

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL ORIGINAL JURISDICTION**

**CRIMINAL APPEAL NO. 444 OF 2021**

**IN THE MATTER OF:**

FR STAN SWAMY ... APPLICANT/ACCUSED

VERSUS

NATIONAL INVESTIGATION ... RESPONDENT  
AGENCY

**REPLY AFFIDAVIT ON THE BEHALF OF NATIONAL**

**INVESTIGATION AGENCY ("NIA")**

**MOST RESPECTFULLY SHOWETH:**

I, Vikram Khalate, aged 41 years, presently working as Superintendent of Police, National Investigation Agency (NIA), Mumbai - 400026 do hereby state on solemn affirmation as under-

1. That, I have read the contents of the present Criminal Bail Application filed by appellant/accused hereinabove and on the basis of the documents and records available in my office, I am filing the present reply Affidavit *inter alia* placing on record the factual aspect before this Hon'ble Court.
2. That the National Investigation Agency (NIA) is investigating a case vide RC-01/2020/NIA/MUM under Sections 153 (A), 505(1)(B), 117, 120 (B), 121, 121 (A), 124 (A) & 34 of IPC, sections 13, 16, 17, 18, 18(A), 18(B), 20, 38, 39 & 40 of the Unlawful Activities (Prevention) Act, 1967 as per direction of Ministry of Home Affairs, Government of India, CTCR Division Order F. No. 11011/17/2020/NIA dated 24<sup>th</sup> January 2020, relating to 16 arrested accused persons for inciting people and giving provocative presentation and speeches on 31.12.2017 during Elgar Parishad organized by the activist of Kabir Kala Manch at Shaniwarwada, Pune which promoted enmity between the caste groups and led to violence resulting in loss of life and state wide agitation. During investigation it is revealed that the senior leaders of CPI (Maoist) a banned organisation under U. A. (P.) Act were in contact with organisers of Elgar

Parishad as well as the arrested accused persons of the case to spread the ideology of Maoism/Naxalism and encourage unlawful activities.

3. That the above said was registered as case No. 04/2018 dated 08.01.2018 at Vishram Baug Police Station Pune, Maharashtra, under sections 153-A, 505(1)(B), 117, 34 Indian Penal Code against accused persons namely Sudhir Dhawale of Kabir Kala Manch, Sagar Gorkhe & others associates, Harshali Potdar, Ramesh Gaichor, Deepak Dengle, Jyoti Jagtap and other associates.
4. That considering the gravity of the offence and its inter State linkages and implications on national security, the Central Government in exercise of the power conferred by section 6 (5) r/w section 8 of National Investigation Agency Act, 2008 has suo motu directed the National Investigation Agency to take up the investigation of the aforesaid case, vide Ministry of Home Affairs (MHA), Government of India, CTCR Division order F. No. 11011/17/2020/NIA dated 24<sup>th</sup> January 2020. Accordingly, the case was re-registered at NIA Police Station, Mumbai vide RC No. 01/2020/NIA/MUM under section 153 A, 505(1)(B), 117, 34 of Indian Penal Code and sections 13, 16, 18, 18B, 20, 39 of Unlawful Activities (Prevention) Act 1967 for the purpose of investigation.
5. That after receipt of order from the Maharashtra State Government the Pune Police, vide handing over taking over memo dated 19.02.2020, handed over the case papers and records to NIA for further investigation.
6. That it is revealed from the documents received from the Pune Police that Crime No 04/2018 u/s 153-A, 505(1)(B), 117, 34 of Indian Penal Code was registered against accused namely accused) 1) Sudhir Dhawale 2) Sagar gorakhe 3) Harshali Potdar 4) Dipak Dhengale 5) Jyoti Jagtap 6) Ramesh Gaychor and Others by Visharm Baug Police on 08.01.2018, on the basis of the complaint of Shri Tushar Ramesh Damgude.
7. That initial investigation af the case was carried out by Police Inspector Shri Marathe and Shri. Shrikant Shinde from 08/01/2018 To 24/01/2018. Subsequently investigation was entrusted to Shri. Shivaji Pawar, Asst. Commr. of Police, Swargate Div. Pune City as an Investigation officer of the case on 24.01 2018.
8. That during investigation of the case names of two suspects Surendra Gadling, R/o- Nagpur and Rona Wilson, R/o Delhi came forth, hence Investigation officer arraigned them as suspect /accused and invoked the provisions of section 120(B) of the Indian Penal Code by on 06.03.2018
9. On 17.4 2018, the Investigation officer conducted searches at the residences of eight persons, namely, Rona Wilson, at Delhi, Surendra Gadling, at Nagpur, Sudhir Dhavale, at Mumbai, Harshali Potdar, at Mumbai, Sagar Gorakhe, at Pune, Deepak Dhengale, at Pune, Ramesh Gaychor at Pune, and Jyoti Jagtap, at Pune and various computers/ laptops / pen drives memory cards along with other articles were seized.

