

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL BAIL APPLICATION NO.1536 of 2012**

Dhawala Rama Dhengale ... Applicant  
versus ...  
The State of Maharashtra ... Respondent

**WITH**

**CRIMINAL BAIL APPLICATION NO.1634 of 2012**

Siddharth Bhagwan Bhosale ... Applicant  
versus ...  
The State of Maharashtra ... Respondent

**WITH**

**CRIMINAL BAIL APPLICATION NO.1692 of 2012**

Mayuri Panjabrao Bhagat & Anr ... Applicants  
versus ...  
The State of Maharashtra ... Respondent

...

Mr.Mihir Desai i/b Mr.Vijay Hiremath, Advocate for the applicant in  
BA No.1536/12.

Ms.Maharukh Adenwala i/b Mr.Vijay Hiremath, Advocate for the  
applicants in BA No.1634/12.

Ms.Sharmila Kaushik with Ms.Susan Abraham, Advocates for the  
applicants in BA No.1692 of 2012.

Ms.Rohini Salian, Special P.P with Mr.Y.S.Shinde, APP for the State.

**CORAM : ABHAY M. THIPSAY, J.**  
**RESERVED ON: 11 DECEMBER 2012**  
**PRONOUNCED ON: 31<sup>st</sup> JANUARY 2013**

**ORAL ORDER:**

1            These three applications can be conveniently disposed of by this common order, as the applicants in all these applications are accused in one and the same case i.e. Sessions Case No.655 of 2011, pending before the Addl. Sessions Judge at Sewree, Mumbai. The applicant Dhavala K. Dhengle (Bail Application No.1536/12) is the accused no.7 in the said case. The applicant Siddharth Bhosale (Bail Application No.1634 of 2012) is the accused no.6 in the said case. The applicants Mayuri Bhagat and Anuradha Sonule (applicant nos.1 and 2 respectively in Bail Application No.1692/12) are the accused no.3 and accused no.5 respectively in the said case. The case is in respect of offences punishable under section 387 IPC, 419 IPC, 465 IPC, 467 IPC, 468 IPC, 471 IPC read with section 120B IPC and also in respect of offences punishable under section 10, 13, 17, 18, 18A, 18B, 20, 21, 38 39 40(2) of the Unlawful Activities (Prevention) Act 1967, as amended upto 2008 (hereinafter referred to as 'the UAP Act'). There are totally seven accused who have been arrested in the case, so far, and eight more are said to be 'absconding' and 'wanted'.

2 The applicants are alleged to be members of the 'Communist Party of India(Maoists)' which is a terrorist organization. The Central Government has declared it to be so by a notification on 22 June 2009 whereby the said Organization was enlisted in the schedule appended to the said Act.

3 Two accused in the said case – Ms.Jyoti (Accused no.4) and Ms.Sushama (Accused no.2) – have already been released on bail by me. (Bail Applications No.1020/12 of 1066/12, both decided by a common order dated 3 October 2012)

4 I have heard Mr.Mihir Desai, learned counsel for the applicant in BA No.1536/12, Ms.Maharukh Adenwala, learned counsel for the applicant in BA No.1634/12, Ms.Sharmila Kaushik, learned counsel for the applicants in BA No.1692 of 2012 and Ms.Rohini Salian, learned Special Public Prosecutor with Mr.Y.S.Shinde, learned APP for the State.

5 I have gone through the application, the annexures thereto and the relevant parts of the charge-sheet, to which my

attention was drawn by the learned counsel for the applicants and by the learned Special Public Prosecutor.

6 The State has filed counter affidavits in all these Bail Applications. I have taken into considerations the contents thereof.

7 The substance of the allegation against the applicants is that they are members of a terrorist organization i.e. '*Communist Party of India(Maoists)*'. It is alleged that they were aware of the activities of the said terrorist organization, and had knowingly associated themselves with the said organization, and the persons who are allegedly indulging into terrorist acts for furthering the aims and objects of the said terrorist organization.

