

GAHC010100772021



2026:GAU-AS:7198-DB

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRL.APPEAL No. 122 of 2021

The State {National Investigation Agency,
Ministry of Home Affairs, Government
of India} Represented by the Superintendent
of Police, National Investigation Agency
(NIA) Branch Office, Guwahati, Assam.

.....***Appellant***

-Versus-

- 1.** Shri Akhil Gogoi
S/o- Late Boluram @ Bolu Gogoi,
R/o-LukrakhangaonSeinghat,
P.S. Teok, District- Jorhat, Assam.
Pin 785636
- 2.** Shri Jagjit Gohain @ Jagajit Gohain
S/o- Ritu Gohain,
R/o-Takubam Gaon, P.S.-Chabua,
District- Dibrugarh, Assam.
Pin 786184
- 3.** Shri Bhaskarjit Phukan @ Swagaditya Phukan @ Swargaditya
Phukan,
S/o-Uleswer Phukan,

R/o-Pulunga Gaon, P.S.-Chabua,
District- Dibrugarh, Assam.
Pin 786184

4. Shri Bhupen Gogoi,
S/o- Late Mohan Gogoi
R/o-RajabariPulunga Gaon,
P.S.- Chabua,District- Dibrugarh, Assam.
Pin 786184

..... **Respondents**

::BEFORE::

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant :Mr. D. Saikia, Senior Advocate
:Mr. K. Gogoi, Special PP, NIA

For the Respondents : Mr.S. Borthakur, Advocate

Date of Hearing : **24.03.2026**

Date of Judgment : **25.05.2026**

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

1. Heard Mr. D. Saikia, the learned senior counsel assisted by Mr. K. Gogoi, the learned Special Public Prosecutor, National Investigating Agency, (NIA). Also heard Mr. S. Borthakur, the learned counsel for the respondents.

2. This appeal, under Section 21 of the National Investigating Agency Act, 2008 has been preferred by the

National Investigating Agency impugning the order dated 22.06.2021, passed by the learned Special Judge, Special Court, NIA, Assam at Guwahati, in Special NIA Case No. 03/2020, arising out of RC-01-2020/NIA-GUW, whereby, the respondents, namely, [i] Sri Akhil Gogoi (A-1), [ii] Sri Jagjit Gohain @ Jagajit Gohain (A-2) and [iii] Sri Bhupen Gogoi (A-4) were discharged of offences under Sections 120B/ 143/ 147/ 148/ 149/ 326/ 307/ 333/ 353 and Section 427 of the Indian Penal Code, as well as Section 16 of the Unlawful Activities (Prevention) Act, 1967. By the impugned order, the respondent No. 3, namely, Bhaskarjit Phukan @ Swagaditya Phukan @ Swargaditya Phukan (A-3) was also discharged of all other offences except offences under Sections 144 & 148 of the Indian Penal Code.

3. The facts relevant for consideration of the instant appeal, in brief, are that on 10.12.2019, one Sri Tulumoni Duwarah, SI of Police of Chabua Police Station, Dibrugarh, had lodged an FIR before the Officer-in-Charge of Chabua Police Station, *inter alia*, alleging that, on 09.12.2019, at about 7:00 PM, when the first informant along with other police personnel of the Chabua Police Station and his superior officer, namely the Additional SP (H/Q) were performing law and order duty at Chabua town, there was a gathering of about 6000 citizens against the Citizenship Amendment Bill, 2016. It was alleged in the FIR that the crowd was headed by Sri Akhil Gogoi (A-1). It was further

alleged that they blocked the railway track as a part of economic blockade. It was also alleged that efforts were made by district administration to remove the blockade but in vain. It is further alleged that the leader of the crowd and some others criminally conspired against police and threw stones at them. At that time, one of the stone hit the mouth of the first informant injuring his two teeth, upper jaw and upper limbs causing grievous injuries. It was also alleged in the FIR that one of the stone hit the head of the first informant. However, as he was wearing helmet, he did not sustain any injuries by the same. It was further stated in the FIR that immediately thereafter, the first informant was shifted to Aditya Nursing Home, Dibrugarh and was given stitches and other treatments. It was alleged that there was an attempt to murder as a part of conspiracy against police who were deployed there to maintain law and order situation.

4. On receipt of the aforesaid FIR, the Chabua P.S. Case No. 289/2019 was registered under Sections 120B/147/148/149/336/353/326/307 of the Indian Penal Code. Thereafter, investigation was initiated and one Sri Khagen Laskar, SI of Police was entrusted to conduct the investigation. It also appears that during the investigation, Sections 153A/153B of the Indian Penal Code as well as Section 15(1)(a) of the Unlawful Activities (Prevention) Act, 1967 were added to the aforesaid case and the investigation of the case was

entrusted to one Kulapradip Bhattacharyya, APS, Deputy Superintendent of Police, Namrup.

5. Later on, the Ministry of Home Affairs, the Government of India, by its order No. 11011/34/2020/NIA, dated 04.04.2020, in exercise of powers conferred under Section 6(5) and Section 8 of the National Investigation Agency Act, 2008, directed the National Investigation Agency to take up the investigation of the aforesaid case. The FIR was renumbered at NIA Branch Office, Guwahati as RC-01/2020/NIA-GDW dated 09.04.2020 under Sections 120B, 147, 148, 149, 336, 353, 326 with added Section 307 of the Indian Penal Code with added Sections 153A and 153B of the Indian Penal Code as well as Section 15(1)(a) of the Unlawful Activities (Prevention) Act, 1967.

6. All the respondents, namely, Akhil Gogoi (A-1), Jagjit Gohain (A-2), Bhaskarjit Phukan @ Swargaditya Phukan @ Swargaditya Phukan (A-3) and Bhupen Gogoi (A-4) were arrested on 1/4/2020, 19/2/2020, 11/5/2020 and 11/5/2020 respectively.

7. During the course of investigation, the Investigating Agency i.e., the present appellant, found following incriminating facts against respondent No. 1, namely Shri Akhil Gogoi (A-1):-

(1) A-1 delivered provocative speeches at the spot in Chabua which has caused disruption of public peace and damage/destruction of public and private

properties and disruption of services essential for life of community in India, and created fear in a section of people in India, which is a terrorist act as per Section 15(1)(a)(ii)(iii), (b) of the Unlawful Activities (Prevention) Act, 1967.

(2) A-1 led a mob in violation of section 144 of CrPC imposed at Chabua on 09.12.2019. A-1 led the mob to cause damage to public/private properties with intent to strike fear in a section of people in India.

(3) A-1 led the mob armed with deadly weapons and attempted to cause death of public functionary by show of criminal force and thus, caused grievous injury to the Government servant on duty.

(4) The mob led by A-1 was planning to set fire on the house of Bengali dominated area Amrawti Colony. This establishes the fact that A-1 led a mob with intent to strike terror in a section of people of India. The statement of witnesses reveals that the terrorist act of A-1 in pursuance of the conspiracy has led to fear in a section of people in the area.

8. It found following materials against the Respondent No.2, Shri Jagjit Gohain @ Jagajit Gohain (A-2).

(1) A-2 in association with A-1 caused and coordinated to be caused the economic

blockade by causing NH-37 and railway lines blockage at Chabua on 09.12.2019. A-2 thus in association with A-1 led the blocking of supplies essential for life of community in India, which is a terrorist act as per Section 15(1)(a)(iii) of Unlawful Activities (Prevention) Act, 1967.

- (2) A-2 in association with A-1 and other accused led a mob in violation of section 144 of CrPC. imposed at Chabua on 09.12.2019. A-2 in association with A-1 led the mob to cause damage to public/private properties with intent to strike fear in a section of people in India.*
- (3) A-2 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show of criminal force and thus, caused grievous injury to the Government servant on duty, with intent to strike fear in a section of people.*
- (4) The mob led by A-1 in association with A-2 was planning to set fire on the house of Bengali dominated area Amrawti Colony. This establishes the fact that A-2 in association*

with A-1 led a mob with intent to strike terror in a section of people.

