

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

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

Monday the 5th day of December, 2022/ 14th Agrahayana, 1944

Crl. MP. No.76/2022

in

S C No.1/2020/NIA/KOC

Petitioner/Accused No. 3 : M. Usman, aged 42, S/o. Aboobacker, Melethil House, Odampatta, Chembrassery, pandikkad, Malappuram, Now remanded at High Security Prison, Viyyur.

By Adv. Sri. Thushar Nirmal Sarathy.

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

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

This Criminal M.P coming on for hearing before me on 25.11.2022 and the Court on 05.12.2022 passed the following:-

ORDER

1. This bail application is filed u/s.439 Cr.P.C. on behalf of the third accused Usman.
2. The offences alleged against this accused are under Sections 120B of IPC, Sec.20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.
3. Notice served to the learned Public Prosecutor. He filed a detailed written statement vehemently opposing the bail application.
4. The points that arise for consideration are:-
 1. Whether the petitioner/A3 is entitled to be released on bail?

2. Relief and cost?

5. Heard both sides in detail.

6. **The points**:- This is the second bail application filed by Usman. The first one (Crl.M.P.115/2021) was preferred before the filing of the supplementary final report. It was dismissed by this court as per order dated 21.12.2021, finding that there are sufficient materials against A3 Usman to continue the investigation for the offences charged and to that extent, there exists a prima facie case.

7. NIA completed the further investigation and filed the supplement charge sheet on 25.03.2022. Now comes the second bail application.

8. The history of the case as born out from the records arranged in chronological order is as follows: On 01.11.2019, the Sub Inspector of Police, Pantheerankavu Police Station and his team of police officers were on patrolling duty. At about 18.45 hours, while passing through Perumanna – Parammal road and when reached near Medicare Laboratory, they spotted three accused persons (A1 to A3) under suspicious circumstances. The third accused Usman ran away upon seeing the police party. The police party questioned A1 and A2 and searched their belongings including a shoulder bag possessed by A1. It is alleged that several booklets and pamphlets/leaflets prima facie indicating association of A1 and A2 with the Communist Party of India (Maoist) were found and seized. The Communist Party of India (Maoist) is a banned terrorist organisation mentioned in the first schedule of the UA(P) Act, 1967.

9. A1 and A2 were arrested. The materials mentioned above and the motorbike were seized. Crime No.507/2019 of Pantheerankavu Police station under Sections 20, 38 and 39 of UA(P) Act, 1967 was registered on 01.11.2019.

10. The houses of A1 and A2 were searched and several incriminating

materials including electronic devices, pamphlets, books, banners etc were seized. The electronic devices were forwarded to RFSL, Kannur for Forensic examination.

11. It was during the custodial interrogation of A1 and A2 the identity of the third accused Usman was revealed. The investigating officer has submitted a report before this court to add C.P. Usman as the third accused, who allegedly escaped on seeing the police party.

12. The investigation of the case was entrusted to the NIA by the order dated 16.12.2019 of the Ministry of Home Affairs, Government of India vide order No.11011/60/2019/NIA. The crime was re-registered as RC.4/2019/NIA/KOC on 18.12.2019 under Sections 20, 38 and 39 of the UA(P) Act and submitted FIR to this court. NIA took over the investigation on 27.12.2019. During the investigation, NIA was not able to arrest A3 Usman. He is involved in many other cases. On 27.04.2020 the NIA filed final report before this court against all three accused for the offences punishable u/s.120B of IPC besides sec.38 and 39 of UA(P) Act. Sec.20 of the UA(P) Act is not included in the final report. A2 was charged also for the offence u/s.13 of the UA(P) Act. In the said final report, A3 Usman was referred to as an absconding accused.

13. In the final report, it is stated that A3 Usman, a native of Malappuram District, is a full-time member of the Professional Revolutionary of CPI (Maoist), holding the possession Area Committee Member (ACM) in the proscribed organisation. This fact was revealed from one of the documents seized by the Kerala Police, in Crime No.536/2016 of Edakkara Police Station, from the site of an encounter with PLGA (Peoples Liberation Guerrilla Army – the military wing of CPI (Maoist) led by Kuppu Devaraj, a Central Committee Member of CPI (Maoist), in the forests of Malappuram District during November 2016. The involvement of A3 in

several cases registered in Thrissur, Kasaragod, Wayanad, Malappuram and Kannur District of Kerala, regarding left-wing extremism and unlawful activities of the CPI (Maoist) Party, support this fact.

