

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Appeal (DB) No.358 of 2023**

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Kunwar Ganjhu, aged about 45 years, son of Rambarath Ganjhu

....      ....      **Appellant**

**Versus**

Union of India through National Investigation Agency

....      ....      **Respondent**

**CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**  
**HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

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For the Appellant	: Mr. Indrajit Sinha, Advocate
	: Mr. Shashank Shekhar Prasad, Adv.
For the NIA	: Mr. Amit Kumar Das, Advocate

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**10/Dated: 15.01.2024**

**Per Sujit Narayan Prasad, J.**

1. The instant appeal preferred under Section 21(4) of the National Investigation Agency Act, 2008 is directed against the order dated 13.02.2023 passed by the AJC-XVI-cum-Spl. Judge, NIA, Ranchi in Misc. Cr. Application No.183 of 2023 [Special (NIA) Case No.03 of 2020], corresponding to R.C. No.38 of 2021/NIA/DLI, arising out of Chandwa P.S. Case No.04 of 2020 registered for the offence under Sections 386, 411 and 120B of the I.P.C., Section 17 of the C.L.A. Act and Sections 13, 16, 17, 20, 21 & 23 of the Unlawful Activities (Prevention) Act, whereby and whereunder, the prayer for regular bail of the appellant has been rejected.

**Facts**

2. The brief facts of the prosecution case leading to this Criminal Appeal is that on 05.01.2020, Inspector cum SHO of Chandwa

police station had received a reliable information that three persons came at Budhbazar, Chandwa by a motor-cycle bearing registration number JH 01 CW773 after collecting levy from a contractor and further proceeding to deliver the amount to Maoist Ravindra Ganjhu (A-4).

3. On receipt of the said information, the SHO along with his staff reached near Shiv Mandir, Budhbazar and noticed that 03 persons were going towards stadium by a motorcycle bearing registration number JH-01-CW773. It is alleged that after seeing the police party, all three persons tried to escape but they were chased and apprehended by the police and on enquiry, the persons revealed their names as Rajesh Kumar Ganjhu (A-2), Baijnath Ganjhu (A-1) and Kunwar Ganjhu (A-3) the appellant herein.
4. It is alleged that when search of the aforesaid persons was conducted in the presence of two independent witnesses, cash amounting to Rs. 05 (five) lakhs, a pair of new clothes, a letter of Maoist Ravindra Ganjhu (A-4) addressed to Sonu Singh (A-5) and other documents etc. were recovered from their possession.
5. It is further stated that during preliminary examination, these persons disclosed that, Ravindra Ganjhu (A-4) called them to meet at Beerjangha forest, gave a letter with direction to deliver it to contractor Sonu Singh (A-5) and collect money of Rs. 5 lakhs from Sonu Singh (A-5).

6. Accordingly, they went to Sonu Singh's house, collected cash of Rs. 5 lakhs from Sonu Singh (A-5) by producing the letter of Maoist Ravindra Ganjhu (A-4) and delivered the cash to Maoist Ravindra Ganjhu (A-4) in the forest. They admitted that they are the couriers of terrorist organization CPI (Maoist) and involved in collection of levies and passing police information to Maoist cadres.
7. Accordingly, a case was registered as FIR No.04/2020 dated 05.01.2020 at PS Chandwa, District Latehar, Jharkhand under sections 386, 411, 120B of the Indian Penal Code(IPC), section 17 of the Criminal Law (Amendment) Act (CLA Act) and sections 13, 16, 17, 20, 21 and 23 of the Unlawful Activities (Prevention) Act, (UA(P) Act) against Rajesh Kumar Ganjhu (A-2), Baijnath Ganjhu (A-1), Kunwar Ganjhu (A-3), Ravindra Ganjhu (A-4) and Sonu Singh (A-5).
8. After investigation, the Jharkhand state police had filed charge-sheet vide Final Report No.59/2020 on 02.07.2020 under sections 386, 411 and 120B of the IPC, section 17 of the CL(A) Act and sections 13, 16, 17, 20, 21 and 23 of the UA(P), Act against 03 arrested accused (i) Rajesh Ganjhu (A-2), (ii) Baijnath Ganjhu (A-1) and (iii) Kunwar Ganjhu (A-3) and cognizance of the offence was taken on 16.07 2020. Further investigation of the case was continued by the state police against other absconding accused.

