



Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 316 OF 2024

Sunil Dharma Mane

R/o. A-2101, Abrol Vastu Park,

Evershine Nagar, Malad (W),

Mumbai – 400 064

Currently lodged at Taloja Central

Prison, Navi Mumbai

.. Appellant

Vs.

1. National Investigating Agency,

7th Floor, MTNL Telephone

Exchange Building, Pedder Road,

Cumballa Hill,

Mumbai – 400 026

2. The State of Maharashtra

.. Respondents

....

Mr. Ashok P. Mundargi, Senior Counsel a/w Mr. Shailesh
Kantharia, Mr. Naghdeep Oak for the appellant

Mrs. Kranti T. Hiwrale, APP for the respondent – State

Mr. Sandesh Patil, Special P.P. a/w Mr. Chintan Shan, Mr.
Prithviraj Gole, Mr. Krishnakant Deshmukh, Mr. Shubhankar
Kulkarni for the respondent no.1 – NIA

Mr. Pravin Ingawale, SP NIA, Mumbai present

Mr. Pradip Bhale, Dy.S.P, NIA, Mumbai present

Mr. Nitin Pawar, Head Constable, NIA, Mumbai present

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

**CLOSED ON : 18th OCTOBER, 2024
PRONOUNCED ON: 18th NOVEMBER, 2024**

JUDGMENT :- (Per Prithviraj K. Chavan, J.)

1. Feeling aggrieved with and dis-satisfied by the rejection of an application for bail, the applicant has preferred this Appeal under Section 21 of the National Investigation Agency Act, 2008 (For short 'NIA Act').

2. Facts germane for disposal of the present appeal are summarized as follows.

3. The appellant is a Senior Inspector of Police, who was posted at Kandivali Crime Branch. He is the fifth accused out of the ten accused presently chargesheeted in the case. The appellant came to be arrested on 23.04.2021.

4. FIR No. 47 of 2021 (Theft FIR) was registered by one Mansukh Hiran (victim) at Vikhroli Police Station, Mumbai on 18.02.2021 for the offence punishable under Section 379 of the I.P.C. as his Mahindra Scorpio vehicle was stolen by someone. The said FIR was transferred for further investigation to D.C.B. C.I.D., Crime Branch on 26.02.2021 and came to be re-numbered as 41 of 2021.

5. On 07.03.2021, the Anti Terrorist Squad (ATS), Maharashtra took over the said investigation and re-numbered the said FIR as 11 of 2021. The investigation of the said FIR was handed over to the ATS, Vikhroli Unit.

6. Meanwhile, another FIR bearing No. 35 of 2021 (Explosives FIR) dated 25.02.2021 came to be registered at Gamdevi Police Station, Mumbai for the alleged offences under Sections 286, 465, 473, 506 (2) and 120B of the IPC as well as under Section 4(a)(b)(i) of the Explosive Substances Act, 1908 after the concerned police station found 20 gelatin sticks in an

abandoned vehicle parked opposite Shikhar Kunj Building on Carmichael Road, Mumbai, near the house of an Industrialist. The FIR was transferred to Crime Branch, Mumbai and re-numbered as 40 of 2021.

7. On 05.03.2021, the dead body of Mr. Mansukh Hiran was found in Mumbra Creek. Pursuant thereto, an ADR bearing No. 39 of 2021 was registered by Mumbra Police. Simultaneously, during the pendency of the Explosives FIR, ATS Maharashtra filed a fresh FIR No. 12 of 2021 on 07.03.2021 for the offences punishable under Sections 302, 201, 34 r/w 120B of the IPC against unknown persons in view of death of deceased Mansukh Hiran and the same was investigated by the ATS.

8. Subsequently, the Government of India vide an order dated 21.05.2021 directed National Investigation Agency (NIA) to take up the investigation of Theft FIR, bearing No. 47 of 2021 originally registered with Vikhroli Police Station, Mumbai. Again, by an order dated 08.03.2021 passed by the Government of India, NIA took over the investigation of the original FIR No.

35 of 2021 registered with Gamdevi Police Station, Mumbai. Accordingly, NIA re-numbered it as FIR No. RC-01/2021/NIA/Mum for the offences punishable under Sections 286, 465, 506(2) and 120B of the IPC r/w Section 4(a) (b)(i) of the Explosive Substances Act, 1908. Subsequently, at the request of NIA, Government of India, by an order dated 20.03.2021, expanded the scope of earlier order thereby permitting the NIA to investigate the murder of the deceased purportedly being connected with the offence registered under the Explosive Substances Act.

9. In FIR 35 of 2021 registered with Gamdevi Police Station on 25.02.2021 under Sections 286, 465, 473, 506(2) & 120B of the IPC as well as under Section 4(a)(b)(i) of the Explosive Substances Act as against unknown persons, 20 gelatin sticks were found inside the Mahindra Scorpio vehicle, in a blue coloured backpack having a logo of '*Mumbai Indians IPL*' alongwith a threat note purported to be addressed to the industrialist and his wife (The wife of the industrialist is also an owner of *Mumbai Indian IPL* team). The said backpack was

found in the same Mahindra Scorpio vehicle, in relation to which, an FIR of theft was registered by the deceased Mansukh Hiran. It is alleged that the vehicle was affixed with a fake Number Plate, which was parked outside Shikhar Kunj Building, Carmichael Road, Mumbai. Following 10 accused have been chargesheeted by the NIA in its final report under Section 173 of the Cr.P.C. :-

- A1 - Sachin Waze
- A2 - Naresh Ramniklal Gor
- A3 - Vinayak Balasaheb Shinde @ Vinu
- A4 - Riyazuddin Hisamuddin Kazi
- A5 - the Appellant
- A6 - Santosh Atmaram Shelar
- A7 - Anand Pandurang Jadhav
- A8 - Satish Tirupati Mothkuri @ Tanni
- A9 - Manish Vashantbhai Soni
- A10 - Pradeep Rameshwar Sharma @ PS

The final report cites as many as 323 witnesses and numerous documents. Be that as it may.

10. The appellant has been chargesheeted for the offences punishable under Sections 120B, 201, 302, 364 of the I.P.C. and Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 (For short 'UAP Act') alongwith other accused. Admittedly, investigation has not yet been fully completed,

inasmuch as, investigation under Section 173(8) of the Cr.P.C. has been kept open.

11. During the course of investigation, it was found that A1 Sachin Waze alongwith the co-accused, including the appellant, had committed heinous and serious offences attracting the provisions of Sections 16, 18 and 20 of the UAP Act. It is the case of the prosecution that the appellant willingly and / or intentionally entered into a criminal conspiracy for committing murder of deceased Mansukh Hiran alongwith A1 Sachin Waze A10 Pradeep Sharma and others. It is alleged that alongwith A1 Sachin Waze and A10 Pradeep Sharma, the appellant attended various meetings time and again at the office of the then Commissioner of Police as well as at various other places.

12. The prosecution further alleged that the appellant played an important role by calling the victim Mansukh Hiran through a *benami* SIM card and a mobile phone, which was provided by A1 Sachin Waze, thereby luring the victim to meet him at Ghodbunder Road under the pretext of helping and transporting

him in a safe place to avoid his (victim's) arrest in the case relating to planting of explosive laden Mahindra Scorpio vehicle. It is further alleged that the appellant drove a white coloured Polo Car affixed with a fake number plate to handover the victim to the killers, who were hired by A10 Pradeep Sharma and were already waiting at a pre-decided spot. It is alleged that the appellant tried to fabricate the evidence by taking over mobile phone of deceased Mansukh Hiran before handing him over in the custody of the hired killers at Ghodbunder Road, Thane. The appellant thereafter switched off the said mobile phone at a location far away from the place where the victim's custody was given to the hired killers. It is further alleged that the appellant aided A1 Sachin Waze in destruction of evidence by handing over the mobile phone of the victim to A1 Sachin Waze and *benami* SIM card that were used by him for execution of the murder of deceased Mansukh Hiran.

13. We heard Mr. Mundargi, learned Senior Counsel at a considerable length. Mr. Mundargi would argue that there is no iota of evidence to indicate the appellant as a member of any criminal conspiracy alleged to have been hatched by the other