9. As regards Respondent No. 3, namely, Bhaskarjit Phukan @ Swagaditya Phukan @ Swargaditya Phukan (A-3) is concerned, the investigating agency found following incriminating facts during investigation: -

(1) A-3 in association with A-1 caused and coordinated to cause the economic blockade by causing NH-37 and railway lines blockade at Chabua on 09.12.2019. A-3 thus in association with A-1 led the blocking of supplies essential for life of community in India, which is a terrorist act as per section 15(1)(a)(iii) of the Unlawful Activities (Prevention) Act, 1967.

(2) A-3 in association with A-1 and other accused led a mob in violation of section 144 of CrPC. imposed at Chabua on 09.12.2019. A-3 in association with A-1 led the mob to cause damage to public / private properties with intent to strike fear in a section of people in India.

(3) A-3 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show of criminal force and thus,

caused grievous injury to the Government servant on duty, with intent to strike fear in a section of people.

(4) The mob, which A-3 was part of, and which was led by A-1 was planning to set fire at the house of Bengali dominated 'Amrawati Colony' with intent to strike terror in a section of people.

10. As regards Respondent No.4, Bhupen Gogoi (A-4) is concerned, the investigating agency found following incriminating facts during investigation: -

(i) A-4 in association with A-1 caused and coordinated to be caused the economic blockade by causing NH-37 and railway lines blockade at Chabua on 09.12.2019. A-4 thus in association with A-1 led the blocking of supplies essential for life of community in India, which is a terrorist act as per section 15(1)(a)(iii) of the Unlawful Activities (Prevention) Act, 1967.

(ii) A-4 in association with A-1 and other accused led a mob in violation of section 144 of CrPC. imposed at Chabua on 09.12.2019. A-4 in association with A-1 led the mob to cause damage to public / private properties with intent to strike fear in a section of people in India

(iii) A-4 in association with A-1 led the mob armed with weapons and attempt to cause death of public functionary by show of criminal force and thus, caused grievous injury to the Government servant on duty, with intent to strike fear in a section of people.

(iv) The mob, which A-4 was part of, and which was led by A-1 was planning to set fire at the house of Bengali dominated 'Amrawati Colony with intent to strike terror in a section of people. The statement of witnesses reveals that the terrorist act of A-4 in pursuance of the conspiracy has led to fear in a section of people."

11. Ultimately, on completion of investigation, Shri D. R. Singh, the Additional Superintendent of Police and Chief Investigating Officer, NIA, Branch Office, Guwahati, laid the charge-sheet dated 26.06.2020 against all the four respondents (accused persons) under Sections 120B, 143, 147, 148, 149, 326, 307, 333, 353, 427 of the Indian Penal Code as well as under Section 16 of the Unlawful Activities (Prevention) Act, 1967, before the learned Special Judge, NIA, Assam, Guwahati.

12. On the basis of the charge-sheet, the Court of learned Special Judge, NIA, Assam, took cognizance of aforementioned offences against the present respondents by its order dated 29.06.2020 and Special NIA Case No. 03/2020 was registered.

Ultimately, after considering the materials on record and after hearing both sides, the learned Special Judge, NIA, Assam, Guwahati, by order dated 26/6/2020, had discharged all the respondents in the manner as already described in Paragraph No. 2 hereinabove.

13. Mr. D. Saikia, learned senior counsel for the appellant has submitted that learned Special Judge, NIA, Assam, Guwahati erred in discharging the respondents (accused persons) by adopting an approach contrary to law as well as to the principles laid down by the Apex Court in a catena of judgments in respect of role of a trial court while considering the question of framing of charges against an accused.

14. The learned senior counsel has submitted that the trial court, while passing the impugned order, failed to consider the following important incriminating documents against the accused persons:

- (a) D-2, i.e., the *Ejahaar* dated 10.12.2019;
- (b) D-651, i.e., the FIR prepared by NIA;
- (c) D-12, i.e., the seizure list of one stone recovered from the place of occurrence;
- (d) D-15, i.e., the transcript of the telephonic conversations of A-1 with various persons;
- (e) D-29, i.e., the scrutiny report of the video seized on 29.05.2020, wherein the speeches delivered by A-1 have been mentioned at Sl. Nos. 3, 6 and 7;

- (f) D-33, i.e., the seizure memo of photographs of the Mahindra Bolero vehicle in a capsized condition;
- (g) D-40, i.e., the assessment report regarding the loss of railway property during the CAB protest;
- (h) D-48, i.e., the photo identification memo of Chabua Police Station in which the photograph of A-1 has been mentioned; and
- (i) D-49, i.e., the CDR analysis report of the mobile numbers of the accused persons.

15. The learned senior counsel for the appellant has submitted that, at the stage of consideration of framing of charges, the trial court, while discharging the accused persons by the impugned order, appreciated the materials available on record in the manner as if it was conducting a mini trial. He submits that at this stage, in-depth appreciation of the evidence on record is not permissible.

16. The learned senior counsel for the appellant has submitted that the first informant, namely, Tulumoni Duara (PW-2), in his statement recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973 has clearly implicated the A-1 and other accused persons in entering into criminal conspiracy against police and Government officials and also of throwing stones at police. He submits that the statement of PW-1 clearly indicates that one of the stone

hit his mouth causing injury on his jaw, upper lip and also resulted into broken teeth.

17. The learned senior counsel for the appellant has submitted that the PW-5, namely, UBC-792, Siranjib Chetia has also deposed in his statement before the Investigating Officer that around 7:00 PM some agitated people led by Akhil Gogoi (A-1) started throwing stones at police party and one of the stones hit the officer-in-charge of Chabua Police Station resulting into breaking of two teeth and injuries on the upper lip.

18. The learned senior counsel for the appellant has submitted that similarly PW-6 also deposed before the Investigating Officer that some agitated people led by Akhil Gogoi (A-1) started throwing stones at police. He submits that in similar manner PW-7, PW-8 have also implicated the A-1 in leading the mob which started throwing stones at police.

19. The learned senior counsel for the appellant has submitted that in the statement of the PW-1, who is a protected witness, recorded under Section 161 of the Code of Criminal Procedure, 1973, he has categorically stated that during his speech Akhil Gogoi (A-1) provoked the people and asked them to oppose the government using any means whether they had to do anything for it. The said witness has also stated that due to his provocation, some people from

crowd started pelting stones on security officials. One of those stones hit on the mouth of Tulumoni Duara, OC of the Chabua P.S. He got grievously injured and two of his teeth were broken and he was bleeding profusely. The said witness has further stated that even then the crowd did not stop and overturned and damaged the Bolero vehicle on the road. He also stated that even after the crowd turning violent, Akhil Gogoi (A-1) did not denounce the same nor he did anything to stop them. The learned senior counsel submits that even the statement of protected witness, in itself, is sufficient to frame charges against the A-1. He submits that the question as to whether the said witness has stated truly or falsely, in his statement, before the Investigating Officer is to be tested during trial. However, he submits that at the stage of framing of charges or considering the plea for discharge, the veracity of the statements of the witnesses cannot be tested. Same can only be done during the course of the trial.

20. The learned senior counsel for the appellant has submitted that in Paragraph No. 46 of the impugned order, the trial court instead of taking the statements of the witnesses recorded during investigation, on its face value, embarked upon a journey of considering the reliability of statement of witnesses which is akin to mini trial and same is prohibited at the stage of consideration of an application for discharge.

21. The learned senior counsel for the appellant has also submitted that the materials collected during investigation shows that on 31.10.2019 an order under Section 144 of the Code of Criminal Procedure, 1973, of the Additional District Magistrate, Dibrugarh, was promulgated in entire Dibrugarh district. He submits that during the existence of the said order, A-1 and other accused persons along with large number of people gathered at Chabua thereby forming an unlawful assembly.