9. Later on, the Central Government had received information about registration of case being FIR No.04 2020 dated 05.01.2020 at PS Chandwa, District Latehar, Jharkhand under sections 386, 411, 120-B of the IPC, section 17 of the CL(A) Act and sections 13, 16, 17, 20, 21 and 23 of the UA(P) Act 1967 relating to arrest of 03 persons, namely, Rajesh Kumar Ganjhu (A-2), Baijnath Ganjhu (A-1) and the appellant herein, Kunwar Ganjhu (A-3) and seizure of cash Rs.5 Lakh, from their possession.
10. Considering the gravity of the offence, Ministry of Home Affairs, Government of India, vide order F.No.11011/66/2020/NIA dated 29.10.2020 directed NIA to take over the investigation of the aforesaid case.
11. In compliance to the directions of the Ministry of Home Affairs Government of India, NIA, New Delhi PS, re-registered the PS Chandwa, District Latehar, Jharkhand case FIR No. 04/2020 dated 05.01.2020 as RC-38/ 2020/ NIA/DLI dated 03.11.2020 under sections 386, 411 and 120B of the IPC, section 17 of the CL(A) Act and sections 13, 16, 17, 20, 21 and 23 of the UA (P) Act against the aforesaid accused persons and took up the investigation.
12. During pendency of the investigation, the appellant/accused Kunwar Ganjhu (A-1) and his accomplices cum co-accused Baijnath Ganjhu (A-1) and Rajesh Ganjhu (A-2) had filed a bail

petition under section 167 of Cr.PC before the NIA Special Court, Ranchi but the same was rejected on 19.07 2021.

13. Being aggrieved by the aforesaid bail dismissal order dated 19.07.2021, the appellant Kunwar Ganjhu (A-3), his accomplice moved to this Court, by way of filing Cr. Appeal (DB) No. 181 of 2021 but the same was rejected by this Hon'ble Court vide order dated 29.11 2022.
14. Consequently, the above-named appellant had preferred the regular bail application vide Misc Criminal Application No. 183 of 2023 before the NIA Special Court, Ranchi but the same has been rejected vide order dated 13.02.2023, against which, the present appeal has been filed.

**Submission of the Learned Counsel for the Appellant**

15. Learned counsel for the appellant has assailed the impugned order on the following grounds: -
  - (i) The NIA has not established through its investigation as to what terrorist act was committed by the appellant and thus no offence under Unlawful Activities (Prevention) Act can be said to be made out.
  - (ii) The learned Court below failed to appreciate and consider that the Appellant has not been found to be a member of any terrorist organization, nor in any manner taken part in any decision-making process of the Naxal organization, thus the appellant cannot be brought within the ambit and scope of Act, 1967.

- (iii) No hard copy of either any Naxal Purcha or Literature has been recovered from the vehicle which clearly suggests that the appellant was not going to commit any offence as alleged in the First Information Report.
  - (iv) No incriminating articles has been recovered from the possession of the appellant and he was only pillion rider of the motorcycle.
  - (v) The appellant has been arrayed as an accused in the instant case only on the basis of his own confessional statements which was made before the Police, however, the said confession has got no evidentiary value in the eye of law.
  - (vi) Appellant is in custody since 06.01.2020, i.e., more than three years and still investigation is going on and there is no chance to conclude the trial in near future.
  - (vii) As per the judgment passed by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeeb*** reported in ***(2021) 3 SCC 713*** the personal liberty of the individual has paramount importance. In the instant case, the trial has not yet commenced, hence, taking into consideration the period of custody, it is a fit case where the appellant deserves to be released from judicial custody.
16. Learned counsel for the appellant, on the aforesaid premise, has submitted that the learned trial Court ought to have considered that aspect of the matter, while considering the prayer for regular

bail, but having not been considered, therefore, the impugned orders need to be interfered with.

