

IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM

Present: Sri. Anil.K.Bhaskar, Judge for NIA Cases

Wednesday the 8th day of February, 2023/ 19th Magha, 1944

Crl. MP No. 213/2022 in SC No. 1/2020/NIA/KOC

Petitioner/Complainant: Union of India represented by National Investigation Agency, Kochi.

**By Adv. Sri. Arjun Ambalappatta
Public Prosecutor, NIA, Kochi.**

Respondent/Accused:

1. Allan Shuaib (A1), age 20 years, S/o. Mohammed Shuaib, Manipoori House, Palattu Nagar, Thiruvannur, Kozhikode
2. Thwaha Fasal (A2), age 24 years, S/o. Abubacker, Kottummal House, Moorkanad, Pantheerankavu, Kozhikode.
3. M. Usman (A3), aged 42 years, S/o. Aboobacker, Melethil House, Odampatta, Chembrassery, pandikkad, Malappuram, Now remanded at High Security Prison, Viyyur.
4. Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A4), aged 29 years, S/o. Vijayan V.K., Chaithram House, Puzhamudi Post, Kalpetta, Wayanad District, Kerala.

A1 to A4 by Adv. Sri. Thushar Nirmal Sarathy

This Criminal M.P coming on for hearing before me on 08.02.2023 and the Court on the same day passed the following:-

ORDER

1. This application is moved by NIA to cancel the bail granted to Allan Shuaib (A1) on violation of the condition imposed by this court, vide common order passed in Crl.M.Ps.55/20 and 56/20 dated 09.09.2020.

2. Notice served to the respondent/A1 Allan Shuaib. Detailed counter

statement filed.

3. Facts which ultimately lead to the filing of this petition, arranged chronologically, are as follows:- A1 Allan Shuaib along with A2 Thwaha Fasal was arrested by the police on 01.11.2019. It is alleged that A1 and A2 were cadres of the proscribed terrorist organisation CPI(Maoist) and at the time of the arrest they were together with A3 Usman an active member of the proscribed organisation who fled away from the scene on seeing the police party, and all the three men were there to conduct a secret meeting. All three were booked for the offences punishable u/s.20, 38 and 39 of UA(P) Act. Both the arrested accused were remanded in judicial custody. Later investigation was taken over by NIA. They filed final report against the three accused for the offences punishable under section 38 and 39 of UA(P) Act. Sec.20 was omitted from the charge sheet. A3 was shown as absconding.

4. This court granted bail to A1 Allan Shuaib and A2 Thwaha Fasal by its order dated 09.09.2020 by imposing certain conditions. The result portion of the said order is extracted hereunder:-

- 1. Petitioners/accused 1 and 2 are directed to be released on bail on each of them executing bonds for ₹1 lakhs each with two solvent sureties each for the like amount.*
- 2. One of the sureties of each petitioners shall be the parent of the respective petitioner and other surety shall be a near relative of the respective petitioner.*
- 3. The petitioners/accused shall not directly or indirectly make any inducement, threat or promise to any persons acquainted with the facts of the case so as to denude such person from disclosing such facts to the*

court or to the investigating agency or to any police.

4. *The first petitioner Allan Shuaib shall report before the Panniyankara police station within whose limits he resides, on the first Saturday of every month in between 10 am and 11 am until further orders.*
5. *The second petitioner Thwaha Fasal shall report before the Pantheerankavu police station within whose limits he resides, on the first Saturday of every month in between 10 am and 11 am until further orders.*
6. *Petitioners shall make themselves available for any further investigation by NIA if so required, and regularly attend this court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application.*
7. *The petitioners shall surrender their passports if any to this court before their actual release. In case they are not holding any passport, they shall file an affidavit before this court.*
8. *The petitioners shall not leave the territorial limits of State of Kerala without the prior permission of this court.*
9. *The petitioner shall not indulge in any criminal activities while on bail nor shall in any manner associate with or support the banned CPI (Maoist), all its formations and all its formations.*
10. *SHO, Panniyankara police station is directed to monitor the first petitioner Allan Shuaib and if he finds the first petitioner involved in any criminal activity or in any way associated with or supporting the banned CPI (Maoist) or any of its formations, the police/investigation agency is at liberty to bring it to the notice of this court through the Public Prosecutor.*
11. *SHO, Pantheerankavu police station is directed to monitor the second*

petitioner Thwaha Fasal and if he finds the second petitioner involved in any criminal activity or in any way associated with or supporting the banned CPI (Maoist) or any of its formations, the police/investigation agency is at liberty to bring it to the notice of this court through the Public Prosecutor.

