial court.

19. We have considered the submissions advanced by the learned counsel for

both the sides and have also carefully gone through the materials available on record.

20. As noted above, by the impugned order dated 01/07/2021 passed by the learned court below, the four accused persons i.e. the respondent Nos.1 to 4 have been discharged. Apart from urging that the impugned order is perverse in the eye of law, the same has also been assailed by the appellant on the ground of having been passed in utter violation of the principles of natural justice. Since the learned counsel for the appellant has argued that the prosecution was not given a fair opportunity to place its case, more particularly after the written submissions of the accused persons were brought on record and the additional charge-sheet was submitted on 29.06.2021 we propose to deal with this aspect of the matter first in point of time.

21. It is not in dispute that on 29.06.2021 the defense side had submitted a written argument which runs into 1225 pages. It appears that a copy of the written argument was served upon the learned counsel for the appellant (prosecution) only on 29.06.2021. It further appears from the materials on record that the additional charge-sheet was also submitted by the prosecution on the same day i.e. 29.06.2021 along with Petition No.195/2021 with a prayer to take the same on record. By order dated 29.06.2021, the learned Special Judge had allowed the said prayer after considering the objection filed by the accused persons on the same day i.e. on 29.06.2021 itself.

22. We also find from the materials on record that on the previous day i.e. on 28.06.2021, the prosecution (NIA) had filed a petition bearing No.192/2021 with a request to keep the identity of one of the protected witnesses 'C' as secret. By order

dated 28.09.2021, the learned court below had directed that the identity and address of the protected witness "C" be kept secret. The statement of protected witness "C" was later included in the supplementary charge-sheet filed on 29.06.2021.

23. We also find from the record that on 30.06.2021, the learned court below had passed an order refusing to postpone the charge hearing any further at the instance of the prosecution on the ground that the same would lead to undue delay and accordingly, fixed the matter on 01.07.2021 at 10:30 a.m. for order on the point of charge. The impugned judgment and order was passed on 01.07.2021. From the above, it is evident that the prayer for adjournment made by the prosecution was rejected only on 30.06.2021 i.e. a day before delivering the impugned judgment.

24. If the accused persons were granted leave to file their written submission and the same, running into 1225 pages, was taken on record on 29.06.2021, it was incumbent upon the learned court below to consider the prayer made by the prosecution seeking 10 days time to place their case in the light of the above materials. However, such prayer was rejected only on the ground of causing delay. It is understandable that there could be anxiety on the part of the learned Special Judge to conclude the proceedings expeditiously and to that extent, the court would be wholly justified in ensuring that there is no undue delay in such matters. Since written submission of the defense side as well as the additional charge sheet was taken on record only on 29.06.2021, the prosecution was certainly entitled to some reasonable time to prepare and address the court so as to project its case. However,

it is the admitted position of fact that no such opportunity was granted to the prosecution. Having regard to the facts and circumstances of the case, we do not find any valid reason as to why, the prayer for granting even a short adjournment had to be rejected by the learned trial court. We also do not find any ground to presume that granting a week's time to the prosecution to place its case in its entirety would have resulted in undue delay in concluding the proceedings that would have occasioned failure of justice. On the other hand, by refusing to grant time to the prosecution to place its case in the light of the materials brought on record, more particularly the additional charge-sheet dated 29.06.2021, the learned trial court has, in our opinion, denied a fair opportunity to the prosecution to present its case. We, therefore, find sufficient force in the submission of Mr. Saikia, learned counsel for the appellant, that the impugned order dated 01.07.2021 has been passed in violation of the principles of natural justice thereby having a vitiating effect on the same.

25. Having held as above, ordinarily it would not have been necessary for this court to enter into the merit of this appeal and record any finding as regards the correctness of the observations and conclusions recorded by the learned Special Judge, NIA in the impugned order dated 01.07.2021. However, there are a few aspects of the matter which requires to be highlighted at this point of time. Therefore, without going into the excruciating details of the case, we deem it appropriate to point out the following aspects herein below.

26. We find from the materials placed before us that the prosecution has relied upon the statements of as many as three protected witnesses viz. Protected Witnesses

"A", "B" and "C". The protected witness "A" has stated as follows :-

"I went to Guwahati in the year 2008. There, I saw Akhil Gogoi who is the head of KMSS (Krishak Mukti Sangram Samiti). He was in a meeting with people. Meeting was regarding Big Dam and Land Patta. I saw it. Then, I joined KMSS. Thereafter, I went with them to villages for meeting. One day after a meeting, five of us waited and met a person namely Sapan Barman. Akhil Gogoi set five of us with Sapan Barman (PW-2) for Maoist training in Orissa. I was one amongst the five persons. Rest of them were Sarat Saikia and Dhruba Gogoi, Deepali Gogoi, Laxmi Gogoi. Sapan Barman (PW-2) was not a member of KMSS. He was a link man/contact man between Akhil Gogoi and Maoist. Sapan Barman took all five of us from Guwahati to Hawra (West Bengal). There was a Maoist Leader namely. I don't know his real name. Everyone called him DADAJI. Thereafter SAPAN BARMAN came back to Assam after leaving five of us at Hawra. Thereafter DADAJI DADAJI took us to Bhubaneswar and then to Cuttak. Thereafter five person of Maoist on motorcycle took us to hills in Orissa. Later on after walking for some time five of us reached the Maoist Camp. The Maoist Camp was in a hill in Orrissa. There we saw people in Maoist Uniform. Everyone also had gun. All five of us stayed in the Maoist Camp for one month. We used to shift every day. One day the camp used to be at one place and then it used to get shifted. The camp has 24 hours security. We were made to exercise in the Morning. They used to say Lal Salam. In camp some time people used to go somewhere and sometime people used to come back. Some time there were 20 people and some time there were 30 to 40 people. In camp the Maoist people had AK- 47, Insas Rifles, Pistols and Hand Grenades. The Maoist people had shown us how to handle AK 47 and insas Gun. In the evening some people used to take our class. Teach us. They told and taught us about, the countries in the world which had communist government and the communist countries. They also gave us books to read. This happened for few days. The person who had trained us were Commander Lallu, Commander Laxmi. There we also saw

*Senior Commander Azaad. Later when I saw the newspaper I came to know that Azaad was dead. There we were taught how to assemble people. We were also taught how to protest, how to involve people in the protest and how to take forward the protest. One day they told us that situation is bad and therefore we five will have to go back to Assam. Then they moved us to the bus by motorcycle. We came back to Hawra station by bus and then came to Guwahati. After coming back to Guwahati, all five of us met Akhil Gogoi. There Akhil Gogoi asked us about what we saw and learned in the Maoist Camp. Whatever we saw and learned we told everything to Akhil Gogoi. Then Akhil Gogoi told us that situation in Assam was not favourable to work together. Again said, then Akhil Gogoi said that situation in Assam was not favourable to work together like Maoist. Then the other four people who were with me had left. I do not know where they went. But I continued working with Akhil Gogoi. And for few days I went to different villages in Golaghat, Dhemaji, Shodia and Dibrugarh and attended meetings and told people about their losses and losses of Assam as due to coming of Big Dam and also about the loses on coming of matipatta. Then I also left Akhil Gogoi and joined one organisation namely BRIHAT NODIBANDH PRATIRUDHI MANCH which was opposing the Big Dam. When I was roaming around opposing the Bog Dam I was arrested by the police. That is all and I have more to say. At this stage the entire statement made by the witness is read over to him and after hearing the same the witness said that Akhil Gogoi has told five of us it is not the situation in Assam to work as the Maoist do, therefore, as we have learned we should go to Upper Assam and get the people ready. As Akhil Gogoi said we were visiting the villages and getting the people ready. That time I got arrested. I have nothing more to say".**

