FULL BENCH

Before D. S. Tewana, S. S. Dewan and M. M. Punchhi, JJ.

SUKHDEV SINGH,—*Petitioner*

versus

UNION TERRITORY, CHANDIGARH,—*Respondent.*

Criminal Misc. No. 1798-M of 1986.

May 30, 1986.

Terrorist and Disruptive Activities (Prevention) Act (XLVI of 1985)—Sections 2(c) & (f), 3, 4 and 17(5)—Indian Penal Code (XLV of 1860)—Sections 124-A and 153-A—Code of Criminal Procedure (II of 1974)—Sections 437 and 439—Press and Registration of Books Act (XXV of 1967)—Sections 1(d) and 7—Publication of an article in a newspaper—Person actually controlling the selection of matters to be published different from the person whose name appears in print as editor—Person controlling the publication—Whether could be made to answer a criminal charge arising out of the publication—prima facie inciting terrorist and disruptive activities punishable under Sections 3(3) and 4(2) of the Act—Accused seeking bail—Principles to be followed in the matter of grant of bail in the light of section 17(5) of the Act—Article published in a newspaper alleged to be offensive—Mode of interpretation—Article—Whether to be understood as an ordinary newspaper reader would understand.

Held, (per majority S. S. Dewan and M. M. Punchhi, JJ., D. S. Tewatia, J. (contra) that language of section 7 of the Press and Registration of Books Act. 1867, neither specifically nor by necessary implication excludes persons other than the Editor who may be made to answer a criminal charge. The presumption arising under Section 7 is two-fold (1) that he was evidently the Editor and (2) every portion of the issue of the newspaper was published on his selection. Yet the presumption is rebutable; that is to say facts to the contrary can be alleged and proved over and above the presumption. In a given case, evidence can be led to prove that the Editor whose name in print occurs is a dummy or stooge but the real person who controls the selection of the matter that is published in the newspaper is some one else. Thus, the person who really controls the selection of the matter that is published in the newspaper is the actual Editor and in a given case can be someone who is not the Editor in name and such a person can be made to answer a criminal charge arising out of the publication.

(Para 5)

Held, (per majority S. S. Dewan and M. M. Punchhi, JJ. D. S.) Tewatia, J., contra) that in ordinary cases, the Court has power to grant bail in case of non-bailable offence under Section 437 of the

Criminal Procedure Code, 1973 and the High Court and Court of Session have special powers under section 439. The power under the Code has by means of Section 17(5) of the Terrorist and Disruptive Activities (prevention) Act, 1985 been regulated in the negative. The Court must adopt the negative attitude towards bail but turn it positive firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and secondly that he is not likely to commit any offence while on bail. Both these tests must be satisfied before bail can be granted. Bail is at the most a matter of procedural privilege and not accrued right until it is granted. The Act as a legislative measure was passed in the circumstances which were compelling as the objects and reasons disclose. Its life is for a period of two years from the date of its enforcement. It is a temporary measure taken when the integrity, unity and peace of the country was at stake. The Parliament in its wisdom considered such an emergent legislation necessary when the nation was in peril. The disorders which necessitated this legislation into being were the terrorist acts and disruptive activities of some and the Act is a measure to cope with them. The power of the Court to grant bail has advisedly been regulated in place of that conferred by the Code of Criminal Procedure so as to promote and not defeat the efficacy of the legislation. Therefore, it is right for the Court to interpret the bail provisions in such a way.

(Paras 15 and 16)

Held, (per majority S. S. Dewan and M. M. Punchhi JJ., D. S. Tewatia, J., contra), that those who read newspapers know that the article has direct reference to the event of the times, that is, the Golden Temple at Amritsar, the holiest of the Sikh shrines, having come in the possession of a band of followers of the Bhindranwale cult and their hoisting the Khalistan flag atop. Judges can take notice of these events even when it stands objected to. In order to sustain the presumption of constitutionality of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the registration. Though the constitutionality of the Act is not to be gone into, even then the other statutary principles focus that the courts must presume that the Legislature understands and correctly appreciated the needs of its own people and that its laws are directed to problems made manifest by experience. The objects and reasons reveal the background which led to the passing of the Act and its provisions must necessarily be viewed to overcome the mischief it sought to remove. The article in question must thus, be read and understood as would ordinary newspaper readers understand and be seen whether it *prima facie* rubs against the provisions of the Act. The Court can give an interpretation which is in accord with the right public opinion of the day and not against it so that respect for law and justice is maintained.

A bare reading of the article would show that whosoever is reponsible for its publication has committed offence under Sections 3 and 4 of the Act. The article euelogises Bhindranwale and extolls the role of the band of men who, pursuing his cult, occupied the Golden Temple by force and hoisted the flag of Khalistan. In this way, 'cession' and 'secession' is hailed. Further, the article suggests to the Sikhs to treat the forcible occupiers of the Golden Temple as their true representatives and to prepare themselves for the attainment of Khalistan. Again cession and secession is propogated. It carries obligue reference to the virtues of the cult of violence and alienates one section of people from another. It adversely affects the harmony amongst different sections of the people. And to achieve these objectives, violence is indirectly propogated-attaining of laughter at the cost of others weeping. The article has also hailed the feat of the killer of the Prime Minister of India and has termed the act which has avenged the insult to Sikhs. The article plainly is a blended conglomeration of a variety of suggestive sinister thoughts coverable under the expressions 'terrorist act' and 'disruptive activity as known to the Act. An ordinary newspaper reading man would read the article in such a manner and that is what is expected of us as Judges. Instantly, no intellectual exercise is needed or to hair-spilit or shatter and explain away the context or its contents. No scepticism need enter our minds to laughingly say that no sensible man could have taken the article seriously. It has to be viewed on the basis of common sense. Thus, it is held that the language and tenor of the article is not innocent and cannot be lightly taken. The article undoubtedly advocates, advises or incites the commission of terrorist acts or acts preparatory to terrorist acts punishable under section 3(3) of the Act and disruptive activities or acts preparatory to disruptive activities falling within the ambit of section 4(2) of the Act, if not more. It is true that the article does not directly exhort its readers to do anything but the style of writing is positively suggective recommending action on the path chosen by Bhindrawale and his followers. Now who was Bhindranwale and for what he stood for, is availabde in the Government of India's While Paper on the Punjab Agitation. There are excepts from his statement as translated from tape-recorded speeches transcribed from cassettes and statements made to Press and what White Paper describes can judicially be taken note of, on which there can be no two opinions. The chain of events were thus self speakings. No formal evidence in that regard was necessary to be gathered by the investigation nor can the Court knowingly assume ignorance.