8 On behalf of the applicants, it is submitted that there is no *prima facie* case against them. It is pointed out that admittedly, the applicants are not shown to be – or even alleged to be – involved in any acts of violence or any terrorist act. It is submitted that the material found in the charge-sheet is, *prima facie*, itself unreliable and unacceptable. It is submitted that the applicants' case is on par with other two accused i.e. accused no.4 - Jyoti and

accused no.2 - Sushma who, as aforesaid, have been released on bail by me.

9            Though the applications are being disposed of by a common order as some of the features of the matter are common, and some of the issues are the same, the nature of material against each applicant being different, the case of each applicant needs to be discussed separately.

10           So far as the applicant Dhavala K. Dhengale (Bail Application No.1536/12) is concerned, he was arrested by the Anti Terrorism Squad (ATS) Pune Unit on 13 May 2011, and was handed over to ATS, Mumbai. In his personal search, a mobile telephone hand set, a money purse containing Rs.110/-, a driving licence and an ATM card was found. On 15 May 2011, pursuant to some information given by the applicant Dhavala, the police and panchas were led to a shed in a garden and certain documents were recovered from there. These documents are alleged to be incriminating and the claim is that they show that the applicant Dhavala is a member of the said terrorist organization. On 28 May 2011, office locker of the applicant Dhavala at PMT Vehicle Depot

Office at Pune was searched by breaking the same open, and certain documents including the applicant's Pan card, some CDs, books and letter pads of '*Kabir Kala Manch*' (कबीर कला मंच). As the applicant Dhavala volunteered to state certain facts, he was produced before a Magistrate. He confessed before the Addl.Chief Metropolitan Magistrate, 2<sup>nd</sup> Court, Mazgaon, Mumbai which confessional statement came to be recorded under section 164 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for the sake of brevity). In his confession, applicant Dhavala *inter alia* stated that he had on two occasions, provided place – his house at his native place – for holding meetings organized by the leaders / members of the '*Communist Party of India(Maoists)*.' This confessional statement was subsequently retracted by applicant Dhavala.

11           So far as the applicant Siddharth (Bail Application No.1634/12) is concerned, it is on the basis of some information that he came to be arrested on 28.4.2011 at Chandavad Lasalgaon Road while he was travelling in a motor tempo. His personal search, taken in the presence of panchas, revealed that he was in possession of one Nokia mobile telephone hand set, cash of

Rs.516/-, one more sim card, voter identity card, Pan cards and one college identity card and one memory card. It was revealed that he was staying in a rented house at Shivneri Nagar, and the search of his house, taken on 29 April 2011, resulted into seizure of various books written by different authors. That, on 30 April 2011, the applicant disclosed certain information and led the police and panchas to a room at Sant Gajanan Nagar, Bhosri, which room was allegedly being used as a 'hideout house', and as a 'Den' of the 'Communist Party of India (Maoists)'. One CPU, two pen-drives, two portable hard discs, five memory cards, internet connection equipment, rexin bag containing 184 CDs/DVDs and five floppies, hand written letters, note books, photo albums and cash of Rs.1,10,000/- etc. was seized from the said room. In the course of investigation, on 30 April 2011, one person produced certain books which allegedly had been handed over to him by the applicant. These books were taken charge of under a panchnama. It was also revealed that one lady of about 40 years had come to visit applicant Siddharth twice at the said room in Sant Gajanan Maharaj Nagar. According to the Investigating Agency, this lady is the main accused Angela Sontakke – Accused no.1. That, the CDs, DVDs seized from the room of the applicant Siddharth contained provocative

literature of Communist Party of India (Maoists) etc, and it is alleged that the same indicated that applicant Siddharth was an 'important activist' in the said banned organization. Apart from this, the confession of the co-accused Dhavala (applicant in BA No.1536/12) states that applicant Siddharth had participated in the meeting which the said confessing applicant Dhavala had permitted to be held in his house.

12 So far as applicant no.1 Mayuri and applicant no.2 Anuradha (Bail Application No.1692/12) are concerned, Mayuri came to be arrested on the basis of the information received. A trap was laid by the ATS Pune Unit on 27 April 2011 and the applicant Mayuri and the accused no.4 Jyoti were apprehended. Mayuri was possessing a blue colour back pack travel bag which contained four mobile hand sets with sim cards, mobile battery, mobile charger, ear phone, three passport size photos, pocket diary, purse containing some letters, book written by different authors, publicity material and propoganda literature of the '*Communist Party of India (Maoists)*', cash of Rs.1,90,000/-, PMT bus pass, pan card in the name of Smita Suresh Shinde having photograph of the accused no.5 Anuradha Sonule (applicant no.2 in B.A. No.1692 of 2012) etc.