14. The charge levelled against A3 is that he and other underground professional members of CPI(Maoist) had radicalised and recruited A1 and A2, besides others into the proscribed terrorist organisation with the intention of furthering the activities of CPI(Maoist) and all of them had conspired together and conducted secret meetings, prepared notes to further its terrorist activities, and that, A3 on seeing the police party, had fled from the scene and managed to escape owing to his membership in the proscribed terrorist organisation CPI (Maoist).

15. Acting upon the final report filed by NIA this court took cognizance of the offences and took the case on file as SC 1/2020. After that repeated NBWs were issued against A3 Usman but all returned unexecuted with a report that this man is absconding.

16. As per the order passed in CrI. M.P No.37/2020 on 04.05.2020, NIA had obtained formal permission from this court under Section 173(8) of Cr. P.C. for further investigation, mainly to probe the involvement of other persons if any. During the course of further investigation, NIA filed an inclusion report to add two more accused in the crime as A4 Vijith Vijayan and A5 Eldhose Wilson. Vijith Vijayan was arrested on 21.01.2021 and he is in judicial custody. A5 Eldhose Wilson had turned as an approver. After completing the investigation NIA filed a supplementary final report against A4 Vijith Vijayan on 19.07.2021. Acting upon the said report this court took cognizance of the offences punishable under Sections 13, 38 and 39 of UA(P) Act and Section 120B of IPC against accused Vijith Vijayan and the case is numbered SC No.1/2021 and it is also pending before this court.

17. Subsequently, on 14.09.2021, absconding accused Usman (A3) was arrested by ATS of Kerala in its crime No.34/2020/ATS (crime No.471/2016 of Pandikad Police Station). While Usman was in the custody of ATS Kerala, the investigating officer had effected Section 27 recovery of two secret documents of the proscribed terrorist organisation CPI(Maoist) in Malayalam from his hide-out place at Malappuram. One document with the title "*Keralathile Nagara Meghalayile Sakhakkalkulla Kathu*" is a letter to all the comrades of the Urban wing and is authorised by one Arun, representing Central Committee of the proscribed terrorist organization CPI (Maoist) dated April 2021. This document contains the instructions/directions to the Urban UG network of the organization in light of the arrest of two Zonal committee members and one Urban cadre of CPI (Maoist) who were arrested within a few months before the publication of this document. It is pertinent to note that the zonal committee members arrested before the publication of this document were Rajan Chittilappally and Rajeevan T. K. (both were arrested in ATS Crime 32/2020) (now RC 2/2021/NIA/KOC) and the Urban cadre who was arrested before the publication of this document was accused Vijith Vijayan. The other document with the title "March 8, 2021, nu Chernna WGSZC yude prathyeka Ekopana Yogathinte Theerumanangal" contains the decisions of the Special Coordination Meeting of Western Ghats Special Zonal Committee of CPI (Maoist) dated 8th March 2021. During further investigation, certified copies of both documents were obtained from the District and Sessions Court Manjeri and were submitted before this Court.

18. Later upon issuance of the production warrant, A3 Usman was brought before this court on 29.09.2021 and he was formally arrested and remanded. As per the order passed by this court in Crl. M.P. No.94/2021, NIA obtained formal

permission to conduct further investigation against A3 Usman. He was given in NIA custody from 29.09.2021 to 05.10.2021. During his custody, it is claimed by the prosecution that, as disclosed by A3, various places in Kannur, Kozhikode, Malappuram, Thrissur and Ernakulam got identified, where he made conspiracy meetings for exchanging materials pertaining to CPI (Maoist) with co-accused-and-other senior leaders, collected medicines, cloths etc through accused Vijith Vijayan for further handing over the same to the PLGA Cadres of CPI(Maoist) organization. It is submitted that the pointing out mahazars prepared will prove this fact.

19. According to the prosecution, certain hand written documents found from the possession of A1 were actually written by A3 in his own handwriting. To substantiate the same, with the prior permission of the court, specimen writings of A3 were collected and it was sent for examination along with the disputed writings to RFSL and a report is being awaited.

20. While the further investigation was going on petitioner moved his first bail application CrI.M.P.115/2021. In that petition, it was contended that the petitioner is a coolie worker and a social activist. He is totally innocent and he has nothing to do with the offences alleged against him. In fact, no reasonable grounds have been made out to believe the acquisition made by the prosecution to be prima facia true.

