



Misc. Case (NIA) No. 22/2020

(arising out of RC-01/2020/NIA/GUW)

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- 1) The instant miscellaneous case - *Misc. Case (NIA) No. 20/2020*, has arisen out a bail petition filed on behalf of accused Sri Akhil Gogoi (A-1), seeking bail, in connection with NIA investigated case no. RC-01/2020/NIA/GUW which after completion of investigation was charge-sheeted vide charge-sheet dated 26.06.2020 against 4 (four) accused persons, namely, Sri Akhil Gogoi (A-1), Sri Jagjit Gohain (A-2), Sri Bhaskarjit Phukan (A-3) and Sri Bhupen Gogoi (A-4), u/s 120(B)/143/147/148/149/326/307/333/353/427 IPC r/w Section 16 of the UA(P) Act. Presently, except Sri Jagjit Gohain (A-2), who is on bail, the other 3 accused persons are in judicial custody.
- 2) The background facts in a nutshell. The case initially arose out of an ejahar dated 10.12.2019 lodged by one Sri *Tulumoni Duwarah*, SI of police of Chabua PS, Dibrugarh District, stating inter alia that on 09.12.2019, while he was doing law and order duty at Chabua town, a crowd of about 6000 persons, led by A-1 caused economic blockade and pelting of stones, one of which hit his face and injured him grievously. It was also alleged that the mob led by A-1 tried to murder the police personnel on duty. On the basis of the said ejahar, Chabua P.S. Case No. 289/2019 was registered u/s 120(B)/147/148/149/336/307/353/326 IPC and investigation started. Subsequently, on the prayer of the I.O., Sections 153A/153B IPC r/w Sections 15(1)(a)/16 of the UA(P) Act were added. Further, vide order dated 04.04.2020 passed by the Ministry of Home Affairs, Government of India, the National Investigation Agency (NIA), took over the investigation on 09.04.2020, whereupon the case was re-registered as RC-01/2020/NIA/GUW, which resulted in a charge-sheet dated 26.06.2020, as stated above, against 4 accused persons, including the present accused Sri Akhil Gogoi (A-1), whose bail petition has come up before this court now for adjudication.
- 3) It is stated that the accused Sri Akhil Gogoi (A-1) was already in custody in connection with Case No. RC-03/19/NIA/GUW and was shown arrested in this case on 01.04.2020. As mentioned above, the instant case was registered initially as Chabua P.S. Case No.


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289/90 based on ejahar dated 10.12.2019 filed by Sri *Tulumoni Bora*, the then O/C of Chabua Police Station. It is stated that the accused is nowhere connected with the alleged offence or any unlawful activities and the accused has been kept in detention with a sole objective of obstructing the democratic movement led by him against the Citizenship Amendment Law; that the accused denies the allegations mentioned in the charge sheet filed in this case and that the investigating authority failed to produce cogent evidence in support of the penal provisions under which the charge sheet has been submitted; that the allegations made in the charge sheet are vague, imaginary and general in nature and there is no ground to hold that such allegations are prima-facie true; that the accused completely denies any terrorist acts on his part; that the accused has never instigated or participated in any programme which would be within the purview of terrorist acts; that there are no materials for prima-facie satisfaction of this Court regarding the alleged offences against the accused; that the accused is suffering from several ailments and he was afflicted with Covid-19 twice and that even at present he is undergoing treatment as in-patient in GMCH. It is further stated that in the event of being granted bail, he would abide by any conditions imposed.

- 4) Heard, Sri S Barthakur, learned defence counsel assisted by Sri K Gogoi and Sri R Sensowa, learned counsels, appearing for the accused Sri Akhil Gogoi (A-1), who supports the bail petition and submits on the aforesaid lines and prays for bail for the accused. It is submitted by the learned defence counsel that the accused A-1 denies all the allegations against him; that Section 15 of the UA (P) Act has been casually added in this case; that no deadly weapon has been seized from A-1 and that some of the conversations sought to be projected as incriminating have nothing to do with this case; that in the statement of witness no. 2, the reference to burning down of Bengali houses is an improvement made by the recording officer; that the A-1 has been implicated since he has spoken against the government; that with regard to the statement of witness no.16 the Maoist terrorist angle have been unnecessarily brought in; that with regard to witness no. 31 there is a difference in statement before the police and before the NIA. It is submitted that without justification, attempt has been made to bring the case within the ambit of terrorism and that no conspiracy is made out from the materials on record. It is submitted that terrorist act attributed to the accused is based on surmises and conjectures; that a

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stray throwing of stone by some unknown person cannot be an act of terrorism on the part of A-1. It is submitted that the prosecution itself is not sure about what kind of alleged terrorist act has been committed by the accused; that filing of a separate case against the accused A-1 like this case is mala fide and intended to keep A-1 in continued detention; that the prosecution approach has been casual and callous. It is submitted that there is no relation between what was spoken by A-1 and the subsequent violence. It is submitted that what has been stated by the Hon'ble Gauhati High Court in *paragraph 23 of BA no. 930/2020* would be applicable in the instant case as well and further that, with regard to the expression - *any other means* in Section 15 of UA (P) Act, the principle of *ejusdem generis* would apply and in this regard the learned counsel also refers to *para 52 of the judgment in K K Kochuni v. State, AIR 1960 SC 1080*. It is submitted that for an act to be a terrorist act, the intentions mentioned in Section 15 of the UA(P) Act are very important; that the rejection of the bail of two co-accused would not be prejudice the case of A-1 as no weapon has been seized from him nor he has been seen handling any weapons; that the materials on record are not sufficient to make out a prima-facie case against accused A-1 and it is submitted that he may be granted bail whereupon he will abide any conditions imposed.

5) In support of his contentions, the learned defence counsel cites the following decisions: -

- i. *K K Kochuni v. State, AIR 1960 SC 1080*
- ii. *Akhil Gogoi v. State of Assam, BA No. 930/2020 (GHC)*
- iii. *Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602*
- iv. *State v. Nalini, (1999) 5 SCC 253*
- v. *Akhil Gogoi v. State of Assam, BA No. 930/2020 (GHC)*

6) The prosecution vide petition No. 614/2020 has filed a written objection to the bail application of the accused, stating therein that the informant of this case Sri *Tulumoni Duara*, S.I. of Police sustained grievous injuries on his mouth and teeth; that in the violent incident at Chabua giving rise to this case, there was huge damage to property, economic loss to Chabua Railway Station and huge economic loss to the Government; that in this incident at Chabua on 09.12.2029, the accused delivered provocative speeches leading to violence and disruption of peace and that during this incident there were violent mobs with weapons using criminal force and causing injuries to government servant on duty;

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that the accused A-1 along with other co-accused and others conspired to cause blockage of supplies by blocking national high way and railway and that the programme at Chabua on 09.12.2019 was organized with such objective also; that the investigation also revealed that the accused persons had conspired to instigate crowd to set fire to the houses in a Bengali locality, which however was averted due to advance information; that the CDR analysis of the mobiles of the accused persons revealed their coordination with each other with regard to such conspiracy; that investigation has collected sufficient oral and documentary evidence showing the involvement of accused A-1 in the incident; that the restriction of *Section 43D(5) proviso of the UA (P) Act* would be applicable in this case; that granting of bail to the accused Sri Akhil Gogoi (A-1) at this stage would cause prejudice to the prosecution.