Some other booklets and material showing her connection with the 'Communist Party of India (Maoists)' was also found with the applicant Mayuri. In the search of her house, various books written by different authors, publicity material/provocative literature of the Communist Party of India (Maoists), some pen drives, a pan card in a bogus name having photograph of the applicant Mayuri, was found.

So far as applicant no.2 Anuradha is concerned, she was residing in the assumed name of Aditi at Bhosri Pune with the applicant no.4 Jyoti Chorge. She was found on 28.4.2011 and arrested on 29.4.2011. It was revealed, during investigation that applicant Anuradha had been taking part in NSS camps, and had organized street plays (पथनाटय) and dramas which were, allegedly, 'full of communist ideology' and 'instigative' against Government.

13 It is clear that none of the applicants has allegedly resorted to violence. It is clear that none of the applicant is alleged to have handled some weapons or explosives. There is no charge of an offence punishable under section 16 of the UAP Act. ie. none of the applicants is alleged to have committed a terrorist act. There is

no allegation that the applicants, or any of them, had conspired to commit any particular act or acts of violence, or had instigated anyone to commit a particular or specific violent act, or offence.

The basic allegation against the applicants is that they are all members of a terrorist organization. i.e. Communist Party of India (Maoists). It is also alleged that the *applicants were fully aware of the activities of the said terrorist organization, and had knowingly associated (themselves) with, and assisted the persons resorting to violent activities pursuant to the objectives of the said terrorist organization.*

14 Ms.Rohini Salian, Special Public Prosecutor submitted that she had already advanced her arguments while dealing with the Bail Applications filed by the accused no.4 Jyoti and Accused no.2 Sushama, who as aforesaid were released on bail by this Court (Bail Application No.1020/12 and 1066/12). She submitted that since a particular view has been taken by this Court while dealing with the said Bail Applications, turning down some of the contentions advanced by her at that time, she would not repeat the same arguments all over again. She, however, submitted that the

view taken by this Court is *'under the process of being challenged before the Apex Court'*. She highlighted the ideology and philosophy of the Communist Party of India(Maoists) and claimed that it was dangerous and was *'destroying the nation'*. She submitted that she had earlier argued that under the provisions of the UAP Act, the mere association with the members of the said Organization and the mere possession of the literature/material propagating the philosophy or ideology of the said organization amounted to an offence. She submitted that *'the view taken by this Court while dealing with the said applications filed by the accused no.4 Jyoti and Accused no.2 Sushma viz.that mere membership of a banned organization was by itself not criminal unless the accused resorts to violence or incites people to violence, was being challenged before the Hon'ble Supreme Court of India'*. She referred to the following observations made by this Court in the said order :

*"That the possession of certain literature having a particular social or political philosophy would amount to an offence, though such literature is not expressly or specifically banned under any provision of law, is a shocking proposition in a democratic country like ours"*

and submitted that this view is not acceptable to the State; but that in view of the said observations, she would not again raise the same contentions that had been raised by her while opposing the said Bail Applications.

15 The learned Special Public Prosecutor made no attempt to distinguish the case of any of the present applicants from that of the Accused no.4 Jyoti and Accused no.2 Sushama; and at any rate, did not attempt to show that the material available against any of the present applicants was different or more serious and more incriminating, than that was available against the Accused no.4 Jyoti and Accused no.2 Sushma.

16 Though much has been said about the aims and objects of the '*Communist Party of India(Maoists)*' a discussion on what is the philosophy of the said organization need not be undertaken, as, that it has been declared as a terrorist organization, is not in dispute.