(Paras 6, 11, 12, 13 and 14)

Held, (per D. S. Tewatia, J., contra), that contents of the article do not show that the author had conspired to commit a terroist act or any act preparatory to a terrorist act or that he attempted to commit a terrorist act or any act preparatory to a terrorist act or

that he advocated or abetted or advised or incited or knowingly facilitated the commission of a terrorist act or any act preparatory to terrorist act, as defined in sub-section (1) of section 3 of the Act. The author neither questioned the sovereignty and terrirotial integrity of India nor had sought to disrupt or had intended to disrupt either directly or indirectly the sovereignty or territorial integrity of India. On the other hand, the author had advocated the integrity of India had cautioned that the Prime Minister be beware of the machination of the upper caste Hindus, who are bent upon the vivisection of the country. The author has said that Dalits are against creations of 'Khalistan', because Dalits would suffer greatly if that happens. Again, the author of the article had not suggested any action whether by act or by speech or through any other media or in any other manner which intened to bring about the cession of any part of India from the Union or suppored any claim, whether directly or indirectly for the cession of any part of India. The article does not constitute any offence whatsoever either under the provisions of section 3(3) or that of section 4(2) of the Act and, therefore, the case for granting of bail does not fall within the purview of the provisions of sub-section (5) of section 17 of the Act.

(Paras 25, 26, 29, 30 and 34).

CASE referred by Hon'ble Mr. Justice M. M. Punchhi to a larger Bench for the decision of an important question of law involved in this case on April 25, 1986. The learned Bench consisting the Hon'ble Mr. Justice D. S. Tewatia. The Hon'ble Mr. Justice S. S. Dewan and The Hon'ble Mr. Justice M. M. Punchhi, finally decided the case by the majority judgment on May, 30, 1986.

Application for Bail Under Section 439 of the Code of Criminal Procedure praying that this application of the petitioner may kindly be accepted and the petitioner be enlarged on bail during the pendeny of the case against him.

Ajmer Singh, Senior Advocate, H. S. Jajwa, S. S. Tej and Ajay Pal Singh Advocates with him.

Anand Swaroop, Senior Advocate, Manoj Swaroop, and Ajay Tewari, Advocates, with him).

JUDGMENT

M. M. Punchhi, J.—

(1) This petition for bail speedily climbed the ladder of being heard by a Full Bench. To begin with when the matter came up before me sitting singly, I referred it to a larger Bench considering

it to be of importance needing the powers of the Court to grant bail spelled out in view of the special provisions of bail occurring in the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereafter referred to as 'the Act'). When the matter, under orders of Hon'ble the Chief Justice, was placed before a Division Bench consisting of my learned brother D. S. Tewatia, J., and myself, we considered that an important question of the interpretation of the provisions of sections 3 and 4 of the said Act was involved and thus we referred the case to a Full Bench. It is in this way that the matter has been placed before us. But it has stepped out its parameters as would be seen.

(2) The petitioner Sukhdev Singh gives out that he is a Journalist of eminence with more than 20 years of prefessional career to his credit. He claims to have been associated with leading newspapers/ news agencsies such as 'The Indian Press Agency', Blitz', 'Economic Times' and 'The Daily Tribune'. The petitioner is said to be an owner and consultant Editor of a fortnightly English paper by the name of "Dignity'. The petitioner is further said to be the 'all-in-all' (*karta dharta*) of the said paper though for the purposes of the Newspapers Central Rules, 1956 one D. S. Gill, an Advocate practising at Ludhiana, is the Printer, Publisher and Editor of the paper. The address of Shri D. S. Gill, Printer, Publisher and Editor, that of the owner of the paper and of the petitioner is the same, i.e., 707, Sector 7-B, Chandigarh. Its edition of March 2-15, 1986, bore an article titled as 'A Dalit View of Punjab Scenario' purportly written by one V. T. Raj Shekhar. The petitioner claims that this article was firstly published by Shri V. T. Raj Shehar as an Editor in his own Fortnightly paper 'Dalit Voice' of February 16-18, 1986, at Bangalore and that the Dignity' reprinted this article in its issue of March 2—25, 1986. It is further claimed that Shri V. T. Raj Shekhar is a Journalist who stands for the cause of Dalits, i.e., backward and scheduled castes, etc.

(3) The Chandigarh police registered a case against the petitioner under section 124-A/153-A, Indian Penal Code and under section 4 of the Act on 12th March, 1986. The F.I.R. is primarily based on the questioned article. The petitioner was arfested. He sought bail from the Presiding Officer, Designated Court, Chandigarh, but to no avail. The effort has now been repeated.