**Submission of the Learned Counsel for the N.I.A**

17. While, on the other hand, learned counsel appearing for the N.I.A. has defended the impugned orders on the following grounds: -

- (i) The appellant, namely, Kunwar Ganjhu is the named accused in the FIR and are acted as courier of the CPI Maoists Organization (A banned Organization).
- (ii) When the appellant along with his associates were apprehended from the spot Rs.05 (five) lakhs cash and a letter of Maoist Ravindra Ganjhu (A-4) addressed to Sonu Singh (A-5) and other items/documents etc. were recovered from their conscious possession.
- (iii) The appellant had confessed his guilt in commission of alleged crime as referred in the charge-sheet and in the instant case, the confessional statement of the appellant was in consonance of the incriminating articles seized, therefore such confessional statements of the appellant/accused have all the evidentiary value in the eyes of law.
- (iv) The appellant is actively involved in obtaining extortion of levy from contractors in the name of his brother Ravindra Ganjhu A-4 who is a top cadre of CPI Maoist proscribed terrorist organisation.

(v) The ratio of judgment relied upon by the learned counsel for the appellant as rendered by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeed*** (Supra), is not applicable in the instant case, reason being that, in the aforesaid case, accused having no criminal antecedent and in the said case, nature and background of the offence was different but in the instant case, it has come on record that appellant has direct nexus with the banned organisation and altogether, there are two criminal case pending against him, in which, one is related to section 10/13 of the UA(P) Act and second is related to section 17(i)(ii) of CLA Act.

18. Learned counsel appearing for the NIA, therefore, has submitted on the aforesaid premise that the impugned order requires no interference.

### **Analysis**

19. We have heard the learned counsel for the parties and considered the finding recorded by learned Court in the impugned orders as also the charge-sheet.

20. This Court, before proceeding to examine as to whether the appellant has been able to make out a prima facie case for enlarging him on bail, deems it fit and proper to discuss some settled proposition of law and the relevant provisions of Unlawful Activities (Prevention) Act, 1967(hereinafter referred to as Act, 1967) which is required to be considered herein.



- 21.** The main objective of the Act, 1967 is to make powers available for dealing with activities directed against the integrity and sovereignty of India. As per Preamble, Act, 1967 has been enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. Therefore, the aim and object of enactment of U.A.(P) Act is also to provide for more effective prevention of certain unlawful activities.
- 22.** To achieve the said object and purpose of effective prevention of certain unlawful activities the Parliament in its wisdom has provided that where an association is declared unlawful by a notification issued under Section 3, a person, who is and continues to be a member of such association shall be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine.
- 23.** Clause (m) of Section 2 of the 1967 Act defines “terrorist organization”. It is defined as an organization listed in the First Schedule. CPI (Maoist) has been listed at Item no. 34 in the First Schedule. Chapters III onwards of the 1967 Act incorporate various offences. Chapter IV has the title “punishment for terrorist act”. Clause (k) of Section 2 provides that “terrorist act” has the meaning assigned to it under Section 15 and 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.

- 24.** Further section 10(a)(i) of Act, 1967 provides that where an association is declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that Section, a person, who is or continues to be a member of such association shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine, therefore, so long as Section 10(a)(i) stands a person who is or continues to be a member of such association shall be liable to be punished.
- 25.** As per mandate of section 13 of the Act, 1967 who takes part in or commits, or advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.
- 26.** At this juncture, it will be purposeful to discuss the core of Section 43D(5) of the Act, 1967 which mandates that the person shall not be released on bail if the court is of the opinion that there are reasonable grounds for believing that the accusations made are prima facie true apart from the other offences the appellant is accused of committing offences under Sections 17, 18 and 21 of the UA(P) Act, 1967.
- 27.** The reason of making reference of the provision of Section 43D(5) of the Act that in course of investigation, the

investigating agency has discovered the material against the appellant attracting the offence under various Sections of UA(P) Act. Since, this Court is considering the issue of bail based upon now also under the various sections of UA(P) Act and hence, the parameter which has been put under the provision of Section 43D(5) of the Act is also required to be considered.

