

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

Present: Sri. P.K. Mohandas, Judge for NIA Cases

Monday the 8th day of December, 2025/17th Agrahayana, 1947

Crl.M.P. 466/2025

In

SC No.01/2020/NIA

Petitioner/Accused No. 4:

Vijith Vijayan @ Pachha @ Balu @
Musafir @ Ajay, aged 31 years, S/o.
Vijayan V.K., Chaithram House,
Puzhamudi Post, Kalpetta, Wayanad
District, Kerala.

By Adv. Sri. Sajeev C.K

Respondent/Complainant

Union of India represented by National
Investigation Agency, Kochi.

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

This petition is came up for hearing before me on 04.12.2025 in the presence of the counsel for the petitioner and respondent and Court on 08.12.2025 passed the following:

ORDER

This is an application for bail filed by the 4th accused in this case.

Prosecution case:

2. The prosecution case is that on 01.11.2019, Sub Inspector of Police, Pantheerankavu Police Station and his team during patrolling, found

three persons under suspicious circumstances and one among them ran away on seeing the police party. On checking the belongings of the other two persons, books and pamphlets containing materials supporting the banned CPI(Maoist) organization were found, and based on their admission, they were arrested and arraigned as 1st and 2nd accused. During investigation, it was revealed that they are members of the proscribed terrorist organisation CPI (Maoist), and various incriminating materials including books, pamphlets, and publications, both digital and hard copy, supporting the activities of the said organisation were seized from their houses. Accordingly, a case was registered as Crime No. 507/2019 u/s. 120 B IPC and S.20, 38, and 39 of the UA(P) Act, 1967, against 3 persons, including A3, who had fled from the scene.

3. Considering the gravity of the case, the Ministry of Home Affairs, Government of India, vide order dated 16.12.2019 directed the NIA to take over the investigation, and the case was re-registered as RC-04/2019/NIA/KOC. NIA filed final report before this court against A1 to A3 and this court took cognizance of the offences and taken on file as SC.1/2020.

4. On 01.05.2020, the court allowed further investigation in this case to unearth the role of other suspects. During the course of further investigation, searches were conducted at the houses of the 4th accused and other suspects and incriminating materials, including digital devices were

seized and produced before the court and forwarded for forensic examination. Further investigation revealed the involvement of Vijith Vijayan (A-4) and one Eldos Wilson (A-5), who were arraigned as accused Nos.4 and 5 on 27.07.2020. The 4th accused was arrested on 21.01.2021 and remanded to judicial custody on 22.01.2021 and 5th accused was granted pardon. On completion of investigation, the NIA filed supplementary final reports against the 4th accused on 19.07.2021 & 25.03.2022, after obtaining sanction from the competent authority to prosecute him for the offences punishable under Section 120B IPC and Sections 13, 20, 38 and 39 of the UA(P) Act. The Court took cognizance of the offences and taken on file numbered as S.C. 01/2021. Thereafter, on 09.01.2023, as per order in Crl.M.P. 39/2022, the case was clubbed with SC.01/2020, and the sole accused in SC.01/21 was added as accused No.4 in SC 01/2020.

The Petitioner's case

5. The petitioner's case is that he has been in judicial custody at the High Security Prison, Viyyur, since 21.01.2021, and has completed about 4 years and 9 months in detention. The trial commenced on 01.11.2023, and so far 144 witnesses have been examined. The prosecution evidence is not over, and the trial is not likely to be concluded in the near future. The petitioner got admission to the Three-year LL.B. course at Government Law College, Ernakulam. But, he is unable to attend classes due to his custody. His petition before the Hon'ble High Court to attend classes online was

dismissed and his writ appeal for the same is pending. The petitioner submits that release on bail would enable him to attend regular classes and effectively conduct his case and that the prolonged custody and delay in trial violate his fundamental rights guaranteed by the Constitution of India. He seek bail on the ground of delay in the conclusion of trial and prolonged custody.

Objection

6. The petition is opposed by the prosecution and a detailed objection is filed by the investigating officer. It is contended that the materials collected during investigation clearly establish the direct and active involvement of the petitioner in terrorist activities, as a member of the proscribed terrorist organization, CPI (Maoist). Evidence collected, including witness statements, digital and scientific evidence and material objects, clearly establish the petitioner's role in conspiracies and other anti-national activities furthering the objectives of CPI (Maoist), as part of a larger conspiracy to wage war against the Government of India. The petitioner is not entitled to bail and the petition is only to be dismissed.

7. When the petition came-up for hearing, I have heard the counsel for the petitioner and the Senior Public Prosecutor appearing for the respondent.

Arguments and discussion:

8. The learned counsel for the petitioner contended that the petitioner is undergoing detention for more than 4 years and 9 months. It is submitted that since the petitioner is in remand for long time and there is delay in the conclusion of the trial, the petitioner is to be released on bail. The counsel submits that the fundamental right to liberty guaranteed by the Constitution is curtailed in this case, without any reason. So he is entitled to be released on bail.