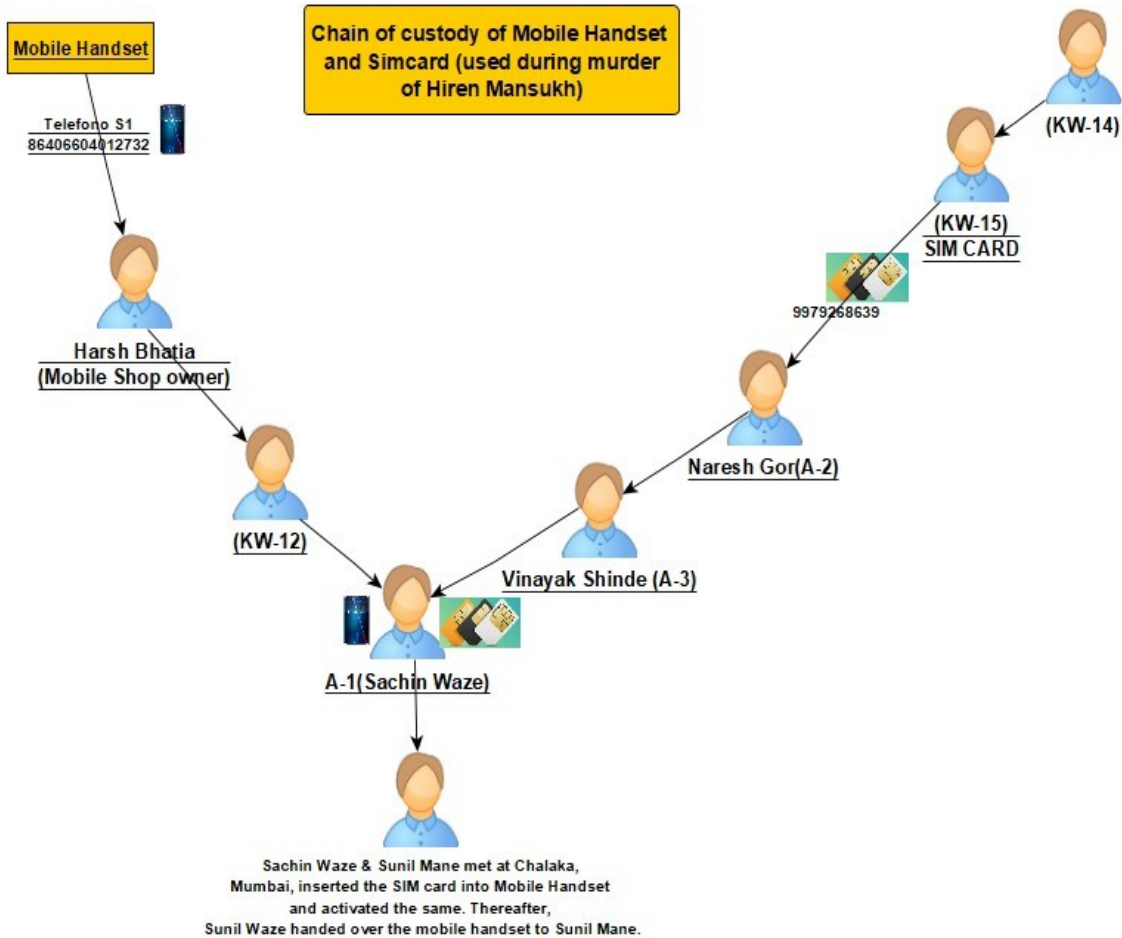
accused in committing the murder of the deceased. Merely meeting the other officers does not amount to any conspiracy, especially when there is absence of any corroborating or other circumstance or any material indicating that the alleged meetings were arranged for entering into a deep rooted conspiracy. Insofar as the material in the form of Call Detail Record (CDR) is concerned, Mr. Mundargi would argue that the CDR establishes that the appellant left his office at 11.10 a.m. on 02.03.2021 while it is the case of the NIA that deceased Mansukh Hiran had arrived at Office of the Commissioner of Police only after that. Mr. Mundargi took us through the record as well as statements of various witnesses by contending that the visit of the appellant to the Office of the Commissioner of Police on 03.03.2021 was to meet A.O. Ahilwar, Crime Branch Cell, to enquire about his permission to travel to Maldives alongwith his family. The appellant also met P.I. Kothmire, incharge of the Arms and Ammunition Branch on the 6th floor of the Annex Building in the Office of the Commissioner of Police to enquire about his gun licence. Mr. Mundargi would argue that there is no material on record to indicate that the appellant met the deceased or that

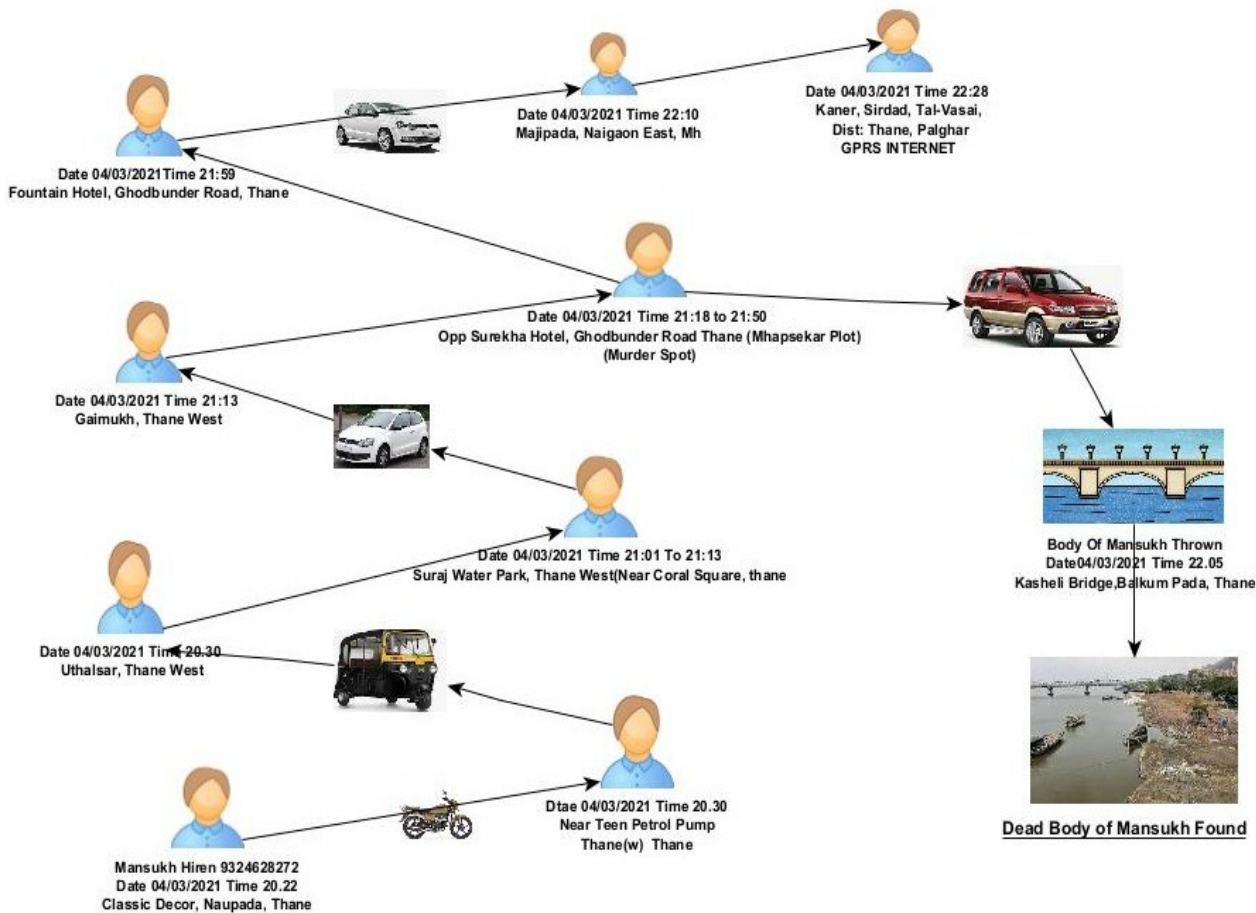
there was any communication between the deceased and the appellant. There is no recovery or any forensic proof to establish any case against the appellant. So far as CCTV footage is concerned, learned Senior Counsel would argue that it would only establish certain physical movements and not the purpose or cause of the movements, as alleged to be a phone call from the appellant. Even, there is no material relating to alleged fake number plate affixed on the white coloured Polo Car nearby Tavera vehicle. It is also urged that there is no material to suggest that the appellant had handed over deceased Mansukh Hiran to any person much less, any material to suggest that the killers had seen the appellant or the car, which could have been identified with its number plate. Mr. Mundargi would further argue that there is absolutely no material placed by the prosecution to indicate that the appellant was instructed by A1 Sachin Waze to call deceased Mansukh Hiran disguising himself as *Inspector Tawade*, except the mere statement. Even, there is no material placed in the chargesheet to suggest that appellant was given a fake name as *Inspector Tawade*.

14. Mr. Mundargi would further argue that even the report of

the CFSL does not establish any connection of the appellant with the crime in view of the DNA profile report. Nothing has been recovered from the appellant in the form of SIM card or phone or a chit. Learned Senior Counsel would further advance his arguments on the aspect as regards the principles on which circumstantial evidence as well as scope of Section 27 of the Evidence Act and when it would be invoked. We are afraid, while entertaining an appeal under Section 21 of the NIA Act, these aspects cannot be gone into as they would be considered only during trial on merits and not while considering an application seeking release of the applicant on bail.

15. On the other hand, Mr. Sandesh Patil, learned Special Public Prosecutor took us through statements of several witnesses, documents coupled with two charts *prima facie* establishing the link. The said charts are reproduced below to better understand the link at a glance. :-





16. The specific allegations against the appellant from the chargesheet tendered by the respondent no.1 NIA are as follows.