28. The requirement as stipulated under Section 43D(5) of the UA(P) Act, 1967 in the matter of grant of regular bail fell for consideration before the Hon'ble Apex Court in the case of ***National Investigation Agency Vrs. Zahoor Ahmad Shah Watali***, reported in ***[(2019) 5 SCC 1]***, wherein, at paragraph 23, it has been held by interpreting the expression “prima facie true” as stipulated under Section 43D(5) of the Act, 1967 which would mean that the materials/evidence collated by the investigation 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 has further been observed that it must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. 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. For ready reference, paragraph 23 of the aforesaid judgment is required to be quoted herein which reads hereunder as :-

*“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the*

*Court has to opine that the accusation is “prima facie true”, as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act....”*

29. It is, thus, evident from the proposition laid down by the Hon'ble Apex Court in the case of ***National Investigation Agency Vrs. Zahoor Ahmad Shah Watali (Supra)*** that it is the bounden duty of the Court to apply its mind to examine the entire materials on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not.
30. Further, it is settled proposition of law that at the stage of granting or non-granting of the bail, 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 said offence or otherwise and the elaborate examination or dissection of the evidence is not required to be done at this stage. Reference in this regard may be made to the Judgment rendered by the Hon'ble Apex Court in the case of ***Ranjitsing Brahmajeetsing Sharma Vrs. State of Maharashtra***, reported in ***(2005) 5 SCC 294***. For ready reference, the following paragraph of the aforesaid Judgment is being referred as under:

**“46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.** However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.”

31. Further, it is the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise and such opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the charge-sheet and other material gathered by the investigating agency during investigation.
32. This Court, on the basis of the abovementioned position of law and the factual aspect, as has been gathered against the appellant is proceeding to examine as to whether the accusation against the appellant is prima facie true as compared to the opinion of accused not guilty by taking into consideration the material collected in course of investigation.
33. This Court had directed the learned counsel for the N.I.A. to file counter affidavit, as would appear from the order dated

31.08.2023 and in pursuance thereto, the counter affidavit has been filed.

- 34.** It is evident from the counter affidavit based upon the material collected in course of investigation as in the charge-sheet that the appellant is named accused of this case and from FIR, it is evident that appellant along with his associates were apprehended from the place of occurrence, then in presence of independent witnesses, all the apprehended accused persons were searched one by one. On search of Baijnath Ganjhu, ten bundle of 500 notes containing 100 notes in each bundle total 1000/- note valued Rs.5 lakhs cash was seized and from the back of the shirt, one hand written letter by Naxalite Ravindra Ganjhu (A-4) addressed to Sonu Singh was found, wherein, Rs.5 lakh which was levy amount, has been demanded.
- 35.** On recovery of Rs.5 lakhs cash and a letter to Sonu Singh(A-5) by Ravindra Ganjhu (A-4), all the three persons failed to provide reasonable explanation, rather, they disclosed that they belong to close aid of CPI (M) commander Ravindra Ganjhu(A-4) and on the direction of Ravindra Ganjhu, they used to provide logistic support in the shape of providing articles, supply letters to other people and they also inform Ravindra Ganjhu about police movement.
- 36.** The present appellant confessed his guilt and admitted that he is brother of Ravindra Ganjhu (A-4) who called them and handed over letter and told to hand over letter to Sonu Singh (A-5). He also told them that Sonu Singh will give Rs.5 lakh after taking letter and they

all after taking money come to Birjanga forest and hand over to him. Accordingly, they proceeded to Sonu Singh as per direction of Ravindra Ganjhu to Chandwa. Accordingly, they handed over letter to Sonu Singh who immediately gave Rs.5 lakhs to them and also returned the letter. They were going to hand over money to Ravindra Ganjhu meanwhile they were caught red handed.

- 37.** Appellant Kunwar Ganjhu (A-3) in his voluntary disclosure, statement recorded on 18.1.2021, in presence of two independent witnesses admitted that in 2013-2014 he purchased ten decimals of land in Kundo village, Kudu Panchayat for a sum of Rs.2,50,000/- and out of Rs.2,50,000/- his brother Ravindra Ganjhu (A-4) arranged Rs.50000/- which were collected from one contractor as levy.
- 38.** It appears from the record that the appellant/ accused had threatened a contractor for getting work, taking name of his brother Ravindra Ganjhu (A-4), a top cadre of CPI Maoist and he got 2/2.50 lakh profit from the said work.
- 39.** It has come on record that the appellant during his disclosure statement revealed that he used to meet his brother Ravindra Ganjhu A-4 in the forest upon receiving message from the letter. On 20/11/2019, appellant along with accused Baijnath Ganjhu A-1 and Sunil Ganjhu, met accused Ravindra Ganjhu and discussed about bail matter of Lalita Devi. In his presence accused Ravindra Ganjhu A-4 asked one person about Mrityunjay Kumar Singh @ Sonu Singh A-5 and gave one letter



to that person with direction to hand it over to Mrityunjay Kumar Singh.