10. That the articles and material seized during the house search of Rona Wilson, Surendra Gadling, Sudhir Dhavale, Harshali Potdar, Sagar Gorakhe, Deepak Dhengale, Ramesh Gaychor, and Jyoti Japtap were sent to Forensic Science Lab, Pune on 20.04.2018.
11. That the investigating officer received the clone copies of above mentioned seized electronics / digital articles from Forensic Science Lab, Pune of accused Rona Wilson on 23.04.2018 Surendra Gudling on 24.04.2018; Harshali Potdar on 10.05.2018; Ramesh Gaychor on 16.05.2018; Dipak Dhengale on 18.05.2018 and Sagar Gorakhe on 24.05.2018.
12. That the analysis of the clone copies of seized articles revealed the nature of offence being very grave and serious and that it is a larger conspiracy which is not limited to the alleged offence as mentioned in the FIR. The involvement of the left wing extremist spread the scope of the offence not only limited to the State of Maharashtra but including the regions of the country which are affected by the Naxalites Movements. The analysis also confirmed that the accused Surendra Gadling, R/o Nagpur, Rona Wilson, R/o Delhi; Shoma Sen, R/o Nagpur, Mahesh Raut, R/o Nagpur and Gadchiroli; Comrade M. @ Milind Teltumbade (absconding): Comrade Prakash @ Navin @ Rituparn Goswami R/o Assam (absconding), Comrade Manglu (absconding); Comrade Dipu are involved in the Crime whose names were not mentioned in the FIR. During the investigation, the investigation officer invoked the provisions of sections 13, 16, 17, 18, 18(B), 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act on 17.05.2018.
13. That the accused namely Surendra Gadling, R/o Nagpur, Rona Wilson, R/o Delhi; Sudhir Dhawale were arrested on 06.06.2018. Similarly the residences of Shoma Sen R/o Nagpur and Mahesh Raut R/o Nagpur and Gadchiroli were searched. During the house searches Pune Police seized various computers / laptops / pen drives memory cards along with the other articles on 06.06.2018 and also arrested accused Shoma Sen and Mahesh Raut on the very same day.
14. That the articles and material seized during the house search of Shoma Sen and Mahesh Raut were sent to Forensic Science Lab, Pune on 08.06.2018.
15. That the investigating officer received clone copies of seized electronics / digital articles from Forensic Science Lab, Pune of accused Shoma Sen and Mahesh Raut on 13.06.2018.
16. That the analysis of clone copies of electronics/digital articles revealed the involvement of more accused namely Vara Vara Rao R/o Hyderabad; Arun Ferreira, R/o Thane, Maharashtra; Vernon Gonsalves, R/o Mumbai; Sudha Bharadwaj, R/o Faridabad Gautam Navlakha, R/o New Delhi ; Anand Teltumbade, R/o Goa; Stan Swamy, R/o-Ranchi. Hence the investigation officer added their names as accused in the case on 23.08.2018.
17. That on 28.08.2018 searches were conducted at the residences / workplaces of Varavara Rao in Hyderabad, Sudha Bharadwaj in Faridabad, Arun Ferreira and Vernon Gonsalves in Mumbai, Gautam Navlakha in Delhi, and Stan Swamy in Ranchi. Further, Pune Police

arrested Varavara Rao, Sudha Bharadwaj, Gautam Navlakha, Arun Ferreira and Vernon Gonsalves on 28.08.2018 and put them under house arrest.