(4) The petitioner has a right to obtain bail when presumed to be innocent is the clamour of S. Ajmer Singh, learned counsel for

the petitioner. He maintains that in view of section 7 of the Press and Registration of Books Act, 1867, the Editor of the newspaper alone, i.e., Shri D. S. Gill was responsible and that the petitioner could not be arranged as an accused. On the strength of section 1(d) of the said act, it is asserted that the 'Editor' means the person who controls the selection of the matter that is published in a newspaper and since under section 7 thereof the name of the Editor as printed on a copy of the newspaper is to be treated as sufficient evidence as against the person whose name is printed, he alone can be proceeded against in any legal proceedings; civil as well as criminal, and that the presumption arising against the Editor by necessary implication excludes all others connected with the newspaper. I regret my inability to subscribe to the view. Section 7 reads as follows:—

> "7. *Office copy of declaration to be prima facie evidence.*— In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declaration, or, in the case of editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper, as the case may be that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration or the editor of every portion of that issue of the newspaper of which a copy is produced."

(4) The language of the section neither specifically nor by necessary implication excludes persons other than the Editor who may be made to answer a criminal charge. The presumption arising under section 7 is two-fold—(1) that he was evidently the Editor and (2) every portion of the issue of the newspaper was published on his selection. Yet the presumption is rebuttable; that is to say facts to the contrary can be alleged and proved. Even additional facts can be proved over and above the presumption. In a given case, evidence can be led to prove that the Editor whose name in print occurs is a dummy or stooge but the real person who controls the

selection of the matter that is published in the newspaper is someone else. Thus, the person who really controls the selection of the matter that is published in the newspaper is the actual Editor and in a given case can be someone who is not the Editor in name. The decisions of the Supreme Court relied upon by the learned counsel in *Haji C. H. Mohammad Koya* v. *T. K. S. M. A. Muthukoya* (1), and *The State of Maharashtra* v. *Dr. R. B. Chowdhri and others* (2), do not help his case, for it has nowhere been held in those cases that evidence cannot be led to show that besides the Editor, other persons too were responsible for the publishing of the matter in question.

(6) The investigation alleges that the petitioner was the all-in-all of the paper 'Dignity' and has recorded to that effect a statement of the Girish Kapur under section 161, Criminal Procedure Code. Shri Kapur has stated that he has been publishing in his press newspaper 'Dignity' at the instance of the petitioner who always brought to him the printing material and after getting if printed would read the proof and then collect as many copies as required. Further more he has stated that D. S. Gill had four or five times accompanied the petitioner to his press but the payment of the printing charges used to be made by the petitioner by means of a cheque. Further he says that sometimes the paper had to be sent to the residence of the petitioner at 707, Sector 7-B, Chandigarh. Lastly, he has stated that the issue of March 2, 1986 of the newspaper was published at the instance of the petitioner who had come personally for the purpose, had checked the proof and after approval got all copies prepared which he took along with him. On the basis of this material, it cannot *prima facie* be said that the petitioner had nothing to do with the write-up in question.

Reproduction of the questioned article in this judgment would be a wholesome burden. From a few extracts, the tenor of it can be gauged:—

> "Baba Saheb Ambedkar once said 'what the Hindus love, we must hate and what the Hindus hate. we must love'. This simple Ambedkar formula for the guidance of Dalits can be applied whenever we are in confusion.
>
> * * * *

(1) A.I.R. 1979 S.C. 154.
(2) A.I.R. 1968 S.C. 110.

Right now in Punjab, the Hindus, meaning the upper-castes, are very much worried over 'extremists' capturing the Golden Temple at Amritsar.....That means, these Hindus, who used to hate Barnala, Tohra, Badal and others have suddenly started loving them and want the pro-Bhindranwale 'extremists', who took over the Golden Temple, to be liquidated. So we know whom the Hindus love and whom they hate. Since they make no secret of their love and hate. It is equally easy for the persecuted minorities of India to come to the right decision at such crucial moments.

* * * *

.....We have been proved right in saying that the All-India Sikh Students Federation has become the representative organisation of the Sikhs and that the Akali Dal (L) and the S.G.P.C., have lost the confidence of the people. Barnala had the police under him and Tohra had the vast S.G.P.C., funds plus the armed guards, but neither could stop the militant, committed Bhindrawale boys from taking over the Golden Temple.

Why? Because the Sikh masses are behind Bhindrawale who today reigns supreme over Punjab. In other words, the 'elected' Akali Government, S.G.P.C., the high priests and the low-pries's have lost the support of the people as they became puppets of the Hindus.

* * * *

It was Bhindranwale who stired np this stinking Sikh pond and Beant Singh, Dalit Sikh who avenged the humiliation to Sikhs. It was Bimal Khalsa, a Ramdasia Sikh and the widow of Beant Singh, who led the canal construction blockade. They say it is these three people who restored the lost self-respect of the Sikhs. Not Longowal, not Barnala, not Tohra, not any high priest. One Bhindranwale may be dead but hundred of Bhindranwale are born out of his blood.

* * * * *

It is better to die young like Bhindranwale, fighting, rather than live the life of a donkey for 100 years without self-respect. That is why we often say that Dalits and other persecuted nationalities must learn how to die.

* * * * *

Today the situation in Punjab is worse than that of June, 1984. Small people have small minds. Barnala, Tohra, Badal proved to be small people. And Sikhs who think big and act big have rightly kicked out the small people.

The upper caste Hindus are never tired of lecturing on the 'unity and integrity' of India..... So much so, they are 'giving' 'Khalistan' to Sikhs on a golden plate..... Till now the Sikhs resisted all such temptations. But going by today's mood of Sikhs, they will take it—come what may.

* * * * *

But the new militants who took over the Goldhen Temple represent the Sikh masses and particularly the Dalits who are the true representatives of Punjab."