17. The CCTV footage of 04.03.2021 of Classic Car Decor shop (shop owned by deceased Mansukh Hiran) establishes the movement of deceased Mansukh Hiran on the said date after receipt of phone call from the appellant. The same is corroborated by CCTV footage of Vikas Palms Society, Thane,

where the deceased was residing. The record reveals that a meeting was held on 02.03.2021 wherein A1 Sachin Waze and the appellant alongwith A10 Pradeep Sharma were present. On that day, A1 Sachin Waze had ensured the presence of deceased Mansukh Hiran in his office so that he could be identified by the appellant and A10 Pradeep Sharma. It further indicates that on 02.03.2021, A1 Sachin Waze met the appellant at Chakala, Andheri (E) and handed over one white coloured Android Mobile handset alongwith *benami* SIM card arranged by A2 Naresh Gor with instructions to activate the same at a location far away from the home location of the appellant. However, the said mobile handset was defective. On 03.03.2021 the appellant went to the Office of the Commissioner of Police compound and met A1 Sachin Waze and returned with a white coloured Android phone. A1 Sachin Waze took the said mobile phone and asked the appellant to meet him again in the evening at Chakala. Both were together during night hours. A1 Sachin Waze installed WhatsApp in a new blueish black mobile phone of the appellant, namely Telefono mobile handset. After switching it off, the said phone was handed over to the appellant by A1

Sachin Waze. A1 Sachin Waze instructed the appellant to use the said mobile having *benami* SIM card for calling the deceased Mansukh Hiran and meet him at a pre-decided place at Thane, to handover Mansukh Hiran to the contract killers, who would be waiting in a red coloured Tavera vehicle near Surekha Hotel, Ghodbunder Road, Thane. A1 Sachin Waze also gave one small chit to the appellant in which the registration number of the red coloured Tavera alongwith the mobile number of Mansukh were written. The chart depicted hereinabove indicates the aforesaid facts. It also appears that in furtherance of the conspiracy on 03.03.2021 the appellant made a WhatsApp call to one of his acquaintance and asked him to arrange one small vehicle for his wife. As per the directions of the appellant, one white coloured Volkswagen Polo Car bearing Registration No. MH-08-BS-8830 was handed over to the appellant. On 04.03.2021, the appellant got the vehicle washed and serviced and instructed to replace the original number plate. After commission of the crime, the appellant modified the said vehicle and deleted all the contact numbers in the mobile permanently. It is further alleged that the appellant and A1 Sachin Waze lured Mansukh Hiran (deceased)

under the pretext of saving him from getting arrested and interrogated. They informed him that Police Inspector Tawade from Kandivali (which is a fake name given to the appellant) would contact him and make necessary arrangements. It is alleged that the appellant posing himself as *Inspector Tawade* made a phone call on the mobile number of Mansukh on WhatsApp from a *benami* SIM card provided by A1 Sachin Waze and asked Mansukh to meet near Suraj Water Park, Ghodbunder Road, Thane at 08:30 p.m. on 04.03.2021. Thereafter, it is alleged that Mansukh left his shop and went home. He informed his wife that he is going to Ghodbunder Road to meet Police Officer Tawade from Kandivali. Mansukh Hiran took an autorickshaw and reached near Suraj Water Park, where the appellant was waiting in a white coloured Polo Car. Mansukh occupied the front seat of the said car, after which the appellant drove the car to Ghodbunder Road towards Fountain Hotel and at around 09:15 p.m. they, reached near Surekha Hotel and stopped the car. Around 09:22 p.m., a red coloured Tavera approached the said spot and took U-turn and stopped opposite Surekha Hotel on the other side of the road, facing towards

Thane. The appellant drove the Polo Car towards the Tavera. At about 09:36 p.m., when the car reached near the red coloured Tavera, the appellant directed Mansukh to handover his mobile phone and go towards the red coloured Tavera, parked just behind the Polo Car, saying that Tavera would take him to a safe place.

18. Learned Special P.P. has shown us the said CCTV footage on his iPad during the course of argument. Learned Special Public Prosecutor would argue that all the CCTV footage alongwith the SIM card and mobile handsets establish not only the vehicle movement but also establishes *inter se* connection between Mansukh Hiran (deceased) and the appellant, who adopted the name, *Inspector Tawade* to conceal his identity and also the link between A1 Sachin Waze and A10 Pradeep Sharma.

19. The Special P.P. also took us through the statements of various witnesses namely, Meet Hiran (son of deceased), Balmukund Soni, Vinod Hiran, Dr. Binu Varghese, Nandlal Pandit, Mataprasad Gupta, Haresh Bhatia, Amin Harun Kasmani, Ratnakar Kambl, Abhishek Nathani, Devendra More,

ACP Alankure, Nilesh Jain, Sameer Gawkar, Vimala Hiran as well as witnesses KW01, KW02, KW03, KW04, KW05, KW06, KW07, KW13, KW14, KW15, Kumar Katdare, Hemal Nandu, Prakash Howal, Prashant Dhage, Avinash Shinde, Sanjay Shinde, Santosh Mane, Milind More, Mahesh Shetty, Pravin Shetty, Manas Maity and Kalpnath Giri etc.

20. Learned Special P.P. has also invited our attention to the confession of A9 - Manish Soni, wherein the appellant disclosed before the panchas that on 04.03.2021, he did not use any SIM card nor his regular mobile bearing SIM No. 9870117295 inserted in iPhone 12. Instead, the appellant used Facetime application in iPhone 11 Pro to call A1 Sachin Waze and this fact was within the knowledge of the appellant. The appellant had handed over the mobile phone during the disclosure panchanama.

21. Learned Special P.P. has also invited our attention to the impugned order wherein in para 23, the learned Special Judge has rightly observed regarding material against the appellant

borne out from the statements of the material witnesses recorded by the Investigating Agency and the substance of their statements. It would be advantageous to extract the relevant paras hereunder :-

“23. Perused application, say and charge-sheet. It is seen that NIA has recorded statements of relevant witnesses and they narrated as under :-

(i) Meet Hiran narrated that his mother told him that accused no.1 had asked Mansukh to get arrested for 3 to 4 days and thereafter, he would get him released. In the evening around 7.45 pm, Meet went to shop with Tiffin for his father Mansukh. Mansukh told him to stay in the shop as he is going to Ghodbunder to meet Police Officer Tawde.

(ii) Balmukund Soni narrated that on 04.03.2021, in the evening about 08.30 pm, Mansukh had received one call on his mobile, then, he told him that he is going to Ghodbunder to meet an officer.

(iii) Vinod Hiran narrated that accused no.1 had advised Mansukh to get arrested for 2 to 3 days and then he would get him released on bail.

(iv) Ganesh Pawar narrated that on 05.03.2021 at about 12.13 to 13.30 hours, this applicant had come and met accused no.1.

(v) Joseph narrated that in the month of February and March,2021, this applicant had come to the office of Commissioner of Police.

(vi) Upendra More narrated that on 03.03.2021, this

applicant had instructed his staff to deliver his personal bag to his home.

(vii) ACP Alunkure narrated that on 03rd or 4th and 5th March, 2021, applicant visited to the office of Commissioner of Police and met accused no.1.

(viii) Protected Witness KW3 narrated on 03.03.2021, applicant gave order for fake number plate with registration numbers starting with MH-01, MH-02 and MH-04. On 04.03.2021, applicant demanded one number plate of having Gujarat registration. He further narrated that as per the directions of the applicant, the staff removed original number plate of white color Volkswagen Polo vehicle and affixed the fake number plate. He further narrated that on 09.03.2021, the said Polo vehicle was returned by one witness from Kandivali Police Station.

(ix) Mr. Sameer Gaonkar narrated that on 03rd March at 11.30 am, accused no.1 came in the office. At about 12.30 pm, Mansukh and Vinayak Shinde at 01.00 pm came in the C.I.U. office. Mansukh met accused no.1 and left the office at about 02.15 pm. After meeting with accused no.1, Vinayak Shinde left office at 04.00 pm. Again, Mansukh came back to C.I.U. office at 06.00 pm and left the office at 06.45 pm after meeting with accused no.1. He also narrated that this applicant also visited to C.I.U. office along with DCP Akbar Pathan and Mahesh Shetty (Bar owner).

(x) Vimla Hiran narrated that accused no.1 and other two co-accused hatched conspiracy and killed Mansukh since he was not ready to take the blame of crime dated 25.02.2021.

(xi) Protected Witness KW4 narrated that on 03.03.2021, applicant demanded Volkswagen Polo vehicle for 2 to 3 days on the pretext that vehicle of his wife has been given for servicing and accordingly, the vehicle was delivered. It was parked in the building of the applicant was away and

therefore, keys of the car could not be obtained and therefore, it was returned on 10th March.

(xii) Protected Witness KW.5 narrated that on 03.03.2021, applicant called him on WhatsApp and asked for arranging small vehicle for his wife. He brought the vehicle to the applicant and then, applicant instructed him to arrange fake number plates of MH and GJ passing. Accordingly, he arranged the same and then, applicant removed original number plate and fixed the duplicate number plate.

(xiii) Protected Witness KW.6 narrated that on 02.03.2021, applicant asked him about the availability of heavy material/object viz. Iron rod etc. in the store room so as to use it for the purpose of tying it along the body of the gangster while doing encounter. On 03.03.2021, applicant gave him a white color smart phone (Intex Company handset) and asked to check its condition and fixed the problem, if any. Applicant had specifically told him not to go to Mumbai. At about 2.15 pm, applicant gave WhatsApp call and called him in C.P. office compound along with the said device and charger. He went there and handed over the same to accused no.1. He further narrated that on 04.03.2021 at 05.30 pm, applicant requested him to attend the calls on his mobile and in case he did not return by 08.30 pm, then, to send all these bags, his phone and Creta back to his home. Applicant did not return by 09.00 pm and therefore, he delivered his bag, phone and Creta at his residence and handed over the keys of Creta to his wife.

(xiv) Protected Witness KW.7 narrated that on 03.03.2021, applicant called him and told that he would be visiting the said area on 04.03.2021 and would require a driver and alternate vehicle to travel back to Mumbai. Applicant also told him that he will be leaving his car near the office. On 04.03.2021, applicant made WhatsApp call to him and gave reminder again. Accordingly, he sent his car at about 10.30 pm with another witness, who dropped the applicant at his residence. He also narrated that as per instructions of the

applicant the black sun film of the Polo car was removed and fixed fake number plates.

