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**HIGH COURT OF TRIPURA**
**AGARTALA**

**Crl. Rev. P. No. 21 of 2023**

1. Sri Amit Bhowmik, son of late Dhirendra Chandra Bhowmik, resident of Water Supply Road, South Dhaleswar, P.O.-Dhaleswar, PS-East Agartala, District-West Tripura, PIN-799004.

2. Sri Arjun Debnath, son of late Pramod Debnath, resident of Paoramura, P.O.-R.K. Pur, Udaipur, PS-R.K. Pur, District-Gomati, Tripura.

3. Sri Suman Majumder, son of Sri Dilip Majumder, resident of Singhicherra, P.O. + P.S.-Khowai, District-Khowai, Tripura.

……Petitioner(s).

V E R S U S

The State of Tripura

……Respondent(s).

| | | |
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| For Petitioner(s) | : | Mr. S. Lodh, Advocate,<br>Ms R. Bhowmik, Advocate. |
| For Respondent(s) | : | Mr. Ratan Dutta, Public Prosecutor<br>Mr. S Debnath, Addl. PP. |

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

**ORDER**

**22.05.2023**

By the impugned order dated 20.01.2023, learned Sessions Judge, Dhalai Judicial District, Ambassa has rejected the application under Section 227 of the CrPC preferred by the petitioners to discharge them in connection with Raishyabari PS Case No. 2020RSB09 dated 27.12.2020 (Annexure-1) registered under Sections 120(B)/121/124(A)/387 of the IPC

and Section 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 [UA(P)A, 1967 for short]. The complaint was lodged by one Er. Rangchak Tripura on 27.12.2020 before the Officer-in-charge of Raishyabari Police Station alleging that while he was discharging his duties as Junior Engineer in the office of the Block Development Officer, Raishyabari RD Block, he got various voice calls and voice messages from an unknown whatsapp number (880-1842783331) on 20.12.2020 at about 2.58 p.m. onwards on his whatsapp number. The miscreants sent him several voice messages in Kokborok language stating that they wanted to talk to him through whatsapp voice calls or else the miscreants warned him to cause harm and threatened him with dire consequences and face recent Ganganagar like incidence. The last voice call of the miscreants was received when they inquired about different government development works that was supervised by him. Thereafter, they started asking him for extortion and wanted to come at his residence.

**2.** The instant Raishyabari PS case No. 2020RSB09 was lodged on 27.12.2020 under the aforesaid provisions of the Indian Penal Code and the UA(P)A, 1967. After investigation, police filed chargesheet against eight persons, including the petitioners, for committing offences under Sections

120(B)/121/124(A)/387 of the IPC and Section 10 & 13 of the UA(P)A, 1967 (Annexure-3).

**3.** Cognizance was taken by the learned Judicial Magistrate and the case was committed before the learned Sessions Judge, Dhalai Judicial District for trial. The petitioners appeared and filed an application under Section 227 of the CrPC for discharge stating that as per the materials found during investigation and contained in the chargesheet, the petitioners are not liable for any offence under any of those penal provisions. The petitioners also made an application for release of seized articles including Rs.15,00,000/- [under Section 451 of the CrPC] which was seized on 20.01.2021. The Bolero vehicle had earlier been released. The learned Sessions Judge has rejected both the applications filed by the petitioners.

**4.** Learned counsel for the petitioners has inter alia urged the following grounds in support of the challenge:

(i) That, the learned trial court has rejected the application for discharge on the ground that there are sufficient materials found during investigation to proceed against them for the alleged offences but it failed to appreciate that the allegations in the chargesheet reveal that the petitioners

are the victims of the instant case and cannot be chargesheeted under any of the penal provisions.

(ii) Learned counsel for the petitioner has further buttressed his submissions by relying upon the relevant contents of the charge sheet in order to submit that the petitioners were involved in construction of border roads/fencing, etc.

(iii) The materials collected during investigation reveal that petitioners No. 1 and 2 were found sitting inside the vehicle along with the Driver Suman Majumder, petitioner No.3, when they were apprehended with Rs.15,00,000/- currency notes wrapped in a paper which as per the instructions of their boss were to be handed over to the accused person, Sona Mohan Tripura @Mitrafa.

(iv) The charge sheet further reveals that during investigation they admitted that they were paying this amount to the banned NLFT extremist group out of fear to protect their labourers from the attack of the NLFT extremists.