27. The protected witness "B" has stated as follows :

"*On being asked I state that I have known Akhil Gogoi since 1998 when*

he was General Secretary of Cotton College, Guwahati. We got close to each other sometime during 2006. He met me and asked me to take some of his cadres/members of KMSS and get them trained in ways of Maoists. I told him that I do not have the authority to do so, but I can talk to the leadership of CPI (Maoist) to make it happen. So, I arranged a meeting of Akhil Gogoi with Amit Bagchi, Member of Central Committee, CPI (Maoist), at near house of Geetashree Tamuly (W/o Akhil Gogoi) at Golaghat during September-October, 2006. In the meeting Akhil Gogoi told Amit Bagchi that he would join CPI (Maoist) after 2 years, but he needs his cadres/members to be trained in the camps of CPI (Maoist) as soon as possible. Amit Bagchi agreed to the proposal made by Akhil Gogoi. After 2-3 months Amit Bagchi visited Assam again met me at a restaurant in Guwahati and asked me to convey to Akhil Gogoi to select 10-12 cadres/members of KMSS that he wants to send for training, and that later on a the training would continue in such small batches. After around 20 days from this meeting. I met Akhil Gogoi in person and conveyed him the message, as he does not talk about such things over phone. I told him to select 10-12 cadres/members of KMSS, and when Amit Bagchi visits Assam after 2-3 months, he would interact with those cadres/members. Akhil Gogoi agreed to do so and asked me to inform him when Amit Bagchi visits Assam the next time.

In January 2007 Akhil Gogoi met me in Guwahati and told me to take Amit Bagchi, whenever he comes, to LP School nearby ancestral place of Akhil Gogoi at Jorhat. During January-February, 2007, Amit Bagchi visited Assam again, and met me. I took him to LP School nearby ancestral place of Akhil Gogoi at Jorhat. There were 10 cadres/members (02 Females and 08 Males), along with Akhil Gogoi present at the location. Amit Bagchi gave a small speech regarding their work and aim to the members (10 cadres +Akhil Gogoi) of KMSS there. Thereafter, he told that when time comes they would be given training in 02 batches of 5 members each, as it becomes difficult to train in winter months. After the meeting, Akhil Gogoi had a secret talk with

Amit Bagchi for few minutes, the contents of which are known to me. Further, Akhil Gogoi requested Amit Bagchi to arrange funds for programs of KMSS and expenditure that will occur on account of cadres/members to be sent for training. Amit Bagchi told him that he would provide the funds to me and that I would hand it over to him later on.

After 10-15 days of this meeting, I received an amount of Rs. 45,000/- in cash sent by Amit Bagchi through one Indranil (member of CPI (Maoist)). I further handed over the amount to Akhil Gogoi in cash in Guwahati. During this meeting Akhil Gogoi asked me if there is any information regarding when the training will start. I told him there was no information regarding it and that I would inform him whenever I get any update.

During April-May, 2007, Amit Bagchi visited Assam again. Akhil Gogoi met him and told him that he needs funds for KMSS activities and expenditures of cadres/members of KMSS selected for training with CPI (Maoist). Amit Bagchi told Akhil Gogoi that he will bear their expenditure.

Later, in April (around Bihu), 2008, a meeting was held in Rahmaya Gaon, Distt. Dibrugarh, Assam, which was attended by Amit Bagchi, Akhil Gogoi, Molan Laskar, Dharmeswar Saikia, Aditya Bora, Tinraj and Ajay Sabar. I do not know the contents of the meeting.

After 3-4 days, Amit Bagchi, along with me, visited LP School nearby ancestral place of Akhil Gogoi at Jorhat, and had a secret meeting with Akhil Gogoi. I do not know the contents of the meeting. During summer season of 2008, Indranil conveyed me the message of Amit Bagchi to meet with Akhil Gogoi and prepare batches of 5 cadres/members to be sent for training. Akhil

Gogoi prepared batch of 5 cadres/members and sent me their age. Accordingly, I booked tickets for all 05 of them using the party funds (of CPI (Maoist)). Those 05 cadres met me at Guwahati. Akhil Gogoi talked to me and it was decided that 2nd batch of 05 cadres will arrive at Howrah Junction after the 1st batch leaves Howrah Junction.

I can recall name of only one member of 1st batch as Dimbeswar Gogoi R/o Merapani. Golaghat. I took the 1st batch to Howrah Junction from Guwahati by Saraighat Express. At Howrah, I handed them over to Indranil for their further journey to Maoist camps. I stayed at Howrah for the night.

The next day 2nd batch of 05 cadres/members arrived at Howrah Junction and I met them there as per previous plans decided by Akhil Gogoi. I handed then over to Indranil for their further journey to Maoist camps, and I returned to Guwahati After few days I met Akhil Gogoi and informed him that all 10 cadres have been sent to the Maoist training camps.

Later in 2008, I received Rs. 60,000/- in cash sent by Amit Bagchi through one Indranil (member of CPI (Maoist)). I further handed over the whole amount to Akhil Gogoi in cash in Guwahati for further activities.

In 2009, I went to Golaghat and met Akhil Gogoi there, and it was decided that the 3rd batch of 05 cadres (03 males + 02 females) would be sent to Maoist training camps. I asked him to provide with the age of the cadres to book tickets for them. I came back to Guwahati and booked tickets for 05 cadres for their journey from Guwahati to Howrah Junction by Saraighat Express. I met them in a meeting at Guwahati where Akhil Gogoi

introduced them to me and briefed them about their visit to Maoist camps. I can recall names of 03 of those members as Deepali Gogoi. R/o Distt. Golaghat, Kishor Das, R/o Distt. Darrang, Sarat Saikia, R/o GaonTengani, Distt.- Golaghat. I took all 05 of them to Howrah Junction from Guwahati by Saraighat Express. At Howrah, I handed them over to Indranil for their further Journey to Maoist camps, and I returned to Guwahati. After some days I met Akhil Gogoi and informed him that the 3rd batch has been sent to the Maoist training camps.

On being asked I state that party had been providing regular funds to Akhil Gogoi for party (CPI (Maoist)) activities, and special funds for special programs time to time"**.**

28. As noted above, the statement of protected witness "C" was included in the additional charge-sheet submitted on 29.06.2021. Protected Witness "C" has stated as follows :-

"*On being asked I state that, I know Mr. Akhil Gogoi and he runs many organizations namely 1) Krishak Mukti Snagram Samity, 2) Mod Mukto Akhom, 3) Cha Srahmik Mukti, 4) Chatra Mukti, 5) Nari Mukti, and many more. Mr. Akhil Gogoi is the actual chief of all organization. Mr. Akhil Gogoi runs his organization in Assam with Maoist style.*

They extorted money through his associates, party member or voluntaries of his organization, he first raise demand for money to the industrialists of non Assamese and Assamese business man. If his demand not fulfilled then he started to create pressure though using media and in the plea of RTI. He is very clever he never protests at the time of purchase of land or any infrastructure construction. When business man invests a large amount and he

is in middle of a business project, then Mr. Akhil Gogoi demand money as levy. Mr. Akhil Gogoi demanded in crores for this type of extortion, he even gathered people by means of giving money Rs. 250/- to Rs. 150/- and also provide them food and alcohol free.