21. The prosecution claimed that further investigation which is going on, had revealed that the petitioner being an Area Committee Member had knowingly and intentionally participated in the meetings with other senior members like Rajan Chittilappally, western ghats special zone committee member and handled the urban cadres of CPI (Maoist) terrorist organisation on the direction of senior leaders. He conducted conspiracy meetings with accused Vijith Vijayan at the

Calicut University campus in the year 2017 and also with A1 at the Kannur University campus and the rented house of A1 in the year 2019, and thus tried to spread extremist ideologies of CPI (Maoist) in university campuses. He fixed APT between A4 and A1 a few days before the incident of this case for training A1 in the translation works for that A4 was already well experienced. It is submitted that the evidence collected pointed out that the accused Usman has been a member of the banned terrorist organisation CPI (Maoist).

22. In reply, the learned counsel for the petitioner/A3 argued that the prosecution attempts to brand this petitioner as a terrorist. This is absolute without any basis. This petitioner is indeed involved in nine other cases as stated by the Prosecutor. He was falsely implicated in those cases only because he protested against atrocities and social evils. The materials collected by the prosecution are mostly inadmissible in evidence. No documents/material objects were seized from the possession of this accused. The pointing out mahazars prepared are fake and don't carry any legal sanctity. What is relevant is only those materials collected during the investigation which can be legally translated into evidence. The materials collected by the prosecution cannot withstand legal scrutiny. There is absolutely nothing to prove that petitioner is a member of a proscribed terrorist organisation to attract sec.20 of the UA(P) act. To attract Sections 38 and 39, mere support or association with the proscribed organisation is not sufficient but it shall also be shown that the accused had the intention to further the activities of the terrorist organisation. This aspect has been authoritatively held by the Hon'ble Supreme Court in Thwaha Fasal's case (Crl. Appeal 1302/2021) who is none other than the second accused herein. Despite the innumerable number of documents said to be seized from the possession of A1 and A2 herein, which, according to the

prosecution, are highly incriminating, the Hon'ble Apex Court found that, prima facie that by itself will not be sufficient to prove that the intention of the accused was to associate and assist the proscribed terrorist organisation to further its terrorist activities. Given the said findings the Hon'ble Supreme Court granted bail to both A1 and A2. According to the learned counsel, the said decision squarely applies to A3 also.

23. This court was not pleased to accept the submissions made by the petitioner. While dismissing the first bail application this court observed as follows: "The specific case put forward by the prosecution is that A3 Usman was not a mere facilitator or supporter of the proscribed terrorist organisation CPI(Maoist) but an active member who had conducted and participated many numbers of conspiracy meetings of the said banned terrorist organisation, had interacted with senior members of the organisation to further its activities which includes waging war against the Government, conducting terrorist act, recruiting people and appraising armed rebellions, with utter disregard of law of the land and welfare of the people of India. It is the specific case of the prosecution that this petitioner had radicalised and recruited A1 and A2 into the proscribed terrorist organisation with the intention of furthering its unlawful and anti-national activities. Be it so, the case of Usman cannot be treated at par with the case of A1 and A2".

24. Subsequently, NIA completed the further investigation and filed a supplementary final report before the court. In the supplement report offence under sec.20 of the UA(P) act was also added. NIA had obtained sanction from the competent authority to prosecute the accused u/s.20 of the UA(P) Act.

25. In the present bail application, the petitioner has reiterated the very same contentions taken up in the first bail application. It is contended that

materials produced by the prosecution are not sufficient for establishing a prima facia case against the petitioner. There is absolutely no legal evidence to prove the serious offences alleged against the petitioner u/s.20, 38 and 39 of the UA(P) Act. It is submitted that the petitioner is only a manual labourer and social activist and all allegations raised against him are false and fabricated.

26. On the other hand, the learned public prosecutor would submit that petitioner is a senior cadre of the proscribed terrorist organisation. The materials collected during further investigation convincingly prove that petitioner worked as a bridge between CPI(Maoist) Western Ghats Special Zonal Committee members and CPI(Maoist) cell members like A1 and A2 as part of furthering the activities of this terrorist organisation. Urban cadres like A1 and A2 came into the picture unexpectedly during the patrolling of the Police party on 01.11.2019. There are most certainly other young cadres handled by A3 whose pictures didn't come out due to the secret working nature of the banned terrorist organisation CPI(Maoist). Usman A3 was not a social activist but an underground professional revolutionary of this banned organisation. He propagated documents of the banned terrorist organisation to the junior cadres for further propagation to others as part of furthering the activities of the banned organisation, including its terrorist activities.