**5.** Learned counsel for the petitioners further submits that the petitioners were carrying on their lawful business and are not members of the banned organization, i.e. NLFT. The ingredients of the offence under Section 10(a) of the UA(P)A, 1967 cannot be made out against them. An

interpretation of Section 10(a)(iii) also would go to show that there was no contribution on the part of the petitioners for the purposes of the banned organization. The petitioners have not taken part in meetings of any such banned organization nor were they found to assist the operations of any such organization. Even the ingredients of Section 13 of the UA(P)A are not made out against the petitioners as they have not taken part in any unlawful activities nor advocated, abetted, advised or incited the commission of any unlawful activity to invite the rigors of the penal provisions. If the ingredients of the UA(P)A are not made out, these petitioners who are the innocent businessmen and driver of the vehicle cannot be made liable for conspiracy for the commission of the alleged acts under the IPC, as alleged.

Learned counsel for the petitioners has relied upon the decision of the Calcutta High Court in ***Graphite India Limited & Anr., Vs. Dalpat Rai Mehta & Anr.,*** reported in **1978 SCC Online Cal 152** in support of the submission that the ingredients of the word "contribution" used in Section 10 of the UA(P)A are not made out and no such contributions were ever made. Learned counsel for the petitioner has further drawn support from the observation of the Apex Court in case of ***Sudesh Kedia vs. Union of India*** reported in ***(2021) 4 SCC 704,*** (paragraphs 12 and 14) to submit that no *prima facie* case is made out from the materials collected by the

investigating agency in reference to the accusation against the accused persons in the first information report for framing of the charge. It is submitted that in the said case, the Apex Court had been pleased to grant bail under Section 43-D(5) of the UA(P)A in favour of the accused-appellant as the materials collated by the investigating agency did not establish the alleged accusations made against the accused who was said to have paid extortion money to the banned terrorist organization. Prima facie, there was no unlawful activity carried out by such person who also was carrying a business of transport company M/s Esskay Concast and Minerals Pvt. Ltd. The case of the petitioners also stands on the similar footings.

**6.** Learned counsel for the petitioners has also relied upon a decision of the Apex Court on the scope of exercise of powers under Section 227 of the CrPC such as ***Sajjan Kumar Vs. Central Bureau of Investigation*** reported in (**2010) 9 SCC 368** and subsequent decisions such as ***Asim Shariff Vs. National Investigation Agency*** reported in (**2019) 7 SCC 148.** It is submitted that in the facts of the present case not only are the materials collected by the investigating agency unable to make out a *prima facie* case against the accused persons but the materials do not even give rise to suspicion against the accused persons. As such, the trial court committed error in refusing to discharge them. The petitioners would be unnecessarily

subjected to a full-dressed trial though they are innocent and there are no incriminating materials collected against them by the investigating agency to justify their implication. As such, the impugned order may be set aside and the petitioners may be discharged.

**7.** Learned Public Prosecutor has strongly opposed the submission. A counter affidavit has been filed by the State. It is stated that during investigation, the investigating officer arrested 7 accused persons, including the 3 petitioners, who were arrested on 20.01.2021. It was submitted by the learned PP that during investigation the investigating officer seized (i) one Samsung Galaxy S10E mobile Cell Phone of Amit Bhowmik and SIM card No. 9436136384/9612439207; (ii) One Samsung Duos mobile Cell Phone of Amit Bhowmik with SIM card No. 60099342239; (iii) One OPPO ID mobile Cell Phone of Suman Majumder with SIM Card No.9863422598/9089079215; (iv) One Xiaomi mobile cell phone of Arjun Debnath and SIM card No. 8794891976; and (v) Rs. 15,00,000/- Indian Currency, etc.

**8.** It has been further submitted by the learned PP that during investigation on 10.02.2021 the investigating officer seized vehicle bearing Registration No. TR-01-M-0707 (Mahindra Bolero) but the same was released to its actual owner vide order dated 05.02.2011.

**9.** It was also submitted that in the course of investigation from secret sources it transpired that a group of NLFT extremists led by Bikram Bahadur Jamatia @ Bomtom was camping on the other side of the Indo-Bangla Border of Raishyabari area and with the help of NLFT collaborators they were trying to extort money from civilians residing in Raishyabari areas, particularly construction agency engaged in construction of border roads/fencing etc. It was revealed that one Sona Mohan Tripura @ Mitrafa was acting as a collaborator of the banned NLFT extremist group for collecting extortion money and the petitioners, namely, Amit Bhowmik and Arjun Debnath had been approached by the extremist group for giving money as safeguard from extremist attack.

