

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

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

Saturday the 24<sup>th</sup> day of May, 2025/3<sup>rd</sup> Jaishta, 1947.

**Cri.M.P. No. 214/2025**

**In**

**SC 02/21/NIA/KOC**

**Petitioner/Accused No.5** : T.K. Rajeevan, S/o. Krishnan, Thottumkara House, Pookkode, Chandrasekhara Street, Koothuparamba, Kannur, Kerala.  
(UT No. 06, High Security Prison, Viyyur).  
**By Adv. Sri. Thushar Nirmal Sarathy.**

**Respondent/ Complainant** : Union of India represented by National Investigation Agency, Kochi.  
**By Sri. Arjun Ambalappatta  
(Senior Public Prosecutor, NIA) and  
Sri. Sreenath.S (Public Prosecutor, NIA)**

This Criminal M.P coming on for hearing before me on 19.05.2025 and the Court on 24.05.2025 passed the following:

**ORDER**

This is an application for bail submitted by the 5<sup>th</sup> accused in the case

**Prosecution case:**

2. The accused voluntarily convened conspiracy 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. The case was registered on the basis of the information tendered by the first accused, when he was arrested by the DySP, Agali on 21.09.2017 in connection with crime No.153/2017 of Sholayur P.S. Investigation was conducted by the Edakkara Police by registering Crime No.249/2017 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.

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.

4. During investigation by the Kerala Police and ATS Kerala, they arraigned 25 accused in this case. Of which, 8 were died in different incidents and the 10<sup>th</sup> accused is 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.

5. 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). It is alleged that accused Nos.1 to 28 knowingly and intentionally participated in the arms and physical training organised by the CPI (Maoist) using prohibited fire arms, in the deep forest of Nilambur. The training camp was held from the last week of May, 2016 to last week of September, 2016, including 8<sup>th</sup> Western Ghats Special Zonal Committee meeting from 4.6.2016 to 7.6.2016, commemoration week of CPI (Maoist) from 28.7.2016 to 3.8.2016 and celebration of the formation of the proscribed association. The accused conducted/attended training camps 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.

6. It is alleged that the petitioner is a South Zonal Committee member of the proscribed terrorist group CPI (Maoist). He was arrested by Kerala Police on 20.11.2020 and since then he is in remand. He allegedly 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 has been in judicial custody for more than 4 years and 5 months. The trial of the case is not yet commenced and this violates his fundamental right to a speedy trial. As the court took cognizance of the case without prior sanction, the proceedings have no legal basis. The prosecution has listed 274 witnesses in the case. Even if the trial proceeds daily, it will take at least two years to complete. Since the investigation is still ongoing regarding recently arrested accused, it is not possible to conclude the trial in the near future. There is no prima facie case against the petitioner and the alleged offences will not stand in his case. He is the sole breadwinner of his family, which includes his wife and a son studying in the 7<sup>th</sup> standard. His wife, who belongs to a tribal community and works as a daily labourer, is now suffering from hypothyroidism and unable to work regularly. Detention of the accused without trial would cause hardship to him and his family. Hence, the petitioner has filed the application for bail.

**Objection**

3. The petition is opposed by the prosecution. It is contended that the materials collected during investigation clearly establish the active

involvement of the petitioner as a South Zonal Committee member of the proscribed terrorist organization CPI (Maoist) in the crime. The evidence on record, including digital and scientific evidence, clearly establish the petitioner's leadership role in the conspiracies, arms training camps and other anti-national activities, furthering the objectives of CPI (Maoist). During his custody, 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.

4. 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:**

5. The learned counsel for petitioner contended that the petitioner is undergoing detention for more than 4 years without trial. He submits that since the petitioner is in remand for long time and there is delay in commencing the trial, he entitled to be released on bail. The counsel submits that the petitioner is the sole bread winner of his family. 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.

6. The learned Senior Public Prosecutor submits that the petitioner is a South Zonal Committee member of the proscribed terrorist organization CPI (Maoist). There are sufficient evidence to establish his active participation in conspiracies, arms training and other unlawful activities to further the objectives of CPI (Maoist). Investigation is completed and final report filed. The court has framed charge against all the accused, including the petitioner. There will be no delay in the trial. The bar under section 43D(5) is applicable in this case and the petition is only to be dismissed.

7. The charge against the petitioner as per the final report is that :  
*“he being a South Zonal Committee member of the proscribed terrorist organisation CPI (Maoist), 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, he along with co-accused trespassed into the reserve forest of Malappuram District in Kerala and actively participated and supervised 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.”*

8. 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.

9. The petitioner was arrested on 20.11.2020 and since then he is in remand. He seeks bail on the ground that there is delay in commencing trial. 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 persons. Some of the accused were absconding at the time of final report. Coercive steps were taken against them. Now appearance of the accused is completed. After appearance/production of the 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, including the petitioner. Accordingly, charge was framed against them on 22.01.2025, 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. This order is not

challenged by the petitioner and the same has become final. So, the petitioner cannot contend that there is no prima facie materials to prove the allegations against him or there is no valid sanction, at this stage. Now appearance of all the accused are over and case is ripe for trial. So, there is no delay in the trial of the case as alleged by the petitioner.

10. 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.

11. 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.

12. 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.

13. The learned counsel for the petitioner argued for an order granting bail mainly on the ground of delay in the trial. He submitted that as

the accused is undergoing detention for more than 54 months without trial, he is entitled to be released on bail. He submits that there is breach of the fundamental right of the petitioner and this entitles the court to interfere and set him free on bail. He submits that in such a situation, not only the constitutional courts, but also the special court also release the accused on bail. He relied on the decision of the Hon'ble Supreme Court in **Manish Sisodia v. Enforcement Directorate (2024 SCC OnLine SC 1920)** and submitted that in that case the Court noticed that trial courts and High Courts tend to play it safe in matters of grant of bail and do not follow the well-settled principle that bail is the rule and jail is the exception. According to him, the observation of the Hon'ble Supreme Court shows that this court also grant bail in suitable case.