- 7) Heard Sri D Saikia, learned senior counsel, assisted by Sri Satyanarayana, learned Senior PP, NIA and Sri V Dwivedi, learned PP NIA, for the prosecution, who objecting to the bail prayer, submits on the aforesaid lines and prays that the bail petition lacks merit and should be rejected. The learned senior counsel has taken the Court through the contents of the charge sheet dated 26.06.2020 and the relevant paragraphs therein pertaining to the role of A-1, stated to have emerged pursuant to the investigation. Para 17 of the said charge sheet dated 26.06.2020 enumerates the charges against A-1 as *u/s-120B/123/147/148/149/326/307/333/353/427 IPC r/w Sec. 16 of the UA(P) Act*. The learned senior counsel has taken the Court through the statement of the witnesses examined during investigation, including the statement of protected witness A and also the relevant documents, including the transcripts of the conversation of A-1 with co-accused and other persons, as available in D-15. The learned senior counsel submits that apart from the other materials in the case diary and charge sheet, more specifically the statements of witness nos. 1, 2, 3, 30, 31, 41 and 42, implicates the accused A-1 with regard to the allegations and make out a prima-facie case against him under *Section 43D(5) proviso of the UA (P) Act*, thereby prohibiting grant of bail at this stage. The learned counsel has also referred to some observations of this Court in the bail order dated 08.07.2020 of co-accused A-3 and A-4 and submits that the same would cover the case of the present accused A-1 as well. Summing up his submissions, the learned senior counsel prays for rejection of the bail petition at this stage.


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8) In support of his contentions, the learned senior counsel representing the prosecution cites the following decisions: --

- i. *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1
- ii. *Jayanta Kumar Ghosh v. National Investigation Agency*, 2010 (4) GLT 1
- iii. *NIA v. Victo Swu*, 2017 (4) GLT 1141 (para 3)

9) In a brief reply to the prosecution submissions, Sri S. Barthakur, the learned defence counsel has reiterated his prayer for bail and taken the Court through paragraphs 42, 44, 46, 48, 59, 61 and 65 of judgement of the Hon'ble Supreme Court in *State – Vs- Nalini*, (1999) 5 SCC 253. It is submitted that for an act to be the terrorist act the dominant intention (s) prescribed have to be present and that though the aforesaid judgement was rendered in the context of TADA, the principles therein would be applicable to UA(P) Act as usual, since many of the provisions pertaining to definition of terrorism in similar between the two statues. It is also submitted that in the facts and circumstances, there is no terrorist act on the part of A-1 and that the bar of *Section 43(D) (5) proviso* of the UA(P) Act would not apply.

10) I have perused the bail petition, the objection thereto and also considered the submissions of the learned counsels of both the sides. Photocopy of the case diary has been placed before the court, as the original case diary is stated to be in the Hon'ble High Court. I have perused the same. I have perused the charge-sheet dated 26.06.2020 and other connected relevant materials. I have perused the relevant portions of the judgments cited at the Bar.

11) Before proceeding further, one may look at the legal provisions governing the matter. Section 43 D of the UA(P) Act governs the subject of bail. In this regard, Section 43 D (5) & (6) of the UA(P) Act lays down as follows:

43-D. Modified application of certain provisions of the Code.—(1)-(4)***

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be

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released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

12) In the context of sub-clause (6) above of Section 43(D) of the UA(P) Act, the Hon'ble Gauhati High Court in *Jayanta Kumar Ghosh v. National Investigation Agency*, 2010 SCC OnLine Gau 586: (2010) 6 Gau LR 727 (para 62) has held that the ban, imposed on the power of the court to release an accused, if a case falls within the *proviso* to section 43D(5) of the UA(P) Act, is in addition to the limitations imposed on the powers of Special Court (*same as magisterial courts*) by clauses (i) and (ii) of section 437(1) Cr.P.C.

13) It was held in the said *Jayanta Kumar Ghosh (Supra)* that while dealing with the scheduled offences, covered by the proviso to sub-Section (5) of Section 43-D, the Special Court, constituted under the NIA Act, would suffer not only from the limitations imposed by Clauses (i) and (ii) of sub-Section (1) of Section 437 Cr.P.C., but also by the proviso to sub-Section (5) of Section 43-D of the UA (P) Act, 1967, wherever the provisions, contained in the proviso to Section 43-D (5), would be applicable.

14) Under Section 437 Cr.P.C., one of the restrictions on grant of bail is that - an accused is not to be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence, which is punishable with death or imprisonment for life.

15) Thus, in a case where the penal provisions involved include sections falling under Chapter IV and /or VI of the UA(P) Act and also penal sections punishable with life or death, then the grant of bail, apart from being subject to the standard limitations governing grant of bail, would also be subject to the following 2 limitations:

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- i. The bar u/s 43(D)(5) proviso of the UA(P) Act
- ii. The bar of section 437 Cr.P.C. pertaining to an offence punishable with death or imprisonment for life, subject to the exceptions incorporated therein - if the accused is sick or infirm or women or below 16 years.

16) As per the statutory provision, the test of Section 43(D)(5) proviso of the UA(P) Act has to be ascertained on the basis of the materials in the case diary and charge-sheet. In this regard, it has been reiterated by a Full Bench of the Hon'ble Gauhati High Court in *Rojen Boro v. NIA, 2016 (4) GLT (FB) 803* that the Legislature has prohibited consideration of any material beyond the case diary or the report made under section 173, Cr.P.C for consideration of bail.

17) Thus, in the scheme of things, if the accused is facing prosecution under penal provisions falling under Chapter IV and/or VI of the UA(P) Act, first the Court has to determine on the basis of the materials in the case diary and /or charge-sheet, as whether there are reasonable grounds for believing that the accusations against the said accused are prima facie true. Only if this test is passed in favour of the accused by holding that there are no such reasonable grounds for believing the accusations to be prima facie true, can the court consider the other aspects of the merit of the bail prayer, including the restrictions u/s 437 Cr.P.C., subject to the other standard limitations applicable to a bail petition. This is because if the aforesaid test is not passed in favour of the accused, by holding that there are reasonable grounds for believing the accusations to be prima facie true, then the court would be barred from granting bail to the accused and it would in a way be an academic and futile exercise to go into the other aspects of the merit of the bail prayer of the accused.

18) *NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1*, is a leading case of the Hon'ble Supreme Court on the subject of bail under the UA(P) Act, wherein several important principles have been laid down. Some of these principles can be enumerated as follows:

- i. The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. (para 26).


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ii. In terms of Section 43-D, it is the bounden duty of the Court to peruse the case diary and/or the report made under Section 173 of the Code and all other relevant material/evidence produced by the investigating agency, for recording its opinion. (para 30).

iii. The Court may release such accused on bail only if it is of the opinion, on perusal of the case diary and/or the report made under Section 173 CrPC that there are "no reasonable grounds" for believing that the accusation against such person is prima facie true. (para 46)

iv. Conversely, if in the opinion of the Court, there are reasonable grounds for believing that the accusation against such person is prima facie true, the question of granting bail would not arise as the bar under the first part of the proviso of no bail in such cases would operate. (para 46).