22. The learned senior counsel for the appellant has submitted that the materials collected during investigation also shows that A-1 gave provocative speech before the agitators instigating them to carry out rail blockade program. He also submits that the video footage (D-29) of the speech delivered by A-1 clearly shows that he made provocative statement against the then Chief Minister of Assam and some of his ministerial colleagues. He submits that the statement of witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 clearly shows that the provocative speech of the A-1 led to destruction of public property (Bolero vehicle) which also resulted in the mob indulging in attacking police force with stones. He submits that the statement of PW-30, Devarikhi Chetia also shows that A-1 delivered aggressive and provocative speech. He further submits that the PW-30 has also stated that Bhupen Gogoi (A-4), Bhaskarjit Phukan (A-3) and

Jagjit Gohain (A-2) along with other protestors were seen near the damaged vehicle and when PW-30 tried to remove one of the burning tyres, A-3 hit on the said tyre with a sword which he was carrying.

23. The learned senior counsel for the appellant has also submitted that the document D-29, which is the scrutiny report of video seized, including the speeches delivered by A-1, as well as a video of police officer with grievous facial injury followed by agitated mob shouting slogans, as well as the document D-74, which is the scrutiny report of video seized from cyber cell of SP Office, Dibrugarh, which shows that one white gypsy vehicle of ITBP, bearing Registration No. AS-06-N-5742 being attacked by violent mob, are sufficient to come to prima facie finding that violence followed after the provocative speech given by A-1. He submits that D-74 also shows that the A-3 was carrying a sword in his hand and leading the protesters.

24. The learned senior counsel for the appellant has submitted that the materials on record, which were collected during investigation, clearly shows that the agitated people who gathered at Chabua to protest against CAB indulged in violent activity of attacking police personnel and destruction of government vehicle. He submits that the presence of all the petitioners at the spot where the attack on police took place has been established by the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 as

well as by the documentary evidence collected during the investigation.

25. The learned senior counsel for the appellant submits that Section 149 of the Indian Penal Code provides that every member of unlawful assembly shall be guilty of the offence committed in prosecution of the common object of that assembly by any member of the said assembly. He also submits that the materials on record are prima facie sufficient to attract offence under Sections 307/326/333/353/147/148/427/149 of the Indian Penal Code against all the respondents.

26. The learned senior counsel for the appellant has also submitted that the document (D-15), which contains the transcript of intercepted telephonic conversations between A-1 with several other persons clearly shows that the agitation and gathering at Chabua on 09.12.2019 as well as rail blockade program were pre-planned. He submits that rail blockade program was planned with an intent to threaten the economic security of India.

27. The learned senior counsel for the appellant has submitted that an important facet of law of conspiracy, under Section 120B of the Indian Penal Code, is that apart from it being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of such conspiracy. He, therefore,

submits that there are also sufficient prima facie materials to attract offence under Section 120B of the Indian Penal Code against all the respondents.

28. The learned senior counsel for the appellant has also submitted that since the mob, of which the respondents were part, caused grievous injury to one of the police officer, who was engaged in maintaining law and order duty on the date of the alleged incident and since public property (government vehicle) was also damaged by the said mob and since deadly weapon (sword) was also used by one of the respondents and since the intention of respondents in carrying out entire exercise was to threaten the unity and economic security of India and to strike terror in the people, the acts of the respondents also falls within the definition of "terrorist act" as provided under Section 15 of the Unlawful Activities (Prevention) Act, 1967 and thereby constituting an offence under Section 16 of the said Act.

29. The learned senior counsel has submitted that, at the stage of consideration of charges, the trial court is not supposed to undertake an elaborate inquiry or delve deep into various aspects of the matter, rather, the materials on record, including the statements of witnesses, are required to be taken as they are.

30. He further submits that, at the stage of framing of charge, even a strong suspicion founded upon the materials on record and a presumptive opinion would enable the court to frame charges against the accused persons. He submits that for framing charges, *prima facie* satisfaction of the court on the basis of the materials available on record, to arrive at an opinion that there are grounds for presuming that the accused persons have committed the offences, is sufficient. However, he submits that, the trial court, while discharging the respondents, failed to consider the *prima facie* materials as well as the statements of the eye-witnesses on record, which clearly make out a case against the accused persons for the offences for which the charge-sheet was filed.

31. In support of his submission, the learned senior counsel for the appellant has cited following rulings:

- (i) **"Union of India Vs. Prafulla Kr. Samal & Another"**, reported in "(1979) 3 SCC 4".
- (ii) **"Ramdas Kachru Wadkar Vs. State of Maharashtra"**, reported in "2006 CrLJ 1156".
- (iii) **"State of Bihar Vs. Ramesh Singh"**, reported in "**AIR 1977 4 SCC 39**"
- (iv) **"State of West Bengal Vs. Md. Khali"**, reported in "**AIR 1995 SC 785**".
- (v) **"Arun Gulab Gawli Vs. State of Maharashtra"**, reported in "**1988 CrLJ 4481 (BOM)**".
- (vi) **"Bagata Vs. State of Rajasthan"** reported in "**1988 Cr.LJ 702 (RJ)**"

- (vii) **"State of Tamil Nadu Vs. N. Suresh Ranjan**, reported in **"(2014) 11 SCC 709"**.
- (viii) **"State of MP Vs. SB Johari"** reported in **"AIR 2000 SC 665"**
- (ix) **"Anir Kapoor Vs. Finance cum Health Secretary"** reported in **"1974 Cri LJ 862"**
- (x) **"Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Anr."** reported in **"(1989) 1 SCC 715"**
- (xi) **"State of Maharashtra Vs. Som Nath Thapa"** reported in **"(1996) 4 SCC 659"**
- (xii) **"Rajbir Singh Vs. State of UP"** reported in **"(2006) 4 SCC 51"**
- (xiii) **"State of Maharashtra Vs. Priya Sharan Maharaj"** reported in **"AIR 1997 SC 2041"**
- (xiv) **"Sajjan Kumar Vs. CBI"** reported in **"(2010) 9 SCC 368"**
- (xv) **"State Vs. S. Selvi"** reported in **"(2018) 13 SCC 455"**
- (xvi) **"Dr. Nallapareddy Sridhar Reddy Vs. State of AP"** reported in **"(2020) 12 SCC 467"**
- (xvii) **"SAIL Vs. Aeltemesh Rein"** reported in **"1983 SCC OnLine MP 71"**
- (xviii) **"Satish Mehra Vs. Delhi Administration and Anr.,** reported in **"(1996) 9 SCC 766"**
- (xix) **"Regional Director, Employees State Insurance Corporation, Mumbai Vs. Shyam Bhatia"** reported in **"(2008) 3 AIR R 157 (Bom)"**
- (xx) **"State of Gujarat Vs. Dilipsinh Kishorsinh Rao"** reported in **"(2023) 17 SCC 688"**

32. On the other hand, Mr. S. Borthakur, the learned counsel for the respondents, has submitted that there is no infirmity or illegality in the impugned order of discharge passed by the trial court.

33. He submits that the trial court has rightly arrived at the conclusion, on the basis of the materials available on record, that no *prima facie* case has been made out against the accused persons for the purpose of framing charges against them. He further submits that, while exercising jurisdiction under Section 227 of the Code of Criminal Procedure, 1973, the trial court cannot act merely as a post office or mouthpiece of the prosecution, but is required to consider the broad probabilities of the case.

34. He further submits that, while considering such a question, the trial court undoubtedly has the power to sift and weigh the materials available on record for the limited purpose of finding out whether or not a *prima facie* case has been made out against the accused persons.

35. The learned counsel for the respondents has submitted that it is apparent from the materials on record that on 09.12.2019 a peaceful democratic protest was called by several organizations and several leaders had addressed the gathering. The respondent No. 1 (A-1) was only one of the speakers. However, he submits, that the State has targeted only

respondent No. 1 and three others, ignoring the other organizers and speakers.

36. He further submits that the entire thrust of the prosecution's case is on the speech delivered by respondent No. 1 (A-1) on 09.12.2019, terming the same to be provocative, which allegedly led the mob to damage public and private properties and caused injuries to government officials. However, he submits that a bare perusal of the transcript of the speech delivered by A-1 on 09.12.2019 would show that no provocative statement, which could incite anyone to indulge in violence, was made by A-1.