Another style of extortion he do that he stopped lorries or trucks of Supari (Beetle Nuts), Ada (Ginger), Haldi (Turmeric), Dhan (Paddy) in high ways, mostly in forest areas by his party people. Mr. Akhil Gogoi does to settlement in yearly or monthly payment basis and as per scale of business. If business man not paid the levy to Mr. Akhil Gogoi then his man beat drivers and do damage to the truck. Even Mr. Akhil Gogoi demands from trucks coming to Assam with fish, eggs and Paan Pata. No trucks can enter Assam from outside without paying levy to Mr. Akhil Gogoi.

Mr. Akhil Gogoi also demands money from the business man of outsider who runs whole sale business with sugar cane product in the false plea of they are making illegal alcohol. This extortion is running in the name of "Mod Mukto Akhom".

The leader of Nari Mukti Mr. Akhil Gogoi is also runs a dirty business in the name of "Nari Mukti" he trapped business man and high government officials in honey trap and then do black mail to the person and demand money for settlements or used them as and when required. To run it successfully Mr. Akhil Gogoi also does some good social work like settlement of rifts in families to create a good image of Nari Mukti Sangathan.

Another style of extortion of Mr. Akhil Gogoi is using Tea labours of Assam. In Assam there are huge fallow lands, which are not Tea garden after British

period, but the adjoining area. If any person purchase the land and started to do some business then Mr. Akhil Gogoi send his party members who are belongs to tea labour union "Cha Srahmik Mukti" and creates problem to the business man by agitation and dharna gherao. And then place his high demand of money to settlements.

Mr. Akhil Gogoi also runs illegal cattle business which is smuggled to Bangladesh. With this he gets supports from the Muslim community mostly they are Silothiya Muslims and Bengali Muslims. This business runs through the Muslim members of Krishak Mukti.

I know this because I personally experienced and suffered a lot. Mr. Akhil Gogoi demanded money fifty lakhs from me for one year. He threatens me that I will be killed anytime and his people are watching me and my family every moment. He also declared that he runs much more strong and lethal organization than ULFA a terrorist organization. I know Mr. Akhil Gogoi, from last five years as an antisocial criminal and extortionist, who creates terror to the business man till he not go for monetary settlements. When am not responded to his demand he called me to do meeting with him, but I am not willing to bow down for his legitimate demand because am not doing any wrong business and paying tax to the Government of Assam as well as Government of India.

My family pressurized me to leave Assam and started newly in other state of India. Anyhow Mr. Akhil Gogoi came to know about our plan, then he also threaten me and I have come to know that he is Krishak Mukti Snagram Samity has association with "MAOIST" who have a network in all over India and they will kill me and my family in accident or other means.

On being asked about identifying of his photographs, I voluntarily ready to identify his photos, I know him since I passed 10th Exam Mr. Akhil Gogoi is living my area."

29. According to the appellant's counsel, the statements of these witnesses, read in the context of other materials available on record including the transcript of intercepted telephonic conversations between the accused No.1, other accused persons and their associates, clearly goes to show that there was a clarion call from the accused No.1 as the leader of the organization called KMSS asking the public to resort to violent protest by resorting economic blockade, torching of Government vehicles, destruction of properties including Railway Stations and also 'gheraoing' important public functionaries including the Chief Minister of Assam. It is in such context that the appellant's counsel has argued that it was incumbent upon the learned trial court to consider these materials before reaching a conclusion whether there are materials for framing charge against the accused persons in the light of section 15 of the UA(P) Act by holding that the accused persons are acting as members of a "terrorist gang" which was not done in this case.

30. The expressions "terrorist gang" has been defined in Section 2(l) of the UA(P) Act, 1967 which is reproduced herein below :-

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

31. "Terrorist act" is defined in Section 15 of the UA(P) Act, which is reproduced herein below :-

> "*15. Terrorist act.—4 [(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 6 [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or]

commits a terrorist act."

32. Section 227 of the Cr.P.C. enjoins a duty upon the Court to discharge the accused by recording reasons for doing so if the Judge, on consideration of materials on record finds that there is no sufficient ground for proceeding against the accused. Section 228 of the Cr.P.C. on the other hand, lays down the procedure for framing of charge if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence.

33. Law is well settled by a long line of judicial pronouncements that at the stage of framing of charge the court is not required to indulge into a roving enquiry but must weigh and sift the evidence for the limited purpose of arriving at a satisfaction as to whether, there are grounds to proceed against the accused persons.

34. In **State of Bihar vs. Ramesh Singh** reported in **(1977) 4 SCC 39** the Supreme Court had the occasion to interpret Sections 227 and 228 of the Cr.P.C. and lay down the tests and considerations to be applied by the court for framing charge. It was held that in the initial stage the duty of the court is to consider the record of the case and the documents submitted therewith and to hear submission of the accused and prosecution in that behalf. Reading sections 227 and 228 of Cr.P.C in juxtaposition, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of evidence which the prosecutor proposes to adduce are not to be meticulously judged nor is any weight to be attached to the probable defence of

the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. At that stage if there is a strong suspicion leading the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

35. In a subsequent decision rendered in the case of **Prafulla Kumar Samal** (supra), the principles applicable for exercising jurisdiction under Sections 227 and 228 Cr.P.C. have been laid down in paragraph 10, which are reproduced herein below for ready reference :-

> "*10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
>
> *(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
>
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.*
>
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before*

him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

36. By taking note of the decisions in the case of **Ramesh Singh** (supra) and **Prafulla Kumar Samal** (supra) laying down the principles for exercise of jurisdiction under Section 227 of the Cr.P.C., the Supreme Court has made the following observations in paragraph 14 in the case of **Stree Atyachar Virodhi Parishad** (supra) :-

"*14. These two decisions do not lay down different principles. Prafulla Kumar case has only reiterated what has been stated in Ramesh Singh case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor it is necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."*

37. In the decision rendered in the case of **Dipakbhai Jagdishchandra Patel** (supra) relied upon by Mr. K. N. Choudhury, the Supreme Court has re-stated the principles that would come into play at the stage of framing of charge. The observations made in paragraph 23 are reproduced herein below for ready reference :-

> "*23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.*"

38. In the case of **Niranjan Singh Karam Singh Punjabi, Advocate** (supra) the Supreme Court has observed that Section 227 Cr.P.C. confers a special power on the Judge to discharge an accused at the threshold if upon consideration of the records and the documents he considers that there is no sufficient ground for proceeding against the accused. It was further observed that since at the stage of framing of

charge the Judge is at the stage of deciding whether or not there exists sufficient ground for framing charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage the Judge is not required to marshal the evidence with a view to separate the grain from the chaff. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused is fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused had committed the offence, then there will be no sufficient ground for proceeding with the trial.

39. In the case of **Yogesh** (supra) the Hon'ble Supreme Court has observed that at the stage of framing charge the Judge would have the power to sift and weigh the materials for the limited purpose of finding out whether a *prima-facie* case against the accused has been made out. The test to determine a *prima-facie* case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application.