12. In case of violation of any conditions, prosecution may ask for cancellation of bail.

5. NIA challenged the said order before the Hon'ble High Court of Kerala. The Hon'ble High Court vide its order dated 04.01.2021, allowed the appeal in part. It set aside the order granting bail to A2 but doesn't reverse the order granting bail to A1. In consequence of this order, A2 surrendered before the court and was sent to jail.

6. A2 challenged that part of the order which set aside the bail granted to him. NIA challenged the other part of the order which went in favour of A1. Both these appeals were disposed of by the Hon'ble Supreme court by its common judgment dated 28.10.2021. The Hon'ble Court allowed the appeal filed by A2 and dismissed the appeal filed by NIA. The Hon'ble Apex court restored the order passed by this court. The observation made by the Hon'ble Apex Court in Para 37 of its judgment is extracted hereunder:-

"The special court while enlarging the accused nos.1 and 2 on bail had imposed the most stringent conditions, such as furnishing of bail bonds of Rs.one lakh with two sureties each for the like amount with further condition that one of the sureties shall be one of the parents of the accused and the other surety, shall be a relative of the accused. There was a condition imposed of marking attendance on every first Saturday of every month at

local police station. There was also a condition imposed on the accused of not associating in any manner or supporting in any manner activities of CPI(Maoist) and all its formations. The accused nos. 1 and 2 were directed to not leave territorial limits of the State of Kerala without permission of the Special Court. Moreover, SHO of the concerned police station was directed to monitor the activities of both the accused. It is not the case of the prosecution that any conditions were breached by any of the accused after they were enlarged on bail."

7. Further investigation, in this case, continued with the permission of the court. One more person was added as an additional accused. He is A4 Vijith Vijayan. A3 Usman the absconding accused was also arrested. After completing further investigation, NIA filed a supplement report by which sec.20 of UA(P) Act was also added. A3 and A4 are in judicial custody.

8. A1 is a law student pursuing his studies in the School of Legal Studies, Palayad Campus, Kannur University. On 20.07.2022, he moved an application as CrI.M.P.68/22 seeking relaxation of the bail condition stating that he is interested in studying the cultural diversity of India and getting a direct experience in this regard he proposes to visit various states in India. In that application, a report was called for from SHO, Panniyankara Police Station. He submitted a report on 15.09.2022. The relevant portion reads as follows:- *"it is humbly submitted that Allan Shuaib had obeyed condition no.4 asking him to report before me on the first Saturdays every month between 10 am and 11 am. Till date he had appeared before me without fail. I have also conducted discrete enquiries regularly monitoring his activities in his dwelling areas and nothing doubtful could be unveiled. No incident of direct and indirect inducement, threat or promise to any person acquainted with facts and*

circumstances of the case to denude him from disclosing such fact to the court or police is reported in the police station.”

9. Pending consideration of this application, A1 got involved in an altercation between the students at the campus of the School of Legal Studies on 02.11.2022. It resulted in the registration of Crime no.576/2022 before Dharmadam Police Station against A1 and another student for the offences punishable under 341, 323 r/w 34 IPC. Immediately after the registration of the crime, SHO, Dharmadam, passed over the information to SHO, Panniyankara Police Station. Immediately, SHO Panniyankara called for a social media patrolling report from the Cyber Crime Enquiry Cell, Kozhikode city regarding A1 Allan Shuaib. The report contained Facebook posts of Allan Shuaib supporting the banned CPI (Maoist) organisation. SHO Panniyankara felt that the above acts and deeds of A1 violate bail condition no.9 imposed by this court. So the SHO submitted a report to this court on 11.11.2022. The printouts of the objectionable Facebook posts are attached to the report.