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

vi. The fact that there is a high burden on the accused in terms of the special provisions contained in Section 43-D(5) to demonstrate that the prosecution has not been able to show that there exist reasonable grounds to show that the accusation against him is prima facie true, does not alter the legal position expounded in *K. Veeraswami v. Union of India*, (1991) 3 SCC 655, to the effect that the charge-sheet need not contain detailed analysis of the evidence. (para 47)

vii. It is for the Court considering the application for bail to assess the material/evidence presented by the investigating agency along with the report under Section 173 CrPC in its entirety, to form its opinion as to whether there are


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reasonable grounds for believing that the accusation against the named accused is prima facie true or otherwise. (para 47).

viii. The settled legal position is that, at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities. (para 53)

ix. The court is expected to apply its mind to ascertain whether the accusations against the accused are prima facie true. (para 53)

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

xi. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of Section 43 (D) (5) Proviso that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. (para 23)

xii. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. (para 23)

xiii. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the

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chain of facts constituting the stated offence, unless rebutted or contradicted.
(para 23)

xiv. The degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, *is lighter than the degree of satisfaction* to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act. (para 23)

xv. Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. (para 23)

xvi. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. (para 23)

xvii. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case. (para 26)

19) The Hon'ble Gauhati High Court has also laid down several important principles with regard to bail in the context of Section 43 D (5) Proviso of the UA(P) Act.

20) The *Concept of the Proviso to section 43D (5) of the UA (P) Act*, was discussed in detail by the Hon'ble Gauhati High Court in the case of *Jayanta Kumar Ghosh v. State of Assam*, (2010) 6 GLR 727 and the following principles were laid down:

i. The proviso to section 43D (5) states that such accused person shall not be released on bail or on his own bond if the court, on a perusal of the case diary or the report made under section 173 of the Code, is of the opinion that there are reasonable grounds for believing


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that the accusation against such person is prima facie true. The expression, 'prima facie true' is an expression, which does not, ordinarily, appear in penal statutes. (para 63)

ii. The word, prima facie, has been described in the Black's Law Dictionary as: "sufficient to establish fact or raise a presumption unless disproved or rebutted". Rebuttable presumption means an inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. Rebuttable presumption also means prima facie presumption or disputable presumption or conditional presumption. (para 64)

iii. The Concise Dictionary of Collins has defined, prima facie, as an adjective, thus : "At first sight; as it seems at first." And prima facie evidence as an evidence that is sufficient to establish a fact or to raise a presumption of the truth unless controverted. (para 65)

iv. Warton's Law Lexicon defines that a prima facie case does not mean a case proved to the hilt, but a case, which can be said to be established if the evidence, which is led in support of the same, are believed. (para 66)

v. The Supreme Court, in *Marlin Burn Ltd. v. R.N. Banerjee*, 1958 SCR 514 at p. 530 (AIR 1958 SC 79 at p. 85), observed, thus: ".....A prima facie case does not mean a case proved to the hilt but a case, which can be said to be established if the evidence, which is led in support of the same, were believed. While determining whether a prima facie case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion, in question, and not whether that was the only conclusion, which could be arrived at on that evidence." (para 67)

vi. The meaning of the word, 'prima facie', given in *Marlin Burn Ltd.*, (supra), has been followed by the Supreme Court, in its later decision, in *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa, M.T. represented by the Binny Mills Labour Association*, AIR 1960 SCC 1352. (para 68)

vii. From the meaning, attributed to the word, 'prima facie', by various dictionaries, as indicated above, and the observations, made by the Supreme Court, in its decisions, in the *Management of the Bangalore Woollen Cotton and Silk Mills*, (supra), what clearly follows is that prima facie is a Latin word, which means, 'At first sight or glance or on its face' and, in common law, it is referred to as 'the first piece of evidence of fact', i.e., considered true unless revoked or contradicted. (para 69)


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viii. In the face of the above observations made by the Supreme Court, it may be construed that prima facie case would mean whether the inference drawn is a possible inference or not. (para 70)

ix. The word, 'true', according to Collins Dictionary, means something, which is not false, fictional or illusory, but factual and confirming with reality or exactly in tune. Webster's Third New International Dictionary defines True as: "Something, which is in accordance with fact or reality". (para 71)

x. The word, 'true' has been defined, in World Book Dictionary, as "Agreeing with fact, not false". (para 72)

xi. Thus, the expression, 'prima facie true', would mean that the court shall undertake an exercise to determine as to whether the accusations, made against the accused, are inherently improbable and/or wholly unbelievable. Ordinarily, while considering a complaint, made against an accused, the court assumes the contents of the complaint to be true and correct and, then, proceed to decide as to whether the allegations, made in the complaint, make out a case of commission of offence by the accused or not. No exercise is required to be undertaken by the court to determine the truthfulness or veracity of the accusations. However, when the word, 'prima facie', is coupled with the word, 'true', it implies that the court has to undertake an exercise of cross-checking the truthfulness of the allegations, made in the complaint, on the basis of the materials on record.

If the court finds, on such analysis, that the accusations made are inherently improbable, or wholly unbelievable, it may be difficult to say that a case, which is prima facie true, has been made out. (para 73)

xiii. The term 'true' would mean a proposition that the accusation brought against the accused person, on the face of the materials collected during investigation, is not false. The term false again would mean a proposition, the existence of which cannot be a reality. While arriving at a finding whether there are reasonable grounds for believing that the accusation against the accused is prima facie true or false, the court can only look into the materials collected during investigation, and on its bare perusal should come to a finding that the accusation is inherently improbable. However, while so arriving at a finding the court does not have the liberty to come to a conclusion which may virtually amount to an acquittal of the accused. (para 74)

xiv. On a bare reading of the materials, as may have been collected during investigation, if the Special Court finds that the materials, so collected, are sufficient to form, when assumed to be true, an opinion that there are reasonable grounds to believe that the accusations,


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made against the accused, are prima facie true, the Special Court will be dis-empowered from releasing the accused on bail. At the stage of bail, no minute scrutiny or microscopic dissection of the materials, collected during investigation, shall be undertaken by the Special Court. Credibility or otherwise of the materials collected would not be the subject-matter of scrutiny. What, at best, the Special Court can do, and shall do, is to examine if the accusations made, on the basis of the materials collected, are wholly improbable. When the materials are, on examination by the Special Court, are found to be not wholly improbable and the Special Court finds, on assuming such materials to be true, that the accusations, made against an accused, as regards commission of an offence under Chapter IV and/or Chapter VI of the UA(P) Act, are prima facie true, such materials would be enough to attract the bar imposed by the proviso to section 43D(5). (para 76)

xv. The Special Court is required to examine the materials, collected during investigation, assuming the same to be true and if, such materials, on such examination and consideration, are found to make out a case against the accused, the Special Court has to determine if there is any such thing in the materials, so collected, which would make the case, which has been made out against the accused, as a wholly improbable case. If the Special Court, on undertaking such an exercise, finds reasonable grounds to infer that the case, which has been made out against the accused, is not wholly improbable, the case would be treated as a case, which is sufficient for the Special Court to form an opinion that there are reasonable grounds to believe that the accusations, made against the accused, are prima facie true. (para 77)

xvi. The expression, 'reasonable ground', means something more than prima facie ground, which contemplates a substantially probable case for believing that the accused is guilty of the offence(s) alleged. Under section 437, Cr. PC, an accused is not to be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence, which is punishable with death or imprisonment for life. Under section 437, Cr. PC, the burden is on the prosecution to show existence of reasonable ground for believing that the accused is guilty. Hence, the presumption of innocence, which always runs in favour of the accused, is displaced only on the prosecution showing existence of reasonable ground to believe that the accused is guilty. (para 78)

xvii. The proviso to section 43D(5) does not require a positive satisfaction by the court that the case against the accused is true. What is required is a mere formation of opinion by the court on the basis of the materials placed before it. The formation of opinion cannot be irrational or arbitrary. Such formation of opinion cannot be based on surmises and conjectures; but must rest on the materials collected against the accused. Since the presumption of innocence runs in favour of the accused, it logically follows that if there are,