(xv) Hemal Nandu narrated that on 03rd and 07th March, applicant called him and asked to arrange the driver to collect car and removed sun film of the car.

(xvi) Prashant Dhage narrated that on 04.03.2021, he was present in the office and he did not see the applicant during evening time.

(xvii) Avinash Shinde narrated that the applicant left Kandivali Unit at 12.30 pm on 04.03.2021 without taking his vehicle.

(xviii) Protected Witness KW.08 narrated that in the first week of March 2021, he went and received the applicant. The applicant gave directions to him to take vehicle. He also brought applicant at his home at 1.00 am.”

22. Learned Special Judge has, therefore, rightly placed reliance in the case of ***National Investigation Agency Vs. Zahoor Watali***¹, wherein it has been held that 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. Admittedly, the application seeking discharge came to be rejected by the Special Court on the basis of the material

¹ (2019) 5 SCC 1

placed before it. At the time of rejecting an application seeking discharge, the trial Court observed and noted *prima facie* involvement of the appellant in the instant case. The prosecution has placed sufficient material to prove the conspiracy between the appellant and its culmination into the murder of deceased Mansukh Hiran by A1 Sachin Waze alongwith other co-accused, including the appellant.

23. There is also material on record, as already observed hereinabove, in the form of CDR of the mobile phone used by the appellant. Apart from that, there are several statements of protected witnesses, which indicate presence of the appellant alongwith A1 Sachin Waze. Deceased was killed by the accused because of the Crime dated 25.02.2021. It is the basic story of the prosecution that the act of parking of the explosive laden Scorpio vehicle of the deceased and thereafter his murder, was a well hatched conspiracy, which was meticulously planned, in which several persons are involved and that the conspiracy was executed by the accused persons with an intent to strike terror.

24. Learned Senior Counsel argued that though Mansukh went missing on 04.03.2021, the appellant came to be arrested on 23.04.2021 and was chargesheeted on 03.09.2021, that there is no material in the form of last seen together, no evidence under Section 27 of the Evidence Act, no mention in the chargesheet to show conversation between the appellant and A1 Sachin Waze, there is no description of the number plate of white Polo Car, the confession of A9 Manish Soni is before the Judicial Officer, and there is nothing to show that the appellant was also called as *Inspector Tawade*, from the overall material placed on record, we are satisfied that the material is *prima facie* sufficient to show the link and the role of the appellant as one of the co-conspirators. It is well settled that at the stage of considering the application for bail, defences cannot be looked into. It is also pertinent to note that the appellant has not only facing prosecution under the provisions of the Indian Penal Code but under the stringent provisions of the Unlawful Activities (Prevention) Act.

25. At this stage, it would be expedient to reproduce the observations made by this Court while rejecting an application of

A10 Pradeep R. Sharma on the aspect of a larger conspiracy, which are as under :-

“7.1 At the outset, we express some anguish in the manner in which the NIA has investigated the charge of conspiracy of parking of the Scorpio vehicle near the residence of a prominent businessman and planting of gelatin sticks in the said vehicle, on 24/25.02.2021.

7.2 We may note, that during the course of the arguments, we asked the learned ASG, as to with whom Sachin Waze had entered into a conspiracy to plant gelatin sticks in the Scorpio vehicle, considering that the charge against Sachin Waze is, that he had entered into conspiracy to plant gelatin sticks in the Scorpio vehicle ‘with others’. With whom? The charge-sheet is silent. Hence, learned ASG took time. Though the charge-sheet says Sachin Waze entered into a conspiracy ‘with others’ to plant gelatin sticks in the Scorpio vehicle, the names of the co-conspirators are curiously not spelt out.

7.5 It is pertinent to note, that it is the prosecution case, that Sachin Waze wanted to plant gelatin sticks in a vehicle, and for the said purpose, chose a Scorpio vehicle, belonging to Mansukh Hiran; that on 17.02.2021, Sachin Waze asked Mansukh Hiran to drive the Scorpio from Thane towards Vikhroli and park the same on the service road near the flyover at Airoli junction on the Eastern Express Highway; that Sachin Waze asked Mansukh Hiran to handover keys of the said vehicle to him near the CP Office compound; that Mansukh Hiran complied with the same by parking his vehicle on the Eastern Express Highway; that after parking the vehicle, Mansukh Hiran took an Ola Cab to meet Sachin Waze, to handover the keys of the Scorpio Car; that the Ola dropped Mansukh Hiran near G.P.O. at around 20:10 hrs.; that after taking the car keys, Sachin Waze left alongwith KW-1 towards Eastern Freeway; that at 21:50 hrs., KW-1 and Sachin Waze reached the spot, where the Scorpio was parked and Sachin Waze directed KW-1 to open the car and change the number plate of the said Scorpio vehicle and to take it to Saket Colony (residence of Sachin Waze).

*7.7 It appears that the NIA, after a detailed investigation, had not charge-sheeted the appellant for the offence pertaining to the Scorpio vehicle, which was laden with gelatin sticks. Prima facie, we feel that this feeble attempt was made to connect the appellant with Sachin Waze only when we questioned the NIA, as to with whom Sachin Waze had conspired with, in planting of gelatin sticks in the Scorpio vehicle. In a case of this magnitude, prima facie, it is highly impossible that Sachin Waze himself would be involved, without the help, assistance or may be, guidance of some others. We may note, that it is the prosecution case, that Sachin Waze had done a lot of planning in this regard, when he planted gelatin sticks in a Scorpio vehicle near a prominent businessman's residence i.e. he had booked a room in Hotel Oberoi for 100 days; had paid in cash for booking of the room in Hotel Oberoi; had given a fake Aadhar Card, etc. **We, prima facie, find that the NIA has not done investigation with regard to the same i.e. with respect to the co-conspirators involved in planting of gelatin sticks in the Scorpio vehicle.**"*

(emphasis supplied)

26. Learned Special P.P. has, now, tendered statements of the then Commissioner of Police, Mumbai Mr. Parambir Singh recorded on 29.08.2022 and 30.08.22 by the Additional S.P. of NIA. It is to be noted that the defence has not been provided with the said statement and the same cannot be and will not be used against the appellant, save and except, to unearth the well planned larger conspiracy hatched by the accused persons. It seems that 42 questions were asked to the then Commissioner of Police in connection with the present crime. Admittedly, Mr. Parambir Singh was the Commissioner of Police, Mumbai from

29.02.2020 to 17.03.2021. A1 Sachin Waze, who was then under suspension, was reinstated and posted to CIU, Crime Branch, Mumbai. It reveals from the statement of Mr. Parambir Singh that A1 Sachin Waze used to directly come and report him about sensitive cases. Most of the time, he used to brief alongwith Senior Officers (ACP, DCP, Joint C.P.). Mr. Parambir Singh knew about the whole of the incident dated 25.02.2021 as regards parking of gelatin laden Scorpio near the residence of Mr. Mukesh Ambani. When a specific question was asked to Mr. Parambir Singh that during investigation 'A1 Sachin Waze had stated that he (Parambir Singh) was the part of the conspiracy in planting of gelatin sticks in Mahindra Scorpio SUV vehicle alongwith a threat note addressed to Ambani family', he denied having aware of any such conspiracy and that he was not part of the same. However, he admits visit of A1 Sachin Waze few times to his residence earlier regarding briefing about the discussion which he had during his visits to Chief Minister and Home Minister in sensitive cases, which A1 Sachin Waze was handling. It would be advantageous to reproduce a few relevant questions and its explanation given by Mr. Parambir Singh, the then

Commissioner of Police :-

“15. Sachin Hindurao Waze also claimed that prior to the murder of Mansukh Hiran on the night of 4th of March, 2021, he had a meeting with the then Police Commissioner Parambir Singh and retired Police Officer Pradeep Sharma on the 28th February and 2nd of March, 2021. Is this true?”

Explanation : *I deny that there was a meeting at my residence or in my office or that Sachin Waze and Pradip Sharma both came together to my residence at Malabar Hill, Mumbai. Pradip Sharma had visited once in evening at my residence to discuss about his concerns in Ravi Pujari matter. Since I could not discuss the same with Pradip Sharma, I asked him to come to my office for discussion. I categorically deny that Sachin Waze met me at my residence along with Pradip Sharma. Sachin Waze visited few times to my residence earlier regarding briefing about the discussions which he had during his visits to CM and HM in sensitive cases which he was handling.*

Thereafter once or twice Pradip Sharma came to my office regarding his concerns in Ravi Pujari matter as he could not discuss the matter in my residence.

On being asked about the meeting with Pradip Sharma on 28.02.2021 at your residence, wherein it has been told that ‘Naraj to nahi ho? Problem aaya hai. Tumhe kuch kaam karna padega. Ek ka potla karna hai. Uski body nahi milni chahiye. Ho jayega? Ravi Pujari bak-bak kar raha hai. Tum savdhan rahana’.

I state that, no such conversation took place when Pradip Sharma had visited my residence.

On being asked about meeting with Pradip Sharma at your office on 02.03.2022, wherein Pradip Sharma requested you to transfer Shailendra Pandey @ Pinky Pandey from Kolhapur Jail to Thane Jail, so that he can be a buffer between the planners and executers and you have told that it cant be done easily and that it will take time and my name will surface in that. Further when you saw that Pradip Sharma was reluctant to do the ‘Potla Task’ you told Sachin Waze “Theek hai then Sunil Mane ko bolo..... wo karne ke liye ready hai, Sunil Mane mere liye kuch bhi karega.... iski MCOCA ki tayari karo”.

