

IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM
Present: Sri. Anil.K.Bhaskar, Judge for NIA Cases

Tuesday the 21st day of December, 2021/ 30th Agrahayana, 1943

Crl.MP No.115/2021

in

SC No.01/2020/NIA/KOC

Petitioner/Accused:

M.Usman, aged 42,S/o.Aboobacker, Melethil House, Odampatta, Chembrassery, Pandikkad, Malappuram.

By Adv. Sri. Thushar Nirmal Sarathy

Respondent/Complainant

Union of India represented by National Investigation Agency, Kochi.

By Adv. Sri. Arjun Ambalappatta
Public Prosecutor, NIA

This Criminal M.P coming on for hearing before me on 13.12.2021 and the Court on 21.12.2021 passed the following:

ORDER

1. The third accused Usman who was arrested recently, preferred the above application under Section 439 Cr.P.C for granting bail.
2. The offences alleged against this accused are under Sections 120B of IPC and 38 and 39 of Unlawful Activities (Prevention) Act, 1967.
3. Notice served to the learned Public Prosecutor. He filed 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 at this stage?
 2. Relief and cost?
 3. **The points**:- The petitioner would submit that he 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 in the charge sheet filed by the prosecution to believe the accusation to be prima facie true. The petitioner was arrested in this case on 29.09.2021 and from that date onwards he is in judicial custody. There is absolutely no reason to continue the incarceration. He is ready and willing to abide by any lawful and just conditions this court may impose while granting bail. For all these reasons he sought bail.

4. On the other hand the learned Public Prosecutor would submit that the evidence collected, clearly points that the accused C.P.Usman @ Usman @ Mahesh @ Faizal (A3) being a member of the banned terrorist organisation CPI(Maoist), has furthered the activities of this organization as a duty bound member, has conducted and participated in many meetings of the said banned terrorist organization, hatched criminal conspiracy for the purposes of the activities of this organisation which includes waging war against the Government, conducting terrorist acts, recruiting people and uprising armed rebellions for its purposes with utter disregard for the law of the land and welfare of the people of India.

5. It is submitted that accused Usman is involving in such extremist activities for a quite long time since 2010 continuously. Almost 10 cases including eight UA(P)A cases, were registered against him for carrying out attack on Police, arson of bank officer's vehicle, offence under PDDP Act etc., in consequence of his violent extremist ideology. In those cases he was released from Jail several

times on bail, but he showed no signs of reformation and continued his extremist activities. He went absconding since the occurrence of this case and after lots of hardship and earnest efforts by Law Enforcement Agencies, he could be nabbed only after about 21 months from the date of occurrence of this case. Placing weight upon these factual aspects, the learned Public Prosecutor would submit that if the petitioner/A3 is released on bail, he may continue his underground activities and pursue his extremist ideology on behalf of the proscribed terrorist organization CPI(Maoist) and continue his violent and anti-national activities. Further he may secretly recruit new youths into his proscribed organization by actively participating in the activities of frontal organizations of CPI (Maoist). Further he may continue his assistance to the Peoples Liberation Guerrilla Army (PLGA) cadres who is already fighting against the nation in the forests of Kerala. It is also to be apprehended that, upon his release he will abscond and physically join the PLGA cadres of the proscribed terrorist organization CPI(Maoist) and may wage war against the Nation. There is every likelihood that he would tamper with the evidence and also influence the witnesses whose address and whereabouts are known to him.

6. Furthermore, the bar under section 43D of the UA(P) Act in granting bail to accused involved in offences under Chapter VI, squarely applies to this case, which prevents this Court in granting bail to this petitioner since there is prima facie evidence available against him. To substantiate his contention the learned Prosecutor relied upon the decision of Hon'ble Supreme Court in **Zahoor**

Ahammed Shah Watali's case reported in 2019 (5) SCC 1.

7. History of the case arranged in a chronological order with reference to the evidence said to have been collected by the prosecution during the course of investigation and the ongoing further investigation, are as follows:-

8. On 01.11.2019, 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 found all the three accused persons under suspicious circumstances. The third accused Usman ran away on 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 Communist Party of India (Maoist) were found and seized. Communist Party of India (Maoist) is a banned terrorist organisation mentioned in the first schedule to the UA(P) Act, 1967.