37. He further submits that even if the materials on record, including the statements of witnesses, documents and video footage relating to the accused persons, are taken at their face value, still no offence under Section 16 of the Unlawful Activities (Prevention) Act, 1967 is made out against the present respondents. He submits that, in order to constitute an offence under Section 16 of the Unlawful Activities (Prevention) Act, 1967, the prosecution must be able to show that there are *prima facie* materials on record to indicate that the accused persons have committed a "terrorist act" within the meaning of the phrase as defined under Section 15 of the said Act.

38. He submits that for any act to be regarded as a "terrorist act", three components are required to be satisfied, firstly, the

act must have been done with the intent as indicated in Section 15(1) of the Act; secondly, the act must have been carried out by the means as indicated in Section 15(1)(a); and thirdly, the act must have been committed with the object of carrying out the acts stated in Section 15 of the Act. He submits that all the three components, i.e., the intent, means and object as indicated in Section 15 of the Unlawful Activities (Prevention) Act, 1967, must exist together for an act to be considered as a "terrorist act". However, he submits that in the instant case neither the speech delivered by respondent No. 1 (A-1) on the date of the alleged incident nor the other materials on record indicate any such intent, means or object as mentioned in Section 15 of the aforesaid Act. Hence, he submits that the trial court has rightly held that there was no material on record against the present respondents to indicate, even *prima facie*, that they had committed any "terrorist act" as defined under Section 16 of the Unlawful Activities (Prevention) Act, 1967.

39. He also submits that even assuming that the participating organizations had given a call for a "*Rail Roko*" to protest against the Citizenship Amendment Bill, same cannot by any stretch of imagination be regarded as an act threatening the economic security of India, particularly when such protest was for a maximum duration of about four hours. He submits that such symbolic "*Rail Roko*" protests have been undertaken on many occasions by social organizations. However, the same

cannot be equated with an act of terrorism as defined under Section 15 of the Unlawful Activities (Prevention) Act, 1967.

40. The learned counsel for the respondents has also submitted that the document (D-15), which are the transcript of intercepted telephonic conversations between A-1 and other persons only shows that A-1 was being informed about the preparations in connection with peaceful protest meetings against CAB. He submits that, in the said conversations, there is nothing to indicate that the A-1 has incited any violence or that the protesters had any plan to indulge in any kind of violent activities during the meetings to protest against CAB.

41. The learned counsel for the respondents has submitted that no deadly weapon has been seized in this case except "one piece stone". He submits that though the photograph of the A-3 holding a sword has been collected by the Investigating Officer, however, no seizure of any such sword has been made, neither there is any evidence to show that the said sword was used for injuring anyone or destruction of any public property. He submits that under such circumstances the definition of "terrorist act" as provided under Section 15 of the Unlawful Activities (Prevention) Act, 1967 is not applicable in the present case.

42. The learned counsel for the respondent submits that Section 15(1)(a) of the Unlawful Activities (Prevention) Act,

1967 describes the means by using which when any act is committed with the intent and object mentioned in the said section, the said act may be regarded as a "terrorist act". He submits that the phrase "*or by any other means of whatever nature*" has to be interpreted by applying the principle of *ejusdem generis*. He further submits that the document (D-12) i.e., the seizure list, only shows the seizure of one stone. He submits that "stone" cannot be considered to be included within the phrase "by any other means of whatever nature" used in Section 15(1)(a) of the Unlawful Activities (Prevention) Act, 1967. He submits that the word "stone" cannot be regarded as of the same nature and characteristic of the means indicated in Section 15(1)(a) of the aforesaid Act, namely, "bombs, dynamite or other explosive substance or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by other substances (whether biological, radioactive, nuclear or otherwise) of a hazardous nature". He, therefore, submits that even if the materials on record are taken on its face value, no offence under Section 16 of the Unlawful Activities (Prevention) Act, 1967 is made out against the present respondents. In support of his submission, he has cited a ruling of the Apex Court in the case of "***Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India and Anr.***" reported in "**(1982) 2 SCC 458**".

43. The learned counsel for the respondents has submitted that the Court ought to carefully examine every case, before making an assessment if the provision of Section 16 of the Unlawful Activities (Prevention) Act, 1967 would apply or not to the respondents. He submits that when the statutes have stringent provisions, the duty of Court would be more onerous. He submits that graver the offence, greater should be the care to be taken to see that the offence would fall within the four corners of the Act.

44. In support of his submission, the learned counsel for the respondents has cited following rulings: -

(i) "***Union of India Vs. Prafulla Kumar Samal and Anr.***" reported in "***(1979) 3 SCC 4***".

(ii) "***Vernon Vs. State of Maharashtra and Anr.***" reported in "***(2023) 15 SCC 56***".

(iii) "***Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra***" reported in "***(2008) 10 SCC 394***".

(iv) "***Asif Iqbal Tanha Vs. State of NCT of Delhi***" reported in "***(2021) 3 High Court Cases (Del) 106***".

(v) "***Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India and Anr.***" reported in "***(1982) 2 SCC 458***".

(vi) "***Hitendra Vishnu Thakur and Ors. Vs. State of Maharashtra and Ors.***" reported in "***(1994) 4 SCC 602***".

(vii) "***Zakia Ahsan Jafri Vs. State of Gujarat and Anr.***" reported in "***(2023) 13 SCC 54***".

(viii) "***Shoma Kanti Sen Vs. State of Maharashtra and Anr.***"
reported in "***(2024) 6 SCC 591***"

45. The learned counsel for the respondents thus submits that the trial court, after sifting and weighing the material on record for the limited purpose of deciding the question as to whether charges may be framed against the accused persons or not, has rightly discharged the respondents after finding that no *prima facie* case has been made out against the present respondents. Hence, he prays for dismissing the instant appeal.

46. We have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. We have also viewed the video footages contained in the exhibits (in form of pen drive and compact discs), *in camera*, in presence of the learned counsel for both sides. We have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

47. As discussed in the Paragraph No. 11 of this judgment herein before, the Investigating Officer of NIA had filed the charge-sheet against the present respondents under Sections 120B, 143, 147, 148, 149, 326, 307, 333, 353, 427 of the Indian Penal Code as well as under Section 16 of the Unlawful Activities (Prevention) Act, 1967. It also appears that the trial court, by the impugned order dated 26.06.2020, discharged all the respondents, except respondent No. 4 (A-3), of all the

offences under which charge-sheet was filed against them. The A-3 was also discharged of all the offences except offence under Section 144 and Section 148 of the Indian Penal Code.

48. It appears that while discharging the respondents, in the manner, indicated in the foregoing paragraph, the trial court, in paragraph Nos. 46, 47 and 48 of the impugned order, discussed the discrepancy between the testimony of witnesses and ultimately came to a finding that no *prima facie* case has been made out against any of the respondents/accused against Section 16 of the Unlawful Activities (Prevention) Act, 1967. Though, after considering the incriminating materials against the A-3, in paragraph Nos. 65 and 66 of the impugned judgment, it found materials against A-3, which were *prima facie* sufficient for the purpose of framing charges for offences under Sections 144 and 147 of the Indian Penal Code, however, as regards other offences under Indian Penal Code, for which he was charged, the trial court found no *prima facie* materials. The other respondents (A-1, A-2 and A-4) were discharged of all offences under Indian Penal Code as the trial court was of the opinion that the materials on record were not sufficient to frame charges against them.

49. Let us now consider as to whether the Trial Court was correct in its approach, while arriving at the conclusion that the materials on record were not sufficient to frame charges against

the accused persons and that no *prima facie* case has been made out against the accused persons (present respondents).

50. Though, the learned counsel for both sides have cited a number of rulings in support of their respective contentions as to what approach the trial court should take while considering the question of framing of charges and discharge under Sections 228 and 227 of the Code of Criminal Procedure, 1973 respectively, however, as the principles regarding the approach to be taken by the trial court, in this regard, are well settled, as well as for the sake of brevity, we are not discussing each of the rulings cited by the learned counsel for both sides. As stated herein before, we have, however, gone through each of the judgment cited by the learned counsel for both sides.