I state that, no such conversation took place when Pradip Sharma had visited my office. Sachin Waze and Pradip Sharma together never had a meeting with me in my office. The only time they were present together in my chamber was on the day when body of Mansukh Hiren was found and Sachin Waze had rushed into my chamber where Pradip Sharma was already present and I asked him to leave.

On being asked about you calling Nitin Thakre, Inspector, Crime Branch, Thane and sending a message to call me back for doing the Potla Task, as per deposition of Sunil Mane. I categorically deny any such discussion or call made.

16. *There are also technical evidences to prove the above mentioned conspiracy meetings. What explanation would you like to offer to this?*

Explanation :- *I deny the same and no such meetings took place.*

18. *On March 5th Morning, dead body of Mansukh Mishrilal Hiran was found by the creek at Retibunder Mumbra for which an Accidental Death Report was filed at Mumbra Police Station, Thane. Did Sachin Waze report to you about this incident ?*

Explanation :- *As above.*

19. *Smt. Vimla Mansukh Hiran, widow of the deceased alleged foul play and in her written complaint before ATS Thane Unit, she claimed her husband Mansukh Mishrilal Hiran was murdered and named Sachin Hindurao Waze, investigating officer for the explosive laden SUV case and vehicle theft case, as the person who killed her husband Mansukh Mishrilal Hiran. Were you aware about this ?*

Explanation :- *I subsequently became aware of this. On being asked that whether I know about any connections between Mansukh Hiran & Sachin Waze, I state that I was not aware about it.*

20. *Were you aware that Govt. of Maharashtra on 06.03.2021 transferred the cases relating to explosive laden*

SUV case, vehicle theft case and ADR of Mansukh Mishrilal Hiran, to ATS Maharashtra for investigation. (Re-regd. As Case No.10/2021, 11/2021 & 12/2021). The investigation was transferred from Sachin Waze to ACP Alakhnure and then to ATS / Maharashtra?

Explanation :- *I am aware that the original CIU, Crime Branch, Mumbai case was transferred to ACP Alakhnure. I am aware that subsequently the case was transferred to ATS, M.S. I am also not aware about Sachin Waze being instructed to assist ACP Alakhnure the new IO of the case and I have not to instructed regarding the same.*

25. *Did you instruct Sachin Waze to convince Mansukh Hiren to own up the responsibility of parking the explosive laden scorpio vehicle near Ambani residence?*

Explanation :- *No such instructions were given at any point of time.*

26. *Subsequently when Mansukh Hiren refused to own up the responsibility of the crime and as he was thought to be a weak link / soft target you instructed Sachin Waze and other co-accused persons to eliminate him?*

Explanation :- *I was not aware of this.*

27. *As per evidences gathered, Conspiracy meetings were held in your office and your residence at Nilima and instructions for murdering Mansukh Hiren were given by you to Sachin Waze, Sunil Mane & Pradeep Sharma. What do you have to say in this connection?*

Explanation :- *No such conspiracy meetings happened at my office or residence. I categorically deny that I have given instructions to Sachin Waze, Pradeep Sharma or to Sunil Mane to murder Mansukh Hiran. I also deny that Mane along with Sachin Waze ever came together to my office for any discussions. Sunil Mane had come to my office requesting for an arms licence for himself and his brother since they were running a security agency in Mumbai.*

On being asked that, on 04.03.2021, Sunil Mane had met you in your chamber along with Sachin Waze, wherein it has been told that 'tumko Waze ne kutch bataya

hai kya. Hiren ko abhi 3-4 din ke liye bahar bhejna hai, wo sab Waze bata dega, to Waze se tie-up kar lena. Isme kuch naih hai, ye kya pehle baar kar rahe hain? Iske pehle bhi kar chuke hain',

Further on 05.03.2021, Sunil Mane had met you in your chamber, wherein it has been told that "tumhara kaam barobar ho gaya hain, daro mat. Tumhari service kitna hua hain. Tumko Rashtrapati Padak mil jayega'.

Further on 07 or 08.03.2021, Sunil Mane had met you in your chamber, wherein it has been told that "Tum kyun darr rahe ho? Tum ne thodi na maara hain, Jisne maara hain woh Nepal border cross kar chuke bhi honge. Tum kisi se baat mat karo, normal kaam karte raho'.

I categorically deny that any such meeting and any such conversation took place.

29. *Why was the Cyber Expert instructed to issue a false certificate regarding resolving the Jaish-Ul-Hind threat note and was paid 05 lakh in cash as reward for falsely resolving the Jaish-Ul-Hind threat note?*

Explanation :- *I had not called him. He came on his own and brought report with him. I never asked him to amend the report in any manner. I only asked him whether he is willing to give it officially and once he showed his willingness I asked him to mail it to me on my official email ID.*

About the amount paid to cyber expert Ishan Sinha is already explained in earlier reply given above.

30. *Arrested accused persons have revealed that you had instructed them to plant the gelatin laden scorpio vehicle near Mukesh Ambanis residence Antilia and thereafter murder Mansukh Hiren. The then Home Minister to whom you were reporting had also revealed that you are behind the said incident. What was the motive for doing this crime?*

Explanation :- *This is false allegations. I have not instructed any body to indulge in these acts.*

33. *Two summons were issued to you on the 24th and 26th of August 2021? Why did you not respond to the NIA summons?*

Explanation :- The entire state machinery was hounding me and I was taking precaution to protect my freedom and seek legal remedies during this period. I never handled my own email account. It was always handled by my PA Mr. D'silva. So I was never aware of such summons having been sent on my email ID. Hence, I was not aware about the summons issued.

34. Does the apple ID (Facetime) xxxxx@gmail.com belong to you?

Explanation :-The apple ID xxxxx@gmail.com does not belong to me.

35. There are also technical evidences to prove the above mentioned conspiracy meetings. What explanation would you like to offer to this?

Explanation :- There cannot be any technical evidence whatsoever to show that the accused were present together in my office chamber or my official apartment, since no such meetings happened.

36. There is evidence to show that you had made calls from this ID to the arrested accused persons after NIA had recovered the vehicle used in the murder. What explanation would you like to offer?

Explanation :- As explained above the apple ID does not belong to me.

37. Evidences reveal that on multiple occasions you had met Sunil Mane clandestinely with your mobile phones switched off subsequent to him being called by NIA for investigations. What explanation would you like to offer?

Explanation :- I never met Sunil Mane clandestinely on any occasions. I frequently keep my phones on Aeroplane mode to make WhatsApp calls on wifi as I was being hounded by entire state machinery after I had made complaint against Shri Anil Deshmukh. This is the practice which I still follow.”

27. Apart from the statement of the then Commissioner of Police, learned Special P.P. has also invited our attention to the sequence of crime *vis-a-vis* technical evidence on record in order to indicate nexus of the appellant in the alleged crime, especially the murder of deceased Mansukh Hiran. The chart depicting the said sequence is reproduced hereinbelow :-

“SEQUENCE OF CRIME VIS-A-VIS TECHNICAL EVIDENCE ON RECORD :-

<i>Date</i>	<i>Particulars of Conspiracy / crime / fact</i>
<i>Nov, 2020 To 05.02.2021</i>	<i>Sachin Waze had possession of the Green coloured Scorpio vehicle from Nov, 2020 to 05.02.2021 for personal / official use.</i>
<i>Prior to and during 25.02.2021 and 04.03.2021</i>	<i>Sachin Waze (A-1), Pradeep Sharma (A-10), Vinayak Shinde (A-3), Riyazuddin Kazi (A-4), Sunil Mane (A-5), were in close association with each other.</i>
<i>Prior to and during 25.02.2021 , 04.03.2021 and till their date of arrest(s)</i>	<i>Pradeep Sharma (A-10), Santosh Shelar (A-6), Anand Jadhav (A-7), Satish Mothkuri (A-8), Manish Soni (A-9), were in close association with each other. Manish Soni (7045644755) is in contact with Satish Mothkuri (9768628648) from January, 2021 till April, 2021. Anand Jadhav (8850480183) is in contact with Satish Mothkuri (9768628648) from December, 2020 to April, 2021.</i>
<i>Jan, 2021 to March 2021</i>	<i>Naresh Gor (A-2) and Vinayak Shinde (A-3) were associated with each other.</i>
<i>05.02.2021</i>	<i>Handing back of said Scorpio vehicle by Sachin</i>

	<i>Waze to Mansukh Hiran.</i>
<i>16.02.2021 to 20.02.2021</i>	<i>Booking of A-1 at Hotel Oberoi Trident.</i>
<i>17.02.2021</i>	<i>Crime – Alleged Theft of Scorpio vehicle.</i>
	<i>Mansukh Hiran (9820214282) found in tower location at Sep-2, B-3, Eastern Express Highway, Pirojshanagar, Vikhroli East, Mumbai, from 19:38 hrs and moved towards Tagore Nagar, Vikhroli East at about 20:07 hrs and was at tower location at VT Station, Mumbai, Esplanade, from 20:37 hrs to 20:45 hrs.</i>
	<i>Mansukh Hiran (9324628272) found in tower location at St. George Hospital, Mumbai from 20:05 hrs to 20:35:41 hrs, and moved in tower location at Cawasji Patel Tank Bhuleshwar at about 21:18 hrs.</i>
	<i>Naresh Gor purchased 14 benami SIM cards from Gayatri Tradersl, Patan, Gujarat.</i>
	<i>Naresh Gor used 9979268639 for internet from 12:44 hrs to 12:48 hrs.</i>
	<i>Naresh Gor handed over 06 mobile SIM cards bearing numbers 9979268639, 9979257896, 9979269837, 9979273883, 9979273887, 9979275653 to Vinayak Shinde (A-3) at the instance of Sachin Waze.</i>
	<i>Mobile Number 9819696096 (Sachin Waze) was in contact with mobile number 9987598759 (Protected witness – KW-12) during the period of conspiracy.</i>
<i>17.02.2021 to 25.02.2021</i>	<i>Planning, collection of incriminating articles, men and hatching of conspiracy for executing crime regarding placement of explosive laden vehicle on Carmichael Road on 24/25.02.2021.</i>
<i>21.02.2021</i>	<i>Mobile number 9979268639 was inserted in handset having IMEI No 3599730894165902 used in Gujarat circle (Gayatri Traders and Naresh Gor).</i>
<i>22.02.2021</i>	<i>Pradeep Sharma through mobile SIM number 9870164150 of KW-13, was in contact with Santosh Shelar (A-6) through mobile SIM</i>