**10.** It was further submitted that based on secret information that some transaction of money would take place at Raishyabari market area on 20.01.2021 the investigating officer carried out a raid and managed to detect one Bolero vehicle bearing registration No. TR01M0707 at Hospital Choumuhani, Raishyabari and found the petitioners sitting inside the vehicle. On search, one bundle of Indian currency notes amounting to Rs.15,00,000/- wrapped in paper was found. On query, the petitioners stated that as per instruction of their Boss they were waiting to hand over the money to Sona Mohan Tripura @ Mitrafa. It has been stated that on

interrogation the petitioners admitted that they were paying this amount to the banned NLFT extremist group out of fear to protect their labourers from the attack of the NLFT extremists. The accused persons have admitted that their mobile phones contain call lists of their conversation with the banned NLFT (BM) extremist group and the accused persons tried to assist the banned organization by providing money instead of informing the police which is punishable under the provisions of the UA(P)A, 1967.

**11.** During the course of investigation it was further revealed that Sri Rangchak Tripura was threatened by Sri Sumen Kanti Tripura @ Hero, alleged NLFT(BM) extremist and spoke of extortion. Sri Joydeb Saha and Sri Nupur Banik of Raishyabari were examined and it was revealed that Sumen Kanti Tripura @ Hero had threatened them by calling and sending voice calls in their mobile No. 8413847408 and 7630971841 from 9485428612 which belonged to NLFT(BM) extremist Sumen Kanti Tripura @ Hero and two other mobile No. 8801575454367 and 8801842783331 and on several occasions spoke of extortion with a view to send money to banned NLFT (BM) extremist group. Another witness namely Sri Bikram Saha of Gandacherra has revealed that the alleged miscreant had also threatened him and demanded Tax money in the name of an extremist group

by calling him on his mobile No. 9485143907 on 23.12.2020, 26.12.2020, 27.12.2020, 31.12.2020 and 02.01.2021, respectively.

**12.** Learned public prosecutor has specifically referred to the ingredients of Section 10(a)(iii) of the UA(P)A and submitted that the ingredients of the offences against the accused persons-petitioners herein, are made out since they have admitted of being involved in payment of huge amounts to the banned NLFT extremist group and have not informed the police or took the help of the security forces and thereby assisted the banned NLFT extremist group. The accused persons admitted that their mobile phones contained some call lists of their conversation with the banned NLFT (BM) extremist organization by providing money instead of informing the police which is punishable under the provisions of UA(P)A, 1967. The learned PP has specifically referred to the relevant paragraphs of the charge sheet which show that these accused persons were apprehended while waiting to pay Rs.15,00,000/- Indian currency notes to the accused person Sona Mohan Tripura @ Mitrafa, the collaborator of the banned organization.

**13.** It is submitted that as per the principles settled by the Apex Court at the stage of discharge, the learned trial court is not required to conduct a mini trial by marshalling the evidence on record. The

investigating agency has established that the materials are sufficient enough to proceed with the case and that they do give subjective satisfaction of existence of *prima facie* case of the alleged offence. The learned trial court has the 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. It is not the case where there are two views possible, one of which gives rise to suspicion as distinguished from grave suspicion against accused which would justify the trial court discharging them. Learned PP has also relied upon the decision of the Apex Court in ***Asim Shariff Vs. National Investigation Agency*** reported in ***(2019) 7 SCC 148*** and also **State of Tamil Nadu by Ins. of Police Vigilance and Anti Corruption Vs. N Suresh Rajan & Ors.,** reported in ***(2014) 11 SCC 709*** (paragraphs 21, 22 & 23 in particular) in support of his submission. Based on these factual assertions and the legal submissions, learned Public Prosecutor has prayed that the petitioners have failed to make out any grounds for interference under the inherent powers of the court under Section 482 of the CrPC to discharge the petitioners in this case and set aside the impugned order.

**14.** I have considered the submissions of the learned counsel for the parties at length and gone through the materials on record. I have also perused the charge sheet submitted by the police. The principles of law

governing discharge are now well settled by the decisions of the Apex Court such as, in the case of **Asim Shariff** (supra). The Apex Court has also considered the earlier decisions rendered in the case of ***Union of India vs Prafulla Kumar Samal*** reported in ***(1979) 3 SCC 4***; ***Sajjan Kumar Vs. CBI*** reported in ***(2010) 9 SCC 368***, ***Vikram Johar vs. State of U.P.*** reported in ***(2019) 14 SCC 207*** and held as under:

> "15. Before we proceed to examine the facts of the present case, it may be apposite to take note of the ambit and scope of the powers of the Court at the time of considering the discharge application. This Court in Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 had an occasion to consider the scope of Section 227 CrPC and it held in para 7 as under :
>
> "7. Section 227 of the Code runs thus:
> '227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'
> The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the

police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

16. In Sajjan Kumar v. CBI, (2010) 9 SCC 368, this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged therefrom have been taken note of in para 21 as under :

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

17. The exposition of law on the subject has been further considered by this Court in State v. S. Selvi, (2018) 13 SCC 455 followed in Vikram Johar v. State of U.P., (2019) 14 SCC 207.