17 It cannot be said that the applicants have, or any of them, has no connection at all with any members of the Communist Party of India(Maoists). It is contended by the learned counsel for the applicants that the material collected against the applicants is not reliable, and that the same has been concocted and ought to be rejected. However, it is not possible to accept this contention inasmuch as the material collected during investigation has to be taken at the face value at this stage. The real question is '*what is the effect of the material that is available against the applicants, or any of them, and whether such material makes out a prima facie case of the alleged offences against them, or any of them*' What needs to be seriously considered in this context is what has actually been made criminal and punishable by the UAP Act.

18 The UAP Act was substantially amended by Act XXXV of 2008. Several drastic provisions were introduced by the said amendment. Sub-section (5) of section 43D of the UAP Act curtails the discretion available to the Courts in the matter of grant of bail to a great extent. The offences punishable under section 17, 18, 18A, 18B, 20, 21, 38, 39, 40(2) of the UAP Act are of a serious nature, and come within the prohibition imposed by sub-section (5)

of section 43D of the UAP Act. The most serious charge against the applicants is of an offence punishable under section 20 of the UAP Act, which reads as under:-

19 Section 20 of the UAP Act reads as under:-

**20. Punishment for being member of terrorist gang or organization :**

Any person who is a member of a terrorist gang or a terrorist organization, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

20 Indeed, the section is widely worded. It lays down that a mere membership of a terrorist gang or organization which is involved in terrorist act would invite punishment: and that too, a drastic punishment inasmuch as the imprisonment that can be awarded for being a member of such a gang or organization, can be for life. Grant of bail to a person arrested on such a charge would be difficult in view of the provisions of sub-section (5) of section 43D, as the discretion available to the Courts is curtailed thereby.

21 Because of these drastic provisions, the concept of 'membership' that has been contemplated in section 20 and incidentally, in section 38 needs to be carefully considered, and properly interpreted in the light of Article 19 of the Constitution of India.

22 Article 19 of the Constitution, *inter alia*, protects the following rights of citizens:

- (a) to freedom of Speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions.

23 Undoubtedly, Article 19(2) empowers the Parliament to impose, by law, *reasonable restrictions on these rights in the interests of sovereignty and integrity of India*. Section 20 has been enacted as and by way of *reasonable restriction* on the aforesaid freedoms and rights, guaranteed by the Constitution. Inasmuch as the said clause imposes restrictions on the aforesaid freedoms and rights, the interpretation thereof has to be in consonance with the constitutional values and principles, and the concept of membership

contemplated by the said section, is required to be interpreted in the light of the aforesaid freedoms and rights.

24 It follows that viewed from this angle, the membership of a terrorist gang or organization as contemplated by section 20, cannot be a passive membership. It has to be treated as an active membership which results in participation of the acts of the terrorist gang or organization which are performed for carrying out the aims and objects of such gang or organization by use of violence or other unlawful means.

25 Whether the activities of the applicants as have been alleged by the Investigating Agency amount *prima facie* to the offences punishable under the UAP Act, would be the crucial aspect needing determination, and therefore, the legal position as has been clarified by the pronouncements of the Apex Court, needs to be kept in mind.

26 In Arup Bhuyan Vs. State of Assam, (2011) 3 SCC 377, Their Lordships of the Supreme Court of India had an occasion to deal with the aspect of membership of a

banned/terrorist organization. In that case, the appellant before the Supreme Court was a member of ULFA and had been convicted of an offence punishable under section 3(5) of the Terrorist and Disruptive Activities (Prevention) Act 1987 (hereinafter referred to as 'TADA Act' for the sake of brevity). The provisions of the said section are *in pari materia* with the provisions of section 20 of the UAP Act (except for a variation that a minimum sentence is prescribed for the offence under section 3(5) of TADA, which is immaterial for our purpose). Their Lordships noted that section 3(5) of TADA made mere membership of a banned organization criminal. Their Lordships observed that even assuming that the appellant was a member of ULFA, it had not been proved *that he was an active member, and not a mere passive member*. It was observed that

"Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence (see also the Constitution Bench judgment of this Court in *Kedar Nath Singh Vs. State of Bihar* AIR para 26) (Emphasis supplied)  
(Paragraph No.9 of the reported judgment)

27 Their Lordships went on to quote the following observations of the US Supreme Court in **Brandenburg Vs. Ohio**, 395 US 444(1969), which go a step further.