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in given circumstances, grounds for believing that the case, against the accused, is true, a case of commission of offence under Chapter IV or Chapter VI of the UA(P) Act, 1967, can be said to have been made out and when such a case is made out, it would be tantamount to saying that reasonable grounds exist for opining that the accusations are prima facie true. In such a case, the bar, imposed by the proviso to section 43D(5) on the court's power to grant bail, gets attracted. (para 79)

xviii. Under the scheme of the NIA Act, the Special Court, above, is a 'court' other than the High Court and Court of Sessions. In such circumstances, the limitations, imposed by clauses (i) and (ii) of sub-section (1) of section 437, Cr. PC, are applicable to the Special Court too. In addition thereto, when a case falls within the ambit of the proviso to section 43D(5), there would be an additional bar, on the part of the Special Court, to release an accused on bail, the bar being that the Special Court shall not release the accused on bail or on his own bond if the Court, on perusal of the case diary or the report made under section 173 of the Code, is of the opinion that there are 'reasonable grounds' for believing that the accusation against such person is prima facie true. (para 81)

xix. The Special Court NIA, not being a Court of Sessions or of the High Court, cannot exercise the powers of the Court of Sessions or High Court under section 439, Cr. PC. Hence, while dealing with the scheduled offences, covered by the proviso to sub-section (5) of section 43D, Special Court, constituted under the NIA Act, would suffer not only from the limitations imposed by clauses (i) and (ii) of sub-section (1) of section 437, but also by the proviso to sub-section (5) of section 43D of the UA(P) Act, 1967, wherever the provisions, contained in the proviso to section 43D (5), would be applicable. (para 82)

21) Upon analyzing the aforesaid legal principles laid down in *Jayanta Kumar Ghosh (Supra)*, I am of the considered view that the para 76 & 77 above lay down the basic formula regarding the interpretation of Proviso to Section 43D (5) of the UA(P) Act. Therefore, the said basic principles are summarized hereunder:

- i. The Special Court is required to examine the materials, collected during investigation, assuming the same to be true and if, such materials, on such examination and consideration, are found to make out a case against the accused, the Special Court has to determine if there is any such thing in the materials, so collected, which would make the case, which has been made out against the accused, as a wholly improbable case.
- ii. If the Special Court, on undertaking such an exercise, finds reasonable grounds to infer that the case, which has been made out against the accused, is not wholly improbable, the case would be

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treated as a case, which is sufficient for the Special Court to form an opinion that there are reasonable grounds to believe that the accusations, made against the accused, are prima facie true.

22) Having noticed the principles of law pertaining to the subject matter, now the materials in the case diary and the charge-sheet, with regard to the accused Sri Akhil Gogoi (A-1), have to be carefully perused by this Special Court to form an opinion as to whether there are or there are not, reasonable grounds for believing that the accusations against the Sri Akhil Gogoi (A-1) are prima facie true.

23) Now, coming to the facts of the instant case for adjudication before this court, the penal sections of the UA(P) Act under the case was investigated are section 15(1)(a)/16 and the section (s) of the UA(P) Act, under which charge-sheet dated 26.06.2020 was submitted against Sri Akhil Gogoi (A-1) is *Section 16*.

24) Section 16 of the UA(P) Act belongs to Chapter IV of the Act. The subject areas of this penal section of the UA(P) Act are as follows:

- i. Section 16 - Punishment for terrorist act. The punishment prescribed is death or life imprisonment and also fine, if the terrorist act has resulted in death of any person; however, in other cases, where such terrorist act has not caused death, punishment is imprisonment not less than 5 years, but which may extend to life imprisonment and also fine

25) It may be mentioned herein that Section 2 (k) of the UA(P) Act pertaining to definitions, states that *terrorist act* has the meaning assigned to it in section 15, and the expressions *terrorism* and *terrorist* shall be construed accordingly.

26) In this context, Section 15 of the UA(P) Act is as under:

15. Terrorist Act.—

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

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by


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any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

- (i) death of, or injuries to, any person or persons; or
- (ii) loss of, or damage to, or destruction of, property; or
- (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
- (iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or
- (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies;

or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary;

or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person do or abstain from doing any act;]

commits a terrorist act.

Explanation.—For the purpose of this sub-section,— (a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

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

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

27) As stated earlier, the case diary has been placed before me and I have perused the relevant portions of the case diary. I have also gone through the charge-sheet dated 26.06.2020.


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28) Now, it needs to be ascertained as to whether the materials stated in the case diary and charge-sheet against the accused Sri Akhil Gogoi (A-1), if believed make out prima facie case against him, especially under Sections 15/16 of the UA(P) Act. Further, whether the materials stated in the charge-sheet upon investigation find some support from the materials in the case diary. Finally, it needs to be ascertained as to whether there is anything in the existing materials, which make the accusations against the accused wholly improbable. This exercise has to be done in keeping with the formula enunciated in Jayanta Kumar Ghosh (Supra) with regard to the interpretation of the Proviso to section 43 D (5) of the UA(P) Act.

29) Paragraph 16.14(A) of the charge-sheet dated 26.06.2020, states about the findings against the accused Sri Akhil Gogoi (A-1) pursuant to the investigation. It is stated therein that:

- i. A-1 delivered provocative speeches at the spot in Chabua which has caused disruption of peace and damage/destruction of public and private properties and disruption of essential services for life community in India and created fear in a section of people in India, which is a terrorist act as per section 15 (1)(a)(ii)(iii)(b).
- ii. A-1 led a mob in violation of section 144 of the Cr.P.C. imposed at Chabua on 09.12.2019. A-1 led the mob to cause damage to public/private properties with intent to strike fear in a section of people of India.
- iii. A-1 led the mob armed with deadly weapons and attempted to cause death of public functionary by show of criminal force and thus, caused grievous injury to the government servant on duty.
- iv. The mob led by A-1 was planning to set fire on the houses of Bengali dominated area of *Amravati* colony. This establishes the fact that A-1 led a mob with intent to strike terror in a section of people of India. The statement of witnesses reveal that the terrorist act of A-1 in pursuance of the conspiracy has led to fear in a section of people in the area.


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- v. The oral evidence, documents, material objects and technical evidence collected during the course of investigation are establishing the prima facie case against the accused for prosecution of the offences.

