

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

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

Thursday the 30th day of January, 2025/ 10th Magha, 1946

Crl.M.P. No. 504/2024 in SC.02/21/NIA/KOC

Petitioner/Accused No.1 : Kalidas @ Sekhar @ Mani, aged 54 years,
S/o Arakkas, 3/503, Ponnayyapuram,
Parambakkudy Taluk, Ramanathapuram,
Tamil Nadu.

**Represented 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 22.01.2025 and the
Court on 30.01.2025 passed the following:

ORDER

This is an application for bail submitted by the first accused in the case
u/s.437 of Cr.P.C.

Prosecution case:

2. The case was registered on the basis of the information tendered
by the petitioner herein, who is the first accused, when he was arrested by the
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 during September 2016 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 the Government of India. Investigation was conducted by the Edakkara Police by registering Crime No.249/2017 on 30.09.2017 against 19 persons. Later, the case was handed over to the Anti Terrorist Squad PS, Ernakulam and renumbered as Cr. No.32/2020/ATS on 19.03.2020.

2. 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.

3. During investigation by the Kerala Police and ATS Kerala, they arraigned 25 accused in the instant crime. Of which, 8 were died in different incidents and 4 are still absconding. 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.

4. Digital devices seized in Crime No. 536/2016 of Edakkara Police

Station proves the active participation of the accused in the arms and physical training conducted by CPI (Maoist). During the investigation, it was revealed that accused Nos.1 to 28 conspired with the proscribed association and conducted/attended training camps at various places in India to further the activities of the terrorist organization. Investigation was conducted against A1 to A28 and supplementary charge sheet was submitted on 23.04.2022 against 20 persons. The case pending before the Sessions Court, Manjeri was transferred to this court and taken on file as SC 02/2021. The petitioner along with other accused have committed the offence punishable u/s.120B, 121, 121A, 122 of the IPC, S.18, 18A, 20, 38 and 39 of the UAPA, S.7 r/w.s.27(2) of the Arms Act and Section 27(1)(e)(iv) of the Kerala Forest Act.

Petitioner's case

2. The case of the petitioner is that he is the 1st accused in the case. He was arrested on 21-09-2017 by the Dy.SP, Agali, Palakkad, in connection with Cr. No. 153/2017 of Sholayur Police Station, based on an allegation that he confessed during custody about participating in conspiracy meetings in 2016, along with other Maoists, in the Karulai forest, Malappuram, to support the banned terrorist organization CPI(Maoist) and wage war against the Government of India. Subsequently, Cr. No. 249/2017 was registered on 30-09-2017 at Edakkara Police Station based on this alleged confession and the investigation was later transferred to the ATS and then to the NIA.

3. The petitioner formally arrested and remanded for the purpose of this case on 17-10-2017 and since then he is in remand. Despite the prosecution citing 274 charge witnesses, no charges have been framed against him and the investigation is still ongoing concerning recently arrested accused, making the completion of the trial uncertain. As there is delay in commencing the trial, the petitioner seeks bail. It is also contended that there is no prima facie case against him and the alleged offences will not stand in his case. The petitioner, aged 54 years, is suffering from tuberculosis and the conditions in prison are worsening his health. The cognizance was taken for offences under the UAPA and Chapter VI of the IPC without proper sanction. The petitioner has already completed more than half of the maximum punishment prescribed for offences u/s.38 and 39 of UAPA. Hence, the petitioner filed the application for bail.

Objection

4. The petition is opposed by the prosecution and a detailed objection is filed by the investigating officer. The learned Special Public Prosecutor submits that the materials collected during investigation clearly establish the active involvement of the petitioner as a District Committee Member of the proscribed terrorist organization CPI (Maoist) and as the Commander of Siruvani Dalam. Evidence collected, including witness statements, digital and scientific evidence and material objects, clearly establishes the petitioner's

leadership role in conspiracies, arms training camps, and other anti-national activities furthering the objectives of CPI (Maoist). During his arrest on 21-09-2017 in connection with Cr. No. 153/2017, he disclosed his participation in conspiracy meetings and arms training in the Karulai forests, Malappuram, 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.