- 40.** It is evident from the prosecution version that all 03 accused were intercepted by police and subsequently arrested together with cash amounting to Rs. 5 lakhs and one letter of CPI(Maoist) cadre Ravindra Ganjhu (A-4) addressed to Sonu Singh (A-5), which indicates that, the appellant/accused Kunwar Ganjhu (A-3) and his associates had absolute knowledge about the offence and they had committed the offence, conjointly.
- 41.** During investigation, it has revealed that a mobile number 6200870200 was being used by the accused Kunwar Ganjhu (A-3) till his arrest and call detail record (CDR) analysis of the said mobile number revealed that he was in frequent contact with co-accused persons, namely, Baijnath Ganjhu (A-1), Rajesh Ganjhu (A-2) and the contact number of accused Kunwar Ganjhu (A-3) was found in the saved contact list of the mobile phone of accused Baijnath Ganjhu (A-1) which was seized in the instant case.
- 42.** It appears that during investigation, it has come on record that the appellant/accused Kunwar Ganjhu (A-3) is an over-Ground Worker/courier of CPI (Maoist), a proscribed terrorist organisation and he is actively involved in collection of levies, extortion of different amounts from the contractors, in the name of his brother Ravindra Ganjhu (A-4), who is a top cadre of proscribed extremist organisation CPI (Maoist) and accused of

many terrorist related cases of murder, attempt to murder, extortion, robbery etc.

- 43.** Thus, it appears from record that the appellant/ accused Kunwar Ganjhu (A-3) had a clear knowledge that, CPI (Maoist) is a proscribed terrorist organization and involved in many terrorist acts across the State. Despite having such knowledge, he continued to help the said terrorist organization and he acted in blatant contravention of laws and impair the safety and security of citizens and the State.
- 44.** It has come on record that the appellant/accused Kunwar Ganjhu (A-3) is also an accused in two more criminal cases of extortion and causing hurt or threatening to a public servant, registered at PS-Chandwa, District-Latehar, Jharkhand vide FIR No.140/18 dated 04.11.2018 under sections 147, 148, 149, 341, 342, 386, 487, 427,435, 436 of IPC, sections 10, 13 of UA (P) Act, section 17 (i) and 17 (ii) of the CLA Act and FIR No. 34/19 dated 06.04.2019 under sections 341, 323,353, 34 of IPC.
- 45.** The facts disclosed by the appellant were duly corroborated during course of investigation by way of statement of witnesses and thereby, prima facie the allegation as made against the accused/ petitioner appears to be true.
- 46.** Thus, from perusal of the various annexures and paragraphs of the charge sheet, prima facie appears that the appellant (A-3) has associated himself with terrorist organisation CPI (Moist) knowingly and aided the said organisation voluntarily and further he has

provided logistics support to terrorist organisation CPI (Maoist), took part in meeting with its cadres and has collected or received funds from Sonu Singh (A-5) and others for terrorist organisation CPI (Maoist) knowing that such funds would be used for terrorism.

47. Thus, it is evident that the appellant connected with CPI Mandet and actively participating and aiding to the banned organisation. Recently, the Hon'ble Apex Court has also held in the case of **Arup Bhuyan Vrs. State of Assam & Anr.**, reported in **(2023) 8 SCC 745** that being a member of the banned organization is also an offence under the UA(P) Act.
48. Learned counsel for the appellant has taken the ground of custody and has also taken the aid of the judgment passed by the Hon'ble Apex Court in the case of **Union of India Vs. K.A. Najeeb (supra)**.
49. It has been contended by taking aid of the aforesaid judgment that in the instant case, many witnesses are there but the trial has not yet been commenced, hence, taking into consideration the period of custody, and probable delay in trial, it is a fit case where the appellant deserves to be released from judicial custody.
50. While, on the other hand, Mr. Amit Kumar Das, learned counsel appearing for the Respondent-N.I.A. has seriously disputed the aforesaid fact apart from the merit that against the present appellant, altogether two criminal cases are pending and his involvement is direct in commission of offence having closed associates of four people of the CPI (Maoist).