18. That on 15.11.2018 Pune Police filed chargesheet under Sections 153 (A), 505(1)(B), 117, 120 (B), 121, 121 (A), 124 (A) & 34 of IPC and Sections 13, 16, 17, 18, 18(B), 20, 38, 39 & 40 of the Unlawful Activities (Prevention) Act, 1967, against five arrested accused persons namely Sudhir Dhawale., Surendra Gadling, Shoma Sen, Mahesh Raut, Rona and five absconding accused persons namely Kishan da @ Prashanto Bose, Milind Teltumbde, Prakash @ Ritupan Goswami, Deepu, Manglu.
19. Subsequently, on 19.02.2019 Pune Police filed Supplementary Charge sheet under sections 153 (A), 505 (1)(B), 117, 120 (B), 121, 121 (A) 124 (A) & 34 of IPC and section 13, 16, 17, 18, 18 (B), 20, 38, 39 & 40 of the Unlawful Activities (Prevention) Act, 1967 against Varavara Rao, Arun Ferreira, Vernon Gonsalves and Sudha Bharadwaj and one absconding accused namely Ganapathy @ Mupalla Laxman Rao.
20. That after receipt of the documents, NIA vide application dated 21.03.2020 reported the court regarding addition of Sections 120 (B), 121, 121 (A) & 124 (A) of IPC and Sections 17, 38 & 40 of the Unlawful Activities (Prevention) Act, 1967 in the FIR re-registered by NIA vide RC-01/2020/NIA/Mum.
21. That as per the order of Hon'ble Supreme Court of India dated 08.04.2020, the accused Anand Teltumbde surrendered before National Investigation Agency, Mumbai Branch office and the accused Gautam Navlakha surrendered before the National Investigation Agency, New Delhi on 14.04.2020.
22. That the accused Anand Teltumbde was arrested by the National Investigation Agency, Mumbai and the accused Gautam Navlakha was arrested by National Investigation Agency, New Delhi on 14.04.2020.
23. That during the investigation of the case, NIA arrested the accused Hany Babu Musaliyarveetil Tharayil on 28.07.2020. Further NIA arrested FIR named accused Ramesh Gaychor and Sagar Gorkhe on 07.09.2020, Jyoti Jagtap on 08.09.2020 and Stan Swami on 08.10.2020.
24. That investigation officer has filed Supplementary chargesheet against accused persons namely (1)Anand Teltumbde @ AT S/o. Bapurao Teltumbde (**A-10**) (2) Gautam Navlakha @ Darbar @ G @ S/o. Late Pratap Singh (**A-11**) (3) Hany Babu Musaliyarveetil Tharayil @ HB @ Venkat (**A-12**) (4) Sagar @ Yogesh S/o. Tatyaram Gorkhe (**A-13**) (5) Ramesh @ Akash S/o. Murlidhar Gaichor (**A 14**) (6) Jyoti @ Vaishali d/o Raghobha Shankar Jagtap (**A-15**) (7) Stan Swamy S/o Late Lourdu Swamy (**A-16**) (8) Milind Teltumbde (**WA-1**) under sections 153 (A), 505 (1)(B), 115, 120 (B), 121, 121 (A), 124 (A), 201 & 34 of Indian Penal Code and sections 13, 16, 17, 18, 18(A), 18(B), 20, 38, 39 & 40 of the Unlawful Activities (Prevention) Act, 1967, on 09.10.2020.

25. Before advertng to the paragraph wise reply in the instant case, I seek kind leave and pray to this Hon'ble Court to kindly take into consideration the true facts and circumstances as stated hereinabove at paragraph nos. 01 to 24 of this affidavit in-opposition / reply.