10. A copy of the report was furnished to both sides. Subsequently, A1 deleted his Facebook account. Acting upon the said report NIA moved the above application for cancellation of bail. The Facebook posts already shared by A1 are found available on Facebook and the NIA obtained the screenshots of the incriminating posts mentioned in the report of the SHO from the Cyber Crime Enquiry Cell, Kozhikode city in a DVD and the said DVD is submitted before this court on 22.11.2022. The printout of the extract is also produced for easy reference.

11. The prosecution would submit that A1 has misused his liberty after release by indulging in criminal acts and propagating and supporting the proscribed

terrorist organisation CPI (Maoist) and thereby misconducted himself, in utter violation of condition no.9 of the bail order. As clause no.12, this court made it clear in the bail order itself that "in case of violation of any conditions, the prosecution may ask for the cancellation of bail". In this given circumstance, it is submitted that the prosecution is perfectly justified in seeking cancellation of the bail granted to A1.

12. The respondent/A1 would submit that the petition is not maintainable either in law or on facts. The allegations are all false and imaginary. There is absolutely nothing on record to prove that the petitioner has supported the proscribed terrorist organisation CPI (Maoist) while on bail. He only aired his concern and views on the unconstitutionality of the UA(P) Act and his support to the victims booked under the said act. It is an issue being discussed in the public domain and a many numbers of persons including jurist, social activists, and poets have aired their views against this draconian act. The Dharmadom police had indeed charged a criminal case against him but it is about an incident which happened inside the campus of the school of legal studies, Palayad, Kannur. In fact, it was a false case charged against A1 due to political rivalry. Against the real assailants Dharamdam police had registered a case as crime no.577/2022. Precisely these are the contentions taken up by A1.

13. The factual details regarding the criminal cases and Facebook posts will be gone into during the discussion at the appropriate stage.

14. Both sides were heard in detail. At the time of the hearing, the prosecution produced a copy of the final reports submitted by the police in the crime registered regarding the incident that occurred in the School of Legal Studies, Palayad, Kannur. The defence produced copies of various articles and news published by eminent personalities against UA(P) Act.

15. The points that arise for consideration are:-

1. Whether there are sufficient grounds to cancel the bail granted to A1 Allen Shuaib?
2. Orders to be passed.

16. **Points:-** This court granted bail to A1 u/s.439(1) Cr.P.C. Clause 2 says that the court may direct that any person who has been released on bail under this chapter be arrested and commit him to custody. It is now well settled that sec.439(2) empowers the court to cancel the bail granted to an accused based on his subsequent conduct, though the phrase "cancel the bail" is not mentioned in the section. (Ref: the decision of **Hon'ble High Court of Kerala in Noushad Vs State of Kerala and another (2016 1KHC 119)**).

17. It is also well settled that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on a different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. The **Hon'ble Supreme Court in Dolat Ram Vs State of Haryana (1995 1SCC 349)** observed that *"generally speaking the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of materials placed on record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by*

enjoying the concession of bail during the trial.” In other words cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

18. Normally, a bail already granted can be canceled for the following reasons:-

1. The accused misuses his liberty by indulging in similar criminal activity.
2. Interferes with the course of investigation.
3. Attempts to tamper with evidence or witnesses.
4. Threatens witnesses or indulges in similar activities which would hamper smooth investigation.
5. There is likelihood of his fleeing to an another country.
6. Attempts to make himself scarce by going underground or becoming unavailable to the investigating agency.
7. Attempts to place himself beyond the reach of his surety. **(Ref: Raghbir Singh Vs. State of Bihar (1986 4SCC 481))**

19. Here nobody has a case that A1 had done any acts like threatening or influencing the witnesses so as to adversely affect a fair trial in this case. The first report of SHO, Pantheerankavu is in favour of A1.