Those who read newspapers know that the article in question has direct referenc to the event of the times, i.e. the Golden Temple at Amritsar, the holiest of the Sikh shrines, having come in the possession of a band of followers of the Bhindranwale cult and their hoisting the Khalistan flag atop. But can we as Judges take notice of these events when it stands objected to? I know that in order to sustain the presumption of constitutionality of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the legislation. This rule has been well enunciated in *R. K. Dalmia and others* v. *Justice S. R. Tendolkar and others,* (3) and *Mohd. Hanif Quareshi and others* v. *State of Bihar and others* (4). Though truly in this petition we are not required to go into the constitutionality of the Act, even then the other salutary principles enunciated in the aforesaid cases focus that the Courts must presume that

(3) A.I.R. 1958 S.C. 538.
(4) A.I.R. 1958 S.C. 731.

the Legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience. The objects and reasons read out to us reveal the background which led to the passing of the Act and its provisions must necessarily be viewed to overcome the mischief it sought to remove. The article in question must thus be read and understood as would ordinary newspaper readers understand and be seen whether it *prima facie* rubs against the provisions of the Act.

(7) I am tempted to quote in extenso observations of Lord Denning in his Book 'The Closing Chapter' in relation to the Sikh Boy's Turban case, when his decision in the Court of Appeal was reversed by the House of Lords. He says at pages 82—85:—

> "I am tempted to suggest that if they do not read the newspapers, they must be sitting in an ivory tower. To my mind, that is not the right place for a Judge to sit. There is one sentence in the judgment of Lord Fraser of Tullybelton in the House of Lords which shows that their Lordships do read the newspapers. In analysing the meaning of the words 'ethnic group', he referred to the dictionary definitions and rejected all of them. He said in (1983) 2 WLR 620, 625:
>
> '.....in seking for the true meaning of 'ethnic' in the statute, we are not tied to the precise definition in any dictionary. The value of the 1972 definition is, in my view, that it shows that ethnic has come to be commonly used in a sense appreciably wider than the strictly racial or biological.'
>
> And then he made this illuminating comment:
>
> 'That appears to me to be consistent with the ordinary experience of those who read newspapers at the present day. In my opinion, the word 'ethnic' still retains a racial flavour but it is used nowdays in an extended sense to include other characteristics which may be commonly thought of as being associated with common racial origin.'
>
> Now, reading that paragraph, it seems to me that the House of Lords were being guided by what they thought was the

'ordinary experience of those who read newspapers at the present day.' I ask myself : How are the Lords themselves to find out what is the view taken by 'those who read newspapers'? They must be putting themselves into the same position as newsper readers. In some branches of the law we look for the meaning of the ordinary 'reasonable man'. Here the Lords are looking for the meaning given by the 'ordinary newspaper reader'. I should have thought that on reading the criticisms of our decision, most newspaper readers would have said : 'The Court of Appeal were quite wrong. The Lords ought to reverse their decision.'

Not that I doubt the wisdom of Judges reading the newspapers. I think they ought to read them, so as to keep in touch with public opinion. The law ought to accord with the right public opinion of today, and not be against it. Otherwise, it will not be held in respect."

(8) I think the illuminating words of Lord Denning sum up the expectations of our people and their elected representatives sitting in the Parliament through whom they legislate. They hopefully look forward to the Court to give an interprtation which is in accord with the right public opinion of the day and not against it so that respect for law and justice is maintained.

(9) It was next contended by S. Ajmer Singh that the effort to prosecute the petitioner was violative of Article 19(1)(a) of the Constitution which guaranteed freedom of speech and expression. He contended that in today's free world, freedom of press is the heart of social and political intercourse. Reliance was placed on *Indian Express Newspapers (Bombay) Private Ltd. and others etc.* v. *Union of India and others* (5). It has been noted therein that the press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world and that the purpose of the press is to advance public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. So far as it goes, it is constructive. But if in the name of freedom, licence

(5) A.I.R. 1986 S.C. 515.

is assumed by the press to run across public interest, then the freedom guaranteed stands abused. This argument to my mind does not advance the case of the petitioner on just his supposed freedom.

(10) Now the stage is set to have a sceptical look at the definitions of the expressions 'disruptive activity' and 'terrorist act' in section 2(c) and (f) respectively as also the provisions of sections 3 and 4 which are quoted hereafter:—

"2 (c) 'disruptive activity' has the meaning assigned to it in section 4, and the expression 'disruptionist' shall be construed accordingly;"

"2 (f) 'terrorist act' has the meaning assigned to it in subsection (1) of section 3 and the expression 'terrorist' shall be construed accordingly;"

"3 (1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alnenate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substanmces or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction, of property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.

(2) Whoever commits a terrorist act shall—

(i) if such act has resulted in the death of any person, be punishable with death;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the

the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine."

"4 (1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

"(2) For the purposes of sub-section (1) 'disruptive activity' means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,—

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignity and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section,—

(a) 'cession' includes the admission of any claim of any foreign country to any part of India, and

(b) 'secession' includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever which—

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any persons

bound by oath under the constitution to uphold the sovereignty and integrity of India or any public servants shall be deemed to be a disruptive activity within the meaning of this section."

(11) These provisions require thus no interpretation except a cool grasp of their intendment. It only requires to be seen whether the article in question advocates, advises or incites the commission of a terrorist act or any act preparatory to it, or the commission of a disruptive activity or any act preparatory to it. A bare reading of the article and in particular the passages above extracted would show whosever is responsible for its publication has committed offences under sections 3 and 4 of the Act.