51. As regards, the approach to be adopted by the trial court while considering the question of framing of charges, the Supreme Court of India, has observed in the case of "***Union of India Vs. Prafulla Kr. Samal & Another***" (supra) as follows: -

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is

difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

52. Similarly, in the case of "***State of Gujarat Vs. Dilipsinh Kishorsinh Rao***"(supra), the Supreme Court of India has observed as follows: -

"10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

***11.** This Court in State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] adverting to the earlier propositions of law laid down on this subject has held : (SCC pp. 721-22, para 29)*

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and

may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. *The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency."*

53. From the aforesaid observations, made by the Apex Court, it appears that the approach to be adopted by the trial court, while considering the question of framing of

charges/discharge under Sections 228/227 of the Code of Criminal Procedure, 1973, has been settled and same are as follows: -

(i) While considering the question of framing of charges/discharge under Sections 228/227 of the Code of Criminal Procedure, 1973, the trial court has the power to sift and weigh the materials collected during the investigation for the limited purpose of finding out whether or not the same are *prima facie* sufficient to make out a case against the accused person.

(ii) If the materials collected during investigation which are placed before the court, discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge against the accused.

(iii) If two views are equally possible, on the basis of materials before the court, which give rise to some suspicion but not grave suspicion against the accused, the Judge will be fully within his rights to discharge the accused.

(iv) While considering the materials before it for deciding the question of framing of charges/discharge, the court cannot act merely as a post office or a mouth piece of the prosecution, but has to consider the broad probabilities of

the case and total effect of materials produced before it, including any basic infirmity appearing in the case.

(v) The court must proceed on with an assumption that the material which has been brought on record by the prosecution is true.

(vi) The said materials are to be evaluated in order to determine whether the facts emerging there from, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence alleged in the charge-sheet.

(vii) At the stage of consideration of the question of framing of charges/discharge, the defence of the accused is to be confined to the materials produced by the Investigating Agency on completion of the investigation along with the charge-sheet.

54. The other judgments cited by the learned counsel for both sides, which we are refraining ourselves from discussing in detail in this judgment, more or less reiterate the above-mentioned principles.

55. In this case, the charge-sheet against the present respondents was laid for offences under two separate penal statutes, namely, the Indian Penal Code as well as the Unlawful Activities (Prevention) Act, 1967.

56. Let us first consider as to whether the trial court was correct in discharging the respondents for offences which were alleged to have been committed by them under the Indian Penal Code.

57. On perusal of the charge-sheet laid against the present respondents, it appears that the accusation has been made against them under Sections 120B/ 143/ 147/ 148/ 149/ 326/ 307/ 333/ 353/ 427 of the Indian Penal Code.

58. Section 120B of the Indian Penal Code prescribes punishment for criminal conspiracy. Section 120A of the Indian Penal Code, wherein the definition of the criminal offence of criminal conspiracy has been provided is quoted herein below: -

*"120A. **Definition of criminal conspiracy.** —When two or more persons agree to do, or cause to be done, —*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

59. Section 143 of the Indian Penal Code prescribes the punishment for being a member of unlawful assembly.

60. Section 142 of the Indian Penal Code provides that whoever, being aware of facts which renders any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of unlawful assembly.

61. Thus, an unlawful assembly, even it may not be so when initially, if it becomes an unlawful assembly, and any member of it after coming to know about the fact that the assembly has become an unlawful assembly continues to be a part of it, he would be guilty of being a member of unlawful assembly under Section 142 of the Indian Penal Code and punishable under Section 143 of the said Code.

62. Section 147 of the Indian Penal Code prescribes punishment for the offence of rioting. As per Section 146 of the Indian Penal Code, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of offence of rioting.

63. Section 148 of the Indian Penal Code prescribes punishment for rioting armed with deadly weapon. It provides that whoever is guilty of rioting being armed with a deadly weapon or with anything which, used as a weapon of offence,

is likely to cause death, shall be imposed with the punishment prescribed in that section.

64. Section 149 of the Indian Penal Code provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing that offence, is a member of said assembly, is guilty of that offence. It is to be taken note of the fact that Section 149 of the Indian Penal Code does not create a separate offence, but it only declares the rule of vicarious liability of all the members of unlawful assembly for acts done in prosecution of the common object of such assembly.

65. Section 326 of the Indian Penal Code prescribes punishment for voluntarily causing grievous hurt by dangerous weapon or means.

66. Section 307 of the Indian Penal Code prescribes punishment for attempt to murder.

67. Section 333 of the Indian Penal Code prescribes punishment for voluntarily causing grievous hurt to deter public servant from his duty.

68. Section 353 of the Indian Penal Code prescribes punishment for assault or use of criminal force to deter public servant from discharge of his duty.

69. Whereas, Section 427 of the Indian Penal Code prescribes punishment for mischief causing damage to the amount of rupees fifty or upwards.

70. We have seen in the foregoing paragraphs that the approach to be adopted by the trial court while considering the question of framing of charges/discharge under Sections 228/227 of the Code of Criminal Procedure, 1973 has been settled. Though, the court should not conduct a mini trial for the said purpose, however, it has the power to sift and weigh the materials collected during investigation for the limited purpose of finding out whether the facts emerging therefrom, taken on its face value discloses the existence of the ingredients necessary to constitute the offences alleged in the charge-sheet.

71. On perusal of the charge-sheet laid against the present respondents, it appears that one of the main areas of thrust of the prosecution case is on the speech delivered by respondent No. 1 (A-1) on 09.12.2019. Several witnesses, whose statements were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the Investigating Officer during the course of investigation have termed the speech delivered by A-1 as provocative and aggressive, which led to mob damaging the public properties and of throwing stones at police. The trial court in paragraph No. 49 of the impugned order have come to a conclusion that the speeches delivered by A-1 cannot be

regarded to contain anything which has the potential to instigate violence.

72. We have also viewed the video of three speeches of the A-1, namely video bearing File No. VID-20200320-WA0009.mp4, video bearing File No. VID-20200320-WA0013.mp4 and video bearing File No. VID-20200320-WA0014.mp4. We have also gone through the transcript of the speeches given by the A-1 on the date of alleged incident. The said transcripts are provided in document No. D-29.

73. For the sake of convenience, the transcripts of the speeches given by A-1 are reproduced *in verbatim* herein below.

- (1) VID-20200320-WA0009.mp4- The speech delivered by accused, Akhil Gogoi, translated from Assamese to English.

"Today, the villagers from CM's constituency, Chabua, came out in highway, people from CM's family come out in highway, and very clearly tell by the people of Chabua that we don't accept CAB, whereas, CM tell in this day that CAB is very good thing and to implement CAB, he expressed his gratitude to PM and HM. At this moment, I think he is taking position in opposite pole of people and people of Chabua said that what CM has done, being native of their area, they feel ashamed and there is no

other option left for CM to resign him from his post. I think, today people of Chabua become example for entire Assam, because in 2016 when the CAB came, there was large-scale protests in Chabua, largest number of people came out in Chabua.....this time in 2019 also ten thousand people came out at night in the highway in Chabua area and tell clearly that we do not accept CAB, means by sitting in the power seat CM has given up patriotism, but people from this area, people from his village, people from his family said in full voice that we will not give up patriotism, we have to save our community, we will not give up our land in the hand of foreigner, therefore, I think CM has no other way left except resign from his post. I think Himanta Bishwa Sharma is the most evil politician in Assam, and most bad person, therefore, I don't want to reply of the version of most wicked person, if he want to see the movement, I wanted to invite him in Chabua...I wanted to invite Himanta Bishwa Sharma once... leave your Z category CISF persons and come to Chabua to see the movement, by wearing color glass of BJP, RSS and dreaming to get the seat of CM, what kind of speech you delivered...Himanta Bishwa Sharma... You betray Assamese community, therefore, Himanta Bishwa Sharma, you Himanta Bishwa Sharma, Sarbananda Sonowal and Ranjit Dutta has been identify as modern Badan Barphukan by Assamese people. You called

Samujjal Bhattacharya, if you have courage, Himanta Bishwa Sharma call Akhil Gogoi once. Call me once if you have courage. I am challenging... (noise of crowd). Himanta Bishwa Sharma has called Samujjal Bhattacharya for debate, I am Akhil Gogoi, challenge you Himanta, you come for debate with KMSS... with me if he wants to take someone else, Sarbananda Sonowal, take any advocate along with him... I am inviting him for debate in front of public in CAB matters... If he is really one honest politician, if he has courage, he comes out and take this challenge."

