

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

Present: Smt. Mini S Das, Judge for NIA Cases

Thursday the 17th day of August, 2023/26th Sravana, 1945

Crl.M.P. No.359/2023

In

SC.01/2020/NIA

Petitioner/Accused No. 4:

Vijith Vijayan @ Pachha @ Balu
@ Musafir @ Ajay, aged 27 years,
S/o. Vijayan V.K., Chaithram House,
Puzhamudi Post, Kalpetta, Wayanad District,
Kerala.

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 16.08.2023 and
the Court on 17.08.2023 passed the following:

ORDER

1. This is an application filed by the counsel for accused No.4 seeking
bail for 14 days from 28.08.2023 to 10.09.2023.

2. **The prosecution allegation is as follows:-** On 01.11.2019 while
on patrolling duty the complainant found A1 to A3 under suspicious
circumstances, A3 escaped from the scene. On checking the bag in their
possession, certain books and pamphlets containing materials supporting
activities of proscribed terrorist organisation. As it was found they were

members of proscribed terrorist organisation, they were arrested and FIR is registered Under sections 20, 28 and 39 of Unlawful Activities (Prevention) Act. After registration of crime investigation was entrusted to the National Investigation Agency. On completing the investigation final report against A1 to A3 was submitted. Thereafter, on further investigation searches were conducted at the houses of the petitioner/A4 and A5 and incriminating materials including digital evidence were seized. The petitioner/A4 was arrested on 21.01.2021 and remanded to judicial custody on 22.01.2021. On completion of investigation supplementary final report against petitioner/A4 alleging offences punishable Under sections 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 and section 120B of IPC is filed.

3. The petitioner contends that the marriage of his brother is fixed, that the marriage will be solemnized at Chottanikkara Devi temple at Ernakulam on 03.09.2023, that the reception will be held at the house of petitioner at Wayanad on 04.09.2023 and that the petitioner being the eldest son, wishes to participate his brother's marriage, for which interim bail is sought for.

4. The prosecution submitted a detailed objection highlighting the incriminating materials against the accused, collected during investigation.

5. This court dismissed the bail application in Crl.M.P.116/2021 mainly stating that there is sufficient reason to believe that the accusation, against the petitioner/A4 constituting the offence forming part of Chapter 6 of the Act is prima facie sustainable. The Hon'ble High Court as per order dated 31.05.2022 in Crl.M.A.177/2022 dismissed the appeal challenging the order in Crl.M.P.116/2021,

rejected the appeal. The Hon'ble High Court also found that materials recovered on search and further investigation prima facie proves the allegation raised against the petitioner/A4.

6. The provisions contained in Sub clause (5) of section 43D imposes restriction on the power of the court to grant bail. Subsection (6) of section 43D makes it clear that the restrictions specified in Sub clause (5) are in addition to the restrictions which exist under the Code or any other law for the time being in force. This court dismissed the application for bail applying the first proviso to section 43D(5) and the same is confirmed by the Hon'ble High Court. In the said circumstance, the petitioner/A4 cannot be released on bail even for an interim period as sought for. Hence the application is liable to be dismissed.

In the result, the bail application stands dismissed.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 17th day of August, 2023.

Appendix: Nil

Sd/-
Mini S Das
Judge, Spl. Court for NIA Cases

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

//True Copy//

Sd/-
Sheristadar