	<i>number 9821579892 of one Sunil Kale.</i>
<i>25.02.2021</i>	<i>Planting of explosive laden vehicle Scorpio vehicle along with threat note to Ambani family by Sachin Waze and others in furtherance of larger conspiracy to strike terror in section of local people and others.</i>
	<i>Taking over of investigation by the authority of State Government by Sachin Waze & others</i>
	<i>Sachin Waze contacted Mansukh Hiran asking him to remain present in his office CIU on 26.02.2021.</i>
<i>26.02.2021</i>	<i>Mansukh Hiran (9324628272) found in tower location at Crawford Market, Mumbai from 15:16 hrs to 21:36:22 hrs.</i>
	<i>Posting of 2nd threat letter to the Ambani family by Sachin Waze & others in furtherance of larger conspiracy</i>
	<i>Mansukh Hiran identified as the alleged owner of the vehicle.</i>
	<i>Pradeep Sharma through mobile SIM number 9870164150 of KW-13, was in contact with Santosh Shelar (A-6) through mobile SIM number 9773338015 of Rohan Fernandis.</i>
<i>27.02.2021</i>	<i>Social medial post by Jaish-ul-Hind (3rd letter) disowning the incident dated 25.02.2021.</i>
	<i>Pradeep Sharma received call (information) from Sachin Waze & others about the meeting to be held at Malabar hill.</i>
	<i>Sunil Mane attends CP Office compound Mumbai.</i>
	<i>Manish Soni (7045644755) (A-9) and Santosh Shelar (9833041110) (A-6) were in regular contact with each other Pradeep Sharma)</i>
<i>28.02.2021</i>	<i>Pradeep Sharma met Sachin Waze and others at Malabar hill on 28.02.2021.</i>
	<i>Sachin Waze (9819696096) found in tower locations at Malabad Hill, Worli Sea face, Bandra Kurla Complex.</i>
	<i>Meeting at Malabar hill between Sachin Wze Pradeep Sharma & others. Driver Ulhas Shirsole</i>

	<i>and Vikas Bangar were found at Malabar Hill Mumbai from 20:18 hrs to 21:43 hrs. Prakash Salvi (7039030659) found in said tower location at Malabar Hill, from 18:51 hrs to 20:26 hrs.</i>
	<i>Meeting at Worli sea face between Sachin Waze and Pradeep Sharma.</i>
	<i>In said meeting Pradeep Sharma called Santosh Shelar in presence of Sachin Waze and tasked him to eliminate Mansukh Hiran. Here also there was no occasion for Pradeep Sharma to call Santosh Shelar save and except the planning for murdering Mansukh Hiren.</i>
	<i>9920778844 (Pradeep Sharma) found in tower location at Bandra-Worli sea link at Worli Ward No.836 from 21.59 hrs to 22.00 .50 hrs.</i>
	<i>Sachin Waze is found in tower location at Malabar Hill, Mumbai, on 28.02.2021 at about 20:18 hrs to 22.17 hrs, and further at tower location in Zenith House, Bandra Kurla Complex from 22:20 hrs to 01.03.2021 at about 00:07 hrs. Thereafter, his tower location is Saket Complex at about 01:16 hrs.</i>
	<i>9920778844 (Pradeep Sharma) called Santosh Shelar (9833041110) from Facetime application.</i>
<i>01.03.2021</i>	<i>Santosh Shelar tasked Anand Jadhav, Satish Mothkuri and Manish Soni to arrange for logistics, in furtherance of criminal conspiracy to murder Mansukh Hiran.</i>
	<i>Santosh Shelar (9833041110) contacted Anand Jadhav (8850480183) at 10:04 hrs, Satish Mothkuri (97686278648) at 10:49 hrs and Manish Soni (7045644755) at 13:05 hrs and further during the daytime with said accused persons and others.</i>
	<i>Santosh Shelar (9833041110) called Manish Soni (704564475) & instructed him to manage 01 mobile handset and 02 SIM cards on urgent basis. Accordingly, Manish Soni arranged the 01 Intel company model handset and 02 Vodafone SIM cards bearing Nos. 9619058549 & 9619053688 (As per Disclosure statements and</i>

	<i>pointing out memos and panchanama of said accused).</i>
	<i>SIM cards handed by Manish Soni to Santosh Shelar on 01.03.2021 at about 3 pm to 6 pm.</i>
	<i>Manish Soni (917045644755) and Santosh Shelar (919833041110) were in contact with each other at about 13:05:30 hrs, 14:04:11 hrs, 14:24:05 hrs, 14:25:00 hrs, 14:30:47, hrs, 14:36:56 hrs, 14:51:37 hrs 15:02:05 hrs, and 15:08:03 hrs.</i>
02.03.2021	<i>Pradeep Sharma (9920778844) was at CIU, office 4th Floor, and CP office compound from 11:53hrs to 13:39hrs, and met Sachin Waze (9819696096) at CP Office compound.</i>
	<i>Sachin Waze is found in the tower location at CP office compound at 11:53:57hrs to 13:06:17hrs.</i>
	<i>Mansukh Hiran (9820214282) was at CIU, office 4th Floor, CP Office Compound, Mumbai from 12:29hrs to 19:54hrs. Mansukh Hiren (9324628272) found in tower location at C.S.T, Mumbai from 15:37:46hrs to 17:12:02 hrs and further in tower location at Crawford Market LT Road till 21:05:11 hrs.</i>
	<i>Sunil Mane (9870117295) is at CIU, Office, 4th Floor, and CP Office compound, Mumbai from 10:58hrs to 18:48:31hrs.</i>
	<i>Sachin Waze ordered for one mobile handset and collected the same through one witness.</i>
	<i>Mansukh Hiran was identified at CIU office in close proximity by Sunil Mane (A-5) and Pradeep Sharma (A-10), in presence of witnesses.</i>
	<i>Santosh Shelar (9833041110) contacted Anand Jadhav (8850480183), Satish Mothkuri (9768628648)</i>
	<i>Red coloured vehicle (Tavera) and logistics arrangement were checked by Santosh & Anand.</i>
	<i>Santosh Shelar (9833041110) handed one sim card bearing No. 9619058549 & Intel mobile handset to Pradeep Sharma on 02.03.2021 at about 17:03hrs to 17:34hrs, for secret conversation.</i>

	<i>Intex Company mobile handset was handed over by Sachin Waze (A-1) to Sunil Mane (A-5) at Chakala, Andheri near house of Pradeep Sharma (A-10)</i>
	<i>9920778844 (Pradeep Sharma) found in tower location near Commissioner of Police Office Compound from 11:53hrs to 13:39 hrs.</i>
03.03.2021	<i>9820214282 (Mansukh Hiran) was in tower location at CP office compound from 16:07hrs to 20:18hrs. Mansukh Hiren (9324628272) found in tower location at Crawford market, Mumbai at 19:57:02hrs. These tower locations are near CP Office Compound, Mumbai.</i>
	<i>Santosh Shelar (A-6) handed over mobile SIM 9619058549 to Pradeep Sharma (A-10) which was activated at around 10:07 hrs at Andheri (East) near house of Pradeep Sharma, in mobile handset having IMEI No.351186417701970. Further said Pradeep Sharma (9619058549) was in contact with Santosh Shelar (9619053688) during the period of conspiracy and execution of murder of Mansukh Hiran.</i>
	<i>Said handset of Intex Aqua Costa Company IMEI No. 911528300493988 having SIM card No. 9979268639 and malfunctioned, due to which Sunil Mane (A-5) returned said handset and SIM card to Sachin Waze (A-1) at his office in CIU on 03.03.2021.</i>
	<i>Sachin Waze is also found in the tower location from 13:52hrs to 19:30hrs at CP office compound.</i>
	<i>Pradeep Sharma through mobile SIM number 9870164150 of KW-13, was in contact with Santosh Shelar (A-6) through mobile SIM number 9773338015 of one Rohan Fernandis, at about 14:10:34 hrs.</i>
	<i>9870117295 (Sunil Mane) was found in tower location CP office compound, from 14:39hrs to 20:26hrs.</i>
	<i>A meeting of conspiracy between Sachin Waze and Sunil Mane took place at Chakala, Andheri</i>