14. The Hon'ble High Court in the judgment in **Ashif v. Union of India (2025 KER 30291)** dated 08.04.2025, referring to the decision in *Najeeb's case (Union of India - vs - K.A. Najeeb [2021 (3) SCC 713]* has observed that :

“In the decision in Najeeb's case, the Hon'ble Apex Court, while considering the bail application of an accused involved in a case charged inter alia under Sections 16, 18, 19 & 20 of UAPA Act and who has undergone a long period of

incarceration, held as follows:

"17.It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial".

While holding so, the court also observed and considered the fact that Section 43-D(5) of UAPA is comparatively less stringent than Section 37 of the NDPS Act.

11. Subsequently, in another decision in *Shoma Kanti Sen v. State of Maharashtra* (2024 KHC 6182), the Apex Court, by relying on the decision in *Najeeb's* case and rejecting the contentions of the prosecution that unless the conditions specified in Section 43-D(5) of UAPA are fulfilled the accused is not liable to be enlarged on bail, held thus:

“38. Relying on this judgment, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfill the conditions specified in S.43D(5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Art.21 of the Constitution of India. This was in the case of *Najeeb*(supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail - restricting provision of S.43D(5) of the 1967 Act. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice.

Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post - chargesheet stage has the sanction of law broadly on these reasonings. But any form of deprivation of liberty results in breach of Art.21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprivation must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre - trial detention, both at investigation and post - chargesheet stage”.

The same principle was also followed by the Apex Court in Javed Gulam Nabi Shaikh's case and Athar Parwez' case (all cited supra). In the decision in Athar Parwez's case, the Apex Court after discussing Najeeb's case, went on to observe as follows:

“At the initial stage, the legislative policy needs to be appreciated and followed by the Courts. Keeping the statutory

provisions in mind but with the passage of time the effect of that statutory provision would in fact have to be diluted giving way to the mandate of Part III of the Constitution where the accused as of now is not a convict and is facing the charges. Constitutional right of speedy trial in such circumstances will have precedence over the bar/strict provisions of the statute and cannot be made the sole reason for denial of bail. Therefore, the period of incarceration of an accused could also be a relevant factor to be considered by the constitutional courts not to be merely governed by the statutory provisions.”  
(emphasis supplied by me)

15. Hon'ble Supreme Court in **Vernon v. State of Maharashtra (2023 KHC 6743)** has considered the dictum in K.A.Najeb's case and other precedents on the point and has observed that :

“As the charges against the appellants include commission of offences under different Sections of the 1967 Act, including those coming within Chapters IV and VI thereof, the restriction on grant of bail as contained in S.43D (5) of the said Act would apply in their cases. We shall also refer to the ratio of the judgment of a three - Judge Bench of this Court in the case of **Union of India - vs - K.A. Najeeb**

[2021 (3) SCC 713] while examining the appellants' cases in the backdrop of the aforesaid provision. In this judgment, *it has been held that such statutory restrictions, per se, do not oust the jurisdiction of the Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution of India and it would be within the jurisdiction of the Constitutional Courts, i.e., this Court and the High Courts to relax the rigours of such provisions, where there is no likelihood of trial being completed within a reasonable time and the period of incarceration a detinue has already undergone, covers a substantial part of the prescribed sentences for the offences with which the latter has been charged.* This ratio has been relied upon by the learned counsel for the appellants. Other authorities cited on this point are **Thwaha Fasal - vs - Union of India** [2021 SCC OnLine SC 1000] and **Angela Harish Sontakke - vs - State of Maharashtra** [2021 (3) SCC 723]. On general proposition of law on the aspect of grant of ball due to delay in trial, the case of **Sagar Tatyaram Gorkhe and Another - vs - State of Maharashtra** [2021 (3) SCC 725] has been relied upon.”

16. A reading of the decision in *Najeeb's* case and the subsequent

precedents on the same point shows that when there is violation of Part-III of the Constitution, the constitutional courts can interfere and despite Section 43D (5) of the UAPA, the constitutional courts can exercise its power to release the accused on bail. The Hon'ble Supreme Court in *Vernon's case* has considered the dictum in *Najeeb's case* and similar cases and observed that it would be within the jurisdiction of the constitutional courts, i.e., the Supreme Court and High Court, to relax the rigour of the provisions of the UAPA. So all these decisions are of the consistent view that only the constitutional courts are entitled to relax the rigour of such provisions.

17. The Supreme Court is established under Article 124 of the Constitution of India and the High Courts are established under Article 214 of the Constitution of India. The Sessions Court or a Special Court cannot be said to be a "*constitutional court*". The Sessions Courts are established under the CrPC and Special Courts are established or notified under the special statute. So it cannot be equated with the constitutional courts. The decision relied on by the counsel specifically deal with power of the constitutional courts. Only because the constitutional courts have exercised its power to relax the rigour of the provisions of the Act, it is not possible to find that this court has power to release the accused on bail as contended by the learned counsel for the petitioner.

18. 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)

19. 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.”*

20. 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.

21. Though the petitioner contends that his continuous detention causes hardship to his family, including his wife and school-going son, as he

is the sole breadwinner, this cannot be a ground for granting bail in the present case involving a grave offence against the State.

22. 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 24<sup>th</sup> day of May, 2025.

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

Appendix: Nil

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

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