40. Dealing with the definition of a 'prima-facie case' the Hon'ble Supreme Court has made the following observations in the case of **Amit Kapoor vs. Ramesh Chander and another** reported in **(2012) 9 SCC 460** :-

> "*30. We have already noticed that the legislature in its wisdom has used the expression 'there is ground for presuming that the accused has committed an offence'. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in the case of* ***State of Maharashtra Vs. Som***

Nath Thapa *referred to the meaning of the word 'presume' while relying upon the Black's Law Dictionary. It was defined to mean 'to believe or accept upon probable evidence'; 'to take as proved until evidence to the contrary is forthcoming'. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence."*

41. From a careful analysis of the law laid down in the decisions referred to herein above, what would be evident is that at the stage of framing of charge the Judge is not required to meticulously sift the materials on record and come to a conclusion as regards the culpability of the accused persons but is merely required to consider as to whether, the facts emerging from the record placed before the court makes out a *prima-facie* case and raises a strong suspicion so as to presume that there is a probability that the accused persons have committed the offence charged by the prosecution. Upon consideration of the record if the court is of the view, for reasons to be recorded, that the materials are insufficient to raise a strong suspicion giving rise to a presumption that the accused has committed an offence then it must be held that there is no sufficient ground to proceed against him. If on the other hand, it is found that the record discloses facts so as to raise a strong suspicion against the accused, the court cannot say that there is no ground to proceed against the accused person. The satisfaction of the court, either ways, is subjective but the same must be based on objective materials available on record. In the light of the observations made here-

in-above, let us now examine the findings recorded by the learned Special Judge, NIA in the impugned judgment in respect of each of the four accused persons.

42. **A. <u>Findings recorded with regard to accused No.1 (A-1), (Sri Akhil Gogoi)</u> :-**

"*113) I have perused the speeches of A-1 available in documents such as D-44 and D-56. In none of the speeches of A-1, I find any incitement to violence. It is a different matter that during the protests in the State in December, 2019 against the Citizenship Amendment Act (CAA) led by various organizations, incidents of vandalism, damage and destruction of property unfortunately did take place.*

114) However, as stated above, from his speeches available on record, Sri Akhil Gogoi ***(A-1)*** *cannot be imputed with any incitement to violence. There are also no materials to link A-1 with vandalism and damage to property that took place during the said CAA protest due to such agitations led by various organizations.*

115) I have carefully perused the statement of Sri Dipak Mudoi (W-3), Sri Pranabjyoti Handique (W-4) and Sri Rahul Chetry (W-8). As per witness no. 8, A-1 expressed his opinion that after passing of CAB there is no other option then to shut down the State and that A-1 encouraged him to continue protest and shut down.

116) In the statement of witness No. 4 Sri Pronab Jyoti Handique, there is a sentence "marched in a procession at Dibrugarh to stop all essential supplies, markets, national highway". This statement of witness No. 4 is based on a telephonic conversation with A-1 on 10.12.2019 at 18:50, in which the corresponding statement is – "At around 6:50 P.M. on 10.12.2019, A-1 called him over his mobile and told that thousands of people marched in a procession at Dibrugarh to stop it". Thus, I find that the words- 'stop all essential supplies, markets, national highway' do not find place in the corresponding telephone conversation transcript as stated above. A similar significant dichotomy is seen in the statement of Sri Ritumoni Hazarika and his telephone conversation with A-1 with regard to such kind of subject matter.

117) In the statement of W-3 also, A-1 is stated to be talking about closure and blockade. It is also revealed in the statement that on the next day shops, markets were automatically closed. In the statement of W-4, A-1 is stated to be talking about shut down in town of Sivasagar. From the expression – supervising execution of the bandh against CAB - in the statement of witness Shahjahan, it cannot be automatically inferred prima-facie that accused had instructed about destruction of essential supplies or that the same amounts to abetment or commission of an act of terrorism defined in Section 15 of the Act. Further, there are also no telephone conversations with regard to non-listed witness Shahjahan.

118) I am of the considered view that apart from other materials, the following components of the speeches of Sri Akhil Gogoi ***(A-1)*** *has an important bearing on ascertaining his intention with regard to terrorism and sedition and may be reproduced hereunder:*

- *Speech in D-56 – "my request is to continue the movement peaceful way don't pelt stone in anywhere; don't set fire anywhere or damage any vehicle. ……Therefore my request to revolutionary comrades that don't set fire anywhere, don't pelt stone anywhere; don't damage any vehicle, don't create any violence……..." He called upon his revolutionary colleagues to continue movement with dedication. He compared himself with professional revolutionary like Jay Prakash Narayan. He further stated that if they come to arrest him they should not create violence and give opportunity to open fire.*

- *Speech in Sl No. 4 of D-44 – ……..that they need to come out peaceful and democratic way and shut down all Central and State Government offices by picketing……*

119) Thus, in his speech transcript available document D-56, rather than inciting violence, A-1 is exhorting people not to indulge in violence and seems to be doing so fervently.

120) There is one statement at the end about stopping transportation of natural resources from Assam. There is no material to indicate that such stoppage of natural resources from this part of the country to the rest took place as a result of any such statement by A-1. Moreover, that statement alone cannot be used to impute frame charge for terrorism.

121) In this context, it might be also relevant to mention herein that there are no materials whatsoever, about Sri Akhil Gogoi ***(A-1)*** *making any imputations prejudicial to unity and integrity of India or national integration.*

122) Only on the basis of the statements of some of the witnesses about A-1 speaking about blockade and closure, it cannot be said that there are prima facie materials to indicate that such talk of blockade was with an intention to threaten the economic security of India so as to constitute an offence of advocating commission of a terrorist act. That would not be a correct prima facie deduction, for the purpose of framing charge.

123) Even if the statements of some of the witnesses attributing talk of shut down etc. to A-1 are accepted on face value – in the backdrop of any non-incitement to violence and appeals for peace in his speech in D-56 – it cannot said that there is a prima facie case for inferring that – A-1 advocated or advised causing death, destruction of properties or disruption of essential supplies with the use of 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 (ejusdem generis), with the intention of threatening 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. Therefore, I am of the considered view that these statements and conversations do not make out any offence u/s 18 UA (P) Act – of conspiracy, abetment, advise, advocacy of a terrorist act defined in S.15 of the Act."

B. Findings recorded as regards accused No.2 (A-2) (Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar) :-

"*70) The two protected witnesses have not implicated the accused Sri Dhirjya Konwar @ Dhaijya Konwar @ Dhajya Konwar (A-2) in any manner. In fact, they have not mentioned the name of A-2.*

71) Of the remaining witnesses of the charge-sheet dated 29.05.2020, 10 witnesses viz., witness no. 3, 6, 8, 12, 13, 14, 16, 17, 18 and 19, have not mentioned the name of Sri Dhirjya Konwar @ Dhaijya Konwar @ Dhajya Konwar (A-2) nor made any implications against him.

72) 5 witnesses of the charge-sheet dated 29.05.2020 viz., witness no. 4, 5, 9, 10 and 15 have mentioned about Sri Dhirjya Konwar @ Dhaijya Konwar @ Dhajya Konwar (A-2), stating that they know him as an office bearer of the KMSS, but have not implicated him.

73) Out of the witnesses whose statements were recorded during investigation but who were not listed in the charge-sheet dated 29.05.2020, the statements of witness Sri Naba Moran and Sri Pranjal Kalita, do not mention the name of or implicate accused Sri Dhirjya Konwar @ Dhaijya Konwar @ Dhajya Konwar (A-2) in any manner. Similarly, the statement of witness Sri Arupjyoti Saikia also in my considered view, do not implicate A-2 Dhaijya Konwar.

74) Regarding the intercepted telephone conversations of Sri Dhirjya Konwar @ Dhaijya Konwar @ Dhajya Konwar (A-2) available in D-34 - in the conversation of A-2 Dhaijya Konwar with A-1 Akhil Gogoi on 04.12.2019 at 13:01, they talk about a protest programme, probably in the context of CAB. A-2 Dhaijya Konwar says they should do a padayatra, whereupon A-1 says that they have to take vehicles or otherwise they

will not reach the destination. In another part of the conversation, A-2 Dhaijya Konwar talks about a rally by car. Upon perusing this conversation, I am of the considered view that there are no implications whatsoever with regard to A-2 Dhaijya Konwar.