**Para with reply:**

26. That save and except what are matters of record or specifically admitted hereinafter all statements, allegations and / or contentions contrary thereto and / or inconsistent therewith are denied and disputed as if the same were hereinafter set out And traversed seriatim.

27. In reply to the contents of paragraph no.01 of the Appeal, it is Submitted that it is a matter of record and need no reply.

28. In reply to the contents of paragraph nos. 02 to 04 of the Appeal, it is stated and submitted that the contents are denied in-toto and the petitioner be put to strict proof of facts as stated therein.

29. In reply to the contents of paragraph nos. 5(i) and 5(ii) of the Appeal, the contents therein being formal in nature, hence, needs no reply.

30. In reply to the contents of paragraph nos. 5(iii) to 5(xxi) of the Appeal, are denied and disputed, however, the correct factual matrix is referred to in the preceding paragraphs of this affidavit in reply at paragraph no. 02 to 24, which may kindly be relied in reply to the averments/ contentions/ allegations of the appellant / accused.

31. In reply to the contents of paragraph nos. 6 of the Appeal, it is stated and submitted although the Appellant / accused has filed alleged medical documents; the same are not conclusive proof of alleged Parkinson disease. Moreover, the said medical documents which are disputed except document dated September 24<sup>th</sup>, 2019, at page No. 25 of the Appeal, herein are of a prior date i.e., more than one year old reports. As such it is, categorically submitted that, the Appellant /accused be put to strict proof of facts as alleged in the said documents.

32. In reply to the contents of paragraph nos. 7 & 8 of the Appeal, it is a matter of record, however it is categorically submitted that the Ld. Special NIA Court, Mumbai, has rightly, validly and after proper application of judicious mind, after having satisfied the directives issued by the High Power Committee of the Hon'ble High Court in respect of Covid-19 management in prisons, and considering the appropriate medical treatment given to the Appellant / accused has rejected the bail application. Moreover it was also rightly considered and observed by the Special Court that the present appellant/accused was/in not suffering from any sort of ailments as alleged in his bail petition. It is, also, rightly observed by the Ld. Special Judge that the Prison Authorities have adequate facilities available for the medical management of the alleged diseases.

**Ground wise reply:**

33. That save and except what are matters of record and specifically admitted hereinafter all statements, allegations and / or contentions contrary thereto and / or inconsistent therewith as mentioned in the **grounds (i) to (xxiv)** of the Appeal, are denied and disputed as if the same were hereinafter set out and traversed seriatim.
34. In reply to the ground No (i) to (iii) of the Appeal, the contents therein are absolutely false and baseless, hence denied the same. It is, humbly submitted that, the accused was arrested for the offences committed by him for his direct involvement in the present crime.
35. In reply to the ground No (iv) of the Appeal, the contents therein are true as there was ample evidence against the appellant/accused at the time of his arrest as such no police custody was sought.
36. In reply to the ground Nos. (v), (vii), (viii), (ix) and (xi) of the Appeal, it is stated and submitted that the averments, allegations, and the contents therein are denied. However this Hon'ble Court may kindly put the appellant to strict proof of facts.
37. In reply to the ground No. (vi) of the Appeal, it is stated that the same being formal in nature, hence, needs no reply.
38. In reply to the ground No. (x) of the Appeal, it is humbly stated and submitted that of the Respondent has preferred to challenge the impugned judgment and Order dated February 22<sup>nd</sup>, 2021 passed by this Hon'ble Court in the case of, Dr. P.V. Varavara Rao Versus National Investigation Agency, in CrI. Appeal No. 52/2021, before the Hon'ble Supreme Court of India. The filing of Special Leave Petition (Criminal) against said Judgment and Order is under process.
39. In reply to the ground No. (xii) of the Appeal, it is stated and submitted that with respect to 200 relied prosecution witnesses and alleged thousands of pages relied upon documents in the charge-sheet, pruning would be done during the trial with the permission of the Ld. Special Court to save the valuable time of the court below. It is, further humbly submitted that the trial is required to be commenced shortly in view of the mandate of section 19 of the National Investigation Agency Act, for which the kind intervention of this Hon'ble High Court in expediting the proceedings, is highly crucial and necessary at this stage, in the interest of justice, of this instant case.
40. In reply to the ground No. (xiii) of the Appeal, it is stated that the contents therein are false, hence, are denied and disputed. It is submitted that an application (**Annexure -1**) has been moved before the trial court seeking clone copies / comparison of electronic evidence of the NIA by the Counsel for the accused persons. It is further submitted that the Ld. Special Judge has passed an order (**Annexure-2**) on the said application directing the concerned counsel for the accused person to visit NIA office for the same. It is further submitted that the concerned counsels for the accused persons has visited the office of the