(2) Transcripts of video bearing File No.VID-20200320-WA0013.mp4:-same as above.

(3) Transcript of video bearing File No.VID-20200320-WA0014.mp4 speech delivered by accused Akhil Gogoi translated from Assamese to English.

"My brothers, my sisters... these people from Chabua become example for Assam (slogan from crowd)...therefore, I request all my volunteers, create one human chain in front side by holding each other's hand, create another human chain on backside and no one will go out from the chain even for pass urine without asking the volunteers. What example you have shown... Assamese national organizations could not come together

in anywhere in Assam but herein Chabua, We see in Chabua the committee of AASU is here also the committee from KMSS is present... today AASU and KMSS could not come together in Assam but Chabua has proved that we need to unified... KMSS, AASU, AJYCP and all other nationalist organizations of Assam and each and every Assam lovers of need to unified and make this movement successful. And real key for success of our movement, future of Assamese community is unified movement. Yes or no...? Therefore, from this platform I call everybody to unified AASU, KMSS, AJYCP all nationalist organization of Assam, LEFTIST ORGANIZATIONS of Assam and all political parties, unified for movement against CAB. And till CAB has not canceled, we will not spare anybody."

74. After viewing the video footage of the speeches of the A-1 as well as after going through the transcripts of said speeches as provided in D-29 along with the charge-sheet, we have no hesitation to concur with the finding of the trial court that the speeches given by A-1 may be in forceful tone, however, there is nothing therein to indicate that there was any instigation to anybody regarding any kind of violence. There is no instigation to commit any violence by anybody or to indulge in any destructive activities. It appears only to be a forceful and assertive speech, which is of political nature, opposing against

the Citizenship Amendment Bill. Many of the witnesses whose statements were recorded by the Investigating Officer had termed the speeches given by A-1 as provocative and aggressive, leading to the mob indulging in violent activities. However, in view of the fact that the video footage of the speech and the transcripts of the speech was also provided by the Investigating Officer along with the charge-sheet, there was no error in the trial court considering the same to come to a finding with regard to broad probabilities of the case and the basic infirmities in the testimony of the witnesses terming the speech to be provocative and aggressive in light of the video footage of the speeches and the transcript of the speech delivered by A-1 available before the court. We, therefore, do not have any hesitation in holding that the speeches of A-1 do not contain any instigation to violence and concur with the observations of the trial court in the impugned order.

75. Similarly, on perusal of the transcripts of telephonic conversation between A-1 and other accused persons as well as some other persons as contained in document D-15 and D-49, it appears that same also only indicates that the accused persons were preparing for protest meetings at various places to protest against Citizenship Amendment Bill. It only indicates about the preparations for the protest meetings against CAB at Chabua and other places. There is no indication as to any

incitement of violence or any plan to indulge in violent and destructive activities in any manner.

76. Though, on perusal of some of the transcripts of the recorded conversation between A-1 and one Kajol Gohain, it appears that during conversation said Kajol Gohain and A-1 also used some rhetoric among themselves. For example, A-1 said *"I have come to give some fire to make you warm."* In reply to that Kajol Gohain answered *"I will be on fire now. Okay come, let's meet."* Similarly, in one of the recorded conversations, which was for the duration of one minute thirty-one second and was recorded at 16.46.5 hrs on 09.12.2019, the A-1 while having conversation with one Sanjay informed him that *"Sanjay da, we have aandolans in every corner of Assam, lakhs of people came on the street, railways have been stopped and Assam is totally Bandh."* These conversations, *prima facie*, do not indicate that there was any plan to indulge in violence or any destructive activities by the present respondents. It only appears to be a conversation regarding the status of the protest programme and a call to be more assertive and impactful in planning the protest meeting.

77. We are thus also in agreement with the finding of the trial court to the extent that the CDR analysis reports only indicates that the A-1 and other respondents were discussing only regarding organizing the protest meet against Citizenship Amendment Bill and no discussion was made as regards

planning any destructive activities or indulging in any kind of violence by the protesters.

78. However, even if we ignore the speeches delivered by the A-1, recorded version of which as well as the transcripts of which are provided in D-29; as well as even if we ignore the telephonic conversation between A-1 and other persons, transcripts of which are contained in D-15 and D-49, if we consider the statements of some of the witnesses, which were recorded during the course of investigation, under Section 161 of the Code of Criminal Procedure, 1973, namely, PW-2, PW-5, PW-6, PW-7 and PW-13, it appears that they have stated in their statement that some agitated people, led by Akhil Gogoi, started throwing stones at police parties and the officer-in-charge of the Chabua Police Station was injured in the said attack. The trial court did not rely on the said statements as it find differences in the statement of two set of witnesses and the witnesses who implicated the A-1 and other accused persons were not corroborated by similar statements by other witnesses.

79. We are of the considered opinion that the trial court had erred in deciding the question of reliability of the statement of those witnesses who have implicated the respondents including the A-1, at the stage of consideration of charges.

80. As discussed herein above, while considering the question of framing of charges though court has power to sift and weigh the materials collected during investigation, however, unless some basic infirmities appears from the statements of the witnesses which makes it difficult to rely on them, same has to be considered with an assumption that they are true and it has to be taken on its face value without delving into the question of reliability much less seeking any corroboration at that stage. Apart from the fact that PW-2 i.e., the officer-in-charge of Chabua Police Station was severely injured by stone throwing by some of the protesters, there is also evidence on record to indicate that the government vehicle was damaged and the said vehicle (Bolero) was capsized by the protesters.

81. Even if it is assumed that the respondents gathered at Chabua along with other citizens only for the purpose of protesting against proposed Citizenship Amendment Bill, once the incident like throwing of stones at police personnel wherein the officer-in-charge of Chabua Police Station got injured as well as capsizing of Bolero vehicle occurred and they became aware of the facts which rendered the assembly as an unlawful assembly, their continued presence in such assembly, in itself is sufficient to *prima facie* make all of them to be a member of unlawful assembly.

82. Taking the statements of PW-2, PW-5, PW-6, PW-7, PW-13, PW-30 and PW-19 on their face value is sufficient for the

purpose of framing of charges against the respondents under Section 149 of the Indian Penal Code read with Sections 120B, 143, 147, 148, 326, 307, 333, 353, 427 of the Indian Penal Code. The trial court had erred in this regard in not taking the statements of aforementioned witnesses on their face value. It erred in seeking for corroboration and testing its reliability on the basis of contradiction in the testimony of the aforementioned witnesses when compared to the testimony of other witnesses. This exercise undertaken by the trial court of verifying the veracity, reliability and genuineness of the testimony of aforementioned witnesses, in the considered opinion of this court, is beyond the scope of examination, which can be done while considering the question of framing of charges/discharge under Sections 228/227 of the Code of Criminal Procedure, 1973.

83. Unless there are basic infirmity in the materials before the court at the time of consideration of the question of framing of charges, court has to consider such materials on their face value. For example, in the instant case, many witnesses have stated that the speeches given by A-1 were provocative and aggressive, which led the public protester to indulge in violent activities of throwing stones and damaging public property. However, as the video footage as well as transcripts of the speeches were available before the trial court, same can be examined to ascertain whether the statement of witnesses as

regards speeches delivered by the A-1 may be regarded as provocative and whether it contained any incitement to indulge in violent and destructive activities or not. The testimony regarding the fact as to whether these speeches contain anything which could have incited violence or disruptive activities by the protesters can be verified by examining cursorily the video footage and transcripts of the speeches. This much of sifting of available materials on record, to find out whether *prima facie* case is made out against the accused persons or not, is permissible. Hence, unless there are any inherent infirmities in the materials available before the court, the court has to rely on it by taking it on its face value. When PW-5 and PW-6 and some other witnesses have stated in their statement recorded under Section 161 of the Code of Criminal Procedure that "*some agitated people led by Akhil Gogoi started throwing stones at police party and the officer-in-charge of Chabua police station was struck by one of the stones on his face and got injured.*" Such statements are to be taken on its face value and veracity of such statement could be ascertained only during trial when the witnesses who gave such statement, appear as witness before the trial court for the purpose of cross-examination. If the statements of the aforementioned witnesses are taken on their face value, it fulfills the ingredients of the offences, for the purpose of framing of charges against the respondents under the provisions of Indian Penal Code, as mentioned in the charge-sheet.