18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from

> grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record."

**15.** Further, the Apex Court in the case of ***ME Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru*** reported in ***(2020) 2 SCC 768*** reiterated the above principles in paragraphs 17, 18, 28 to 31 which are quoted hereunder:

> ***"Legal principles applicable in regard to an application seeking discharge***
> 17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala, (2010) 2 SCC 398 and discern the following principles:
>
> 17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.
>
> 17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.
>
> 17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.
>
> 17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused

committed offence, then, there will be no sufficient ground for proceeding with the trial".

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181. The expression, "the record of the case", used in Section 227 CrPC, is to be understood as the documents and the 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. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568.

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28. It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 227 CrPC. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as

> alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the trial court to discharge the accused.
> 29. It is not open to the accused to rely on the material by way of defence and persuade the court to discharge him.
>
> 30. However, what is the meaning of the expression "materials on the basis of which grave suspicion is aroused in the mind of the court's", which is not explained away? Can the accused explain away the material only with reference to the materials produced by the prosecution? Can the accused rely upon material which he chooses to produce at the stage?
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> 31. In view of the decisions of this Court that the accused can only rely on the materials which are produced by the prosecution, it must be understood that the grave suspicion, if it is established on the materials, should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the court to discharge him."

**16.** The principles of law which emerge from a combined reading of these decisions rendered by the Apex Court show that the learned trial court at the stage of considering the question of framing of charge under Section 227 of the CrPC 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. Where the materials placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge. In such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record. If the materials adduced by the

investigating agency are sufficient enough to proceed with the case and if the same do give subjective satisfaction of the existence of *prima facie* case of alleged offences, the learned trial court would be justified in framing the charges against the accused persons. However, if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be justified in discharging him. In such cases, the trial judge is expected to exercise his judicial mind to determine as to whether a case for trial has been made out or not.

**17.** Considered in this light, the materials which have been collected by the investigating agency do show that these three accused persons were apprehended while waiting in a Bolero vehicle bearing registration No. TR01M0707 at Hospital Chowmuhani, Raishyabari in order to hand over the packet of Rs.15,00,000/- Indian currency notes to the accused person Sona Mohan Tripura @ Mitrafa, a member of the banned terrorist organization NLFT. The accused persons admitted that they were acting on the instructions of their boss to hand over the packet to Sona Mohan Tripura @ Mitrafa. These accused persons admitted that their mobile phones contained some call lists of their conversations with the banned NLFT(BM) extremist group and that they had tried to assist the

extremist organization by providing money instead of informing the police which is punishable under the provisions of the UA(P)A, 1967.

**18.** During course of investigation, the CDRs of the mobile numbers of the accused person Amit Bhowmik were analyzed and found that they had communicated with the user of the mobile number 6033242681 of Sona Mohan Tripura which was currently being used by Badanjoy Tripura and 7628862174 of accused Samaresh Debbarma at several times during the period 18.01.2021 to 20.01.2021 before they were detained along with Rs.15,00,000/- by the police at Raishyabari. From the customer application form of 6033242681 it was seen that the SIM bearing that mobile number had been obtained by the accused Sona Mohan Tripura on 20.03.2020. Thereafter, the SIM card was given to one Bangladeshi national namely, Badanjoy Tripura, an inhabitant of Kestamani Para, Silchari, District-Khagrachari, Bangladesh in the month of March, 2020 to assist him in carrying out all kinds of extremist activities such as extortion, kidnapping, etc., inside the Indian territory on behalf of the NLFT(BM) group. During investigation, it was also learnt from reliable sources that Badanjoy Tripura is an active member of the NLFT(BM) group led by one Bikram Bahadur Jamatia @ Bomtom, SS COAS.