	<i>(East), whereby Sachin Waze gave one Telephono company handset and one Vodafone SIM card bearing number 9979268639.</i>
	<i>Aforementioned secrete communication between Sachin Waze and Sunil Mane was through their Facetime and Whatsapp accounts by using their email id: indunited2020@gmail.com and sunil_mane009@yahoo.com.</i>
	<i>Meeting between Sachin Waze (A-1) to Pradeep Sharma (A-10) for further planning and handing over of murder money by A-1 to A-10 near Chakala Andheri.</i>
	<i>Santosh Shelar and Anand Jadhav did recce of the scene of crimes. 9833041110 (Santosh Shelar) and 88504801830 (Anand Jadhav) were found travelling together (as per tower location) up to Balkum Padda from 22:17hrs to 22:46hrs. Thereafter their mobile phones are found at Kasheli bridge from 22:17 hrs to 23:17 hrs. Further they moved from Majiwada-Balkum and were found in their respective address tower locations in Malad.</i>
	<i>Sachin Waze is in the tower location at CP Office compound at 20:53:22hrs. Thereafter he is in the tower location at Santacruz at about 22:17:39 hrs. Sachin Waze switched off his mobile phone from 22:17:39hrs near Chakala, Andheri (East) to avoid detection.</i>
	<i>SIM Card mobile number 9979268639 inserted in Telephono mobile handset and switched-On by Sachin Waze and handed over to Sunil Mane, near Chakala, Andheri.</i>
	<i>Mansukh was interviewed on 03.03.2021 by media and was made to write letter at the instance of A-1, A-5 & A-10 to the Chief Minister and others, that ATS, NIA agencies are harassing him. Said letter was kept by A-1 in his possession. Mansukh was pursued by Sachin Waze to take the blame & get himself arrested in case No.35 of 2021 dated 25.02.2021.</i>
	<i>Mobile number 9979268639 was found in tower</i>

	<i>location at Chakala Andheri (East) near residence of Pradeep Sharma on 03.03.2021 at about 23:55:53hrs.</i>
	<i>Mansukh was again identified by Sunil Mane (A-5) at CIU office, CP office compound, Mumbai.</i>
	<i>Recce of routes and planning by A-5.</i>
<i>04.03.2021</i>	<i>Pradeep Sharma (9619058549) was in contact with Santosh Shelar (9619053688) from 15:53hrs to 22:47hrs, Total calls (08):- 15:53hrs, 17:44hrs, 17:49hrs, 17:51hrs, 19:43hrs, 21:25hrs, 21:27hrs, 22:47hrs.</i>
	<i>Mobile number 9979268639 was found in tower location near Chakala Andheri (East) near residence of Pradeep Sharma from on 04.03.2021 at about 00:07:51hrs (This Sim card was active from 03.03.2021 from 23:55:53hrs to 04.03.2021 at about 00:07:51hrs).</i>
	<i>Sunil Mane got possession of the POLO vehicle with 03 fake registration plates through witness.</i>
	<i>Sunil Mane left his Kandivali-Unit 11 office by leaving his iPhone mobile phone handset and SIM card bearing no. 9870117295, along with office bag and his Creta car bearing No. MH-02-EE-6912 in his office at Kandivali and thereunder had directed his staff to deliver the same to his residence.</i>
	<i>Accordingly, as directed by Sunil Mane, his aforementioned iPhone and office bag was carried by his staff in his Creta car and handed over to his residence to Smt. Mala Mane wife of Sunil Mane.</i>
	<i>In the meantime at afternoon, Manish Soni & Anand Jadhav collected red coloured Tavera Vehicle. Refuelled said car and picked up Santosh Shelar & Satish Mothkuri from Kandivali on the way towards Ghodbundar. Then reached at Hotel Surekha on Ghodbander Road.</i>
	<i>Manish Soni (917045644755) and Santosh Shelar (919833041110) in furtherance of conspiracy and commission of crime were in contact with each other at about 13:30:04hrs,</i>

	<i>14:43:21hrs. 15:11:40hrs, 17:42:23hrs. 17:44:02hrs, 18:49:22 hrs.</i>
	<i>Sachin Vaze called Mansukh Hiran and informed the Inspector Tawade (Sunil Mane) will call him & he has to go with him somewhere for few days till the investigation & storm settles down in connection of crime dated 25.02.2021.</i>
	<i>Mobile number 9979268639 was Switched-ON in Telephono company handset near tower location Swati Sagar Industrial Estate, Near Majiwada Junction, Thane (West). User (Sunil Mane) remained in said tower location till 20:23 hrs:. (Later, this SIM card 9979268639 was used by Sunil Mane who gave WhatsApp call on mobile SIM number of Mansukh Hiran on his mobile SIM number 9324628272 on 04.03.2021 which was given by Sachin Waze at Chakala Andheri East near house of Pradeep Sharma).</i>
	<i>Sunil Mane calls Mansukh Hiran and picks him from Suraj Water park and drop him adjacent to the parked red coloured Tavera vehicle and hands him over to the killers A-6, A-7, A-8, & A-9, opposite Hotel Surekha. Also, Mansukh Hiran's mobile handset and personal belongings was taken by Sunil Mane.</i>
	<i>Pradeep Sharma (9619058549) was in the tower location at Ramkrishna Mandir, Marol Pipe lines, Andhri (East), Mumbai 400059. This tower location is near Residence of Pradeep Sharma at 601, Bhagvan Bhavan, JB Nagar, Andheri (East), Mumbai – 400 059; Also near Hotel Sai Leela Grand – owned and managed by Pradeep Sharm, and near Raylon Arcade wherein Pradeep Sharma & Swikriti Sharma wife of Pradeep Sharma have PS Foundation office.</i>
	<i>Sachin Waze at the time of murder was creating false ALIBI by allegedly raiding TIPSY Bar & Restaurant and attending DINNER at Grills and Rice Restaurant along with Riyazuddin Kazi (A-4) and others at Byculla.</i>
	<i>9833041110 (Santosh Shelar) and 88504801830 (Anand Jadhav), 9768628648 (Satish Mothkuri)</i>

	switched-off their mobile handset at same time around 1848hrs to 1915 hrs.
	<p>Sunil Mane used an Apple iPhone 11 Pro model (previously used by Malhar Mane Son of Sunil Mane) handset and used the same through his Facetime id:sunil_mane009@yahoo.co.in (Discovery pointing out memo and Disclosure memo page nos. 001018, 001022 of Annexure _ B, Vol-III) to call Sachin Waze on his Facetime Id:indunited2020@gmail.com through Facetime (inbuilt application in iPhone). As per IPDR email indunited2020@gmail.com was verified and found to be associated with mobile SIM number 9819696096 (Sachin Waze). 02 Apple iPhone 11 Pro model No.MWCQ2LL/A, Serial No. C39ZMHDLN6XW, without SIM card, and Apple iPhone XR Model No. MRYD2HN/A, Serial No. GV4D51F2KXK8, without SIM card along with WIFI Dongle of Airtel and 02 Airtel SIM cards, were produced by Sunil Mane on 06.04.2021 and same were seized under Production-cum-seizure Memo dated 06.04.2021 (page no.944, Annexure – B, Vol-III). The said articles have been forwarded to the CFSL, Pune, on 11.05.2021, and Report is awaited (page nos. 2058, 2059, 2062, Annexure -B, Vol-VII). However, the accused Sunil Mane (A-5) during inquiry on 23.04.2021 had admitted before the CIO, NIA, about the use of Apple iPhone 11 Pro without SIM card, through Facetime id: sunil_mane009@yahoo.co.in., to call Sachin Waze on his Facetime Id:indunited2020@gmail.com, for furthering the conspiracy and murder of Mansukh Hiren.</p> <p>At about 20:00 hrs to 20:30hrs Sunil Mane called through by using WhatsApp on said Telephono company handset and Vodafone SIM card bearing number 9979268639 to Mansukh Hiren or his mobile number 9820214282.</p> <p>And further switched-on at around 0047hrs to 0049hrs on 05.03.2021.</p>

	<p><i>As per conversation between Sunil and Mansukh, Mansukh was picked up by Sunil Mane in white coloured POLO car, posing as Inspector Tawde of Kandivali PS, from Suraj Water Park, Majiwada.</i></p> <p><i>Further, Sunil Mane stopped said POLO car after reaching at Surekha Hotel and took U-turn and drove said vehicle on the opposite side near the already stationed red coloured Tavera vehicle on the Ghodbundar Road.</i></p> <p><i>Mansukh Hiran got down from the POLO vehicle. At the same time Santosh Shelar had got down from red coloured Tavera vehicle and went towards Mansukh Hiran and walked along with him till the Tavera vehicle.</i></p> <p><i>First Mansukh Hiran boarded the Tavera vehicle from the left side door of middle row. Then Santosh Shelar followed Mansukh and sat next to him on the left side of middle row seat. Already Anand Jadhav was sitting on the right hand side middle row seat. Satish Mothkuri was seated at the dickey seat (last row of said vehicle). Manish Soni was on the driver's seat. (These facts find corroboration from the confession of Manish Soni and CCTV Footage of Surekha Hotel and Hotel Hill View).</i></p>
	<p><i>After handing over Mansukh Hiran to Killers A-6 to A-9, Sunil Mane drove white coloured Volkswagen POLO vehicle towards Manor via Fountain Hotel. At this time Sunil Mane had taken the mobile handset having SIM number 9324628272 from Mansukh Hiran. As a result the tower locations of SIM number 9979268639 used in said mobile handset of Telphono Company, and SIM card 9324628272 were showing last tower location at Narayan Kashinath Kini, A/P-Bhamat Pada, Kaneer, Sirdad, Tal-Vasai, Dist. Thane, 401303, Town Code, Palghar at about 22:00hrs.</i></p> <p><i>Immediately after Mansukh Hiran boarded red coloured Tavera Vehicle, said vehicle moved for about 5-10 metres and stopped on the left roadside with its parking lights ON.</i></p>