30) Upon perusing the statements of the witnesses, recorded during the investigation, I find as follows with regard to A-1:

- i. P.W. A in his statement before NIA stated that on 09.12.2019, A-1 called him and asked him to do something fiery. That, at around 6:00 P.M. on the same day he along with A-1 reached Chabua where there was a large gathering in a noisy atmosphere. That, A-1 addressing the meeting, provoked the people and asked them to oppose the government using any means. That, due to the provocation of A-1 some people from the crowd started pelting stones on the security officials and one stone hit the mouth of Chabua O/C Sri *Tulumoni Duarah* grievously wounding him with profuse bleeding. That, even then the crowd did not stop and overturned and damaged a Bolero vehicle on government duty. That, even after the crowd turn violence A-1 did not denounce the same or did anything to stop them.
- ii. Witness no. 2 Sri *Tulumoni Duarah* in his statement before NIA stated that at the relevant time he was working as O/C Chabua P.S and that on 09.12.2019 he was performing law and order duty at Chabua Town along with his staff and Addl. Superintendent of Police. That, there was a gathering of 6000 people headed and addressed by A-1 and that they had blocked the railway track as part of economic blockade and that the crowd had also damaged the gypsy vehicle belonging to security personnel. That, during the meeting he got information from one *Devarikhi Chetia* that protesters were planning to burn down houses of Bengali dominated Amravati Colony whereupon he immediately informed Circle Inspector and request him to deploy security forces in the area. It is further stated by this witness that he along with security staff tried to remove the blockade unsuccessfully as they were provoked by A-1 and that A-1 the leader of the crowd and his associates criminally conspired against police and government officials and threw stones, one of which hit the mouth of the witness Sri *Duarah* causing


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grievous injuries by way of broken teeth and injury of lips. That, another stone hit his head but he was wearing helmet. That, he was immediately removed to Aditya Nursing Home in Dibrugarh where he was given treatment involving stitches and removal of affected teeth. It is further stated that at the time of the incident the associates of A-1 also damaged the Bolero vehicle on CRPF duty and that A-1 and his associates obstructed police and government officials from performing their duties as well. It is further stated that at the time of the incident when the witness got injured and was being shifted away from the site, A-1 was still addressing the gathering of people.

- iii. Witness no. 3 Sri Khagen Laskar, S.I. of Police of Chabua P.S. also stated that on 09.12.2019 a protest meeting held near Chabua Railway Station and addressed by A-1 turned violent and pelted stones as a result of which O/C Chabua P.S. sustained grievous injuries leading to lodging of FIR and registration of Chabua P.S. Case No. 289/19, which was endorsed to this witness for investigation, during which he seized one stone, duty register and pan drive.
- iv. Witness no. 4 Sri Kulapradip Bhattacharjee in his statement stated that while working as Dy. Superintendent of Police at Namrup, he took over the investigation of Chabua P.S. Case No. 289/19 from the earlier I/O Sri *Khagen Laskar*.
- v. Witness no. 5 Siranjib Chetia, witness no. 6 Sourav Jyoti Baruah and witness no. 7 Pallab Baruah are constables working in the Chabua police station and they have stated on similar lines that on 09.12.2019, there was a large protest meeting in Chabua during which people tried to block the roads and rail and the police party from Chabua police station were trying to clear the blockage and in the presence of Akhil Gogoi, the crowd started pelting stones on the police party also, leading to injuries on the OC. These witnesses have also stated that they do not know the attacking persons but will be able to recognise them, if they see them. Witness no. 5 has also stated that the crowd led by A-1 started pelting stones but the version of witness no. 6 and 7 is slightly different. Witness no. 8 Nabajyoti Chetia, a driver in the Chabua police station has also stated on similar lines and that while

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they were trying to clear the blockage, some people in the crowd under the leadership of Akhil Gogoi started pelting stones on the police party. This witness has also stated that though he does not know the attacking persons but will be able to recognise them, if he sees them.

- vi. Witness No.9, Rafiq Shah; witness no.10, Birendra Sarmah and witness no.11, Biju Choudhury are associated with the V.D.P. under Chabua P.S. and all 3 (three) of them have stated that on 09.12.2019, there was protest meeting in Chabua area, whereby, the protestors were trying to block the highway and the police party of Chabua P.S. were trying to obstruct the same, whereupon, some of the protestors started pelting stones on the police party. All these three witnesses have, however, stated that they do not know the said protestors.
- vii. Witness no.12, Subhas Kachari, witness no.13, Lakhinath Basumatary and witness no.14, Dipen Gogoi are associated with the office of Circle Inspector of Chabua and they have also stated about the protest meeting and attempts at blockade. They have mentioned about the aggressive speech given by Akhil Gogoi against the Government and subsequent pelting of stones by some of the protesters, due to which, the O/C of Chabua P.S. sustained injuries. Witness no.14 has stated that due to the crowd and darkness, he could not recognize the attacking persons.
- viii. Witness no.15, Nabin Gogoi is the driver of the Circle Office of Chabua Revenue Circle and witness no.16, Sri Anuj Bharati is a driver of Chabua P.S. and both the two witnesses have stated about the aggressive speech of Akhil Gogoi and the stone pelting by protestors leading to injuries on the O/C of Chabua P.S. Witness no.16 has stated that he could not recognize the persons attacking the police at that time.
- ix. Witness no. 17 Sri Dhruba Bora Addl SP, in his statement recorded during investigation stated that on 09.12.19 he along with O/C Chabua P.S. and staff were going on law and order duty at Chabua where a protest programme of railway blockade was being carried out under the leadership of A-1, who in his speech instigated the people, leading to pelting of stones, one of which hit the face of O/C

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Chabua P.S. leading to grievous injuries by way of broken teeth and cut lips. That, after the instigational speech of A-1 miscreants also vandalized vehicle and public properties. That, A-1 as leader of KMSS was responsible for the miscreants activities that took place in Chabua during the bandh called given by them. That, it was revealed that it was a plan of miscreants as well as Maoist / terrorist design activity in the name of protest against CAA in Chabua.

- x. Witness no. 18 Sri Biswajit Phukan a local correspondent of *Pratidin Time* stated in his statement that he was in Chabua and on 9th December, 2019 during bandh call given by KMSS and other organizations there was a huge gathering at Chabua Town in the evening comprising about 6000 people. That, A-1 and his associates arrived at the meeting at 6:00 P.M. where after A-1 asked the people to sit on the railway track to block the trains. That, A-1 gave a provoking lecture as chief guest whereupon the people got furious and started pelting stones on the security people and subsequently he saw O/C Chabua P.S. Sri *Tulumoni Duarah* with sustaining injuries on his face and bleeding. That, Sri Duwara told the witness that he was hit because of pelting of stones by the supporters of A-1, whereupon witness took video footage of the injured O/C and the meeting environment. That, one Bolero vehicle was also damaged there due to the instigational speech of A-1; that organizer had made the public gathered there and that after the vandalism, A-1 and others remained there for an hour; that the witness did not see A-1 requesting the crowd not to vandalize; that as leader of KMSS A-1 is fully responsible for the miscreants activities that took place in Chabua during the bandh call given by KMSS and that it was also revealed that it was a planned miscreants as well as Maoist/ terrorist design activities in the name of protest against CAA in Chabua.
- xi. Witness no. 19 Dr. C.R. Joshi- Dental Surgeon of Dibrugarh who had treated Sri T. Duarah for the injuries in the incident has stated in his statement about the treatment given by him involving dental surgery procedure under anesthesia.


