

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

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

Tuesday the 2nd day of April, 2024 /13th Chaithra, 1946.

Crl.M.P. No.89/2024 In RC No.02/2021/NIA/KOC

(SC.02/2021)

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

**Represented by Sri. Arjun Ambalappatta
Public Prosecutor, NIA.**

Accused No. 3 1. Unnimaya @ Sreemathi (A6 in SC 02/21),
D/o Puttu Gouda, Belagodukudige, Masige
Village, Sringeri Taluk, Karnataka.

By Adv. Sri. Thushar Nirmal Sarathy

This petition coming on for hearing before me on 02.04.2024 and the Court on the same day passed the following:

ORDER

This petition was for police custody of the accused No.3 in the crime (A6 in SC 2/2021) and also A15 and 28.

2. The petitioner is the chief investigating officer of this case. The case was registered on the basis of the information tendered by the first accused, Kalidas @ Mani @ Sekhar, when he was arrested by then DySP, Agali on 21.09.2017 in connection with crime No.153/2017 of Sholayur P.S. It was revealed that the accused had voluntarily convened a meeting and training camp in the forest of Karulai in Malappuram district with arms, including automatic rifles

for the purpose of furthering the activities of proscribed terrorist organization CPI (Maoist) in order to wage war against Government of India. Investigation was conducted by the Edakkara Police by registering Crime No.249/2017. Later, the case was handed over to the Anti Terrorist Squad of State Police and further investigation was conducted by the DySP, Crime Branch.

3. During the investigation it was revealed that Crime No.536/2016 was registered by the Edakkara Police in connection with the exchange of fire between the Maoists and the Security forces on 24.11.2016, in which 2 Maoists died. During the investigation of that case, various electronic gadgets, including laptop, pendrive, etc were recovered from the scene of incident. On examination of these gadgets, the role of some of the accused were revealed. During investigation by the Kerala Police, involvement of 25 persons in the crime was disclosed. Of which, 7 were absconding and 8 accused were arrested by the Kerala Police. The ATS filed charge sheet against 5 accused before the District and Sessions Court, Manjeri on 18.05.2021. Later, Government of India as per order dated 19.08.2021 directed the NIA to take over the investigation and the case was re-registered in the present number on 20.08.2021. During the investigation of NIA, A21, A24, A11, A4 and A18 were arrested and produced before the court and remanded to judicial custody. Investigation was conducted against A1 to A28 and charge sheet was submitted on 23.01.2022 and the case was taken on file as SC.02/2021 against the 20 persons, excluding the expired accused. Nonailable warrants were issued by the Special Court against the absconding accused. Further investigation is being conducted u/s.173(8) CrPC against the absconding accused.

4. On 07.11.2023 at 22.00 hrs, an exchange of fire occurred between the Maoists and Thunder Bolts of Kerala Police resulting in the apprehension of Sreemathi B. P. @ Unnimaya @ Savitha @ Paappa @ Sangeetha (A3 in RC and A6 in SC) and P. Thiruvengadam @ Chandu @ Chandru @ Manohar (A15 in RC and A13 in SC) and a case was registered as Crime No.743/2023 of Thalappuzha Police Station.

5. A3 produced before the NIA court on 06.01.2024 and she was formally arrested and she is under judicial custody. The further investigation conducted by the NIA has given sufficient reasons to believe that the accused Nos.3 is associated with the proscribed terrorist organisation, CPI (Maoist), and had conspired and conducted training camps at various places in India to further their activities.

6. Custodial interrogation of the accused is highly necessary to unearth the larger conspiracy in the case. Though the charge sheet has been filed, the accused No.3 in RC was not taken into police custody as she was absconding and no verification of the facts was possible. The version of the accused is also to be heard by the investigating officer. As there is a larger conspiracy behind the crime with the involvement of various accused/suspects from different states, detailed custodial interrogation of the accused is necessary. Digital devices seized during the investigation are to be confronted with the accused by taking them into police custody. So the petitioner prays that A3 may be remanded to his custody for one day.