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

Argument and discussion:

6. The petitioner contended that he is undergoing detention for more than 7 years without trial. He submits that since he is in remand for long time and there is delay in commencing the trial, he is to be released on bail. He submits that he is suffering from tuberculosis and other illness and his health condition is very bad. It is also contended that there is no material produced by the prosecution to make out the offence alleged against him and he is entitled to be released on bail.

7. The learned Senior Public Prosecutor submits that the investigation has clearly established that the petitioner is a District Committee Member of the proscribed terrorist organization CPI (Maoist) and the Commander of Siruvani Dalam. There are sufficient evidence to establish his

active participation in conspiracies, arms training and other unlawful activities to further the objectives of CPI (Maoist).

8. The charge against the petitioner as per the final report is that : *“he being a District Committee member of the proscribed terrorist organisation CPI (Maoist) and the Commander of the Shiruvani Dalam (Squad) of CPI (Maoist) organisation, active in Tri-Junction of Kerala, Karnataka and Tamil Nadu, conspired with co-accused inside deep reserve forest of Malappuram District of Kerala, during different occasions in the year 2016, for conducting and participating in physical and arms training so as to commit terrorist acts and to wage war against the Government of India, collected arms and men and abetted waging war. Being a member of proscribed terrorist organisation CPI (Maoist) which is involved in terrorist acts and also being an in-charge of the training camp of CPI (Maoist), he along with co-accused trespassed into the reserve forest of Malappuram District in Kerala and actively participated in the physical and arms training using prohibited arms, in the period between last week of May 2016 to last week of September 2016, to strengthen the proscribed terrorist organisation CPI (Maoist) with intention to commit terrorist acts for furthering the activities of CPI (Maoist) and thereby to wage war against the Government of India.”*

9. The accused thus allegedly committed the offences punishable u/s.120B, 121, 121A, 122 of the IPC, S.18, 18A, 20, 38 and 39 of the UAPA, S.7 r/w.s.27(2) of the Arms Act and Section 27(1)(e)(iv) of the Kerala Forest Act.

10. The petitioner was arrested on 17-10-2017 and since then he is in remand. He seeks bail on the ground that there is delay in commencing trial and also due to his bad health condition due to Tuberculosis. As stated above, the case was originally registered by the Kerala Police. Investigation was later entrusted with the Anti Terrorist Squad of Kerala Police. Later, investigation was taken over by the NIA in August 2021. Supplementary final report was filed by the NIA on 23-04-2022 against 20 person. Some of the accused were absconding at the time of final report. Coercive steps were taken against them. The presence of A8, 10, 12, 16 and 18 could not be procured so far and they are absconding. The 9th accused was produced before the court for the first time only on 30-08-2024. After appearance/production of the available accused, both sides were heard in detail. After considering the evidence produced by the prosecution, this court found that there are sufficient materials for framing charge against the accused. Accordingly, on 22-01-2025 charge was framed against the accused, including the petitioner, for offence punishable u/s.120B, 121, 121A, 122 of the IPC, S.18, 18A, 20, 38 and 39 of the UAPA, S.7 r/w.s.27(2) of the Arms Act and Section 27(1)(e)(iv) of the Kerala Forest Act. So, there is no delay in the trial of the case as alleged by the petitioner.

11. The materials on record show that there are sufficient materials to prima facie show that the petitioner has committed the offences alleged by the prosecution.

12. 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.

13. The allegations against the petitioner and the materials placed before the court in support of the same show that there are prima facie materials to substantiate the offences coming under Chapter IV and VI of the UA(P) Act. Investigation is completed and final report filed. Charge is also framed against the petitioner.

14. The Hon'ble Supreme Court in **Gurwinder Singh v. State of Punjab (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)

15. 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."*

16. 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*. In the decision referred to by the counsel for the petitioner, the Apex Court distinguished the decision in *Gurwinder Singh's case* on facts. That decision was rendered on the fact that the accused was undergoing detention for long period without trial. So, there is no change in the

law laid down in *Gurwinder Singh* and this court is bound to follow the same.

17. Though the petitioner contends that he is suffering from Tuberculosis and he is entitled to be released on bail, there is nothing to substantiate the same. Even if the petitioner is suffering from any illness, the same cannot be a ground for bail in grave offences of the nature alleged against the petitioner. The prison authorities are equipped to provide adequate medical care.

18. 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 ripe for 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 30th day of January, 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