(12) The article attributed to the petitioner intends to eulogise Bhindranwale and extoll the role of the band of men who, pursuing his cult, occupied the Golden Temple by force and hoisted the flag of Khalistan. In this way, 'cession' and 'secession' is hailed. Further, the article suggests to the Sikhs to treat the forcible occupiers of the Golden Temple as their true representatives and to prepare themselves for the attainment of Khalistan. Again cession and secession is propogated. It carries oblique references to the virtues of the cult of violence and alienates one section of people from another. It adversely affects the harmony amongst different sections of the people. And to achieve these objectives, violence is indirectly propogated—attaining of laughter at the costs of others weeping. The article has also hailed the feat of Beant Singh, the killer of the Prime Minister of India, Mrs. Indira Gandhi, and has termed that act which has avenged the insult to the Sikhs. The article plainly is a blended conglomeration of a variety of suggestive sinister thoughts coverable under the expressions 'terrorist act' and 'disruptive activity' as known to the Act. An ordinary newspaper reading man would read the article only in such a manner and that is what is expected of us as Judges. Instantly, no intellectual exercise is needed or to hair-split, or shatter and explain away the context or its contents. No scepticism need enter our minds to laughingly say that no sensible man could have taken the article seriously. It has to be viewed on the basis of common sense. Thus, I am constrained to hold that the language and tenor of the article is not innocent and cannot be lightly taken. Thus I am of the confirmed view, as at presently advised, that the article undoubtedly advocates, advises or incites the commission of terrorist acts or

acts preparatory to terrorist acts punishable under section 3(3) of the Act and disruptive activities or acts preparatory to disruptive activities falling within the ambit of section 4(2) of the Act, if not more. It is true that the article does not directly exhort its readers to do anything but the style of writing is positively suggestive recommending action on the path choosen by Bhindranwale and his followers.

(13) Now who was Bhindranwale and for what he stood for is available in the Government of India's White Paper on the Punjab Agitation. There are excerpts from his statements as translated from tape-recorded speeches transcribed from cassettes and statements made to Press. A few of them are:—

> "It comes to 35 and not even 100. Divide 66 crores, then each Sikh gets only 35 Hindus, not even 36th. How do you say you are weak?"
>
> * * * *
>
> "I had earlier directed that each village should raise a team of three youth with one revolver each and a motorcycle. In how many villages has this been done?"
>
> * * * *
>
> "Those of you who want to become extremists should raise their hands. Those of you who believe that they are the Sikhs of the Guru should raise their hands, others should hang their heads like goats."
>
> * * * *
>
> "Frankly I don't think that Sikhs can either live in or with India."
>
> * * * *
>
> "A Sikh without arms is naked, a lamb led to slaughter. Buy motorcycles, guns and repay the traitors in the same coin."

(14) What the White Paper describes can judicially be taken note of, on which there can be no two opinions. The chain of events were thus self speaking. No formal evidence in that regard was necessary to be gathered by the investigation. Neither can the Court knowingly assume ignorance.

(15) In ordinary cases, the Court has power to grant bail in case of a non-bailable offence under section 437, Criminal Procedure Code, and the High Court and Court of Session have special powers under section 439, Criminal Procedure Code. The power under the Code has by means of section 17(5) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 been regulated in the negative by providing as follows:—

> "Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless:—
>
> (a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
>
> (b) where the Public Prosecutor opposes the application, the Court is satified that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

(16) It is plain from the language of the above provision that the Court must adopt a negative attitude towards bail but turn it positive firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and secondly that he is not likely to commit any offence while on bail. Both these tests must be satisfied before bail can be granted. Bail is at the most a matter of procedural privilege and not accrued right until it is granted. The Act as a legislative measure was passed in the circumstances which were compelling as the objects and reasons read to us in extenso disclose. Its life is for a period of two years from the date of its enforcement in accordance with section 1(3). It is temporary measure taken when the integrity, unity and peace of the country was at stake. The Parliament in its wisdom considered such an emergent legislation necessary when the nation was

in peril. While interpreting its provisions and carrying out its intendment, the words of Lord Macmillan in (1942) A.C. 206 are a pointer:—

> "But in a time of emergency, when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which because of its drastic invasion of the liberty of the subject the Courts would be slow to attribute to a peace-time measure. The purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is in accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peace time as well as in war time."

The disorders which necessitated this legislation into being were the terrorist acts and disruptive activities of some and the Act is a measure to cope with them. The power of the Court to grant bail has advisedly been regulatel in place of that conferred by the Code of Criminal Procedure so as to promote and not defeat the efficacy of the legislation. Therefore, it is right for the Court to interpret the bail provisions in such a way. On such interpretation, it cannot be said at this stage that there are reasonable grounds for believing that the petitioner is not guilty of such an offence and further while on bail he was not likely to commit any offence.

(17) Thus, for the views afore-expressed, I decline bail to the petitioner.

D. S. Tewatia, J.—

(18) I have persued the opinion prepared by my learned brother Punchhi, J. With respect, I have not been able to persuade myself to subscribe to the view he has projected and, therefore, the necessity of dictating a separate opinion of my own.

It is unnecessary to burden this opinion with the facts of the case, because these have been in detail recaptituated by my brother Punchhi, J. It would suffice to mention that the petitioner Sukhdev Singh has claimed himself to be the owner and consultant editor of

political weekly 'Dignity', of which the ostensible printer, publisher and editor is one Shri D. S. Gill, Advocate of Ludhiana. In its issue of March 2-15, 1986, 'Dignity' reprinted an article 'A' Dalit View of Punjab Scenario', authored by one V. T. Raj Shekar, which he had earlier published as an editor in his own fortnightly paper 'Dalit Voice' of February 16—22, 1986, at Bangalore, Chandigarh police registered F.I.R. No. 122, dated 12th March, 1986, against the petitioner, V. T. Raj Shekher and D. S. Gill under sections 124-A and 153-A, I.P.C. and under section 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, hereinafter referred to as the Act'. The petitioner was arrested by Chandigarh police on 12th March, 1986.

(19) The petitioner sought bail from the Presiding Officer, Designated Court, Chandigarh, who declined the same by his order dated 15th March, 1986.