NIA in the same regard. Accordingly, the reports have been filed by the NIA and the counsel for the accused persons (*Including the counsel for the accused Stan Swamy*), respectively (**Annexure-3 & 4**). It is further submitted that the clone copies in respect of electronic evidence seized from the accused Stan Swamy was sent to Regional Forensic Science Laboratory (RFSL), Pune, to obtain another clone copy (**Annexure-5**), in a sealed condition, as the clone copies which were available with NIA were in open seal condition, It is further submitted that recently the clone copies were sent by the RFSL, Pune May 06<sup>th</sup> , 2021, to NIA which will be filed in the Ld. Special NIA Court, and will be provided to the applicant accused along with additional evidences, in due course.

41. In reply to the ground No. (xiv) of the Appeal, it is stated that the contents therein being formal in nature, hence, needs no reply.
42. In reply to the ground No. (xv) of the Appeal, it is stated that the contents, allegations made in the said para are hypothetical, and that the custody of the appellant/accused is validly sanctioned as per the mandate of the Special Acts by the Learned Court below. Hence, by no stretch of imagination the custody of the appellant/accused is pre-incarceration and punishment thereof.
43. In reply to the ground No. (xvi) of the Appeal, it is stated that the contents, allegations therein are untrue and the appellant/accused herein be put to the strict proof of the same.
44. In reply to the ground No. (xvii) and (xvii) of the Appeal, it is humbly stated and submitted that the case laws / citations as mentioned therein does not apply to the facts of the present case. The present case stands on a different footing and is governed by the mandate of section 43(D) of the UA (P) Act and the Code of Criminal Procedure.
45. In reply to the ground No. (xix) of the Appeal, it is not a disputed fact about the observation of the Hon'ble Court as stated therein. However, by a catena of judgments by the various Hon'ble High Courts and the Hon'ble Supreme Court of India, it has been observed and held as a principle that, the matters pertaining to the Special statutes are to be considered as per the pithily of the mandate of the said laws.
46. In reply to the ground No. (xx) and (xxi) of the Appeal, the reply at paragraph no. 30 of this affidavit-in-opposition / reply may kindly be considered. It is categorically submitted that the citation relied by the respondent has a bearing on the subject matter, which was rightly considered by the Ld. Special Court while rejecting the bail petition.
47. In reply to the ground No. (xxii) of the Appeal, it is stated and submitted that the constitutional rights, human rights, fundamental rights and other legal rights are available to persons, who are law abiding citizens and duly comply with the fundamental duties as enshrined in the Constitution of India and other applicable laws. The appellant / accused is charged for commission of heinous and serious offences under the provisions of Indian Penal Code and the Unlawful Activities (Prevention) Act, hence, the alleged human rights as claimed therein was curtailed by the Ld. Special Court as per the procedure established by law, which is enshrined in Article 21 of the Constitution of India.

Therefore. the appellant / accused cannot claim violation of any rights including human rights or other rights.