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- xii. Witness no. 20 Ms Manashi Bora of the cyber cell of Dibrugarh police in her statement stated that on 29.05.2020 under requisition of NIA team she extracted 8 nos. of video footages of violent activities by KMSS/SMSS and their associates from 9th December, 2019 onwards under Chabua P.S. The said witness has also stated about another video of such violent activities extracted from the cyber cell computer system of S.P. Dibrugarh and from two pen drives produced by Inspector NIA.
- xiii. Witness no. 21 Sri Ridip Sonowal is the seizure witness pertaining to aforesaid extraction. Witness no. 22 Sri Nilu Kumar Kohar is also a similar seizure witness pertaining to the 8 videos mentioned by witness Manashi Bora.
- xiv. Witness no. 23 Sri Bikey Kondapan in his statement before NIA has stated that he was the driver of Mahendra Bolero vehicle No. AS06 V2392 given by his owner on hire to CRPF and that on 09.12.2019 he was around Chabua area; that, on that day at around 6:45 P.M. he was on the high way going towards Tinsukia and then he saw one gypsy vehicle being attacked by protectors whereupon he tried to move out but crowd came out from both sides of the road and blocked his vehicle and started pelting stones and attacking him as well, whereupon he somehow came out of the vehicle and hid himself; that after sometime he came out and saw that the vehicle had been damaged by protesters; that, on calling O/C Chabua P.S. he came to know that O/C himself had suffered from serious face injury caused by violent protesters; that due to darkness and huge crowd he could not identify any of the protesters clearly.
- xv. Witness no. 24 Sri Trilochan Behera - an Assistant Commandant of CRPF in his statement before NIA stated that on 09.12.19 he was on security duty in Chabua where a protest were going on and that around 6:00 P.M. A-1 and his associates came to Chabua near the railway station and started addressing the crowd during which he delivered a provocative speech and told the people to oppose CAA using any means; that, on his provocation some people from the crowd started pelting stones, one of which hit the mouth of O/C Chabua P.S. leading to injuries; that

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even then the crowd did not stop and damaged his vehicle. Witness no. 25 Sri D.K. Medhi of Government Railway Police stated about the rail block programme conducted near Chabua railway station on 09.12.2019. He also stated about some complaints lodged by railway officers regarding damage of railway properties. Similarly witness no. 26 Sri T. Shanti Kr. Singha of RPF also stated about such rail block protest on 09.12.2019. Witness no. 28 Sri Parimal Mali – railway officer in his statement before NIA stated that during the CAB protest from 09.12.2019 to 12.12.2019 different violent activities were reported in Chabua and other railway stations committed by violent protesters, causing loss and damage of railway properties; that, after the situation improved a little, he along with his senior officers visited the affected stations including Chabua and prepared loss assessment report.

xvi. Witness no. 29 Sri Satish Baruah has also stated about witnessing such protest on 09.12.2019 near Chabua railway station being a railway officer on duty at that time and that also saw leaders of different organization deliver speeches, but could not personally identify any of them; that on 13.12.2019 when he saw the station he found that it was partially burnt down and there was also other destruction of railway properties there.

xvii. Witness no. 32 is Constable Sri S. Dangaria who in his statement before NIA stated about being a seizure witness to the seizures made by NIA team on 28.05.2020 from Chabua P.S., which included documents, one piece of stone, medical report of T. Duarah etc. Witness no. 33 is Constable Sri Reshob Das who also stated about being witness to such seizure.

xviii. Witness no. 34 Sri Kaushik Haldar also stated about protest at near Chabua Railway Station on 09.12.2019 and that, on 11.11.2019 when he went there, he found station to be partially burnt and also saw other losses of railway properties. Witness no. 35 Sri B.P. Rao - a railway employee has stated about being witness to seizure of some materials such as mobile phone, photographs etc. by NIA team


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from Chabua Railway Station on 21.06.2020. Witness no. 36 - Sri Tanu Gogoi another railway employee also stated about such seizure on 21.06.2020.

xix. Witness no. 37 - Sri Matin Choudhury @ Matin Ali in his statement has stated that he personally knows A-1 and his mobile no. 9435054524 and had talked with A-1 many times on this number. Witness no. 38 - member of KMSS has stated about personally knowing A-1 and having talked with him many times on his mobile nos. 9435054524 and 6001416124. Witness no. 39 Sri Dipjyoti Handique and witness no. 40 Sri Abhijit Gohain has stated about talking with accused Bhupen Gogoi, Jagjit Gohain and Bhaskarjit Phukan on their mobile nos. 7099492813, 84863719449 and 9101117593 respectively.

xx. Witness no. 30 Sri Devarikhi Chetia in his statement before NIA stated that he is the P.W.D. contractor and office bearer of *Motok Juba Chatra Sammelon* and that under umbrella of several organizations, his organization had also taken part in the anti CAA movement in Assam in 2019. That, on 9.12.2019 people started gathering for protest near Chabua Railway Station and around 5:40 to 6:00 P.M. leaders of different organizations started delivering speeches; that, KMSS leader Sri Akhil Gogoi (A-1) also delivered an aggressive and provocative speech. That, during this time one administrative officer informed him about some protesters were trying to create violence by disruptive law and order situation and that at 6:45 P.M. he heard about damage of one CRPF vehicle. That, at that time Sri Tulumoni Duarah, O/C of Chabua P.S. along with his staff were doing duty near him and subsequently O/C Chabua along with his staff went forward and these witnesses also followed him; that, when they reached the place where CRPF vehicle was damaged O/C Duarah was attacked by protesters causing serious injury on his face due to stone pelting. That, A-1 along with A-2, A-3 and A-4 were leading the mobs. That, though other leaders were also there, he saw presence of A-1 and other KMSS leaders from beginning of the programme. This witness further stated that during this time, he also got information that some protesters were planning to set fire on the houses of Amaravati colony - Bengali dominated


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area, whereupon he immediately informed the O/C who in turn deployed security there.

xxi. Witness no. 31 Sri Dhruba Gohain in his statement before NIA stated that he is a businessman and also associated with CPI (M) and under an umbrella organizations, also took part in anti CAA protest; that, on 09.12.2019 people gathered for protest near Chabua Railway Station and around 5:30 to 6:00 P.M., A-1 delivered an aggressive and provocative speech. That, during the programme he also heard about damaging of one CRPF vehicle and that O/C Chabua P.S. was attacked by some miscreants causing serious injury. However, the witness stated that he has not seen this incident personally.

31) Upon perusing the documents, as part of the charge-sheet, I find as following with regard to A-1:-

- i. D-2 is the original ejahar dated 10.12.2019 lodged by the victim Sri Tulumoni Duwara, O/C of Chabua P.S. mentioning about the incident in which crowd allegedly provoked by A-1 got violent and threw stones on security people one of which hit his face grievously injuring him.
- ii. D-6/1 is the first information report dated 09.04.2020 prepared by NIA pursuant to order dated 04.04.2020 passed by Union Home Ministry directing the NIA to investigate the case.
- iii. D-12 is the seizure list (MR No.148/20) dated 11.12.2019 pertaining to seizure of one stone from the place of incident in the presence of witnesses.
- iv. D-15 are transcripts of intercepted telephone conversations of A-1 with various persons at the relevant time. In the conversation of A-1 with Paramanda on 07.12.2019 at 21:50, A-1 tells other persons about his plan to go to Chabua on 9th at night as public programme was being planned thereof. In the conversation of A-1 with one Baishya on 07.12.2019 at 22:18, they talked about the upcoming programme at Chabua. In his conversation with one Sri Dibon on 09.12.2019 at


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8:16 A.M. A-1 asked him as to what time he should reach Chabua whereupon the other persons tells him to reach about 7:00 P.M. In his conversation with Sri Dipjyoti on 09.12.2019 at 10:17 A.M. A-1 tells about the evening programme in Chabua. In conversation with Jagjit on 09.12.2019 at 4:20 P.M. the other persons tells A-1 that about 5000 people having gathered in Chabua whereupon A-1 tells him to call him after the programme starts. In the conversation of A-1 with Jagjit on 09.12.2019 at 5:28 P.M., they talk about the gathering of 7000 to 8000 people and A-1 says that he is on his way. In conversation with Chandan Gogoi on 09.12.2019 at 5:29 P.M., A-1 tells him that he is at Chabua and will stay there whole night.