"..... mere advocacy or teaching the duty, necessity, or propriety of violence as a means of accomplishing political or industrial reform, or publishing or circulating or displaying any book or paper containing such advocacy, or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism, or to voluntarily assemble with a group formed 'to teach or advocate the doctrines of criminal syndicalism' is not per se illegal. It will become illegal only if it incites to imminent lawless action."

(Paragraph No.10 of the reported judgment)

28 Their Lordships of the Supreme Court of India expressed agreement with the aforesaid views, and opined that the same would apply to India also, as the fundamental rights in Indian Constitution are similar to the bill of rights in the US Constitution. Their Lordships ultimately concluded as follows:-

"In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence."

(Emphasis supplied)

(paragraph 12 of the reported judgment)

29 Even prior to the aforesaid Judgment, the Supreme Court of India had an occasion to consider a similar question i.e. in **State of Kerala Vs. Raneef, (2011)1 SCC 784**. In that case, the Kerala High Court had granted bail to one Dr. Raneef – respondent before the Supreme Court, who was, *inter alia*, accused of having committed offences punishable under various provisions of IPC, the Explosive Substances Act and the UAP Act. The allegation was that the said respondent was a member of the Popular Front of India (P.F.I), alleged to be a terrorist organization. Their Lordships noted that there was till then, no evidence to prove the P.F.I to be a

terrorist organization, but observed that even assuming it to be so, whether all members of the said organization can be automatically held to be guilty, would need consideration. Their Lordships referred to the observations made by the US Supreme Court in **Scales vs. United States, 367 U.S. 203**, distinguishing 'active knowing membership and 'passive, merely nominal membership' in a subversive organization. The following observations of the US Supreme Court were quoted with approval:-

The clause does not make criminal all association with an organization which has been shown to engage in illegal activity. A person may be foolish, deluded, or perhaps mere optimistic, but he is not by this statute made a criminal. There must be clear proof that the Defendant specifically intends to accomplish the aims of the organization by resort to violence. (Emphasis supplied)

30 Again, the following observations of US Supreme Court in **Elfbrandt Vs. Russell, 384 US 17 19 (1966)** were also quoted:

Those who join an organization but do not share its unlawful purpose and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. A law which applied to

membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here.

(Emphasis supplied)

The Supreme Court of India observed that those observations would apply in India too. It said:-

“We are living in a democracy, and the above observations apply to all democracies”.

31 A reference may also be made to another judgment of the Supreme Court of India in **Indra Das Vs. State of Assam (2011) 3 SCC 380**. In that case, the appellant before the Supreme Court had been convicted of an offence punishable under section 3(5) of TADA. Their Lordships referred to the decision in **Arup Bhuyan's case (supra)** and reiterated the observations made therein. Support to the views expressed by Their Lordships was derived from several decisions of the **US Supreme Court**, including those referred to earlier.

32 The aforesaid discussion leaves no manner of doubt that passive membership is not what is contemplated by section 20 of the UAP Act. It is very clear from the observations made by the Supreme Court that if section 20 were to be interpreted in that manner, it would at once be considered as violative of the provisions of Article 19 of the Constitution of India, and would be struck down as *ultra vires*. In fact, Their Lordships of the Supreme Court of India have interpreted the concept of membership as an active membership to save the relevant provision from being declared as unconstitutional.

33 Let us now examine the material against applicant Dhavala which mainly consists of his own confession recorded under section 164 of the Code. It shows that Dhavala has studied upto Xth Standard, and thereafter he had completed the ITI course of a mechanic. Dhavala appears to be interested in social work, and he was a part of the troupe of artists that had been doing programmes for eradication of superstitions. Dhavala was the Chief bard/minstrel of that troupe. He was working for '*Kabir Kala Manch*' and used to organize street plays, touching social issues such as '*brotherhood between Hindu-Muslims, the oppression of schedule*