48. In reply to the ground No. (xxiii) of the Appeal, it is stated and submitted that the custodial interrogation of the appellant / accused was not required at the relevant time, since, the facts and circumstances and related evidences against said accused had been, duly established during investigation. It is, categorically submitted that if the appellant / accused, is granted bail, he would escape from the law and also tamper with the evidences on record, influence / gain over the prosecution witnesses, and as such will result in hampering of the trial proceedings. Hence, this Hon'ble Court may outrightly reject the prayer of appellant / accused for interim bail on medical grounds.
49. In reply to the ground No. (xxiv), it is stated and submitted that the High Power Committee of this Hon'ble Court has already observed and given a direction that prisoners covered under Special Acts have to remain in custody. Moreover, all the best of medical facilities are being provided by the concerned jail authorities to the Appellant / accused during his judicial custody period. That the appellant / accused cannot seek his alleged release on the backdrop of COVID-19 pandemic. It is humbly stated and submitted that there is no provision of Interim Bail in the UA(P) Act or the Code of Criminal Procedure. Appellant / accused is trivializing the subject matter and tries to shift the focus from factual aspects and legal aspect on the medical grounds, so as to deviate the Courts from the course of justice.
50. **Additional Points on behalf of the National Investigation Agency / Respondent herein, in opposition to the Appeal may kindly be considered by this Hon'ble Court, as under;**

It is submitted at the cost of repetition that, the direct involvement in the commission of offences under the I.P.C. and UA (P) Act by the appellant / accused are heinous and grave in nature supported by crucial and valid evidences filed by the National Investigation Agency in respective final reports (charge-sheets). Moreover, the plain and purposive interpretation of said statutes read with the provisions of the National Investigation Agency vide a catena of Judgments by the Hon'ble Supreme Court of India and various Hon'ble High Courts across the country, have observed and held that on existence of Prima-facie materials against accused person(s) charged with commission of offences under Chapter (IV) and (VI) of the UA(P) Act, or in other words when there are sufficient incriminating materials on record which reflects about the prima facie involvement of accused in alleged offence, will carves a special power, function and duty on the Hon'ble Special Courts and higher Courts i.e. not to enlarge accused on bail, even if accused person is behind the bars or delay in completing the trial; hence, these aspects cannot be a ground for enlarging accused on bail. (Emphasis added). In support of this contention the respondent would like to rely on the following citation mentioned as under;

*In the matter of Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Hari Nath Bhattacharya @ Aseem Kumar Bhattacharya Versus National Investigation Agency (NIA), CRA No. 209 of 2020; decided on March 15<sup>th</sup>, 2021*, the Division bench of the



Hon'ble High Court of Calcutta presided by his Hon'ble Chief Justice finally decided criminal appeal under section 21 of the National Investigation Agency Act, and it was observed and held by, which is reproduced for the sake of convention of this Hon'ble Court, here as under;

7. *We see from the materials papers as well as submissions made by the Learned Senior Counsel for the appellant and the submissions made by the Learned Additional Solicitor General that during the course of proceedings, there were even proceedings being carried to the High Court either challenging the proceedings or seeking other orders. This Court had also called for records at some point of time. As of now, the trial has commenced. There is nothing on record, which would indicate that the National Investigating Agency or the prosecutor could be attributed with having contributed to delay in the trial. We also see from the material papers that the sixth accused, on whose behalf this appeal is filed, had himself changed his Advocate appearing for him before the Special Court on occasions more than two. The records also disclose that the appellant, even during the course of proceedings where interlocutory matters were taken up or the accused persons were produced and subjected to judicial authority, the appellant had conducted himself in such manner which discloses that he was not appropriately cooperating with the judicial process. We make this observation on the basis of some of the judicial orders of the Court below which are part of the material papers before us. Exchange of words in the open Court by the appellant/sixth accused even as against the lawyer appearing for him, that too interfering and disturbing the court is not something to be countenanced that though it is something that weighs with us while considering this application for bail, where we stand advised by the decisions of the Hon'ble Apex Court referred to in the case of **Union of India-vs-K.A. Najeer reported in 2021 SCC Online SC 50 and Rajesh Ranjan Yadav @ Pappu Yadav-vs-CBI through its Director reported in (2008) Cr. L. J. 1033.***