(20) As before him, so also before us, the prosecution resisted the granting of bail to the petitioner on account of the commission by the petitioner of the alleged offence under sections 3 and 4 of the Act and, therefore, this Court too is to consider as to whether the petitioner has made out a case for the granting of bail, in view of the provisions of sections 3 and 4 of the Act, read with section 17 thereof, which provides the circumstances in which this Court could grant bail to an accused charged with the commission of offences under the Act.

(21) Before proceeding to consider the rival containtions advanced at the Bar. It would be appropriate to notice the expressions 'disruptive activity' and 'terrorist act' as defined in section 2(c) and (f) of the Act, as also the provisions of sections 3 and 4 thereof, which are in the following words:—

> "2(c) 'disruptive actively' has been meaning assigned to it in section 4, and the expression 'disruptionist' shall be construed accordingly;
>
> * * * * * *
>
> (f) 'terrorist act' has the meaning assigned to it in sub-section (1) of section 3 and the expression 'terrorist' shall be construed accordingly;
>
> * * * * * *

3(1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.

(2) Whoever commits a terrorist act shall:—

(i) if such act has resulted in the death of any person, be punishable with death;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

4(1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission of, any disruptive activity or any act preparatory to disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to a term of life and shall also be liable to fine.

(2) For the purposes of sub-section (1) 'disruptive activity' means any action taken, whether by act or by speech or

through any other media or in any other manner whatsoever:—

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section,—

(a) 'cession' includes the admission of any claim of any foreign contry to any part of India, and

(b) 'secession' includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever which—

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to inscite, advise, suggest or prompt, the killing or the destruction of any persons bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servants shall be deemed to be a disruptive activity within the meaning of this section."

The offending portions of the article in question, which were highlighted by the counsel for the State, have been reproduced by my brother Punchhi, J., in his opinion. I would, however, consider it desirable to produce the entire article, for it is the tenor of the article as a whole has to be construed. The offending article is in the following words:

"A Dalit View of Punjab Scenario

By V. T. Rajshekar

BABASAHEB AMBEDKAR once said: "what the Hindus love, we must hate and what the Hindus hate we must love". This simple

Ambedkar formula for he guidance of Dalit can be applied whenever we are in canfusion. The upper caste Hindus rule only by confusing others. That is how they once again reduced Punjab toa bundle of confussion. So whenever there is any confusion like this Babasaheb comes to our rescue.

Right now in Punjab the Hindus, meaning the upper caste, are very much worried over 'extremists' capturing the Golden Temple of Amritsar. They are finding fault with Chief Minister Barnala for yielding to the 'terrorist pressure' and 'appeasing the anti-nationals'. They are also furious that the 'extremists' are going ahead with the demolition of Akal Takht rebult by them at an estimated cost of Rs. 50 crore.

Volte face by Hindus

That means, these Hindus, who used to hate Barnala, Tohra, Badal and others have suddenly started loving them and want the pro-Bhindranwala 'extremist', who took over the Golden Temple, to be liquidated. So we know whom the Hindus love and whom they hate. Since they make no secret of their love or hate, it is equally easy for the persecuted minorities of India to come to the right decision at such crucial moments. This is called the laws of contradictions. (Selected Works of Mao Tse-Tang, 1952 Vol. 1, Peoples Publishing House Beijing).

A proper study of these laws that govern every society is a must for all Dalits and persecuted nationalities. Guided by the thoughts of Babasahab and Mao, we come to certain conclusions and that is how we have been proved right in saying that the All India Sikh Students Federation has become the representative organisation of the Sikhs, and that the Akali Dal (L and the S.G.P.C., have lost the confidence of the people. Barnala had the police under him and Tohra had the vast S.P.G.C., funds plus the armed guards, but neither could stop the militants, committed Bhindranwala boys from taking over the Golden Temple.

Why ? Because the Sikh masses are behind Bhindranwala who today reigns supreme over Punjab. In other words, the 'elected' Akali Government, S.G.P.C., the high priests and the low priests have lost the support of the people as they became puppets of the Hindus. That is why the 'Hindus are beating their breasts over the fall of their stooges.

Sikh religion tells a Sikh to fight and die, never to surrender, Longowal, Badal, Tohra, Zail Singh not only did not fight but surrendered and compromised with the 'enemy'. Hence they must go. No tears be shed over this. All these high priests and low priests and were responsible for compromising with Brahminism making Sikhism, a military religion, part of Hinduism.

Sikh—Dalits Bhai Bhai

As a consequence, Sikhism distanced itself from the Dalits for whose liberation Sikhism was founded. It was Bhindranwale who stirred up this stinking Sikh pond and Beant Singh, a Dalit Sikh, who avenged the humiliation to Sikhs. It was Bimal Khalsa, a Ramdasia Sikh and the widow of Beant Singh, who led the canal construction blockade. They say it is these three peopule who restored the lost self-respect of the Sikhs. Not Longowal, not Barnala, not Tohra, not any high priest. One Bhindranwale may be dead, but hundreds of Bhindranwale are born out of this blood.

What is going on in Punjab today is a welcome, long overdue clash between internal contradictions. Without resolving the internal contradictions, we cannot resolve the external contradictions. 'The fundamental cause of the development of a thing is not external but internal. Contradiction within a thing is the fundamental cause of its development. Social development is due chiefly not to external but internal cause.

So as per the laws of contradictions, Sikhs have more deadly enemies inside their own house. And the A.I.S.S.F., and the Damdami Taksal of Bhindranwale have, therefore, rightly identified these internal enemies and ousted them. Congratulation. So much so the Dalit Sikhs have started coming closer to the Jat Sikhs and, in fact, leading the Sikh nation under Bimal Khalsa because the priority is given to throw out the internal enemies.

It will now become easier to fight the external enemies once the internal enemies are eliminated. The experiment being conducted within the Sikh society is a lesson to the Dalit and all other persecuted nationalities. If the Muslims are weak today despite forming about 15 per cent of the population, it is because of the enemy within.