caste and tribal people, patriotism, equality between men and women, eradication of corruption', etc. He was told by one Sachin Mali and Amarnath Chandelia that they should form their own organization, but as Dhavala did not have time, he did not accept this idea. Sometime, in June 2008, Sachin Mali and Chandelia introduced Dhavala to a woman by name Rahee. Rahee gave information regarding the Maoists Organization to Dhavala. Though Rahee spoke much about Marx, Lenin etc., he did not follow much from what she said. He, however, did not accept her proposal to join the said party, but against his wishes, Rahee made Dhavala a part time member of the party. That, the party work was taking place in secrecy and therefore, all the members were given a different name i.e. 'party name'. Accordingly, Dhavala was given name as 'Pratap.' It appears that Dhavala was thereafter working in association with the said Sachin and Amarnath Chandelia, and was organizing plays in hutments area, colleges etc. Sometime in February – March 2009, he organized a meeting at his native place at the instance of one Sheetal. The meeting went on at his place for three days, but he was not allowed to sit in the meeting. A second and subsequent meeting was also held at the residence of Dhavala, but even in this meeting, Dhavala was not allowed to sit. According to him, he had

no connection with the Maoists thought, but as an artist, he went along with them.

34 It is contended by the learned counsel for the applicant Dhavala that the so called confession actually does not incriminate Dhavala at all. It is contended that Dhavala does not admit at all that he had taken any part in the activities of the Communist Party of India(Maoists) and that too, for the purposes of achieving their objects by resorting to violence. I am in agreement with the learned counsel for the applicant. The confession, when read as a whole, does not indicate that the applicant Dhavala has admitted having committed any of the offences with which he has been charged.

35 Coming to the material against the applicant Siddharth (Bail Application No.1634 of 2012), a reference to him finds a place in Dhavala's confessional statement as one of the persons who participated in the meeting which had been held at Dhavala's house. The statement of one Amarnath Chandelia recorded during investigation projects Siddharth as a person known to Sachin Mali, Sheetal Sathe etc, who were attracted towards the *Nakshalwadi* movement. The applicant Siddharth was, apparently, remaining

present for the programmes organized by 'Kabir Kala Manch.' Thus, all that can be found against applicant Siddharth is that he was in association with some persons who were allegedly associated with *Communist Party of India(Maoists)*.

36 So far as the applicants Mayuri and Anuradha are concerned, Mayuri's name finds a place in the confession of Dhavala. Significantly, Anuradha's name does not find a mention in Dhavala's statement recorded under section 164 of the Code. The witness Amarnath Chandelia who appears to be very much conversant with some active members of the Communist Party of India(Maoists) makes no mention of any of these applicants.

37 It is interesting to note what is the nature of allegation against Mayuri and Anuradha which, according to the prosecution projects them as members of the *Communist Party of India(Maoists)*.

It is alleged that Mayuri was also interested in organizing street plays and had written the script of one such street play. The subject of the street play was 'social inequality' and it showed discontent about the 'established social order.' One of the persons, whose statement was recorded during investigation, has opined that the

script reflected '*communist thought*'. The statements recorded during investigation indicate that these applicants were organizing street plays wherein social issues such as the '*eradication of corruption*', '*social inequality*', '*widening gap between the rich and the poor*', '*the exploitation of poor*' etc. were addressed to. Some statements indicate that they were advising the students to rise up against Fee-hike etc. Some statements show that they used to claim that the college was responsible for the suicide of farmers, and use to propagate revolt against the Government and revolution.

38 It is surprising that the State should consider these activities of the applicants as incriminating material against them. Speaking about corruption, social inequality, exploitation of the poor etc. and desiring that a better society should come in existence is not banned in our country. Claiming that these wrongs exist in our society, cannot be banned and made punishable. Many of the statements attributed to Mayuri and Anuradha, as found from the statements recorded during investigation, are often made by several national leaders and social thinkers also. That these issues exist and there is a need to create awareness on these issues among the masses is spoken about by several patriots and national leaders.

Infact, the interest taken in these issues by the applicants and their attempts to create a social awareness on these issues is commendable. How can the applicants' highlighting the wrongs prevalent in the society, and insisting that there is a need to change the situation, be considered as evidence of they being members of a terrorist organization ? That the State should highlight these activities of the applicants to convince the court about the applicants being members of '*Communist Party of India(Maoists)*' is rather surprising.