20. Here the specific allegation is that A1 had violated condition no.9 in the bail order. Condition no.9 is extracted for ready reference.

“The petitioner shall not indulge in any criminal activities while on bail nor shall in any manner associate with or support the banned CPI(Maoist) and all its formations.”

21. It is alleged that the first part as well as the second part of condition no.9 stands violated. In other words, A1 had misused his liberty after release by

indulging in criminal activities for which a crime was registered against him and further using the social media premises he invited to support and help the proscribed terrorist organisation CPI (Maoist) and for the release of its members as well as those of its tactical friendly groups, who are detained in prison being convicted or charged for carrying out terrorist activities, and thereby A1 had misconducted himself in breach of the bail restrictions imposed as condition no.9 in the bail order.

22. I will now go into the details of the factual allegations one by one. Firstly, I will go into the violation regarding the first part of condition no.9. A1 is a student of the School of Legal Studies, Palayad Campus, Kannur University. Upon an incident that happened on 02.11.2022 between 11.00 am-11.45 am inside the campus, two crimes got registered before Dharmadam Police Station, both for offences punishable u/s.341, 323 r/w.34 IPC. In Crime no.576/2022, there are two accused. One is A1 Allan Shuaib and the other one Badaruddin his batch mate. The defacto complainant is one Adhil Subi, a student of the same college. In Crime No.577/2022 there are four accused persons all students of the same college. One among them is Adhil Subi. The defacto complainant is none other than Badaruddin. Accused in both these crimes including A1 Allan Shuaib were released on bail. Crime No.576/2022 was investigated by Grade ASI of Dharmadam Police Station and Crime No. 577/2022 was investigated by the Grade Sub Inspector of the same police station. In one case (crime no.576/2022) charge sheet was filed on 02.11.2022 and in the other case (crime no.577/2022) filed on 30.11.2022.

23. The copies of both the final reports were furnished to this court by the learned public prosecutor. He would submit that final reports will prima facie prove that A1 Allan Shuaib got involved in a criminal case while on bail in this case. The

findings in the final report filed in crime no.576/2022 will make it clear that the aggressors were A1 Allan Shuaib and his friend. Therefore, it stands proved that he had deliberately violated one of the terms of the bail conditions and got involved in criminal activities while on bail and this amounts to a violation of the bail condition imposed by this court and he is liable to face the consequence.

24. On the other hand, the learned defence counsel would submit that, it is a false case foisted against A1 Allan Shuaib and there was no proper investigation in this matter to find out the truth and the final reports were filed in a most casual manner under the pressure of the ruling party, to its students' organisation, the accused in crime no.577/2022 belongs to. Moreover, the incident said to be occurred out of a clash between college students, nearly three years after the main incident, cannot be taken to be a criminal act carried out with the intention to intimidate or influence any witnesses in the main crime. Both crimes are entirely different and have no connection with each other. All the accused in the second set of crimes were released on bail. In this given circumstance merely because A1 is seen implicated in a criminal case for the offences punishable u/s.341, 323 r/w.34 IPC, cannot be taken as a valid ground to cancel the bail already granted in favour of A1. To buttress his argument, the learned defence counsel relied upon the decision of **the Hon'ble High Court of Kerala in Godson Vs. State of Kerala (2022 (4) KLJ 150)**.

25. There is force in the submission made by the learned defence counsel. The reasons are the following:- In a situation wherein there is a case and a counter case with regard to a single transaction, the investigating officer is expected to make all endeavours to find out the truth, to cull out the truth from the falsehood, and it is perfectly within his competence to refrain from filing a charge sheet in the

case wherein the allegation is false. The courts have condemned the practice of filing charge sheets by the police based on rival complaints regarding identical incidents, apparently to exhibit a spirit of impartiality. The extensive powers of investigation given to the police by the Code of Criminal Procedure are to ascertain the truth, not for dressing up cases with any evidence true or false which happens to be available **(Ref: Decision of Hon'ble Kerala High Court in Augustine Vs. State (1982 KLT 351) and that of Hon'ble Apex Court in State of M.P. Vs. Mishrilal and others (2003 SAR (CrI) 409).**