27. The learned prosecutor would further point out that, the petitioner is involved in 10 other criminal cases. He is involved in extremist activities since 2010 continuously. In the other cases, he was released on bail but he never showed any signs of reformation and continued his extremist activities. In this given circumstance, the petitioner even if he is released on bail, will continue his extremist activities on behalf of the proscribed terrorist organisation and will engage in secretly recruiting new youth into the proscribed organisation and continue his

assistance to the PLGA cadres who are fighting against the nation camping in the forest of Kerala. There is every chance that the petitioner would tamper with the evidence and also influence the witnesses. For all these reasons, the learned prosecutor prayed for an order to reject bail to the petitioner.

28. Admittedly the petitioner herein is involved in almost 10 cases, out of it eight cases, he is charged with the offences under UA(P) Act. It is true that in all these cases Usman is on bail. But there is nothing available on record to suggest that Usman was falsely implicated in those cases. Learned counsel for the petitioner would submit that petitioner never absconded and this will be clear from the fact that the bail bonds executed by him in all those cases, are not cancelled. The said contention cannot be accepted. After the registration of the present case, Usman never appeared before any of the courts till he was arrested by ATS in 2021. The statements tendered by CW171 and CW172 will go to show that from 1st November 2019 onwards Usman was residing in a rental accommodation, concealing his real identity and introducing himself as a different person by the name "Midhun". It is to be noted that, A1 and A2 were arrested on 01.11.2019 and the prosecution case is that A3 Usman who was along with A1 and A2 at that time participating in the conspiracy meeting, fled away from the place on seeing the Police party. Therefore the evidence of CW171 and CW172 supports the prosecution version. Learned counsel for petitioner/A3 Usman would argue that the evidence on record is not sufficient to prove the identity of the person who was along with A1 and A2 on 01.11.2019 and fled from the place on seeing the police party. It is pointed out that, after the arrest of A3 Usman prosecution failed to conduct any identification parade. Further, Usman was not shown to the material witness and got him identified. According to the learned counsel, this is very much

fatal to the prosecution.

29. It is not fully correct for the defence to argue that after the arrest of Usman, he was not shown to any one of the material witnesses for identification purposes. Even though A3 Usman was not shown to the police officers who arrested A1 and A2, A3 Usman was shown to the independent witness who was available at that place who had to closely watch and see A1, A2 and the person who run away from the place. This witness identified Usman. At this stage, we need not analyze and evaluate the evidence to find out whether the prosecution evidence is weak or strong. The process of evaluation shall be left out to the trial stage. The prosecution would specifically allege that certain handwritten documents (D6, D7 and D8) found in the possession of A1 during his arrest were written by A3 and handed over to A1. The above documents were sent along with the specimen writings of Usman to the handwriting expert for comparison and the report is being awaited. In this regard, it is to be noted that the statements given by CW56, CW57 (protected witness E) and CW58 (protected witness R) will go to show that, A1 and A3 are closely associated and A3 had visited A1 and had stayed with him. All this evidence prima facia proves that A1 and A3 are closely associated and that on 01.11.2019, A3 was along with A1 and A2 and he run away from the place on seeing the police and from that day onwards he was residing in Malappuram concealing his identity and introducing himself as a totally different man by name "Midhun".

30. The documents seized from his possession (D172) as well as the documents seized by the Kerala Police in Crime no.536/2016 of Edakkara Police station from the site of the encounter killing of top Maoist leaders (D175) will give a clear indication that A3 Usman is a person holding the post of area committee

member of CPI(Maoist party) a proscribed terrorist organisation, who is having close contacts both with urban cadres, top leaders as well as the Gorilla fighters of the proscribed terrorist organisation. These facts were already discussed in the earlier bail order. The above evidence prima facia attracts sec.20, 38 and 39 of the UA(P) Act.

31. It is also to be taken note that, the statements of the CW39 brother, CW40 Neighbor and CW41 sister of petitioner Usman, gives clear inputs about the inclination of petitioner Usman towards the CPI(Maoist) outfit.

32. To sum up the discussions, the materials collected by the prosecution are sufficient to prima facia prove that the petitioner/accused has committed the offences punishable u/s.20, 38 and 39 of the UA(P) Act. Be it so, the bar under Section 43 D(5) of UA(P) Act, 1967 will come into play. Apart from this, the petitioner being involved in many number of criminal cases, I find it not safe to release the petitioner on bail. There is every chance that he will abscond. For all these reasons petitioner/A3 is not entitled to be released on bail. Points answered accordingly.

In the result, the petition is dismissed.

Dictated to the Confidential Asst., typewritten by her directly to the computer system, corrected and pronounced by me in open court on this the 05th day of December 2022.

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

Appendix:-Nil

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

//True Copy//

Sd/-
Sheristadar.