**19.** The following mobile phones with SIM cards were seized from the accused-petitioners:

(i) One Samsung Galaxy S10E mobile cell phone of petitioner Amit Bhowmik with SIM number 9436136384/9612439207;
(ii) One Samsung DUOS mobile cell phone of petitioner Amit Bhowmik with SIM number 6099342239;

(iii) One OPPO ID mobile cell phone of petitioner-Suman Majumder with SIM number 9863422598/9089079215;

(iv) One Xiaomi mobile cell phone of petitioner-Arjun Debnath with SIM number 8794891976.

(v) Indian currency notes for Rs.15,00,000/- along with one Mahindra Bolero vehicle bearing registration No. TR01M0707 was also seized on 20.01.2021.

**20.** As noted above, the investigating agency has after analysis of the CDRs of the Mobile number 60099342239 of the petitioner-Amit Bhowmik found that he had communicated with the mobile number 6033242681 of accused-Sona Mohan Tripura, a member of the banned organization, which cell phone was being used by Badanjoy Tripura, an active member of the NLFT(BM). The communications between the numbers 6033242681 and 7628862174 showed that these accused persons, Sona Mohan Tripura and Badanjoy Tripura, used to communicate with each other frequently and the interchange of mobile phone and SIM cards show a strong link between the two. The investigating agency thus collated the materials collected during the investigation and thus submitted charge sheet

that a *prima facie* case under Sections 120(B)/121/124(A)/387 of the IPC and Section 10 & 13 of the UA(P)A, 1967 has been established against the accused persons, including these three petitioners.

**21.** The learned trial court has, on sifting and weighing the evidence, found out a *prima facie* case against the accused persons which gives rise to grave suspicion against them which has not been properly explained to justify their prayer for discharge. On the basis of the materials on record if the court has formed an opinion that the accused persons might have committed the offence it is empowered to frame the charge though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence as per the principles laid down by the Apex Court in ***Sajjan Kumar*** (supra) at para 21(iv).

**22.** Learned counsel for the petitioner has tried to impress that the ingredients of Section 10(a)(iii) has not been made out as there is no proof of contribution already made to the banned organization as these petitioners were apprehended with a packet of Rs.15,00,000/- only, and no money was shown to have been transferred to the members of the banned organization to implicate them for the serious charges under Section 10 of the UA(P)A, 1967. The materials contained in the charge sheet, however, on being weighed as a whole, on the other hand, make out a *prima facie* case. Such

satisfaction is definitely higher than the degree of satisfaction required to be recorded for considering an application for bail of the accused persons under Section 43-D(5) of the UA(P)A, 1967.

**23.** Learned counsel for the petitioner has relied upon the case of ***Sudesh Kedia*** (supra) in particular para 12 thereof. However, in the said case, the Apex Court was considering the degree of satisfaction as is required by the learned court for the purposes of grant of bail to the appellant Sudesh Kedia, accused under the UA(P)A. In such circumstances, the Apex Court had observed that by its very nature the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. The Apex Court has thereafter, gone on to draw a distinction between the degree of satisfaction to be recorded by the court for granting of bail as compared to the degree of satisfaction required to be recorded for considering a discharge application or of framing of charge in relation to offence under the 1967 Act by observing as under:

> "In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie

> true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

**24.** As such, in the given facts of the case, the plea that since the petitioners admitted that they were paying this amount to the banned NLFT extremist group to protect their labourers from the attack of the NLFT extremists could not be the basis to discharge them, at this stage, as the said plea would be subject to scrutiny at the time of trial. The present case is not one of grant of bail under Section 43-D(5) of the UA(P)A like that of ***Sudesh Kedia*** (supra). If the materials collected by the investigating agency and forming part of the charge sheet do *prima facie* make out a case against these petitioners, the probative value of the materials is not to be gone into in deep to hold that the materials would not warrant a conviction as per the opinion of the Apex Court expressed at para 21 in the case of ***N Suresh Rajan*** (supra). 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. Such a mini trial is not permitted at this

stage. The Apex Court has further, at para 22 of the report, observed that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial.

**25.** Therefore, having regard to the proposition of law applicable to the case at hand, it cannot be said that the materials collected by the investigating agency do not make out even a *prima facie* case for the purposes of discharging the petitioners. As such, this court after careful consideration of the submission of the parties, the materials placed on record and the reasons recorded hereinabove, is satisfied that the impugned order passed by the learned trial court dated 20.01.2023 rejecting the application for discharging the petitioners does not require any interference, in exercise of the inherent powers of the court under Section 482 of the CrPC.

**26.** The instant petition being devoid of merit is dismissed.

Pending application(s), if any, also stands disposed of.

**(APARESH KUMAR SINGH), CJ**

*lodh*