26. In the case at hand, the investigating officer filed final reports in both cases as if the allegation, in that case, is true. Anyway, at least regarding the genesis and origin of occurrence both allegations cannot go together. Therefore, from the final reports submitted by the investigating officers, it is not possible to have an inference that A1 Allan Shuaib and his companions were the aggressors which lead to a fight between the students. The only inference that can be drawn is that there occurred a tussle between the students which resulted in the exchange of fists and blows between the two groups. The main case and the crimes arising out of the college tussle are entirely different and have no connection with each other. The allegations in the subsequent crime are not related to an act which was allegedly committed by the petitioners with the intention to intimidate or influence any witnesses in the main crime registered in the year 2019. Our **Hon'ble High Court in Godson Vs. State of Kerala (2022 (4) KLJ 140)** held that a mere violation of the condition not to involve in similar offences during the bail period would not result in the cancellation of bail automatically, and while considering an application to cancel the bail on the ground of non-compliance of bail condition, the court has to consider the question whether the alleged violation amounts to an

attempt to interfere with the administration of justice or has to whether it affects the trial of the case in which the accused is implicated.

27. Applying the above dictum of the Hon'ble court of Kerala to the facts of the present case, only because A1 got involved in a case causing simple hurt to a fellow student of the same college which resulted from a tussle between the students, I find it not a sufficient ground to cancel the bail granted by this court for the simple reason that it violated one of the terms of the bail that he shall not indulge in any criminal activities.

28. Now I will come to the violation of the second part of condition no.9. Learned prosecutor reminded this court that this is not a usual IPC offence case but a case wherein A1 and his co-accused are charged for being members of CPI(Maoist) organisation a proscribed organisation and also for the association and support given by them to further its terrorist activities. It is in this context while granting bail to A1 this court imposed stringent conditions particularly, condition to the effect that while on bail he shall not in any manner associate with or support the banned CPI(Maoist) and all its formations. The court has also given direction to the local SHO to monitor the activities of A1. According to the learned prosecutor, one of the factors taken note of by the Hon'ble Apex Court while confirming the order granting bail to A1 by this court, was the fact that the conditions imposed by this court are stringent and further none of these conditions were found breached by A1 as on the date of the order passed by the Hon'ble Apex Court. In this scenario, according to the learned prosecutor, any violation in this regard is to be viewed seriously and it will be a threat to society if such persons are permitted to act freely and move freely in society. According to the learned prosecutor, the violation of the second part of the bail condition no.9 is solid ground for cancellation of the bail and

the evidence collected by extraction of the Facebook account of A1 Allan Shuaib convincingly proves that, while on bail he rendered full support and assistance to the proscribed organisation and its formations to propagate its ideology of violence and for the release of its members as well as members of tactful front organisations who are presently incarcerated in jail. More importantly, it is pointed out that after the filing of the report of the SHO, being convinced that he is getting exposed, A1 deleted either his Facebook account or modified its settings so that the public cannot have any access to his Facebook posts. The learned prosecutor vehemently argued for the cancellation of bail.

29. On the other hand, learned defence counsel would submit that A1 is a person who has first-hand experience of the trauma the prisoners face in the jails and he had written articles about it. He firmly believes that UAPA is a draconian law and he had aired his views in this regard in the public domain. He also firmly believes that all persons booked under UA(P) Act are to be released from prison. He is seriously pursuing this subject. In fact, well-known personalities and distinguished persons have aired their concerns in this regard. They include retired Supreme Court judges, renowned artists etc. By liking and forwarding the comments made by like-minded persons through Facebook doesn't mean that A1 is on the path of violence and supporting CPI (Maoist) the proscribed terrorist organisation. After the filing of the report by the SHO, he deleted his Facebook account not to hide his views but since it is being mistaken and made use of, to bring out false propaganda that he is supporting proscribed organisations.