75) The conversation of A-4 with A-2 Dhajya Konwar in D-34 appears to be in the backdrop of the then ongoing protests against the citizenship law. Leaving aside the many irrelevant aspects of their conversation, they talk about to plan some activities. At one point, A-2 Dhaijya Konwar asks A-4 whether he is able to shut down somewhere in Guwahati, whereupon A-4 replies that there is already a shutdown and they don't need to do anything. In the conversation of A-2 Dhaijya Konwar with A-1 Akhil Gogoi on 10.12.2019 at 16:26, A-2 Dhaijya Konwar says that he is at Dispur last gate, where many people have gathered. A-1 Akhil Gogoi tells that they should do something positive. A-1 Akhil Gogoi further asks whether people have enclosed the house of a senior Cabinet minister, to which A-2 Dhaijya Konwar replies in the affirmative.

76) What emerges from the statement of Sri Maina Deka, (witness no. 11), to the effect that - during the period – 09.12.2019 to 13.12.2019, as per the directions of A-1, this witness was in the KMSS office in Guwahati and in close contact with A-1 and other leaders of KMSS - is that A-2 might have been involved in the protest activities against CAB, but the statement does not necessarily indicate or implicate A-2 in incitement to violence or commission of any terrorist act.

77) Document D-59 – the scrutiny report of videos (serial no. 2, 3, 5 and 8) – indicate the involvement of A-2 Dhaijya Konwar in political protests against CAB, but does not in my considered view contain any implications therein, especially vis-à-vis violence and terrorism, for framing charge for these offences.

78) With regard to the conversations of A-2 Dhajya Konwar with A-4 Bittu Sonowal and A-1 Akhil Gogoi in D-34, I am of the considered view that it cannot be taken as indicating conspiracy to commit offences or incitement to violence or commission of

terrorist acts on the part of A-2 Dhaijya Konwar, so as to frame charge thereunder.

79) Upon perusal and analysis of the statements of witness Sri Sunil Sonowal (charge-sheet witness) and Hussain Mohammad Shahjahan (not a charge-sheet witness), it is clear that the KMSS and its associates were involved in planning, coordinating and executing protest activities against the citizenship law (CAB) proposed and later passed by the Government of India. In this context, judicial notice can also be taken that around the relevant there were lot of protest activities in the State over this law, carried out by various peoples and organizations, involving bandhs, disruption of transport, supplies and administrative work. Unfortunately, the protests also led to violence and damage to property. However, there are no prima facie materials to connect Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *to incitement to violence and vandalism.*

80) The voice conversations and the video footage discussed above, also prima facie do not implicate A-2 Dhaijya Konwar.

81) From the materials, I could not find anything on the part of Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *which can be seen to be promoting enmity between different communities or being an act prejudicial to maintenance of harmony in society and therefore, there are no materials to frame any charge u/s-153-A IPC against him. Reference may be made to Manzar Sayeed Khan (supra).*

82) There are also no materials whatsoever, about Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *making any imputations or assertions prejudicial to national integration. Therefore, there is no case for framing any charge against A-2 u/s 153B IPC.*

83) I do not find any implications against A-2 in the statement of witnesses including that of two protected witnesses, who have not even mentioned the name of A-2. The

telephone conversation transcripts at the CDR analysis do reveal that the accused person A-2 as a member of KMSS was involved in protests against the citizenship law along with others and that he was also involved in coordinating such protest. However, the said materials do not indicate any conspiracy with regard to committing violence or inciting violence. The statement of witness Shahjahan, who is not even a listed PW, is also not sufficient in my considered view to come to any prima facie finding for the purpose of framing charge that A-2 was involved in any act of inciting violence, or commission of any terrorist act or trying overawe the government through violence himself by way of sedition. The findings stated in the charge sheet when compared with the other materials such as statement and documents, do not find support therein.

84) The telephone conversations, the CDR analysis and statements of some of the witnesses definitely indicate that Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *was involved in protests against the CAA and also coordinating such protests with others, including co-accused. However, the materials are grossly inadequate to prima facie attribute any conspiracy. There is nothing to indicate that A-3 along with co-accused or others made agreement to commit offences and / or to commit some legal acts illegally. There are no prima facie materials to indicate that he was involved in conspiracy to commit violence and to indicate his linkage with the vandalism etc. that took place in December 2019, during the CAA protests. Thus, there is no case whatsoever to frame charges against Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar* ***(A-2)*** *u/s 120 (B) IPC.*

85) Keeping in mind the principles laid down in Kedar Nath Singh (supra) as stated earlier, there are no materials indicating involvement of Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *in any act of inciting violence, or trying to overawe the government through violence, so as to constitute sedition. Thus, I come to the considered finding that there is no prima facie case to frame charge against Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar* ***(A-2)*** *u/s 124-A IPC, on the basis of the aforesaid materials.*

86) There are no materials indicating incitement to violence by Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *and no prima facie material to link him to any specific vandalism.*

87) In my considered view, there are no prima facie materials to support any finding that - Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *committed or attempted or abetted, advocated, advised a terrorist act within the clauses of Section 15 (1) and that any such act was done or sought to be done with the intention 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. That would be too far-fetched a conclusion and the materials just do not support that. Thus, there are no materials to frame charges against Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar* ***(A-2)*** *u/s 18 UA (P) Act.*

88) Regarding Section 39 UA (P) Act, there are absolutely no materials with regard to Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar ***(A-2)*** *as well. The protected witnesses have not uttered a word about A-2. There is no correlation between what has been stated in the charge-sheet in this regard and the materials. Thus, there are no materials whatsoever to frame charges against Sri Dhirjya Konwar @ Dhajya Konwar @ Dhaijya Konwar* ***(A-2)*** *u/s 39 UA (P) Act*

89) I also do not find materials to frame charges against A-2 under other penal provisions."

C. <u>Findings recorded with regard to accused No.3 (A-3) (Manas Konwar @ Manash Pratim Konwar</u>) :-

"*55) Out of the 19 witnesses examined during the investigation and who are listed in the charge-sheet dated 29.05.2020, the two protected witnesses and witness no. 3, 4,*

6, 8, 12, 13, 14, 16, 17, 18 and 19 of the charge-sheet dated 29.05.2020, have not mentioned the name of Sri Manas Konwar @ Manash Pratim Konwar (A-3).

56) Witness no. 9, 10 and 15 of the charge-sheet dated 29.05.2020, have mentioned about Sri Manas Konwar @ Manash Pratim Konwar (A-3), but have not implicated him.

57) Witness no. 5 of the charge-sheet dated 29.05.2020 has stated about being with Sri Manas Konwar @ Manash Pratim Konwar (A-3) on 11.12.2019, along with A-1 Sri Akhil Gogoi, but he has not implicated him (A-3).

58) Witness no.11 of the charge-sheet dated 29.05.2020, has mentioned about being in KMSS office in Guwahati during the period – 09.12.2019 to 13.12.2019 and being in close contact with A-1 and other leaders of KMSS, but he has not mentioned in that part of his statement as to who those other KMSS leaders were, though in an earlier part of his statement, he stated that he knew A-3 Sri Manas Konwar.

