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

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

Wednesday the 9th day of July, 2025/18th Ashada,1947

Crl.M.P. 281/2025

In

SC No.02/2021/NIA

Petitioner/Accused No. 4	**:**	Dr. Dinesh.D (A4), age 34 years, S/o. Dhanapalan, D. No. 1, Thullarimukam street, Uliyakulam, Coimbatore, Tamil Nadu. **By Adv. Sri. S. Abdul Khadar Kunju**
Respondent	**:**	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 04.07.2025 and the Court on 09.07.2025 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 the petitioner along with the other accused voluntarily convened a meeting and training camp during month of September 2016 in the reserve 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. The case was registered on the basis of the information tendered by the first accused, Kalidas @ Mani @ Sekhar, when he was arrested by the then 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 on 30.09.2017 against 19 persons. Later, the case was handed over to the Anti Terrorist Squad PS, Ernakulam and renumbered as crime No.32/2020/ATS on 19.03.2020.

2. During 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 the Edakkara Police Station crime, 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 the investigation of this case by the Kerala Police and ATS Kerala, they arraigned 25 accused in the case. Out of them, 8 were died in different incidents and 4 are absconding. The ATS filed charge sheet against 5 accused before the District and Sessions Court, Manjeri on 18.05.2021. The court took cognizance of the case. In the meanwhile, 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. Subsequently, the investigation was took over from ATS, Kerala and FIR was submitted before this court.

4. Digital devices seized in Crime No. 536/2016 of Edakkara Police Station proves the active participation of the petitioner in the arms and physical training conducted by CPI (Maoist). Investigation by the NIA 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 all the 28 accused and supplementary final report was submitted on 23.04.2022. This Court took cognizance on the same. 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 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.

5. The petitioner was arrested on 04.02.2021 in connection with this case and since then he is in remand.

Petitioner's case

6. The petitioner's case is that he has been undergoing detention in connection with the case for more than 4 years and 4 months. Considering the large number of documents, material objects and witnesses, the trial is not likely to be completed in the near future. The prolonged custody violates the fundamental rights guaranteed by the Constitution of India. It is further contended that there is no prima facie case against him and that he is innocent of the charges alleged. The 1st accused in the case was granted bail

by the Hon'ble High Court on the ground of delay in trial and prolonged incarceration. On the principle of parity, the petitioner is also entitled to bail on the same grounds. Moreover, the petitioner is suffering from severe cardiac ailments, and the treatment provided in jail is not adequate. His release is essential to receive proper medical treatment. Therefore, he seeks bail on the ground of delay in trial and health reasons.

Objection

7. 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, arms training camps, and other anti-national activities furthering the objectives of CPI (Maoist). The evidence on record establish a strong prima facie case that the petitioner is a hard-core terrorist, who has undergone training in sophisticated weapons, including automatic rifles, for the purposes of the terrorist organization 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.

8. 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:

9. The learned counsel for the petitioner contended that the petitioner is undergoing detention for more than 4 years and 4 months without trial. It is submitted that since the petitioner is in remand for long time and there is delay in commencing 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. It is also contended that there is no material produced by the prosecution to make out the offence alleged against the petitioner and he is entitled to be released on bail.

10. The learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in **Ashraf Moulavi and others v. Union of India (2024 KHC Online 529)** wherein it was observed that :

> "26. Over and above the principles gleaned from the precedents referred above, we feel that in cases such as the present, where the allegation against the accused is that they were complicit in terrorism related offences, a court examining the evidence against the accused under Section 43D of the UA (P) Act has also to guard itself against any confirmation bias that might creep in based on ideological biases and false narratives prevalent in society. Such an exercise would be required, not

> only in keeping with the requirement of safeguarding the personal liberty of the accused under Article 21, but also in the interests of upholding the fundamental right of an accused against arbitrariness and/or discrimination as envisaged under Article 14 of the Constitution. The role of any court, not just the constitutional courts, must be to lean in favor of the fundamental rights of the accused, and not in favors of the restrictions that can be imposed on those rights."

11. The petitioner's counsel submits that in this case there are more than 274 witnesses and even if trial starts, it will take a long time to complete. He submits that the Apex Court in **Javed Gulam Nabi Shaikh v. State of Maharashtra and another (2024 KHC 6323)** it is observed that if the prosecuting agency cannot ensure speedy trial, they should not oppose bail citing seriousness of offences. In that case the Court observed that:

> "If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Art.21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Art.21 of the Constitution applies irrespective of the nature of the crime."