30. The Facebook posts shared by A1 Allan Shuaib during the period from June 2022 to October 2022 are relied upon by the prosecution. These posts can be broadly classified into 7 types. The first type consists of posters with photos

uploaded by A1 urging to free the jailed accused persons booked under UA(P) Act. It consists of under-trial prisoners as well as convicted persons undergoing sentences in jail. On the bottom portion, there is a caption "justice for UAPA prisoners". The list includes his co-accused M.Usman(A3) and Vijith Vijayan (A4) of this NIA case, as well as accused in other cases such as Roopesh, Rona Wilson, Rauf Shareef, Zakariya, Prof.Hany Babu, Umer Khalid, Shibily, Shaduly, Ansar Nadwi and the accused in Bhima Koregoan case. Among them, Shibily, Shaduly, and Answar Nadwi are convicted accused in the SIMI Vagamon Case (A4, A1 and A5 in RC.04/2010/NIA/DLI) and also convicted accused in Ahmadabad blast case. The prosecution would say that these persons are jihadi terrorists who were convicted and sentenced by more than one court of law. The call made by A1 for the release of these prisoners are not innocent calls but are calls made out of decisions made between CPI (Maoist) and jihadi groups both proscribed terrorist organisations acting together inside an illegal combination called the tactical front.

31. Learned counsel for A1 would submit that these posters with photos were published by a group campaigning justice for UAPA prisoners presided by K.Sachidanandan a known poet and social activist and a public figure in Kerala. To the most, it can be said that A1 had shared this post. The sharing of these images would only reveal the real concern of A1 towards the discrimination being shown to the political prisoners of different organisations who are accused in UAPA cases of languishing in different jails without getting bail for years together. A1 never intended to free any convicted accused. It is false to allege that he is part of any tactical front with jihadists as alleged in the petition. His concern is only with regard to UA(P) Act, which according to him is a draconian law. The caption on the posters justifies his stand. In fact, prominent personalities had aired their strong

views against UA(P) Act. In this regard, he specifically refers to the opinion aired by retired Supreme Court Justice Shri.R. F. Nariman, at a public function and Shri Madan Lokur, Shri.Afthab Alan, Shri.Deepak Guptha, and Justice Gopal Gowda while taking part in a discussion under the title "*Democracy, Dissent, and Draconian laws - Do UAPA and sedition Have a place in our statute book*" which are produced along with the counter statement as Annexure no.IV, V and VI. It is pointed out that A1 had also published an article regarding political prisoners in Kerala and prison rights which was published in the news portal (print) and its printout is produced as Annexure-VII. It is submitted that the objectionable Facebook posts highlighted by the prosecution doesn't prove that A1 had ever supported the activities of any banned organisation including CPI(Maoist) and its associates. To the most these posts will only prove the legitimate concern of A1 for the political prisoners jailed under UA(P) Act.

32. The second category consists of the uploaded photographs of A1's meeting with Babu @ Ibrahim @ Nhandu Ibrahim A8 in Vellamunda Maoist case, Harihara Sharma an accused in another NIA case who is also booked for handing over a pendrive to arrested CPI (Maoist) accused at Coimbatore Central Prison.

33. A1 admits that he had met these persons. According to him, Ibrahim was a prisoner in the very same jail wherein A1 and A2 Thwaha were launched. The said Ibrahim was suffering from old age disease and other medical issues and A1 used to help him to attend to his primary needs. When all of them have come out from jail Ibrahim called for a courtesy visit and A1 and A2 made a visit and they together took a photo. The photo with Hari is one taken at the marriage function of Hari and Safeera and the write-up seen attached has not seen shared and uploaded by A2. The marriage ceremony was seen to be a public function

conducted in public wherein a large number of people were invited and attended the ceremony. The group photo will give a clear indication in this regard.

34. The third category consists of shared posts criticizing the Hon'ble Supreme Court on the special hearing and the order passed suspending the judgment of the Hon'ble Mumbai High Court discharging an accused by the name Saibaba and four others in a CPI (Maoist) related case. A comment said to be made by the Hon'ble Judges that "the brain is the most dangerous thing. For terrorists or Maoists, the brain is everything" is seen criticized.