9. A1 and A2 were arrested. The materials mentioned above and the motor bike 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 third accused, who allegedly escaped on seeing the police party.

12. The investigation of the case was entrusted with 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 UA(P) Act and submitted FIR to this court. NIA took over investigation on 27.12.2019. During 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 the three accused. A3 Usman was referred as an absconding accused.

13. In the final report it is stated that A3 Usman, native of Malappuram District, is a full time member of Professional Revolutionary of CPI (Maoist), holding the position of 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 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

CPI (Maoist) Party, support this fact.

14. In this case, the charge leveled 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 reports that this man is absconding.

16. As per the order in CrI.M.P No.37/2020, on 04.05.2020, NIA had obtained formal permission from this court under Section 473(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 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 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

Section 13, 38 and 39 of UA(P) Act and Section 120B of IPC against accused Vijith Vijayan and the case is numbered as 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). It is claimed by the prosecution that, during his custody with 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 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 the light of the arrest of two Zonal committee members and one Urban cadre of CPI (Maoist) who were arrested within 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 TK (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 title "March 8 2021 nu Chernna WGSZC yude prathyeka Ekopana Yogathinte Theerumanangal" contains the decisions of the Special Coordinating 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 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 CrI.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. It is claimed by the prosecution that, certain handwriting 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 was collected and it was sent for examination along with the disputed writings to RFSL and a report is being awaited.

20. It is claimed by the prosecution 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 Calicut University campus in the year 2017 and also with A1 with Kannur University campus and at 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 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 clearly pointed out that the accused Usman has been a member of banned terrorist organisation CPI (Maoist).

21. Learned counsel for the petitioner/A3 would submit that the attempt of the prosecution is to brand this petitioner as a terrorist. This is absolutely without any basis. It is true that this petitioner is 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 doesn't carry any legal sanctity. What is relevant is only those materials collected during investigation which can be legally translated into evidence. In fact the materials collected by the prosecution cannot withstand the

legal scrutiny. To attract Sections 38 and 39, mere support or association with the proscribed organisation is not sufficient but it shall also to be shown that the accused had the intention to further the activities of the terrorist organisation. This aspect has been authoritatively held by Hon'ble Supreme Court in Thwaha Fasal's case (Crl.Appeal 1302/2021) who is none other than the second accused herein. In spite of 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. In view of 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.

22. 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 number 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 uprising 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 A3 Usman cannot be treated at par with the case of A1 and A2.

23. Admittedly the petitioner herein is involved in almost 10 cases, out of it in eight cases, he is charged of the offences under UA(P) Act. He was absconding through out till he was arrested by ATS Kerala recently. Investigation against him has not been completed. It is going on. At this stage there cannot be any finding that the materials collected by the prosecution are not sufficient to prima facie prove the guilt of the accused. Prosecution is in the process of collecting materials.

24. Since the investigation is going on, the limited question that arise for consideration is that whether there are sufficient materials against the petitioner/accused to continue the investigation, and whether release of the petitioner/accused at this stage of investigation will hamper or adversely affect the furtherance of the same. Needless to say that, especially in cases involving serious offences like the present one, the court has to take all precautions to see that investigation shall continue without any interference from the side of the accused.

25. I had gone through the prosecution records. At this stage it cannot be said that the materials collected by the prosecution are not sufficient against the petitioner/accused to continue the investigation for the offences charged. To that extend, there exist a prima facie case. To put it in other words, the materials available before the court and the progress of the investigation will suggest that

the accusation against the petitioner/accused is prima facie true. Two inferences follows. Firstly, it can reasonably be inferred that, release of the accused while the investigation is in progress will hamper and adversely affects the furtherance of the ongoing investigation. Secondly, the bar under Section 43 D(5) of UA(P) Act, 1967 will come into play. Be it so, granting bail to the petitioner/A3 at this crucial stage of the investigation doesn't arise. An in depth evaluation of the materials collected by the prosecution at this stage is unwarranted. This can be done after the completion of the investigation. For the above reasons, the petitioner/A3 is not entitled to be released on bail at this crucial stage of the ongoing further investigation. Points answered accordingly.

In the result, the petition is dismissed.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 21st day of December, 2021.

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

Appendix: Nil

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

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Sd/-
Sheristadar.