12. The learned counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in **Union of India v. K.A. Najeeb: 2021 (3)**

SCC 713 and contended that S.43D(5) of the UAPA is comparatively less stringent than S.37 of the NDPS Act. He also referred to the decision in **Dheeraj Kumar Shukla v. State of UP (2023 KHC 6545)** and argued that when there is delay in trial, the embargo u/s.37 of the NDPS Act can be dispensed with. He also referred to the decision in **Muhammed Muslim @ Hussain v. State (NCT of Delhi) [AIR 2023 SC 1648]** and contended that the right for bail under Article 21 also supports the case of petitioner.

13. The learned counsel argued that when there is delay in trial and consequent breach of fundamental right of the accused, not only the constitutional courts, but all courts can interfere and release the accused on bail. He relied on the observation of the Hon'ble High Court in Ashraf @ Ashraf Moulavi and ors v. Union of India (ILR 2024 (3) Ker.817) that *"The role of any court, not just the constitutional courts, must be to lean in favour of the fundamental rights of the accused, and not in favour of the restrictions that can be imposed on those rights* to buttress his argument.

14. The learned counsel submits that the first accused is granted bail by the Hon'ble High Court in the judgment reported in **Kalidas @ Sekhar @ Mani v. Union of India (2025 KHC 1707)**. He submits that the petitioner is also entitled to parity and is to be released on bail. The first accused was arrested in connection with this case on 17.10.2017 and when the Hon'ble High Court considered the bail application, he was undergoing detention for more that 7 years. The learned Public Prosecutor submitted that the petitioner was absconding for more than 4 years even after knowing about

the case and his case cannot be compared with that of the first accused. It is also submitted that though the Hon'ble High Court has granted bail, the first accused is not released from custody as he did not execute the bond as directed by the Court. It is also submitted that in the case of the first accused, the Court was exercising its power as a constitutional court. In the said judgment the Hon'ble Court observed that:

> "As seen from the extracted passage, the proposition laid down is that even in a case involving interpretation of a penal statute, howsoever stringent it may be, *a constitutional court has to lean in favour of constitutionalism and the rule of law of which, liberty is an intrinsic part.* No doubt, it is observed in Sk. Javed Iqbal that in the given facts of a particular case, a constitutional court may decline to grant bail. But the said observation was made to hold that merely on account of that reason, it is wrong to say that bail cannot be granted under a particular statute."

15. The learned Senior Public Prosecutor submits that the investigation has clearly established that the petitioner is a member of the proscribed terrorist organization CPI (Maoist). There are sufficient evidence to establish his active participation in physical/arms training and other unlawful activities to further the objectives of CPI (Maoist).

16. The charge against the petitioner as per the final report is that:

> "He being a member of the proscribed terrorist organisation CPI (Maoist), conspired with co-accused inside deep reserve forest

of Malappuram District of Kerala, at 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 the proscribed terrorist organization CPI (Maoist) which is involved in terrorist acts, he along with co-accused trespassed into the reserve forest of Malappuram District and actively participated in the physical and arms training camp of CPI (Maoist), 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. He also possessed various documents related to CPI(Maoist) and its frontal organisations for furthering the activities of CPI(Maoist).

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."

17. It is submitted by the Public Prosecutor that there are material evidence in the form of statement of witnesses and electronic records, including videos of the arms training undergone by the petitioner to support the prosecution case. According to him, 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. It is also contended that there is no delay in disposal of the case and now the case is ripe for trial. It is also contended that even if it is found that there is delay in trial, only the constitutional courts have power to grant bail.

18. 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. This court, after considering the materials placed before it found that there are sufficient materials to frame charge against the accused. Accordingly, charge was framed against all the accused, including the petitioner.

19. 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 UAPAct 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 UAPAct. 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 “<u>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</u>

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)

20. 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).** 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."

21. 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 (*Zahoor Ahmad Shah Watali v. National Investigating Agency : *2018 KHC 7647) and Gurwinder Singh's case.* So, there is no change in the law laid down in *Gurwinder Singh* and this court is bound to follow the same.

22. 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* 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 rigors 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 deprival 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 deprival 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)

23. 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 detenue 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."

24. 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. All the decisions relied on by the learned counsel for the petitioner, except the one line observation in *Asharaf Moulavi's* case, are of the consistent view that only the constitutional courts are entitled to relax the rigour of such provisions.

25. 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 decisions 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. In this case, this court has already applied its mind and framed charges against offence coming under Chapter IV and VI of the UPA. So, the rigour of S.43D(5) is applicable to the case.

26. Though the petitioner contends that he is suffering from cardiac ailments 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.

27. In the light of the discussion in the foregoing paragraphs and on a careful scrutiny of the materials placed before me, I am of the view that there are reasonable grounds for believing that the accusation against the petitioner is prima facie true. The allegations against the petitioner are serious in nature. The case is ripe for trial. The Proviso to Section 43D(5) is applicable in this case and the petitioner is not entitled to be released 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 09th day of July, 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