8. *On the plea to set aside the order of the NIA Act refusing bail to the appellant - accused no. 6, on a comprehensive consideration of the materials on record and having in mind the decisions of the Apex Court; and examining the quality of the order passed by the Special Court refusing bail, we are of the opinion that the age of the appellant and the period of detention in jail for more than nine years by themselves do not persuade us to take a different view than that which has taken by the Special Judge. For the aforesaid reasons, this appeal against the order of the Special Court and the plea before us for grant of bail are liable to be rejected.*

9. *On the basis of the submissions on either side and the material papers before us, we see that all that is required to secure the ends of justice is to ensure that speedy trial happens in terms of mandate of the statutory provisions contained in the NIA Act. We say this because Section 19 of the NIA Act provides that a trial by Special Court to have precedence. It lays down that the trial under the NIA Act of any offence by a Special Court shall be held on day-to-day basis on*

*all working days and have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other cases shall, if necessary, remain in abeyance.*

*10. Even if the Special Court so constituted may have on its board other matters under other laws including penal laws, precedence has necessarily to be given to the cases relating to offences punishable under the different enactments which fall within the Schedule of the NIA Act. This pithily is the legislative mandate in Section 19 of the NIA Act.*

*11. Having regard to the contents of Section 19 of the NIA Act as noted and adverted to by us hereinabove, we direct the Court below to be guided by Section 19 of the NIA Act and ensure top priority for trial of this NIA case and any other cases which may be before it in terms of the rule of priority contained in Section 19 of the Act. This means that the Court below will try such cases on day-to-day basis. On every day NIA cases will be treated as the top priority. It is for that Court to decide as to how it has to manage its board though we may, being the Court with supervisory jurisdiction, indicate that the Learned Judge may consider scheduling this case for trial on every day, may be in a particular time slot so that it gets priority in conformity with the legislative mandate contained in Section 19 of that Act.*

*12. We record the submission of the learned Additional Solicitor General supported by the prosecutor for NIA that the matter may be taken up by the Trial Court from 2.00 p.m. to 4.30 p.m. and further that the matter shall be taken up and proceeded with on a day to day basis.*

*13. The appeal being CRA 209 of 2020 is accordingly dismissed*

51. In the matter of State Vs. Jaspal Singh Gill, **1984 AIR 1503**:- the Hon'ble Apex Court observed that applicant therein having been involved for the offences punishable under sections 3, 5 and 9 of the official secrets Act, 1923, read with sections 120-B of the IPC should not have been enlarged on bail in the larger interest of the State through the respondent Jaspal Gill in that case was a person who had undergone a cardiac operation and required constant medical attention.

52. In the matter of Sadanala Ramakrishna & Ors. Vs. National Investigation Agency, **CRA no. 197 of 2014, decided on August 26<sup>th</sup>, 2016**:- the Hon'ble Calcutta High Court observed and held that,

28. These observations having been made by a Coordinate Bench on similar legal points, we do not find any reason to take a contrary view. The orders granting sanction to prosecute the present appellants were issued in the name of the President of India. It was also submitted on behalf of the NIA that the Chief Investigation Officer of this case is one Vikas Vaibhav, holding the rank of

superintendent of Police, which is above the rank of Assistant Commissioner of Police. The officers below the rank of Assistant Commissioner of Police who recorded some of the witness statements were under the command authority, supervision and control of the Chief Investigation Officer. Now turning to the allegations against the appellants, we do not think we can go through the evidence disclosed at this stage in the Case Diary with a fine toothcomb. There are materials prima facie showing involvement of the appellants in the offences alleged against them, and in our opinion formed on the basis of materials disclosed in the Case Diary that such allegations are prima facie true. Mr. Ghosal had relied on certain authorities to demonstrate that factors which could constitute prima facie case. We do not consider it necessary to refer to these authorities, as we have formed this prima facie opinion on the basis of materials disclosed in the Case Diary. We also do not consider it necessary in these appeals to further refer to the authorities cited by Mr Ghosal on the point that there ought to be purposive construction of statutory provisions in cases where plain meaning can lead to more than one interpretation. We do not think having regard to the provisions of Section 43D(5) of the 1967 Act, the appellants can be enlarged on bail at this stage. We are apprised by the learned counsel for the appellants that the case has reached the stage of framing of charge. We do not think there is any error in the three orders appealed against in these three appeals under these circumstances. These appeals shall accordingly stand dismissed and the orders passed by the learned First Court are sustained.