59) Witness No. 7 has stated that he had seen Sri Manas Konwar @ Manash Pratim Konwar (A-3) accompanying A-1 Sri Akhil Gogoi, though he did not specify whether he meant A-3 accompanying A-1 around the time of Chabua incident, but has not attributed any act of violence or violence inciting provoking speech to A-3 Manas Konwar.

60) Witnesses Sri Arupjyoti Saikia and Sri Pranjal Kalita, who were not listed in the charge-sheet dated 29.05.2020, have not mentioned the name of Sri Manas Konwar @ Manash Pratim Konwar (A-3).

61) Though witness Shahjahan, who is not a listed witness has stated about his coordinating with various persons, including A-3 during the protest activities against

CAB, including the protest in Guwahati, during which violence broke out, he has not attributed any act of incitement, conspiracy or terrorism to A-3.

62) As stated earlier, the protected witnesses are silent about A-3.

63) From the materials, I could not find any words or deeds on the part of the Sri Manas Konwar @ Manash Pratim Konwar ***(A-3)*** *which can be seen to be promoting enmity between different communities or being an act prejudicial to maintenance of harmony in society and therefore, there are no materials to frame any charge u/s-153-A IPC against him. Reference may be made to the case of Manzar Sayeed Khan (supra), where it has been held that - intention to cause disorder or incite people to violence is an essential ingredient of Section 153-A IPC and further, it is also necessary that at least two groups or communities be involved.*

64) There are also no materials whatsoever, about Sri Manas Konwar @ Manash Pratim Konwar ***(A-3)*** *making any imputations or assertions prejudicial to national integration of our country. Therefore, there is no case for framing any charge against A-3 u/s 153B IPC.*

65) The telephone conversations and the CDR analysis definitely indicate that Sri Manas Konwar @ Manash Pratim Konwar ***(A-3)*** *was involved in protests against the CAA and there are also some materials about his also coordinating such protests with others, including co-accused. However, there are no materials to indicate any criminal agreement within the meaning of S.120 (B) IPC so as to constitute conspiracy. There is nothing to indicate that A-3 along with co-accused or others made agreement to commit offences and / or to commit some legal acts illegally. There are no prima facie materials to indicate that he was involved in conspiracy to commit violence and to indicate his linkage with the vandalism etc. that took place in December 2019, during the CAA protests. Thus, there is no case whatsoever to frame charges against Sri Manas Konwar @ Manash Pratim Konwar* ***(A-3)*** *u/s 120 (B) IPC.*

66) Keeping in mind the principles laid down in Kedar Nath Singh (supra), there are no materials indicating involvement of Sri Manas Konwar @ Manash Pratim Konwar ***(A-3)*** *in any act of inciting violence, or trying to overawe the government through violence, so as to constitute sedition. It has been held in a catena of decisions by the Hon'ble Supreme Court and various Hon'ble High Courts by applying the principle of Kedar Nath Singh (Supra) that if there is no incitement to imminent public disorder through violence, criticism of the Government and its policies, even if strongly worded, would not constitute sedition. Thus, tested on the touchstone of these principles, all emanating originally from Kedar Nath Singh (supra), I come to the considered finding that there is no case whatsoever, to frame charge against Sri Manas Konwar @ Manash Pratim Konwar* ***(A-3)*** *u/s 124-A IPC.*

67) There are no materials to support any finding that Sri Manas Konwar @ Manash Pratim Konwar ***(A-3)*** *was involved in or attempted to do or abetted, advocated, advised an act, within the any of the clauses of Section 15 (1) and such act done or to be done with the intention 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. In the absence of materials indicating incitement to violence and being linked to vandalism, A-3 talking about the CAA protests, participating in it and coordinating with others about such protests, cannot by any means constitute justification for trying A-3 for offences u/ 18 UA (P) Act. Thus, there are no materials to frame charges against Sri Manas Konwar @ Manash Pratim Konwar* ***(A-3)*** *u/s 18 UA (P) Act.*

68) Regarding Section 39 UA (P) Act, which criminalizes giving of support to a terrorist organization, there are absolutely no materials to support any such proposition with regard to Sri Manas Konwar @ Manash Pratim Konwar ***(A-3)****. The findings in the charge-sheet in this regard have no correlation with the materials and have no legs to stand on. Reference may also be made to Yasmin Zahid (supra). I also do not find materials to frame charges against A-3 under other penal provisions.*

69) Thus, I came to the considered finding that on the basis of the aforesaid materials, charges cannot be framed against Sri Manas Konwar @ Manash Pratim Konwar ***(A-3)***."

D. <u>Findings with regard to accused No.4 (A-4) (Bittu Sonowal @ Bitu Sonowal</u> :-

"*91) In the statements of 18 out of 23 witnesses, there are no adverse materials whatsoever against A-4.*

92) The statement of witness no. 10 – Sri Jugal Gogoi that he along with others were protesting against CAA on the directions of A-1 and A-4 does not constitute any implication. People have a right to protest in a democracy, provided they do not resort to violence.

93) What emerges from the statement of witness Maina Deka is that A-4 might was involved in the protest activities against CAB, but the statement does not indicate or implicate A-4 in incitement to or commission of any violence or terrorist act.

94) The statement of H M Shahjahan, who is not even a listed prosecution witness, even if accepted on face value indicates that A-4 was involved in coordinating the protest activities against the CAB, including protest activities in Guwahati, during which violence broke out. That, he along with others were also supervising execution of bandh in Guwahati against CAB, during which there was some blockages and shutdowns. In the transcripts of the intercepted voice conversations of A-4, his conversation, if any with this witness is not available. Thus, in my considered view, primarily on the basis of the statement of this non-listed witness, it cannot be said prima facie that A-4 was responsible for inciting the said violence or committing terrorist acts with intention to threaten the economic security of India. That would be again too far-fetched a deduction for framing charge against him for any such offence.

95) Next, I carefully analyze the transcripts of the intercepted voice conversations available in document D-34 and my considered findings are as follows:

(i) In the conversation of A-4 with Asif, his advice about the rally people pushing back the police, if the police pushes, cannot be taken as an implication. Similarly, in the conversation of A-4 with the unknown person, their discussion about the naked protest also does not constitute any implication in my considered view against accused Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal (A-4).

(ii) In the conversation of A-4 Bittu Sonowal with A-2 Dhajya Konwar, they talk about to plan some activities. Regarding the query of A-2 Dhajya Konwar about shut down in Guwahati, A-4 says that there is already a shutdown and they don't need to do anything. Upon carefully scrutinizing this part of the statement, I am of the considered view that it cannot be taken as indicating any incitement to violence or commission of terrorist acts.

(iii) In the conversation of A-4 Bittu Sonowal with one Jogo, they talk about one protest at the Mullockgaon residence of the then Hon'ble CM Assam and media coverage of the same. They also converse about motivating the "simple straight forward Muttock people" to rise in protest. In this context, there is one mention of violence after 9th by the said person Jogo whereupon A-4 still talks about motivating the muttock people, saying that - once people of Chabua and muttock wake up, nobody will mess with our world. I have carefully perused and analyzed this statement of A-4. Though there is one word about violence, it is not from the side of A-4. The said Jogo, who uttered this word, is neither an accused in this case nor any statement recorded during investigation of any witness by the name Jogo, though there is a witness by the name Jugal Gogoi. In my considered view, it would be stretching things far, if the conversation of A-4 with this witness is interpreted as constituting prima facie incitement to commission of terrorist acts or any conspiracy or abetment thereof.