51. The contention has been made that the judgment relied upon by the learned counsel for the appellant, i.e., the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeeb*** (Supra), is not fit to be accepted, reason being that, in the said case, respondent/accused whose bail was allowed by the High Court and against the order granting bail, the Union of India had preferred the appeal, was having no criminal antecedent and in the said case the nature of offence was different.
52. In the background of aforesaid rival contention, this court has gone through the judgment as rendered by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeeb*** (supra). It is evident from the perusal of the aforesaid judgment that while giving the indulgence to the facts of the said case, the Hon'ble Apex Court put a pin-pointed question therein for reducing the number of witnesses by the N.I.A. and when the same has been shown to be not possible, then the Hon'ble Apex Court by taking into consideration the period of custody and there is no likelihood of the trial in near future, has not interfered with the order granting bail to the respondent-accused.
53. But here in the instant case, the appellant is having criminal antecedents and closed associate by giving direct aid to the Naxal outfit. Further, on instruction, it has been submitted by the learned counsel appearing for the Respondent-N.I.A that the N.I.A. depending upon the situation will also reduce the

number of witnesses and try to conclude the trial without any unnecessary delay.

- 54.** Further, it has come on record that the appellant having criminal antecedents and as such, submission has been made that the release of appellant on bail would adversely affect the trial. He may influence the independent witnesses and may tamper evidence of this case and as such, his detention in judicial custody is required for the fair trial of this case and for the ends of Justice.
- 55.** This Court, after considering the aforesaid fact as referred hereinabove and based upon the investigation made against the appellant, wherefrom, it is evident that he is the active nexus with the Naxal outfit, having given aid to his brother, the accused no.4, in collecting the money which has been collected by him through levy and the appellant is having criminal antecedent which is of like nature, therefore, is of the view that the case of the appellant is not fit to be considered for his release from judicial custody.
- 56.** So far as the argument regarding reliance having been placed upon the judgment of ***Union of India vs. K.A. Najeeb*** (Supra) is concerned, this Court is of the view that in the facts and circumstances, the aforesaid judgment will not be applicable herein, since, in the said case, altogether 276 charge-sheeted witnesses were to be examined and on the pin-pointed question by the Hon'ble Apex Court, the NIA has submitted that

there is no question of reducing the number of charge-sheeted witnesses and in view thereof and considering the period of custody, i.e., more than 5 and half years and also taking into consideration the spirit of Article 21 of the Constitution of India the hon'ble Apex Court has not interfered in the order by which the bail was granted to respondent-accused.

57. While, the fact of the instant case is that there are much less witnesses and it has further been submitted by the learned counsel appearing for the NIA, on instruction that in course of trial, the number of charge-sheeted witnesses may also be reduced depending upon the situation.
58. Further, the appellant is the active member of the banned organization and he has got direct involvement in the activities of the banned organization as per the discussion made hereinabove and it has also come in the charge-sheet that against the appellant, two criminal antecedents of the like nature are also pending.
59. This Court, considering the aforesaid distinguishing facts in the present case by taking into consideration the active involvement of the appellant in the extremist activities being direct associate of the banned organization, is of the view that the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India vs. K.A. Najeeb (Supra)*** is not fit to be applied.

60. Accordingly, This Court, on the basis of the facts as referred hereinabove and coming to the provision of Section 43D(5) of the Act, 1967 as also the judgment rendered by the Hon'ble Apex Court in the case of **Zahoor Ahmad Shah Watali** (*supra*) is of the view that it cannot be said that the allegation levelled against the appellant is *prima facie* untrue.
61. In view of the foregoing discussions, we find no illegality in the impugned order dated 13.02.2023 passed in Misc. Cr. Application No.183 of 2023 by AJC-XVI-cum-Spl. Judge, NIA, Ranchi, rejecting the bail application of the appellant and as such, the order impugned requires no interference by this Court.
62. In the result, we find no merit in instant appeal, hence, the same is accordingly, dismissed.
63. Pending Interlocutory Application(s), if any, also stands dismissed.
64. It is made clear that any observation made herein will not prejudice the case of the appellant in course of trial and view as expressed by this Court is only limited to the instant appeal.

**(Sujit Narayan Prasad, J.)**

**(Pradeep Kumar Srivastava, J.)**