As no society can escape being governed by these laws of contradictions, Barnala, Tohra and co; will be its first casuality. Zail Singh and Buta Singh, the two running dogs of the Centre, have been rightly shown their place. We really feel sorry for their plight. They are hated by the Hindus as well as by the Sikhs. Zail Singh missed two historic opportunities to recover his lost respect and restore the Sikh glory. As the Commander-in-Chief of the Armed Forces, he could have refused to give his consent to send the Army into the Golden Temple; and later when the Army entered it, he could have resigned as the President. But he compromised and decided to be a stooge. We have no sympathy for worms.

The Sikh 'worms'

Buta Singh may be a Dalit. So what is the use of living without self-respect? It is better to die young like Bhindranwale, fighting, rather than live the life of a donkey for hundred years without self-respect. That is why we often say that Dalits and other persecuted nationalities must learn how to die. Our liberation is assured the moment we learn how to die it is true we hate the upper cate but that is me use. Because we do not know how to oust them. We will not know it until we learn the art of dying.

Barnala had an opportunity to enter the Sikh hearts. He could have resigned on January 26, when Chandigarh was scheduled to be transferred to Punjab as per the 'Rajiv Gandhi-Longowal accord' To him his chair became more important than his conscience. He shivered under the Hindu threats and sent his own son to fight Bhindranwale boys in Amritsar. The son met with a road accident and the father with a political accident. Today the situation in Punjab is worse than that of June, 1984. Small people have small minds. Barnala, Tohra, Badal proved to be small people. And Sikhs who think big and act big have rightly kicked out the small people.

The upper caste Hindus are never tired of lecturing on the 'unity and integrity' of India. If they really love the country they would, not have behaved like this. Enough literature produced by their people has come to prove how brutally they were on Sikhs. So much so, they are 'giving' 'Khalistan' to Sikhs on a golden plate. Sikhs say they don't want 'Khalistan' but it is these Hindu-Nazis, Arya-Samajists, Nirankaris and Durankaris, who are begging the unwilling Sikhs to take 'Khalistan'. Till now the Sikhs resisted all

such temptations. But going by today's mood of Sihks, they will take it—Come what may.

If and when it happens who will be responsible for forming 'Khalistan'? On our part, we have always opposed 'Khalistan'. We sufferers are not interested in parting with the Sikhs whose presence in India as co-sufferers is very essential for us. The cause of the Dalits and O.B.Cs. has suffered because of the formation of Pakistan. It will suffer a further set back if the Sikhs also go with 'Khalistan'. These upper caste exploiters, the 5 per cent Aryan invaders have no love for the country and that is why they are bent upon vivisecting it. But can we allow it?

Will Sunderji Oblige Again ?

They sent their Army led by a Madrasi Brahmin, Sunderji, and destroyed the Golden Temple in 1984. When it was destroyed, they rejoiced, danced with joy and distributed sweets. These very people repeated their rejoicing when the Hindu 'army' rebuilt the Golden Temple. They were happy when it was destroyed, they were more happy when it was rebuilt.

What type of a kill-joy they must be Akal Takht was destroyed many times before but every time it was rebuilt brick by brick by Sikhs themselves. Why did the Hindu mafias go to rebuild it spending Government money? Don't they know that such an action is an insult to Sikh conscience? So when the Sarkar Seva built Akal Takht is being pulled down, why are they weeping now? Well, when the Hindus weep we must laugh and when they laugh we must weep.

Whatever it is, the decision to destroy the Akal Takht is a slap on the face of the Hindu-Nazis. And we are afraid they may have to call Sunderji again. And if ever the heartless Hindus were to repeat the history, it is the sure birth of 'Khalistan'. Whatever may be the Hindu-Nazi pressure on Rajiv Gandhi, we hope he will not become a party to the vive-section of India. May be he is being threatened with the Congress losing in Haryana, which has an unscrupulous Hindu as its Chief Minister. He may form a new party to save Haryana for its upper caste.

Dark forces are at work in Delhi trying to confuse Rajiv. He was magnanimous enough to band over Punjab to Akalis which is

a Kulak party of Sikh landlords. But the new militants who took over the Golden Temple represent the Sikh masses and particularly the Dalits who are the true representatives of Punjab.

All minorities in ferment.

He should not that it is not merely the Sikhs who are in ferment. The Muslims, Christians, Delhi tribes, O.B.Cs. are equally disturbed. Because they have realised that Brahminism is threatening every nationality. So when a nationality is theatened it is bound to hit back. This is called the sharpening of the contradictions. It is health sign. And no nation has sharpened the contradictions. as much as the Sikhs — though they form just 2 per cent of the population. We don't know what is wrong with Muslims who form 15 per cent, Dalits 20 per cent, and tribals 10 per cent and Christians 2.5 per cent Why don't they learn from Sikhs: how to die?"

Counsel for the petitioner has advanced two-hold submission (1) that the petitioner, not being either editor, printer or publisher of the paper in question, cannot be charged with any offence arising from the publication of the given article in the paper, and (2) that the contents of the alleged offending article do not constitute any offence under sections 3 and 4 of the Act.