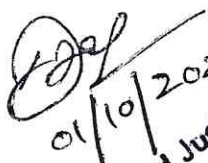
- v. D-19 and D-20 are orders dated 19.10.2019 and 07.11.2019 passed by Addl. Chief Secretary, Home and Political Department, Govt. of Assam granting permission for interception of the telephone numbers of A-1 – 9435000515 and 9435000516.
- vi. D-29 is the scrutiny report of videos seized vide production-cum-seizure memos dated 29.05.2020. Serial no. 3, 6 and 7 therein are speeches delivered by A-1. Serial no. 8 is stated to be a video of police officer with grievous facial injury and behind the police party is seen crowd shouting slow gun- *Joi Aii Asom*.
- vii. D-33 is a production-cum seizure memo dated 11.-6.2020 wherein one of the items at serial no. 7 is 6 nos. of photographs showing a Mahendra Bolero vehicle no. AS06 V2392 in capsized condition.
- viii. D-40/5 pertains to some assessment of loss of railway properties during the CAB protest.
- ix. D-48 is a photo identification memo dated 13.06.2020 of Chabua P.S. in which six photographs are indicated out of which photograph A and C are of A-1 and photograph E and F are of co-accused Bhupen Gogoi and Bhaskarjit Phukan.
- x. D-49 is the CDR analysis report of the mobile numbers of the accused persons of this case and others in connection with the alleged incident. It is stated that A-1

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connected with co-accused A-2 from his mobile no. 8486371949, using phone no. 9435054524 belonging to A-1. It is stated that the CDR analysis revealed that on 09.12.2019 from 5:29 P.M. to 8:15 P.M., the tower location of A-1 with his mobile no. 9435054524 was found under the tower location covering the area of Chabua under Dibrugarh district. It is stated that the CDR analysis also reveals that on 09.12.2019 A-1 reached Panitola in Tinsukia at 1:00P.M. and that at 5:39 P.M., his tower location was found in the area of Chabua; that there was no CDR activity between 5:39 P.M. to 7:53 P.M. and that, the same indicated that the accused have deliberately switched off his mobile phone during this time and that from 7:53 P.M. to 8:15 P.M. the tower location of the mobile of A-1 was again found in the Chabua area. It is further stated that the CDR analysis revealed that A-1 was at Chabua on 09.12.2019 at the relevant time and that the tower location of co-accused A-2, A-3 and A-4 were also found in Chabua area, during this time, like that of A-1.

32) Amongst the witnesses examined by the police during investigation, I find that protected witness-A and witness no. 2, 3, 17, 18 and 30 are some of the eye witnesses to the alleged incident. All these witnesses have stated that on 09.12.2019 in the evening, there was a large gathering at Chabua near Chabua Railway Station, which was also addressed by A-1 and that he gave provocative speeches there and subsequently, the crowd turn violent and started pelting stones, one of which hit the witness no.2 Sri Tulumoni Duarah - informant-cum-victim, grievously injuring his face and teeth. The nature of the injuries sustained by the informant is clear from the medical evidence on record and the statement of witness no. 19 - Dr. C.R. Joshi, a Dental Surgeon of Dibrugarh. The witnesses have not stated that A-1 has directly incited the violence, but they have stated that he delivered provocative speech where after the crowd turn violent. Protected witness A has also stated that even after the crowd turned violent A-1 did not denounce it or did anything to stop it. Witness no. 2 – informant-cum-victim has also stated that when after sustaining injuries he was being shifted away from the site, A-1 was still addressing the gathering. In his statement, witness 18 Sri Biswajit Phukan - a T.V. Journalist stated that after the vandalism, A-1 and others remained at the site for an hour and that, this witness did not see A-1 requesting the crowd not to vandalize.


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- 33) Witnesses like witness no. 5 and 8 have stated that the crowd led by Akhil Gogoi started pelting stones in the police party, but some of the other witnesses have stated that Akhil Gogoi delivered an aggressive or provocative speech and subsequently, some members of the crowd started pelting stones in the police party. Therefore, I find some differences in the nature of the incident, narrated by these two sets witnesses. Further, several of the witnesses have stated that they could not recognize the protesters who had thrown stones on the police party, leading to injuries on the OC Chabua police station.
- 34) The presence of A-1 at Chabua on 09.12.2019 including around the time of the evening, is also revealed from the materials on record such as CDR analysis, tower locations, the statement of witnesses and the transcripts of telephone conversations of A-1 with various persons. In parts of such conversations, A-1 has himself stated about his coming to Chabua for a programme on 09.12.2019 and about his being in Chabua on 9.12.2019.
- 35) From the materials on record available at this stage in the case diary and the charge sheet, it is revealed *prima-facie* that on 09.12.2019, A-1 participated in a protest programme at Chabua in the evening hours, during which he delivered an aggressive or provocative speech whereafter the crowd turn violent and pelted stones leading to serious facial injuries to the informant-cum-victim Sri Tulumoni Duarah, who as O-C Chabua P.S. was doing law and order duties at that time in the place of occurrence.
- 36) It is further revealed *prima-facie* from the materials that though A-1 apart from giving aggressive or provocative speech, might not have directly incited violence, but he did not do anything to dissuade the crowd from vandalizing, after they started doing so. It also appears *prima-facie* that A-1 remained at the place of occurrence for about an hour after the vandalism started and also revealed from the statement of the informant-cum-victim that while he was being shifted after sustaining the injuries from stone pelting, A-1 was still addressing the crowd.
- 37) Thus, from these materials it is clear *prima-facie* that on 09.12.2019 A-1 was present in the evening at the place of occurrence in Chabua; that he addressed the protesting crowd giving a progressive / provocative speech where after the crowd turn violent and pelted

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stones seriously injuring the informant and that A-1 did not do anything to prevent the violence or stopping it after it started.

38) Now in the aforesaid facts and circumstances, it has to be determined *prima-facie* as to whether the omissions and commissions of the accused A-1 on the aforesaid lines would make him liable for an act of terrorism within the meaning of Section 15 of the UA (P) Act.

39) Apart from penal provisions of the IPC, the accused A-1 has been charge sheeted *u/s 16 of the UA (P) Act* which prescribed punishment for terrorist act, stating further *that if such act caused death of a person, the offence would be punishable with death or life imprisonment and fine; and in other cases, the offence would be punishable with imprisonment not less than 5 years and upto life imprisonment and also be liable to fine.*

40) As narrated earlier, *Section 15 of the UA (P) Act* provides a detailed definition of a terrorist act under the UA (P) Act. Upon analyzing the said definition, I find that some of the ingredients, which might be relevant to the instant case may be enumerated as follows:

- i. if a person overawes by means of criminal force or show of criminal force or attempts to do so or causes the death of any public functionary or attempts to cause the death of any public functionary *with an intention to threaten or likely to threatened the unity, integrity, security, economic security or sovereignty of India or with an intention to strike terror in the people or any section of the people*, the said person would be committing the terrorist act within the meaning of Section of 15 of UA(P) Act.
- ii. Further, if a person causes death or injuries to persons or causes damage and destruction of properties or causes disruption of supplies or services essential to the life of the community and *such acts are done using bombs, explosives substances inflammable substances or any other means of whatever nature* and further, such acts are done with the *intention to threaten the unity, integrity, security, economic security or sovereignty of India or with an intention to strike*

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terror in the people or any section of the people, the said person would be committing a terrorist act within the meaning of Section 15 of the UA (P) Act.