39 It may also be observed that even the expression of views to the effect that a change in the social order can be brought about only by a revolution would not amount to any offence. It is significant to note that the Communist Party as such, has not been banned or declared as a terrorist organization. Thus, those who preach and advocate the teachings of Karl Marx are certainly not taken as committing any crime. It is therefore, clear that criminality would enter in the matter only at a certain point or stage, where the expression of a certain view and propagating of certain ideas would amount to an 'active membership' of a terrorist organization, and would attract criminal liability for the offences punishable under the

UAP Act. Where that point arises, would need careful consideration, and simply because a certain thought or a philosophy is advocated, criminality attached to the membership of a terrorist organization cannot be attributed. In this context, it appears from the observations made by US Supreme Court in **Yates Vs. United States, 1L Ed 2d 1356 : 354 US 298 (1956)**, which were approved by Their Lordships of the Supreme Court of India in the case of **Indra Das (supra)** *that a distinction needs to be drawn between an advocacy of forcible overthrow of a Government as an abstract doctrine and advocacy of action to that end.* Again, the following observations made by the US Supreme Court in **Bradenburg Vs. Ohio, 23 L Ed 2d 430:395 US 444(1968)** which were also quoted by Their Lordships of the Supreme Court of India with approval in the same case, are extremely relevant in this context.

“ ....the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.  
(Emphasis supplied in the Supreme Court judgment)(paragraph 16 of the judgment)

Their Lordships of the Supreme Court of India also quoted the observations of the US Supreme in **Whitney Vs. California, 71 L Ed 1095:274 US 357 (1926)** which are extremely significant.

“... The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind”

40 In the light of the legal position discussed above, it is not possible to hold that, *prima facie*, the applicants appear to be active members of the said terrorist organization so as to attract the criminal liability created by section 20 of the UAP Act. The applicant Dhavala and the applicants Mayuri and Anuradha seem to be interested in raising social issues, which by themselves cannot be said to be the aims and object of the '*Communist Party of India(Maoists)*.' There is nothing wrong in raising these social issues and emphasizing that a change in the social order in connection with these issues, is required. As aforesaid, the same views are expressed by several national and eminent leaders and the expression for these views cannot brand a person as a member of '*Communist Party of India(Maoists)*.' On the contrary, such a

reasoning would indicate that these issues, which are real and important, are not addressed to by anyone else, except the 'Communist Party of India(Maoists)' which in turn would mean that the other parties or social organizations are indifferent to these problems faced by the society.

41 It does appear that the applicants are attracted towards the communist philosophy, but that by itself would not make them terrorist or criminal. As observed by me in my order in Bail Application Nos.1020/12 and 1066/12, it has been recognized by the committees appointed by the Government to study the problem of naxalites that it is the social, political, economic and cultural discrimination faced by the poor, that is throwing a large number of discontented people towards the Maoists, but all such persons cannot be treated as members of a terrorist organization. Such persons are not liable to be punished for having some faith in the 'Maoists philosophy', or for having sympathy for those who propagate such philosophy. The legal position, as discussed above, seems to be that the element of criminality would enter into the activities of such persons only when they indulge into any violent activities or provide incitement to commit any particular violent or

unlawful act. There is no material to indicate that the applicants, or any of them, had at any time, done so. Also, the possession of some literature which was not specifically banned by an order under section 95 of the Code of Criminal Procedure, or any other law, would not amount to any offence, and by itself would not indicate the person possessing such literature to be an active member of the '*Communist Party of India(Maoists).*' Many of the books found with different applicants, it is claimed, are available in the market; and there is no denial of that by the State. In any case, the said literature is not banned and reading thereof is not prohibited.

42 The applicant Dhavala seems to have got involved with some of the members of the Communist Party of India(Maoists), as he was a minstrel (शाहीर), and useful for attracting people towards their programmes. There is nothing to show that anything objectionable or prohibited by law was taking place in such programmes. Though going by his confession which was retracted, he appears to have permitted two meetings to be held in his house at native place, he himself was not allowed to participate in the said meetings. Even assuming that the meetings were of the workers and

members of the 'Communist Party of India(Maoists)', (which is certainly not clear from the confession) and that in the meetings, the agenda of the said organization was to be discussed, it is clear that applicant Dhavala was not taken in confidence by the concerned persons. That he was not permitted to attend the meetings – and that too inspite of having provided the place for holding the meetings, indicates that he was not trusted by the leaders and members of the Communist Party of India(Maoists). When the said organization itself treated applicant Dhavala with some suspicion and at any rate, did not treat him as their member, it would be difficult to say that he is an active member of the said organization.