53. It is humbly submitted that prima facie case is made out and that there is clinching evidence available on record and accordingly charge-sheet is filed against the accused Stan Swamy.

54. It is humbly submitted that the charge-sheet and the available material on record clearly established the prima facie role of the accused Stan Swamy. Therefore in view of Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, the accused is not entitled for any bail. The said section reads as under:

43D(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or his own bond unless the Public Prosecutor has been given an opportunity of being heard or the application for such release:  
Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person are prima facie true."

55. In the case of Mohammed Nainar reported in **2011 CrI L.J . 1729**, the Kerala High Court interpreted and examined the provisions of section 43D(5) of the UA(P) Act and held that, nature of charge is a vital factor and the nature of evidence is also pertinent in considering the question of bail.

11. \*....we find that granting bail by imposing conditions, we may not be able to secure the presence of the appellants to face trial and receive sentence or to prevent the appellants, if released on bail, from interfering with the prosecution witnesses or intercepting with the process of justice. Therefore, imposing conditions may not yield any effect. The trial court was justified in declining to grant bail. We find no reason to interfere with."

56. In the case of Jayanta Kumar Ghosh Vs NIA, State of Assam, reported in **2010 GLT Guwahati High Court**. It was held that there exists reasonable grounds for believing that the accusations, made against the accused persons of having committed offences under Chapter IV and Chapter VI of the UA(P) Act, are prima facie true and also material, giving rise to a reasonable belief, (at this state and tentatively), that they have committed offence under sections 120B, 121 and 409 read with section 120B of the IPC, not be allowed to go on bail, when statues, as discussed above, disempower the court from releasing them on bail and when there is no other ground, which would have, otherwise, entitled them to go on bail.

57. In the Case of Sanjay Chandra Vs Central Bureau of Investigation case, the Supreme Court of India has specifically held that the court has to consider the nature of gravity of charges and reasonable belief that the accused has committed the offence.

As observed by the Apex Court, it is obligatory on the part on the part of the court to consider seriousness of the allegations against the accused while admitting him/her on bail.

58. That the Appeal filed by the appellant / accused is nothing but similar to a bail application for the release on medical ground. Since, the appellant / accused has challenged the rejection of the bail application by the Hon'ble Special Court by way of another appeal is already pending before this Hon'ble Court and the present Appeal is nothing but the abuse of the due process law. It is humbly submitted that the respondent crave leave of this Hon'ble Court to read the reply affidavit to be filed in Criminal Appeal No. 423/2021 filed by the respondent herein as part and parcel of this reply. It is humbly submitted that this Hon'ble Court may if necessary club the hearing of both the Appeals filed by the appellant / accused.

59. It is humbly submitted that it is a standard strategy and practice of the accused persons in the present case who adopt deceptive methods and by relentlessly filing petitions consistently against the agency on the cost of judicial time.

60. That the grounds raised in the present Appeal are not a cogent and valid grounds much less a legal ground, as such the same is devoid of merits and liable to be dismissed.

## **PRAYER**

The Appeal is barred by limitation and the accused / Appellant is not entitled for any relief. **There is prima facie true case against the accused for commission of the offence under chapter IV and VI of the UA(P) Act and therefore, the Appellant is not entitled for any bail under section 43D(5) of UA(P) Act.** It is therefore prayed, that Hon'ble Court may graciously be pleased to out rightly dismiss the present Appeal, in interest of justice.

61. I say that, this Affidavit has been executed by me and whatever stated hereinabove is true and correct to the best of my knowledge and belief.

**Solemnly affirmed at**

Place: Mumbai

Date: /05/2021

**DEPONENT**

**(Vikram M. Khalate, IPS),**  
Superintendent of Police,  
NIA, Mumbai