	<p><i>This is the actual time when Mansuh Hiran was smothered from behind by Satish Mothkuri by holding his mouth and nostrils with the help of 06 handkerchiefs and Santosh Shelar caught the left upper limb (arm) and pressed left lower limb (leg) of the victim, and similarly right upper limb (arm) and lower limb (leg) was tightly hold by Anand Jadhav. Manish Soni was on the driver seat as instructed by Santosh Shelar to keep a watch on passer-by's. The killing incident lasted for about 7-9 minutes.</i></p>
	<p><i>Manish Soni was directed by Santosh Shelar who drove the vehicle with the dead Mansukh Hiran and 02 others co-accused A-7 & A-8 for about few kilometres and stopped at Kasheli Bridge.</i></p>
	<p><i>Thereafter, as instructed by Santosh Shelar, Anand Jadhav, Satish Mothkuri and Santosh (himself) removed the dead body of Mansukh Hiran from the said vehicle along with the 06 handkerchief and one hooded black-green coloured mask. Thereafter, the said 03 accused lifted the dead victim and threw his corpse into the Thane Creek from the Kasheli bridge. Mansukh Hiran was thrown into the creek waters from the Kasheli bridge on 04.03.2021 at around 10:30 pm.</i></p>
05.03.2021	<p><i>9920778844 (Pradeep Sharma) found in tower location at Commissioner of Police Office Compound from 15:41 hrs to 16:03hrs. Further from 16:04hrs to 16:45:41hrs in tower location near CP Office compound.</i></p>
	<p><i>Sunil Mane met Sachin Waze at CP office compound and handed over mobile phone and belongings of Mansukh Hiran to Sachin Waze.</i></p>
	<p><i>Sunil Mane, Sachin Waze and Pradeep Sharma met each other at CP office compound. Sachin Waze conspired with Pradeep Sharma, Sunil Mane and others for destruction of material evidences.</i></p>
	<p><i>Pradeep Sharma through mobile SIM number 9870164150 of KW-13, was in contact with Santosh Shelar (A-6) on his mobile SIM number</i></p>

	9833041110
07.03.2021	<i>In furtherance of the conspiracy thereof, Sachin Waze, Riyazuddin Kazi and others destroyed evidences in-between 26.02.2021 till 13.03.2021.</i>
08.03.2021 to 22.03.2021	<i>At the instance of Pradeep Sharma (A-10) and Sachin Waze (A-1), killers namely Santosh Shelar (A-6), Satish Mothkuri (A-8) & Manish Soni (A-9) were on a run and went to Nepal via Delhi and Lucknow, and further returned to Mumbai via Delhi and Ahmedabad.</i>
11.03.2021 to 17.03.2021	<i>Santosh Shelar (A-6), Satish Mothkuri (A-8) & Manish Soni (A-9), stayed in Hotel Delhi Heart, Paharganj, New Delhi.</i>
23.03.2021	<i>Santosh Shelar (9619053688) is in contact with Manish Soni (7045644755) at about 1606hrs.</i>
23.03.2021 to 26.03.2021	<i>Pradeep Sharma (9619058549) is in contact with Manish Soni (7045644755) (15 calls). It is a fact that CAF of said mobile number 9619058549 is in the name of Manish Vasambhai Soni.</i>
19.04.2021 Annexure - B, Volume- VI, Page No. 1812)	<i>Siddhi Shelar through her mobile number (D-316, 8390004780 and email id. siddhishelar949@gamil.com (Daughter of A-6 Santosh Shelar) booked Airticket for IndiGO Flight No.6E-61 for travel from Bombay (Mumbai) to Dubai in respect of Manish Soni (A-9), at the instance of her father Santosh Shelar.</i>
20.04.2021	<i>Manish Soni (A-9) travelled from Bombay (Mumbai) to Dubai by IndiGO Flight No. 6E-61, as instructed by Pradeep Sharma (A-10) and Santosh Shelar (A-6).</i>
20.04.2021 (18:22:48 hrs) TO 09.05.2021 (0:40:48 hrs)	<i>Mobile SIM number of Manish Soni (7045644755) (A-9) and mobile SIM number of Santosh Shelar (9833041110)(A-6) were not in contact with each other, as Manish Soni during the said period was in Dubai, as instructed by A-6 and Pradeep Sharma (A-10).</i>
09.05.2021 to 14.05.2021	<i>Manish Soni (7045644755) (A-9) and Santosh Shelar (9833041110) (A-6) were in regular contact with each other when Manish Soni (A-9)</i>

	<i>was harboured at Hotel Sai Leela Grand, Andheri (owned and managed by Pradeep Sharma).</i>
<i>May 2021</i>	<i>Manish Soni was sent (harboured) to Dubai in May, 2021 by A-1, A-6 and A-10.</i>
<i>May 2021</i>	<i>Manish Soni was quarantined after his return from Dubai by A-6 at Hotel Sai Leela Palace, Andheri (owned and managed by A-10), at the instruction of A-1 and A-10.</i>
<i>June 2021</i>	<i>Santosh Shelar and Anand Jadhav escaped from Mumbai when their identities were revealed.</i>
<i>03.09.2021</i>	<i>Since the crime dated 25.02.2021 continued till 04.03.2021 and culminated in the murder of Mansukh Hiren, it can be said that the crime dated 04.03.2021 is continuation of crime dated 25.02.2021. Hence, the accused persons A-1, A-5, A-6, A-7, A-8, A-9 and A-10 were charge-sheeted for commission of offences punishable for the act of conspiracy to commit a terrorist act, commission of terrorist act, member of a terrorist gang, kidnapping or abducting for murder, murder of Mansukh Hiran, destruction of evidences, committing forgery and using the same as genuine, dishonest misappropriation of property and criminal conspiracy to commit these offences along with their co-accused persons. All the aforementioned offences being scheduled offences under the NIA Act, 2008, and connected offences were committed by said accused persons within the jurisdiction of this Hon'ble Special Court NIA, Mumbai.</i>

28. Having gone through the statement of Mr. Parambir Singh in context with the other material on record, including the statements of the protected witnesses, if juxtaposed, would *prima facie* point out as to how the manner in which, a preplanned and larger conspiracy was hatched to eliminate

deceased Mansukh Hiran. We are informed that investigation under Section 173(8) of the Cr.P.C. is going on. We hope and trust that the NIA will take the said investigation to its logical end expeditiously and ensure that justice is done to the deceased's family.

29. Considering the entire material on record, ignoring the statement of the then Commissioner of Police, *prima facie*, there is sufficient material to indicate involvement and complicity of the appellant in the murder of deceased Mansukh Hiran. The possibility of the appellant being the Police Officer having well connected with higher cops, tampering with the witnesses cannot be ruled out. As already stated, the offences are quite serious, including the offences under the stringent provisions of UAP Act. It would not at all be just and proper to release the appellant on bail, which would frustrate the trial. It is also pertinent to note that the appellant had tendered pardon in his own handwriting before the Special Court, NIA, Mumbai thereby expressly admitting his guilt. The said application was made on 16.02.2023, which is annexed at Exh.187, on page nos. 174 to

175 to the Written Submission filed on behalf of the respondent no.1 – NIA. We are informed that the appellant withdrew the said application seeking pardon.

30. The Criminal Appeal No. 1266 of 2022 preferred by the appellant against an order dated 10.11.2022 passed by the Special Court rejecting his application for discharge, has also been dismissed by this Court for want of prosecution on 03.10.2024 (Coram : Nitin B. Sambre & Smt. Manisha Deshpande, JJ). Investigation under Section 173(8) of the Cr. P.C. is still in progress. Statements of nearly 15 witnesses appear to have been recorded after filing the chargesheet and further investigation is still in progress. It also appears that the investigation in respect of posting a threat note on “Telegram” channel is still in progress. It is also important to note that the appellant does not satisfy the Tripod Test laid down by the Supreme Court in case of *Gurwinder Singh Vs. State of Punjab & Anr.*². Para 31 to 34 reads thus :-

“31. The Appellant’s counsel has stated that in the terror funding chart the name of the Appellant does not find place. It

² (2024) SCC Online SC 109

is pertinent to mention that the charges in the present case reveals the involvement of a terrorist gang which includes different members recruited for multiple roles. Hence, the mere fact that the accused has not received any funds or nothing incriminating was recovered from his mobile phone does not absolve him of his role in the instant crime.

32. The Appellant's counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb's case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb's case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.

33. Hence, we are of the considered view that the material on record *prima facie* indicates the complicity of the accused as a part of the conspiracy since he was knowingly facilitating the commission of a preparatory act towards the commission of terrorist act under section 18 of the UAP Act.

34. For the aforementioned reasons the bail application of the Appellant is rejected and consequently the appeal fails. Needless to say, that any observation made hereinabove is only for the purpose of deciding the present bail application and the same shall not be construed as an expression on the merits of the matter before the trial court.”

31. The law of parity would not be applied in the case in view of the decision of the Supreme Court in case of ***Tarun Kumar Vs. Assistant Director, Directorate of Enforcement***³ especially when a specific role appears to have been played by the appellant as a co-conspirator.

32. We are, therefore, not inclined to interfere in the impugned order passed by the learned Special Judge and as such, the appeal is accordingly dismissed.

33. Needless to state that the observations made hereinabove are *prima facie*, only for the purpose of deciding the appellant’s

3 (2023) SCC Online 1486

prayer for bail and as such, the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this judgment.

(PRITHVIRAJ K. CHAVAN, J.) (REVATI MOHITE DERE, J.)