41) Thus, from the analysis of this definition of terrorist acts I find that to constitute a terrorist act within the meaning of Section 15, the prescribed illegal activities have to be done with any or more of the stipulated intention(s) – *such as threatening the unity, integrity, security, economic security of India or threatening the sovereignty of India or striking terror in the people or a section of the people.*

42) I have perused the order dated 18.05.2020 passed by the Hon'ble Gauhati High Court in BA No. 930/2020, relied on by the defence, pertaining to the same accused, with regard to another case. Some of the contents of paragraph 22 and 23 of this order may be enumerated here under:

22. *it is also the case of the prosecution that the petitioner in a speech delivered at a meeting at Chabua on 09.12.2019 had warned the people in attendance against the possible infiltration of people from Bangladesh into Assam and asked all to intensify the protest. Because of his such speech, people got provoked and started the acts of vandalization in the aftermath of the meeting. The petitioner has been interrogated in custody and his statement is found recorded in the case diary. The petitioner has admitted about his participation in the meeting and delivering a speech.*

23. *The emphasis of the prosecution is directed towards the offence punishable under "Section 15(1)(a)(i)" of the UA(P) Act, perhaps inadvertently mentioned as "Section 15(a)(i)", UA(P) Act in the application dated 31.03.2020, more particularly, to the phrase "by any other means of whatever nature" appearing in that Section. I have given my due consideration to the definitions ascribed to "terrorist act", "terrorist gang", "terrorist organisation", "unlawful activity" and "unlawful association" in the UA(P) Act along with the materials available in the case diary produced before the Court. The role attributable to the petitioner, from the materials collected during the investigation carried out so far, cannot be considered to be a terrorist act. There is no material wherefrom it can be inferred that the petitioner had instigated the people with his speeches to carry out the*

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programmes against the Citizenship Amendment Bill (CAB) with the use of bombs, dynamite or other explosive substances, etc. to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror, etc. The phrase "by any other means of whatever nature" appearing in Section 15(1)(a) of the UA(P) Act is to be read, in my considered view, with reference to and in a conjunctive manner with the previous part of the said Section and not in isolation and disjunctively, meaning thereby, this phrase is to be read as ejusdem generis along with the previous part. There are no materials, as on date, to get the presumption under Section 43E of the UA(P) Act activated. In the same light, there are no tangible materials, as on date, in the case diary wherefrom prima facie inferences can be drawn that activities were undertaken by the petitioner in a subversive manner with some unlawful association and with the intention to promote enmity between different groups to cause disharmony or to disturb the national integration for the offences under Sections 153A/154B, IPC. A bandh called can be declared illegal and the participation of the petitioner in such bandh may also be illegal but such activity cannot ipso facto be considered to bring the activity of the petitioner within the purview of terrorist act and within the ambit of the offences under Sections 153A/153B, IPC.

43) The learned prosecution has referred to the order dated 08.07.2020 passed by this Court rejecting the bail application for accused A-3 and A-4 and submitted that the findings therein would be applicable to the bail application. However, upon perusing that bail order, I find that in that case there are materials, including photographs, of the accused leading violent mobs and brandishing weapons like sword etc. Apart from materials about A-1 delivering provocative speech, there are no sufficient materials, including photographs etc. about A-1 actually leading violent mobs and / or handling weapons. The stone pelting which caused the unfortunate injuries on the informant was done so by someone from the crowd which got agitated in the context the speech delivered by A-1 on the issue of CAA.

44) In D-29 at serial no. 6 is mentioned a provocative speech of A-1 which is stated to be the same at the speech mentioned at serial no. 2. Another speech is mentioned in serial no.

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7. Upon perusing the said speeches, I find that though there are some sharp political statements, but *prima-facie*, there is no incitement of violence *per se*.
- 45) Thus, on the basis of the materials, in my considered opinion the main omissions and commissions of A-1 is that he delivered an aggressive and / or provocative speech and when violence started he did not make efforts to stop it. Considering the content of the speeches available in D-29 and the statement of the witnesses about provocative speech, it appears that the tone and tenor of the speech might have been aggressive on the much debated issue of CAA, rather than the speech directly inciting violence.
- 46) In view of the materials on record as discussed above, I am of the considered opinion that the omissions and commissions of A-1 revealed by the materials cannot be *prima-facie* said to be a terrorist act done with the intention of threatening unity, integrity, sovereignty and security of India or a terrorist act done with the intention to strike terror in the people. Therefore, from the aforesaid deduction, I am of the considered view that it cannot be said that there are reasonable grounds for holding *prima-facie* (for the purpose of adjudicating this bail petition) that the accused A-1 is guilty of committing a terrorist act within the meaning of Section 15 of the UA(P) Act, which is punishable u/s 16 of the Act.
- 47) Further, though some of the penal sections under which A-1 is being prosecuted at this stage is punishable upto life imprisonment, as revealed by the information from the jail authority at the time of the last several productions, the accused A-1 is stated to be undergoing treatment in GMCH for his illness. Hence, I am of the considered view that the bar of Section 437 (1) Cr.P.C. would not be applicable in view of the proviso to the section, which relaxes the restriction in case of sick persons, amongst others.
- 48) Considering the nature of determination made by this Court with regard to *Section 437(1) Cr.P.C.* and *Section 43(D) (5) proviso of the UA (P) Act*, now it requires to be determined as what are the other aspects of the bail prayer of the accused to ascertain whether accused should be granted the benefit of bail.
- 49) The accused has been in detention in this case for several months, since 01.04.2020. The investigation is also completed in the case, resulting in charge sheet and the case is poised


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for commencement of the trial and obviously there is no immediate prospect of completion of the trial.

50) In the facts and circumstances, I am of the considered view that in the interest of justice, the accused A-1 should be granted bail at this stage.

51) Before concluding, it is important to mention herein that whatever has been stated and discussed in this order has been done so only for the purpose of adjudicating the bail petition of the accused Sri Akhil Gogoi (A-1) and nothing stated herein should be taken to be expressing any opinion, to the prejudice of the said accused or the prosecution, on the merits of the main case pending for trial.

52) Accordingly, the accused Sri Akhil Gogoi (A-1) is hereby allowed to go on bail of Rs 30,000/- with one surety of the like amount, to the satisfaction of this court.

53) However, the following bail conditions are imposed:

- i. The accused shall be available during the trial and shall appear before the Trial Court, regularly during the trial, if one commences against him.
- ii. The accused shall not in any manner intimidate and/or influence witnesses.
- iii. The accused shall not in any manner tamper with evidence, including documentary evidence, material objects etc.
- iv. The accused shall not misuse his liberty to indulge in any activities detrimental to peace and social harmony.
- v. The accused shall not indulge in any activities which might amount to incitement to violence.
- vi. The accused shall not leave for abroad without the permission of this Court.

54) Violation of the bail conditions might make the bail liable to be cancelled.

55) Accordingly, in the facts and circumstances and in view of the above discussion, the instant bail petition for the accused Sri Akhil Gogoi (A-1) is allowed.


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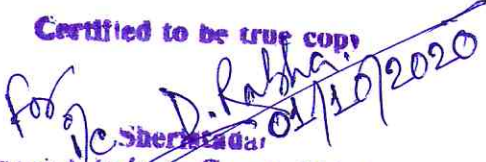




56) The instant miscellaneous case – Misc. Case (NIA) No. 22/2020 (arising out of RC-01/2020/NIA/GUW – Spl NIA Case No. 03/2020), stands disposed of on the aforesaid terms.


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