84. We are, therefore, of the considered opinion that on consideration of the statements of aforementioned witnesses (PW-2, PW-5, PW-6, PW-7, PW-13, PW-30 and PW-19) on their face value, the facts which emerges therefrom, discloses the existence of ingredients necessary to constitute offences alleged under Indian Penal Code in the charge-sheet. Hence, we are of the considered opinion that the trial court had erred in discharging the respondents of the offences alleged against them under Indian Penal Code in the charge-sheet.

85. Now, let us consider as to whether the trial court was correct in discharging the respondents for offence under Section 16 of the Unlawful Activities (Prevention) Act, 1967 as alleged in the charge-sheet against them.

86. While considering the question of applicability of Section 16 of the Unlawful Activities (Prevention) Act, 1967 to the alleged acts committed by the present respondents, we have to keep in mind that the Unlawful Activities (Prevention) Act, 1967 was enacted by the Parliament mainly to comply with the Resolution No. 1373 adopted by the Security Council of United Nations in 4385th meeting on 28th September, 2001, requiring all states to take measures to combat international terrorism. Since the Unlawful Activities (Prevention) Act, 1967 contains very stringent penal provisions, the said statute has to be interpreted carefully to examine the question as to whether the said act would apply to the present respondents or not.

87. In this regard, the Supreme Court of India has observed in the case of "**Vernon Vs. State of Maharashtra and Anr.**", reported in "**(2023) 15 SCC 56**"

"45. In three decisions of this Court, Hitendra Vishnu Thakur v. State of Maharashtra [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Usmanbhai Dawoodbhai Memon v. State of Gujarat [Usmanbhai Dawoodbhai Memon v. State of Gujarat, (1988) 2 SCC 271 : 1988 SCC (Cri) 318] , the manner in which stringent provisions of a statute ought to be interpreted has been laid down. In all the three authorities, observation of this Court has been that the court ought to carefully examine every case, before making an assessment if the Act would apply or not. When the statutes have stringent provisions the duty of the court would be more onerous. Graver the offence, greater should be the care taken to see that the offence would fall within the four corners of the Act. Though these judgments were delivered while testing similar rigorous provisions under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the same principle would apply in respect of the 1967 Act as well."

88. Thus, from above, it appears that since the Unlawful Activities (Prevention) Act, 1967 is not an ordinary penal statute and as it provides for harsher consequences, greater care shall have to be taken to see whether the offence alleged against the

present respondents would fall within the four corners of the aforesaid Act.

89. For framing charges under Section 16 of the Unlawful Activities (Prevention) Act, 1967, the prosecution side has to show materials to justify that the respondents have committed "terrorist act" as defined under Section 15 of the said Act.

90. On perusal of the charge-sheet, it appears that in paragraph No. 16.14 thereof, the prosecution side has alleged that the present respondents have committed terrorist act as per Section 15(1)(a)(ii), (iii), (b) of the Unlawful Activities (Prevention) Act, 1967.

91. For the sake of convenience, Section 15 of the Unlawful Activities (Prevention) Act, 1967 is quoted herein below:-

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

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause-

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

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

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

commits a terrorist act.

[Explanation.--For the purpose of this sub-section,

(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by

an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.]

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

92. As to what is the proper approach to interpret the aforesaid provision has been considered by the Apex Court in the case of “***Shoma Kanti Sen Vs. State of Maharashtra***” reported in “**(2024) 6 SCC 591**”. In the said judgment, the Apex Court has observed as follows:-

"35. *We are not concerned with sub-section (2) of the said provision. In this appeal, there is no allegation of any act of the appellant constituting an offence within the scope of the Second Schedule to the same statute. Sub-section (1) of Section 15 refers to certain acts which would constitute a terrorist act but the first part of sub-section (1) of Section 15 cannot be read in isolation. In our reading of the said provision of the statute, to qualify for being a terrorist act, such act must be done with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of or such act must be accompanied with an intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign*

country. These are initial requirements to invoke Section 15(1) of the 1967 Act. The legislature, however, has not left the nature of such acts unspecified and in clauses (a), (b) and (c) of the said sub-section, the law stipulates the manner of commission of the acts specified in first part of sub-section (1) of said Section 15. If any offender attempts to commit any of the acts specified in Section 15(1), to come within the ambit of the expression "terrorist act" under the 1967 legislation, action or intention to cause such act must be by those means, which have been specified in clauses (a), (b) and (c) of the said provision. This is the line of reasoning broadly followed by this Court in *Vernon* [*Vernon v. State of Maharashtra*, (2023) 15 SCC 56: 2023 SCC OnLine SC 885: 2023 INSC 655] in construing the applicability of the said provision. If we examine the acts attributed to the appellant by the various witnesses or as inferred from the evidence relied on by the prosecution, we do not find *prima facie* commission or attempt to commit any terrorist act by the appellant applying the aforesaid test for invoking Section 15 read with Section 16 [

"16. Punishment for terrorist act.—(1) Whoever commits a terrorist act shall—(a) if such act has resulted in the death of any person, be punishable

with death or imprisonment for life, and shall also be liable to fine;(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”] of the 1967 Act.”

93. From above observation of the Apex Court, it appears that to qualify for being a “terrorist act”, such act must be done with an intent as stated in Section 15(1) of the aforesaid Act. It also appears that in addition to intention as stated in Section 15(1) of the Act, it must be done by those means, which have been specified in clause (a), (b) and (c) of Section 15(1) of the said Act.

94. While considering the question as to whether the charges under Section 16 of the Unlawful Activities (Prevention) Act, 1967 may be framed against the present respondents or not, it has to be ascertained as to whether the ingredients of offence under Section 15 of the Unlawful Activities (Prevention) Act, 1967 are made out on the basis of materials on record, including the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 as well as documents, including the electronic evidence, collected during the course of investigation, taken on its face value.

95. While considering the above question, we cannot lose sight of the fact that the respondents as well as the other protesters gathered at Chabua, on 09.12.2019, mainly to protest against the Citizenship Amendment Bill to be placed before the Parliament.

96. In this regard, the observation of Delhi High Court in the case of "***Asif Iqbal Tanha v. State (NCT of Delhi)***" reported in "**2021 SCC OnLine Del 3253**" is relevant. In the said case, the Delhi High Court was considering the questions involving commission of offence in connection with protest against Citizenship Amendment Act. Same is quoted herein below:-

"Right to Protest

63. *Since this matter emanates from a protest organised by certain persons, which the State alleges, was no ordinary protest but one that has shaken or is likely to have shaken, the entire foundations of our republic, we feel compelled to discuss what might be the permissible contours of a protest that would not threaten our nation.*

64. *In this context we examined, when, the constitutionally guaranteed right to protest, which derives from the rights under Article 19(1)(b) of the Constitution to "assemble peaceably and without arms", crosses the line and ventures into commission of a cognizable offence under the ordinary penal law; and even more so, when, the right to protest further*

crosses into the territory of becoming a terrorist act or a conspiracy or an act preparatory to commission of a terrorist act under the UAPA.