35. A1 would say that this is not his writeup but made by one Tony Mathew, Vadakkancherry about political prisoner Saibaba, a handicapped and ailing person.

36. The fourth category is the Facebook post by which people are called upon to send money to an account for meeting the expenses of handling criminal cases of accused persons involved in CPI(Maoist) cases. According to the prosecution, this post confirms the support given by A1 to the banned organisation CPI(Maoist) and his close association with the said organisation.

37. A1 would say that it appears to be the donation campaign made by Adv.Tushar and Adv.Shyna for the purpose of meeting legal expenses for different accused persons in 246 UAPA cases who are imprisoned on the accusation of CPI(Maoist) members. The only allegation that can be made against A1 is that he shared the write-up. His concern is only with regard to the prisoners jailed under UAPA without bail.

38. The fifth category is a write-up against the state government for killing four Maoists in an encounter with police, which they allege to be a fake encounter. A1 would submit that he is not the author of the writeup, it is made by Adv.Tushar. The only allegation made against A1 is that he had shared the said write-up. It is

pointed out that it was really a fake encounter and a lot of criticism arose from many corners of the public domain against this incident which happened three years back.

39. The sixth category consists of some campaigns and writeups titled "stand up against fascism for a democratic future", "scrap UAPA", "denial of bail to accused Vijith Vijayan, quite unfortunate " etc.

40. A1 would say that these campaigns and writeups came from various organisations and they had done it publicly and the only allegation that can be made against A1 is that he had shared it. He took his stand that he is against UAPA.

41. The last category is the audio clips of A1 shared by him on his Facebook account from the Facebook user "*League of Filipino Students - SFSU*". *Foreign students with placards depicting slogans such as "Repeal UAPA", "Release of Usman", "Release Vijith Vijayan", "No more red-tagging", "Free All Political Prisoners" etc. are also seen in the shared posts on facebook account "League of Filipino Students – SFSU"*.

42. The transcript of one audio clip (pf 1.10 -minute duration) of Allan Shuaib (A1) posted on the Facebook account "League of Filipino Students- SFSU on 07th June 2022 and shared in the Facebook account of Allan Shuaib (A1) is as below:-

"After Vijith's bail got cancelled and our campaign for our co-accused, who is now in prison, Usman and Vijith Vijayan. Why we did that campaign is because there is an element of selectivism in this case because here in India, there is a thing called caste and caste and religion works for these solidarities, politics works for these solidarities. This is the scenario in the

anti UA(P) A front in India this is a reality. We are really advocating to help every prisoner, release all political prisoners, not because they are accused of UA(P)A but also because that their social and political conditions that led them to prison. They were only aware of me and Thwaha and we literally we gave this a huge campaign and that really worked out, many organisations that were silent came out with their solidarity and we are very happy for that".

43. The prosecution would say that by putting such post on line for the view of foreign students A1 is seen advocating and seeking help for the release of accused in India who were arrested in connection with their activities related to banned terrorist organisation. The orders passed by the judiciary of India remanding the accused to jail and denying bail are all internal issues and the call made by A1 to people and groups outside the country for free selected accused from jail in India is a serious concern both to the security of the nation and also to the reputation in the existing judicial system in India.

44. A1 would contend that even if the said post is taken as true it is not against the nation or the judiciary of India. It only brings out the social and political conditions prevailing in India and the influence of caste and religion in every walk of life in India.

45. The learned prosecutor would submit that all the above posts had shown the true colour of A1. He continues to be an ardent supporter of the proscribed terrorist organisation CPI(Maoist). He had deliberately and intentionally violated the bail condition and his bail is only to be cancelled.

46. I will now go into the details. It is to be taken note that in the speech rendered by the former Supreme Court Judge, Justice R.F.Nariman (relied upon by A1), the learned former judge never advocated for the release of the convicted

accused under the UA(P) Act. Justice Nariman only attack the offensive parts of UAPA which permits incarceration of the accused pending trial without bail and the non-availability of provision for anticipatory bail.