43 There is also another important aspect of the matter. One Amarnath Chandelia, whose statement was recorded in the course of investigation, and who, going by his statement had gained an entry in the said organization has not been made an accused in the case. He has also not been tendered a pardon, and made an approver. Such persons are often believed to have a certain understanding with the police – if not of having struck a deal with them. His statement recorded during investigation, therefore, needs to be taken into consideration by keeping this fact in mind.

44 It is true that on the basis of the material in the charge-sheet, the applicants can certainly be said to be sympathizers of Maoists philosophy. However, none of them can be said to be active members of the said organization. The basic apprehension of the State is that in future, they were likely to indulge into various violent activities and offences, as was the case with respect to the Accused no.4 Jyoti and Accused no.2 Sushma, who as aforesaid, were released on bail by me.

45 The prohibition imposed by sub-section (5) of section 43D of the UAP Act would come in play if the Court considers that *there are reasonable grounds for believing that the accusation against the applicants, is prima facie, true.* For the accusation to be believed as *prima facie* true, the acts allegedly committed by the applicants must be shown to be falling under the penal provisions of the relevant sections. When the relevant penal provisions are interpreted in the light of constitutional principles, and in the light of the aforesaid pronouncements of the Apex Court, it does not appear *prima facie* that the acts attributed to the applicants would fall under the penal provisions in question. There is, therefore, no bar to

release the applicants on bail.

46 At the conclusion of the arguments, the learned Special Public Prosecutor submitted that the applicant Mayuri and applicant Anuradha were involved in some other cases also. In this regard, the learned counsel for these applicants submitted that Mayuri was acquitted in one of the said cases, and has been released on bail in the other two cases. It was also submitted that Anuradha was also acquitted in one of the cases against her, and has been released on bail in two more cases. Regarding the other cases, it was submitted that the same have been committed to the Court of Sessions, but there is no material against the applicant Anuradha in the said case. It is submitted that these applicants are alleged to be only conspirators for which there is no supporting material in the respective charge-sheets.

47 The applicants are in custody since April 2011. The trial has not yet commenced.

48 Under the circumstances, I am inclined to release the applicants on bail.

49 In order to reduce the chances of the applicants' absconding, or not being available for their trial, appropriate conditions ought to be imposed upon the applicants.

50 The Applications are allowed.

**Operative Order in Bail Application No.1536 of 2012**

The applicant is ordered to be released on bail in the sum of Rs.30,000/- with one surety in like amount, or two sureties in the sum of Rs.15,000/- each, on the condition that he shall report to Alandi Police Station, Pune, on every Sunday, till the disposal of the case against him.

The trial court may, on an application made by the applicant, exempt him from such reporting on a given Sunday, provided the applicant has remained present in person before the trial court, in the week preceding such Sunday.

**Operative Order in Bail Application No.1634 of 2012**

The applicant is ordered to be released on bail in the sum of Rs.30,000/- with one surety in like amount, or two sureties in the sum of Rs.15,000/- each, on the condition that he shall report to

Kondwa Police Station, Pune City, on every Sunday, till the disposal of the case against him.

The trial court may, on an application made by the applicant, exempt him from such reporting on a given Sunday, provided the applicant has remained present in person before the trial court, in the week preceding such Sunday.

**Operative Order in Bail Application No.1692 of 2012**

The applicants are ordered to be released on bail in the sum of Rs.30,000/- each with one surety in like amount, or two sureties in the sum of Rs.15,000/- each, on the condition that applicant Mayuri should report to Hingna Police Station, Nagpur and applicant Anuradha should report to Rajura Police Station, Chandrapur on every Sunday, till the disposal of the case against them.

The trial court may, on an application made by the applicants exempt them from such reporting on a given Sunday, provided the applicants have remained present in person before the trial court, in the week preceding such Sunday.

**(ABHAY M.THIPSAY, J)**