65. *The observations of the Supreme Court in Mazdoor Kisan Shakti Sangathan case [Mazdoor Kisan Shakti Sangathan v. Union of India, (2018) 17 SCC 324] appear to us to be the most lucid and pithy answer as to the contours of legitimate protest and these bear repetition. In the said decision the Supreme Court says that legitimate dissent is a distinguishable feature of any democracy and the question is not whether the issue raised by the protestors is right or wrong or whether it is justified or unjustified, people have the right to express their views; and a particular cause, which in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. The Supreme Court further says that a demonstration may take various forms: it may be noisy, disorderly and even violent, in which case it would not fall within the permissible limits of Articles 19(1)(a) or 19(1)(b) and in such case the Government has the power to regulate, including prohibit, such protest or demonstration. The Government may even prohibit public meetings, demonstrations or protests on streets or highways to avoid nuisance or disturbance of traffic but the Government cannot close all streets or open areas for*

public meetings thereby defeating the fundamental right that flows from Articles 19(1)(a) and 19(1)(b) of the Constitution.

66. *Assuming, without however expressing any opinion thereon, that in the present case the protest in question crossed the limit of what is permissible under Articles 19(1)(a) and 19(1)(b) and went into the forbidden realm of a non-peaceful protest, first of all there is nothing to show that the Government had prohibited the protest at the relevant time, much less is there anything to show that the appellant was the perpetrator or conspirator or was involved in any illegal protest. In any case, whatever offences are alleged to have been committed by reason of the protests having turned non-peaceful are subject-matter of FIR No. 298 of 2019, in which the appellant is an accused and in which he has already been admitted to bail and will face trial in due course. There is absolutely nothing in the subject charge-sheet, by way of any specific or particularised allegation that would show the possible commission of a "terrorist act" within the meaning of Section 15 of UAPA; or an act of "raising funds" to commit a terrorist act under Section 17; or an act of "conspiracy" to commit or an "act preparatory" to commit, a terrorist act within the meaning of Section 18 of UAPA. We are unable to discern in the subject charge-sheet the elemental factual ingredients that are*

a must to found the offences defined under Sections 15, 17 or 18 of UAPA."

97. We have already discussed in the foregoing paragraphs that on cursory examination of the transcripts of the speeches given by A-1 as well as after viewing the video footage of the said speeches, we are of the considered opinion that the speeches of A-1 do not contain anything which can be regarded as to have provoked the protesters to indulge in violent and destructive activities.

98. We have already held in the foregoing paragraphs that we do not concur with the decision of the trial court in not finding any materials to frame charges against the present respondents under the provisions of Indian Penal Code for offences which were alleged against the present respondents in the charge-sheet. However, we are also of the considered opinion that the provisions of Unlawful Activities (Prevention) Act, 1967 being a special Act containing harsher punishment, is not required to be taken recourse to if the nature of activities with which the present respondents are alleged to have committed can be brought under ordinary penal law of the land.

99. We are of the considered opinion that it is only in those cases where the law enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling with the menace of "terrorist acts", the resort should be taken to the

stringent provisions of Unlawful Activities (Prevention) Act, 1967.

100. The question is whether the alleged act of agitated people led by A-1 throwing stones at police party and one of the stone hitting the officer-in-charge of Chabua police station, causing grievous injury on his person can be regarded as “terrorist act” or not. The answer lies in the means used for committing the alleged offence. Though, we have held in the foregoing paragraphs that the materials available on record is sufficient to frame charges under the provisions of Indian Penal Code. However, unless the means used for causing injury, i.e., stone, is regarded as the means included within the means indicated in Section 15(1)(a) of the Unlawful Activities (Prevention) Act, 1967, the essential ingredients to constitute the offence under Section 15 would not be fulfilled.

101. In the instant case, there is only seizure of one piece of stone during the course of investigation. We are of the considered opinion that if we apply the principle of *ejusdem generis* to Section 15(1)(a) of the Unlawful Activities (Prevention) Act, 1967, it appears that “stone” does not fall in the means of same nature and characteristic as specifically indicated in the said provision like bombs, dynamite or other explosive substances, or inflammable substances, or firearms, or lethal weapons, or poisonous or noxious gases, or chemicals, or by any other substances, whether biological, radioactive,

nuclear, or otherwise of hazardous nature. Hence, the said act of throwing stones and injuring police personnel, though is sufficient to constitute offence under the provision of Indian Penal Code, same falls short of fulfilling the ingredients of offence of terrorist act as defined under Section 15 of the Unlawful Activities (Prevention) Act, 1967.

102. Similarly, though there are materials on record to indicate that A-3 was brandishing a sword in the protest meet, however, there is no evidence on record to show that he used that sword to cause injury to any person or to damage or destruction of any property as required under Section 15 of the Unlawful Activities (Prevention) Act, 1967. It is also pertinent to mention that the said sword was also not seized by police during investigation.

103. Similarly, though PW-30 has stated in his statement recorded under Section 161 of the Code of Criminal Procedure, 1973 that during the meeting period, he got information that some protesters were planning to set fire on the houses of Amaravati colony, which is basically a Bengali dominated area, however, he has not indicated in his statement as to what is the source of his information or from where he came to know about the said fact. As such, the said information alone, appears to be insufficient for framing charges under Section 16 of the Unlawful Activities (Prevention) Act, 1967.

104. Similarly, there is no evidence on record to show that the Bolero vehicle was disrupted and capsized by the protesters by using any of the means as indicated in Section 15(1)(a) of the Unlawful Activities (Prevention) Act, 1967. Therefore, the said Act also does not fall within the meaning of "terrorist act" as defined under Section 15 of the Unlawful Activities (Prevention) Act, 1967. Though, same is sufficient to constitute offences under Indian Penal Code as indicated by us in the foregoing paragraphs.

105. As regards the allegation of threatening the economic security of India by resorting to *Rail Roko* program is concerned, it appears that the *Rail Roko* program was called by the protester as a symbolic means to protest against CAB. It also appears that no violent means was used to stall the rails. Rather, the evidence of PW-34 indicates that 200 to 300 people assembled near signal, making it difficult to operate the signal for up trains. It also appears from the statement of PW-35, that the A-1 asked the protester to sit and squat on the rail line to implement *Rail Roko* protest program. No means as provided for in Section 15(1)(a) like bombs, dynamite, explosive substances, etc., were used by the protesters to implement *Rail Roko* program. Hence, as indicated herein above that though said acts may constitute offences under the Indian Penal Code, as indicated herein before, same are not sufficient to fulfill the ingredient necessary to constitute the offence of "terrorist act"

as defined under Section 15 of the Unlawful Activities (Prevention) Act, 1967.

106. In view of the discussions made and reasons stated in the foregoing paragraphs, we concur with the finding of the trial court that the materials on record, taken on their face value, do not disclose the existence of ingredients necessary to constitute an offence under Section 16 of the Unlawful Activities (Prevention) Act, 1967 by the present respondents. We, therefore, agree with the finding of the trial court in discharging the present respondents of charge under Section 16 of the Unlawful Activities (Prevention) Act, 1967.

107. Thus, we are of the considered opinion that though the materials on records are insufficient to frame charges against the present respondents under Section 16 of the Unlawful Activities (Prevention) Act, 1967, however, same are sufficient to frame charges against the respondents under the provisions of Indian Penal Code with which they have been charge-sheeted.

108. As the Court of learned Special Judge, NIA, does not have any jurisdiction to try the offences under the Indian Penal Code with which the respondents have been charge-sheeted, it will, therefore, transfer the aforesaid case, under Section 20 of the National Investigation Agency Act, 2008, to the regular court

having jurisdiction under the Code of Criminal Procedure, 1973/BNSS, 2023.

109. Upon such transfer, the Court to which the case is transferred shall hear both sides on the question of framing of charges under Indian Penal Code and thereafter proceed accordingly in light of the observations made by us in the instant judgment.

110. Before parting, we would like to clarify that the observations and opinion made by us in this judgment is pertaining only to the aspect of framing of charges and must not be construed to be any opinion on the veracity of the same which is required to be proved in the trial in accordance with law.

111. This appeal is accordingly partly allowed.

112. Send back the records of the trial court to the Court of learned Special Judge, NIA with a copy of this judgment.

JUDGE

JUDGE

Comparing Assistant

Munmun Boruah Digitally signed by Munmun Boruah
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