7. The counsel for the respondent filed objection stating that the 3rd

accused (Sreemathi @ Unnimaya) was produced before the court on 06.01.2024 and her first remand was over on 03.02.2024. The petitioner did not take steps to get the police custody of the accused during the first remand period. He has not explained the reason for delay in seeking police custody as mandated by Section 43D(2) of UAPA. No specific reason is stated for remanding the accused to police custody. The intention of the petitioner is to get access to the respondents so as to coerce them to become approvers.

8. When the matter came up for consideration, the learned counsel for the respondent submitted that the final report is already filed and at this stage the accused cannot be released to police custody. According to him as the first remand period is over, the accused cannot be remanded to police custody.

9. The learned Public Prosecutor relying on the decision of the Hon'ble Supreme Court of India in Central Bureau Investigation v. Rathin Dandapat and Ors (2015 KHC 4550) and State through CBI v. Dawood Ibrahim Kaskar and Ors (1997 KHC 362 : MANU/SC/0643/1997) submitted that where the accused was absconding during the investigation stage and subsequently arrested after filing the final report, he can be remanded to police custody under Section 167(2) CrPC. He submitted that the custody u/s.309(2) does not include the accused who is arrested on further investigation before supplementary charge sheet is filed. The Apex Court in *Rathin Dandapat's* case has observed that : "*We have already noted above the principle of law laid down by the three Judge Bench of this Court in State v. Dawood Ibrahim Kaskar (supra) that police remand can be sought under S.167(2) in respect of an accused arrested at the stage of further investigation, if the*

interrogation is necessary by the investigating agency. This Court has further clarified in said case that expression 'accused if in custody' in S.309(2) CrPC does not include the accused who is arrested on further investigation before supplementary charge sheet is filed."

10. In this case, admittedly further investigation is in progress. The respondent was arrested after submitting the final report. She was absconding for long time. The investigating officer wants to collect further evidence and also get the details of the other persons who are involved in the case. So there is nothing preventing the court from releasing the accused in police custody even after filing the final report.

11. The learned counsel for the respondent submitted that as per Section 43D(2) police custody can be given only on explaining the delay in filing the application for such custody. The 2nd proviso to Section 43D(2) states "*Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."*

12. The learned counsel for the respondent argued that the purpose of police custody stated in the affidavit filed by the petitioner is to confront the accused with the evidence already collected and to verify the same. He also apprehended that the respondent will be compelled to become approver so as to create evidence against the other accused. The learned Public Prosecutor submitted that custodial interrogation is required to see whether some other

persons are also involved in the case and also to find out the hide-outs of the accused. He also submitted that the petitioner will not harass the accused and the apprehension that the respondent may be compelled to be approver without any reason.

13. The 15th and 28th accused (Mr.Thiruvekitam @ Chandu and Aneesh Babu @ Thambi were produced before this court on 22.2.2024 and they were remanded to police custody till 26.2.2024. The 3rd accused was not produced on that day, since she was in police custody in connection with some other case. Today she is produced in persons. The Public Prosecutor submitted that she is to be remanded to the custody of the petitioner for interrogation. The investigating officer is also present before the court.

14. On hearing both sides and going through the records, I am satisfied that in order to find out the involvement of other persons in the offence and collect the details of the persons who had given shelter to the absconding accused, it is necessary to question the (A6) 3rd accused. Custodial interrogation is highly necessary for further investigation of the case. There is no foundation for the apprehension of the defence counsel that the respondent may be compelled to become approver.

15. On going through the entire materials and hearing the counsel for the 6th accused and the Public Prosecutor, I am of the view that this is case in which the respondent can be remanded to the police custody.

16. The offence alleged against the respondent is serious in nature.

Custodial interrogation is necessary in this case. I am satisfied that the respondent is mentally and physically fit and good grounds are made out to remand the respondent in police custody. Hence, the 6th accused, Sreemathi B P @ Unnimaya @ Savitha, (A3 in crime stage) is remanded to the custody of the petitioner from 1.00 pm today till 5.00 p.m. on 04.04.2024. The petitioner shall not harass the respondent while she is in police custody and shall get her examined by medical practitioner and shall also comply the directions of the Hon'ble Supreme Court regarding police custody.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 02nd day of April, 2024.

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.