96) Upon perusing, considering and analyzing the materials available on record, as narrated and discussed above, what is revealed is the accused Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal ***(A-4)****, along with others, is likely to have been involved in planning, participating and coordinating the protest activities that took place in the State of Assam, including in Guwahati, especially in the month of December. This appears from the statements of some of the witnesses, the transcripts of the voice conversations and the CDR analysis. But there are no materials to implicating him for violence or its incitement or commission of terrorism or its abetment.*

97) Further, from the materials, I could not find any words or deeds on the part of the Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal ***(A-4)****, which can be seen to be promoting enmity between different communities or being an act prejudicial to maintenance of harmony in society and therefore, there are no materials to frame any charge u/s- 153-A IPC against him.*

98) There are also no materials whatsoever, about Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal ***(A-4)*** *making any imputations or assertions prejudicial to national integration of our country. Therefore, there is no case for framing any charge against A-4 u/s 153B IPC.*

99) The telephone conversations and the CDR analysis definitely indicate that Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal ***(A-4)*** *was involved in protests against the CAA and there are also some materials about his also coordinating such protests with others, including co-accused. However, the materials are grossly inadequate to indicate any conspiracy. In fact, the materials are non-existent. Though it is clear that A-4 participated in CAA protests, there are no prima facie materials to indicate that he was involved in conspiracy to commit violence and to indicate his linkage with the violence or its abetment. Thus, I am of the considered finding that there is no case whatsoever to frame charges against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal* ***(A-4)*** *u/s 120 (B) IPC.*

100) Keeping in mind the principles laid down in Kedar Nath Singh (supra), there are no materials indicating involvement of Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal ***(A-4)*** *in any act of causing imminent public disorder through violence, or trying to overawe the government through violence, so as to constitute sedition. Thus, tested on the touchstone of the principles emanating from Kedar Nath Singh (supra), I come to the considered finding that there is no case whatsoever, to frame charge against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal* ***(A-4)*** *u/s 124-A IPC.*

101) There are also no materials to support any finding that Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal ***(A-4)*** *was involved in or attempted to do or abetted, advocated, advised an act, within the any of the clauses of Section 15 (1) and such act done or to be done with the intention 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. In the absence of materials indicating incitement to violence and being linked to violence, vandalism or terrorist act, A-4 participating in CAA protests and coordinating with others about such protests, cannot by any means constitute justification for trying A-4 for offences u/ 18 UA (P) Act. Thus, I come to the considered finding that there are no materials to frame charges against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal* ***(A-4)*** *u/s 18 UA (P) Act.*

102) Regarding the offence of giving support to a terrorist organization punishable u/s 39 UA (P) Act, there are absolutely no materials with regard to A-4 also, to try him for that penal provision. The findings in the charge-sheet in this regard are not at all supported by the other materials. Thus, I come to the considered finding that there are no materials to frame charges against Sri Bittu Sonowal @ Bittu Sonwal @ Bitu Sonowal ***(A-4)*** *u/s 39 UA (P) Act.*

103) Summing up the discussion, the statement of witness Sri Jugal Gogoi that on the direction of A-1 and A-4, he along with others were protesting against CAA since November 2019 and that between 09.12.2019 and 13.12.2019 he was involved in

various protest against CAA in Dhemaji - cannot be seen as prima facie implicating against A-4. The statement of Maina Deka also does not prima facie incriminate. The statement of H.M. Shahjahan, who is not even a listed witness, about A-4 and others coordinating of execution of bandh against CAB also do not lead to prima-facie satisfaction about A-4 involved in conspiracy abetment etc. of terrorist act or the offence of sedition, in view of other materials on record. There are no materials linking A-4 to any incitement of violence or involvement in violence. Though there are some materials about his involvement in protest against CAB – which is also admitted position of the defence. The statement of the other witnesses does not contain prima facie implication whatsoever against A-4. The CDR analysis indicate that he was exchanging calls with other co-accused and other people and that he was interested and involved in protesting against CAA. However, the transcripts of the conversation do not contain any materials indicating prima facie commission of offence by A-4. The materials on record also do not indicate any offence of conspiracy, as already stated. Further, on the basis of the materials I do not find any grounds whatsoever to frame charges against A-4 u/s- 124A/153B/153B IPC. There are also no materials to frame any charges under the provisions of the UA (P) Act pertaining to offences of terrorism. Consequently, there is no other option but to come to the inevitable finding in my considered view that there is no justification to frame any charges against A-4.

104) I also do not find materials to frame charges against A-4 under other penal provisions."

43. A conjoint reading of Section 2(l) and Section 15 of the UA(P) Act makes it evident that in order to maintain a charge brought under Section 15 of the UA(P) Act it is not necessary for the prosecution to show that the accused person is a member of a "terrorist organization" within the meaning of Section 2(m) of the UA(P) Act. What must be shown is that the accused persons have committed a terrorist act by resorting to any of the means included in section 15 of the UA(P) Act. Once it is found

that the record discloses facts which *prima facie* indicate that there are ingredients of section 15 r/w 2(l) of the UA(P) Act than it would be incumbent upon the Special Court to frame charge against the accused.

44. Coming to the facts of this case, on a careful scrutiny of the impugned judgment, we find that the learned trial court has recorded elaborate findings so as to arrive at the conclusion that the prosecution has failed to produce sufficient materials to show that the accused persons were members of a "terrorist organization". Such finding, *prima-facie*, appear to be based on cogent materials on record. However, what is significant to note herein that there is no clear finding in the impugned judgment as to why the alleged activities indulged by the accused persons such as calls for blockade and closure, plans for shut-down, enclosing the house of Cabinet Ministers, disruption of transport and supplies and incidents of violence, which the learned court below has taken note of, if accepted to be correct would not come within the meaning of Section 2(l) read with Section 15 of the UA(P) Act.

45. In the above context, it would be pertinent to note here-in that according to the learned Special Judge, NIA, there is no material available on record to frame charge against any of the accused persons. We, however, do not find cogent reasons recorded in the impugned judgment as to why, the statements of the witnesses and other documents placed on record along with the charge sheets submitted by the NIA were not found to be sufficient to frame charge against any of the accused persons. This we say so on account of the fact that in paragraph 120 of

the impugned judgment, the learned Special Judge, NIA has himself observed that there is a statement of the A-1 for stopping transportation of natural resources from Assam but he has ignored the said statement of the witness by holding that there is no material to indicate that such stoppage of natural resources from this part of the country actually took place as a result of such statement of the A-1. The above aspect of the matter, in our opinion, would lie in the domain of trial and therefore, the learned Judge was not correct in recording such an opinion at the time of framing of charge by conducting a mini trial.

46. Likewise, we also find that the learned Judge has taken note of the statements of the witnesses who have heard the A-1 speaking about blockade and closure (shut down) but had ignored such statements by holding that there was no material to indicate that such talk of blockade was with the intention to threaten the economic security of India. We disagree with such observation of the learned trial judge purely on account of the fact that whether the call for economic blockade was with the requisite intention of threatening the economic security of India or not is a matter of trial whereby it would be incumbent upon the prosecution to establish such intention by adducing cogent evidence on record. Therefore, in our opinion, it was not open for the learned trial court to record a finding on the intention of the accused persons at the stage of faming of charge by resorting to a roving enquiry in the matter.

47. We also find that the learned trial court has taken note of the transcript of the intercepted telephonic conversations and other documents relied upon by the prosecution and held that those were not sufficient to frame charge against the

accused persons. However, as would be apparent from the findings of the learned Special Judge alluded to above, proper reasons have not been recorded as to why, such record *prima-facie* did not make out a ground for proceeding against the accused persons under Section 15(1) read with Section 18 of the UA(P) Act. There is also no specific finding to the effect that the documents and statements available on record, even if taken on the face value, cannot lead to conviction of the accused persons under any of the sections pressed into service by the prosecution.