(22) Taking the second submission first, it may first be observed that the author of the article Shri V. T. Rajashekar, in substance, has projected the view that the upper caste Hindus, according to Dr. Ambedkar, rule by confusing others. To correctly assess the situation, Dalits have only to see what the upper caste Hindus love or hate. 'You love those whom they hate and hate those whom they love'—apply this formula to the situation in Punjab. Upper caste Hindus hate Bhindranwale and his committed boys, Dalits should, therefore, love them. Sikh religion was created to rescue Dalit classse (scheduled castes and backward classes) from oppression from upper class Hindus. The cause of Dalit and of Sikhs and other oppressed minorities is one and the same. It is Bhindranwale and his boys, who truly represent Sikh masses and not Barnala, Tohra and Badal. It is Beant Singh and his wife Bimal Khalsa who represent Dalits among the Sikhs and not Giani Zail Singh and Buta Singh. Upper caste Hindus are out to vivisoct India. Dalits are gainst creation of 'Khalistan', because as a result thereof Dalits would suffer. Upper caste Hindus are giving 'Khalistan' to Sikhs on a golden plate, although

Sikhs say they do not want 'Khalistan', but it is Hindu-Nazis or the Arya Samajis Nirankaris or Durankaris who are begging unwilling Sikhs to take 'Khalistan'. The Sikhs till now have resisted all such temptations, but going by today's mood of Sikhs, they will take it—come what may. The Dalits on their part have always opposed 'Khalistan'. They being sufferers are not interested in parting with Sikhs, whose presence in India as co-sufferers is very essential for them. Just as the cause of Dalits and other backward classes had suffered as a result of formation of Pakistan, similar would be the position if Sikhs succeed in getting 'Khalistan'. The upper caste Hindus, the 5 per cent Aryan invaders have no love for the country and that is why they are bent upon vivisecting the country. If another operation 'Blue Star' is executed, it would herald birth of 'Khalistan'. Dalits hope that Rajiv Gandhi would not become a party to the vivisection of India. Dark forces are at work trying to confuse him. He was maganimous enough to hand over Punjab to Akalis which was a Kulaks party of Sikh landlords, but it is the militants who took over the Golden Temple who represent the Sikh masses and particularly the Dalits who are the true representative of Punjab. Dalit and other oppressed minorities can save themselves only if they are prepared to die for their rights.

(23) The presiding Officer of the Designated Court came to the conclusion that the article did not fall within the definition of 'disruptive activity' as given in clauses (i) and (ii) of sub-section (2) of section 4 of the Act. However, according to him, the article came within the ambit of sub-section (3) of section 4.

(24) Before us, Mr. Anand Swaroop, learned counsel for the respondent, contended that the article constituted an offence under sub-section (3) of section 3 and sub-section 2 of section 4 of the Act, which submission has found favour with my learned brother Punchhi, J.

(25) The article, as I view it, however, does not constitute any offence whatsoever either under the provisions of section 3(3) or that of section 4(2) of the Act.

(26) The contents of the article do not show that the author had conspired to commit a terrorist act or any act preparatory to a terrorist act or that he attempted to commit a terrorist act or any act preparatory to a terrorist act or that he advocated or abetted or

advised or incited or knowingly facilitated the commission of a terrorist act or any act preparatory to terrorist act, as defined in sub-section (1) of section 3.

(27) It was, however, argued on behalf of the prosecution that from the factum of eulogising of Bhindranwale and Beant Singh, it must be inferred that the petitioner had advocated the commission of terrorist act.

(28) This, in my opinion, would be allowing the imagination to run riot.

(29) The author of the article in question neither questioned the sovereignty and territorial integrity of India had sought to disrupt or had intended to disrupt either directly or indirectly the sovereignty or territorial integrity of India. On the other hand, the author had advocated the integrity of India and had cautioned that the Prime Minister be beware of the mechination of he upper caste Hindus, who are bent upon the vivisection of the country. The author has said that Delits are against creation of 'Khalistan', because Dalits would suffer greatly if that happens.

(30) The author of the article in question had not suggested any action whether by act or by speech or through any other media or in any other manner which intended to bring about the cession of any part of India from the Union or supported any claim, whether directly or indirectly, for the cession of any part of India.

(31) Mr. Anand Swaroop, senior-advocate, the learned counsel for the State, argued that by using expressions like 'Till now the Sikhs resisted all such temptations. But going by today's mood of Sikhs, they will take it—come what may" and 'And we are afraid they may have to call Sunderji again. And if ever the heartless Hindus were to repeat the history, it is the sure birth of 'Khalistan', the author had predicted the formation of 'Khalistan'.

(32) Even if it is so, predicting the formation of 'Khalistan' is not covered by the provisions of sub-section (2) of section 4. The legislature was aware of the meaning of the words 'predict' and 'prophesy' and wanted that no person should predict or prophesy—the prohibited thing, it has expressly said so, as it had done by providing so under sub-setion (3) of section 4. The absence of these words from sub-section (2) of section 4 is meaningful.

(33) For the reasons aforementioned, I hold that the article in question does not constitute any offence as claimed by the prosecution.

(34) Once it is held that the petitioner has not committed any offence in terms of sections 3 and 4 of the Act, then his case for granting of bail does not fall within the purview of the provisions of sub-section (5) of section 17 of the Act.

(35) As already observed, learned counsel for the respondent, had not argued either before the Court below or before us that the article in question constituted an offence under sections 124-A and 153-A of the I.P.C.

(36) In any case, the contents of the article in question do not constitute sedition that is an offence under section 124-A I.P.C., because the author had not said anything that could bring into hatred or contempt the Government established by law in India. Nor he had tried to incite or attempt to incite disaffection towards the Government of India.

(37) So far as offence under section 153-A I.P.C., is concerned, assuming for the sake of argument that the article constitutes such an offence, then too the petitioner deserves to be enlarged on bail, when regard is had to the fact that the Additional Sessions Judge, Shri M. K. Bansal, had granted anticipatory bail to the petitioner for offences under sections 153-A and 120-B, I.P.C., regarding which F.I.R., was registered against him on 14th March, 1986.

(38) For the reasons aforementioned, the petitioner is enlarged on bail on his executing a personal bond in the sum of Rs. 5,000/- (Rs. Five thousand only) to the satisfaction of the Chief Judicial Magistrate, Chandigarh.

ORDER OF THE COURT.

(39) In view of the majority judgment, the bail is declined to the petitioner.

21761 HC—Govt Press, U.T., Chd.