47. Coming to Justice Madan Lokur again he was attacking the provisions regarding bail. According to him the prolonged incarceration as a remand prisoner amounts to "soft torture". Justice Afthab Alan raised his concern with regard to the low disposal and high pendency rate as far as the cases under UA(P) Act. It is pointed out that the charge sheeting rate is 42% while the pendency rate is 77.8% and according to the learned justice, the process often becomes the punishment. Justice Deepak Gupta raised his concern regarding the misuse of the law to stifle the voices of those who questioned others in power. Justice Gopal Gowda was concerned about the reluctance shown by the courts in granting bail.

48. All these eminent jurists never advocate for the release of persons convicted under UA(P) Act. They never say that no special law is required to counter-terrorism. They never justify violence as a means to achieve the goal. Their concern is regarding the offensive part of UAPA which according to them indiscriminately denies bail to the accused which will lead to prolonged incarceration, in effect amounts to "soft torture", and also about its misuse.

49. Here A1 had crossed the limits and had gone beyond much farther. The acts which crossed the limit can be summed up as follows:-

- a) Urged for the release of convicted accused in Vagamon SIMI Case. A1 has every right to be critical of the reasons given by the court in the judgment. But here it is not the judgment which is put to critical evaluation. He simply demands the release of convicted prisoners.
- b) Shared the post soliciting donation for meeting legal expenses for the

accused in 246 Maoist cases.

- c) Justifying elements appearing in the writeups for using violence as a means to achieve the object and categorizing the said group as political prisoners.

50. Two possibilities are there. First one as pointed out by the learned public prosecutor the above posts had shown the true colour of A1 that he fully supports the proscribed terrorist organisation CPI(Maoist). The second possibility is that A1 in his fight against UAPA, to buttress his views have indiscriminately shared whatever writeups and posts came to him, somehow or other connected to UAPA.

51. Definitely, this is not what we expected from A1 who had accepted the bail conditions imposed by the court, executed the bail bond, and got released on bail. This is also not what we expect from a person who claims to be one pursuing a serious study on the UA(P) Act focusing mainly on its unconstitutionality. While airing his views and comments, he ought to have been conscious of the bail condition which says that he shall not in any manner associate with or support the banned CPI(Maoist) and all its formations.

52. But still, certain aspects shall not be missed out. They are:- the majority of the Facebook posts are not authored by him but he only shared them. Authors are someone else. The objectionable posts are not made in secrecy but openly. Nextly, apart from posting/sharing writeups, posters etc., A1 is not seen involved in any physical activities connected to CPI(Maoist) or its formations. He also made no attempt to influence or cohearse any of the material witnesses in this case. The local SHO in his first report had even given a good conduct certificate to A1.

53. As said at the beginning, the considerations for rejection of bail and the

cancellation of the bail so granted at a later stage are distinct and to be dealt with on a different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail. Considering the whole facts, attending circumstances and the materials placed before this court, it is not possible to arrive at a definite finding that A1 had deliberately violated condition no.9 of the bail order. In other words, it will not be proper to draw any conclusive inference that A1, by his subsequent acts and deeds intentionally associated with or supported the banned CPI(Maoist) or any of its formations, even though he had made some inappropriate Facebook posts which are likely to give support to the ideology of the proscribed terrorist organisation CPI(Maoist). Definitely, he would have avoided it. It is needless to say that any such instances in future will be solid ground for the cancellation of the bail. To sum up, I find it not proper and justifiable to cancel the bail already granted to A1 almost two and half years back. The above points are answered accordingly.

In the result, the above petition stands dismissed.

Dictated to the Confidential Asst., typewritten by her directly to computer system, corrected and pronounced by me in open court on this the 08th day of February, 2023.

Sd/-
Anil. K. Bhaskar
Judge, Special Court for NIA Cases

Id/-
Judge, Special Court for NIA Cases
(By Order)

Sd/-
Sheristadar.

Appendix:-Nil

//True Copy//