48. In the case of **Kedar Nath** (*supra*) relied upon by the learned Special Judge, the Supreme Court had the occasion to interpret Section 124-A of the IPC and held that the aforesaid provision would be applicable when the activities complained of are intended to or have a tendency to create disorder or disturbance of public peace by resort to violence. Here also, we do not find proper reasons recorded in the impugned judgment as to why the activities of the members of the organization led by the accused No.1 resorting to acts of violence and vandalism, if found to be done with the intent of creating public disorder and/or disturbance and/or economic blockade, would not constitute an offence within the meaning of Section 124-A of the IPC read with Sections 15(1) of the UA(P) Ac. We, therefore, find sufficient force in the submission of Mr. Saikia that had the appellant (prosecution) been granted a fair opportunity to place their case after submission of the additional charge-sheet on 29.06.2021, they could have pointed out from the record, in the light of the provisions of the UA(P) Act and the IPC, to demonstrate that there were materials available before the learned court to frame charge against the accused persons. Whether such contention of the prosecution is found to be acceptable or not in the facts and

circumstances of the case, is an entirely different matter but the prosecution was entitled to a fair opportunity to present its case.

49. By the impugned order, the learned trail court had discharged the accused persons by relying upon the ratio laid down in the cases of (1) **Union of India vs. Yasmeen Mohd. Zahid** reported in **(2019) 7 SCC 790,** (2) **Malsawmkimi vs. NIA** reported in **2012 SCC OnLine Gau 897**, (3) **Manzar Sayeed Khan vs. State of Maharashtra** reported in **(2007) 5 SCC 1,** (4) **Kedar Nath vs. State of Bihar** reported in **AIR 1962 SC 955,** (5) **Mohd. Husain Umar Kochra vs. K. S. Dalipsinghji** reported in **(1969) 3 SCC 429,** (6) **Rajender vs. State (NCT of Delhi)** reported in **(2019) 10 SCC 623** and (7) **State vs. Nalini** reported in**(1999) 5 SCC 253.** There can be no quarrel with the propositions of law laid down in the aforesaid decisions and in all probability, the principles emanating therefrom would also come into play, at some stage, in the present case as well. But what is to be borne in mind is that this case was at an initial stage where the court was concerned with the question of framing charge against accused persons after assessing the record. At that stage, the Judge was not supposed to hold a mini trial by resorting to meticulous sifting of evidence so as to form an opinion on the culpability of the accused but was required to only consider, on an assessment of the record placed before him, if there was sufficient ground to proceed against the accused persons. At that stage, the court was also not to be concerned with the question of conviction of the accused persons. If charge is ultimately framed, the burden of proving the same beyond reasonable doubt will always be on the prosecution which burden it will have to discharge during trial.

50. It is no doubt correct that the advent of CAB/ CAA had triggered wide spread public resentment across the state of Assam leading to sporadic out-break of protests across the state. A number of organizations had also participated in such protests. It is also correct that the members of the public have a constitutional right to resort to peaceful protest in such matters. The fact however, remains that the prosecution is relying upon the record to show that the protests and agitations resorted to by the accused persons during the relevant time, in some places, had turned violent. They have also relied upon the record to *prima-facie* show that there were calls for economic blockade and incidents of violence leading to destruction of public properties. It is also the admitted position of fact that A-1 , being the leader of KMSS, in association and with the active support of his followers, had not only mobilized the public and persuaded them to join the agitation in protest against the CAB/CAA but had also spear-headed such agitation in many places. During the course of the agitation, incidents of violence did break out in many places. Therefore, the core issue that would arise for consideration in the present case is as to whether, the record discloses sufficient facts to raise a strong suspicion against the accused persons to *prima facie* indicate that in course of the agitation, the accused persons had resorted to any illegal activity which was punishable under the law. If the answer is in the negative, then the same must lead to the discharge of the accused. Otherwise, the learned trial court would be under a legal obligation to frame charge against the accused persons.

51. At the time of hearing of this appeal, the learned counsel for both the sides have addressed elaborate arguments touching upon the merit of the case by taking

us through the bulk of documents available on record. However, in view of the recourse we propose to adopt in this case and in order to avoid any prejudice being caused to either party, it would neither be necessary nor proper for us to mention in great details, the projections made by both the sides. It would, nonetheless, be apposite to mention herein that although we find that the learned trial Judge had undertaken a laborious exercise in writing a lengthy judgment, yet, we are of the opinion that the findings recorded therein are primarily directed towards existence or otherwise of the grounds for conviction of the accused persons rather than existence of grounds to proceed against them.

52. We also find that while exercising jurisdiction under sections 227 and 228 of the Cr.P.C the learned Special Judge has travelled way beyond the level of sifting of evidence that is permissible at the stage of charge framing and instead, has gone on to weigh the materials produced by the prosecution to record a finding on the question of guilt of the accused persons. Such a recourse, in our opinion, was neither permissible in law nor called for in the facts and circumstances of the case. Therefore, on a careful reading of the impugned judgment and order dated 01.07.2021, we are of the considered opinion that the impugned judgment has the trappings of an order of acquittal rather than an order of discharge. As such, the approach of the learned Special Judge, NIA, in our considered opinion, was clearly erroneous in the eye of law, thus having a vitiating effect on the impugned judgment.

53. For the reasons stated above, we are of the considered opinion that the entire matter calls for re-consideration by the learned Special Judge, NIA. We accordingly,

set aside the impugned order dated 01.07.2021 and remand the matter back to the learned trial court to conduct a fresh hearing on the question of framing of charge against all the four accused persons. In doing so, it will be open for the learned Special Judge to record fresh reasons, in the light of the observations made above, as regards existence or otherwise of materials for framing charge against all or any of the accused persons. It would also be open for the learned Special Judge, NIA to consider, if this is a case where charge can be framed against the accused persons under the UA(P) Act or whether charge needs to be framed against all or any of them only under the provisions contained in the IPC. On such consideration, if it is found that the statements of the witnesses and the documents on record are not sufficient to frame charge against the accused persons under any of the provisions of the UA(P) Act but there are materials to frame charge under the provisions of the IPC, then in that event, the learned court below may invoke jurisdiction under Section 20 of the National Investigation Agency Act, 2008 and transfer the matter for trial by the competent court having jurisdiction in the matter.

54. Since the learned court below has expressed anxiety as regards the delay caused in this matter thereby hampering progress in other cases pending before the Special (NIA) Court, we request the learned court below to conduct charge-hearing in this case as expeditiously as possible, if necessary, by conducting hearing on a day-to-day basis. Facilitating the above, both the parties are directed to appear before the learned court below on 23.02.2023.

55. Our attention has also been drawn to the fact that the accused No.1 (Sri Akhil

Gogoi) was in custody and pursuant to the order of discharge dated 01.07.2021, he has been released. We do not wish to make any observation in this regard save and except providing that if any bail application is moved on behalf of the accused No.1(A-1), the same shall be considered by the learned trial Judge as per law, on its own merit and without being influenced by any observation made in this order. The remaining accused persons may be permitted to remain on previous bail.

With the above observation, the appeal stands allowed to the extent indicated above.

Send back the LCR.

JUDGE **JUDGE**

T U Choudhury/Sr.P.S.

Comparing Assistant