9. The learned Public Prosecutor contended that the petitioner's earlier bail application as Crl.M.P. 116/2021 was dismissed on 29.12.2021, finding a prima facie case against him. The appeal in Crl.A. No.127/2022 was also dismissed by the High Court, on the finding that the materials recovered prima facie established his active organisational and operational role in the proscribed organisation CPI (Maoist). Further, his application for interim bail as Crl.M.P. 359/2022 was dismissed, and the appeal, Crl.A. No.1300/2023 was also dismissed on 24.08.2023. On 07.03.2023 Charge was framed against all accused, including the petitioner, and the trial commenced on 01.11.2023. Out of the total witnesses, 144 have been examined, and only one witness remains to be examined, after which the prosecution evidence will be closed. The trial is progressing and is expected to conclude shortly.

10. It is submitted by the Public Prosecutor that as there is prima facie case against the petitioner, the bar u/s. 43D (5) of the UA(P) Act is applicable and the petitioner is not entitled to be released on bail. It is

submitted that the petitioner has committed offences punishable under various sections of IPC and Chapters IV and VI of UA (P) Act.

11. As pointed out by the learned Public Prosecutor, so far 144 witnesses are examined and 338 documents marked. As almost all materials witnesses are examined in the case and the trial is about to close, it may not be appropriate at this stage to analyse the same and make any observation regarding its merits. For the purpose of disposal of this petition, it is suffice to say that the materials on record prima facie indicate that the petitioner has committed the offence coming under Chapter IV and VI of the UA(P) Act.

12. The Hon'ble Supreme Court in **Gurwinder Singh v. State of Pubjab (2024 KHC 6062)** has considered the question of granting bail in offences under the UA(P) Act and the scope of the proviso to S.43D(5) of the Act. The Apex Court has observed that:

“The source of the power to grant bail in respect of non-bailable offences punishable with death or life imprisonment emanates from Section 439 CrPC. It can be noticed that Section 43D(5) of the UAP Act modifies the application of the general bail provisions in respect of offences punishable under Chapter IV and Chapter VI of the UAP Act.

17. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the

Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It lays down that if the Court, 'on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure', is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43D(5) of the UAP Act. In that sense, the language of bail limitation adopted therein remains unique to the UAP Act.

18. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' – unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)– 'shall not be released' in

contrast with the form of the words as found in Section 437(1) CrPC - 'may be released'— suggests the intention of the Legislature to make bail, the exception and jail, the rule.

19. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in *Zahoor Ali Watali* has noticed this difference, where it said: 2 (2019) 5 SCC 1 12 "In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

20. In this background, the test for rejection of bail is quite plain. *Bail must be rejected as a 'rule', if after hearing the*

public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied – that the Courts would proceed to decide the bail application in accordance with the ‘tripod test’ (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.” (emphasis supplied by me)

13. The Apex Court has considered the decision in *Gurwinder Singh's case* in its latest decision in **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttarpradesh dated 18-07-2024 in Crl.A. No.2790/2024 (2024 INSC 534)**. According to learned counsel for the petitioner, no reliance can be placed on the decision in *Gurwinder Singh's case*. A reading of the judgment of the Apex Court in *Javed Ansari's case* shows that the accused in that case was undergoing detention from February 2015 and the Apex Court considered the Special Leave Petition against the judgment rejecting the bail application in 2024. In para 31 of the judgment the Court observed that “*In Gurwinder Singh (supra) on which reliance has been*

placed by the respondent, a two Judge Bench of this Court distinguished K.A. Najeeb (supra) holding that the appellant in K.A. Najeeb (supra) was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in Gurwinder Singh, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.”

14. The two Judge Bench of the Apex Court in Union of India represented by **the Inspector of Police, NIA, Chennai Branch v. Barakathullah (Crl.A. No.2715/2024 dated 22-05-2024, reported in 2024 INSC 452)** has referred to and followed the decisions in *Watali's case* and *Gurwinder Singh's case*.

15. Further, as pointed out by the learned Public Prosecutor, this court had dismissed similar applications filed by the petitioner on two occasions and the orders were confirmed by the Hon'ble High Court in appeal. There is no change of circumstances. On the other hand, the trial is almost over and only one more witness to be examined on the side of the prosecution.

16. In the light of the above discussion, it can be seen that the bar u/s.43D(5) is applicable in this case. The case is at the concluding stage of

trial. If the petitioner is released on bail at this stage, that will only delay the disposal of the case. Considering the serious nature of the offence alleged against the petitioner and in view of S.43D(5) of UA (P) Act, I am not inclined to release the petitioner on bail at this stage. Hence the petition is only to be dismissed.

In the result, the petition is dismissed.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 08th day of December, 2025.

Sd/-
P. K. Mohandas
Judge, Special Court for NIA Cases

Appendix: Nil

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

// True Copy//

Sd/-
Sheristadar