

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

Present: Sri. Anil.K.Bhaskar, Judge for NIA Cases

Friday the 9th day of June, 2023/ 19th Jyaishta, 1945

Crl. M.P. No.269/2023 in SC.02/2023/NIA

Petitioner/Accused No.17 :- : Muhammed Sadik (**A17**), aged 40/2023,
S/o. Aliyarkutty, Mannezhuthu Thara House,
17/709, Chavara post, Kollam, Kerala.

By Adv.Sri.Thomas Abraham

Respondent/Complainant : Union of India represented by National
Investigation Agency.

**By Adv. Sri. Ajith Kumar.S.
(Special Public Prosecutor, NIA) and
Sri. Sreenath.S. (Public Prosecutor, NIA).**

This Criminal M.P coming on for hearing before me on 09.06.2023 and the Court on the same day passed the following:

ORDER

This application is preferred under sec.439 of Cr.P.C.on behalf of A17 Muhammed Sadik turned as approver, for an order to release him on bail.

2. Accused in this case are the Popular Front of India (PFI), its office bearers, and its members. Prosecution would allege that PFI, its office bearers members and affiliates in Kerala have conspired to indulge in Unlawful Activities, by creating enmity between members of different religions and groups, prejudicial to maintenance of harmony, with intention to disrupt public tranquility and cause disaffection against India, propagating alternative justice delivery system justifying the use of criminal force causing alarm and fear amongst general public, encourages vulnerable youths to join terrorist organisation including Lashkar-e-Taiba (LeT), Islamic

State of Iraq and Syria (ISIS)/Daesh and Al-Qaida and also conspired to establish Islamic rule in India by committing terrorist acts as a part of violent jihad. PFI also spreads dis-affection against India by wrongful interpretation of Government Policies to the particular section of people to create hatred against the State and its machinery.

3. Considering the nature and gravity of the offence, the Government of India, Ministry of Home affairs, CTCR Division issued order in F.No.11011/82/2022-NIA dated 16.09.2022, directing the NIA to investigate the matter. Accordingly, the case has been registered as RC.02/2022/NIA/KOC at NIA Police Station, Kochi on 19.09.2022 under sections 120B and 153A of IPC, Section 13, 18, 18B, 38 and 39 of Unlawful Activities (Prevention) Act against 15 accused persons, who are PFI the organisation and its office bearers and active members. Subsequently, as and when the involvement of some more persons were revealed out more persons were added as accused in this crime. The petitioner Muhammed Sadik is one among those persons added subsequently as an accused.

4. During investigation, NIA conducted search at various places related to the accused and seized many number of documents and material objects and seized documents contain highly incriminating materials related to the targeting of the prominent leaders of particular community.

5. According to NIA, PFI, its cadres and office bearers committed various murders in Kerala and outside Kerala with intension to create terror in the minds of the particular community. Some of the victims of such murders did not even have any association or any previous engagement with PFI. These victims were randomly selected. Investigation further revealed that there exist secret wing of PFI in the name of Reporters to collect the details of the leaders of other community, recruitment and

physical training to PFI cadres for committing terror activities, involvement of PFI and its cadres/office bearers in various Unlawful Activities, etc.

6. Investigation has revealed that Srinivasan murder case (Crime No.318/2022 of Palakkad Town South P.S.) is a connected offence in terms of section.8 of NIA Act, therefore, the Government of India, Ministry of Home Affairs, CTCR Division, vide their Order No.11011/82/2022/NIA(Part) dated 19.12.2022 has directed the NIA to investigate the FIR No.318/2022 dated 16.04.2022 of Palakkad Town South PS, Kerala as per the provisions of section 8 of NIA Act, 2008. In continuation of the order issued by Government of India, on the request of NIA, Hon'ble High Court of Kerala transferred the case to this court to be investigated along with RC.02/2022/NIA/KOC.

7. Subsequently, all the accused in the Palakkad crime were arrayed as accused in RC.02/2022/NIA/KOC. The total number of accused arrayed in RC.02/2022/NIA/KOC is 69 out of which 56 accused were already arrested and are in judicial custody. On completion of investigation NIA filed final report against 59 accused persons on 17.03.2023 u/s.120B, 34, 109, 115, 118, 119, 143, 144, 147, 148, 449, 153A, 341, 302, 201, 212 r/w 149, 120B r/w 302 of IPC, Section 3(a) (b) (d) r/w 7 of the Religious Institutions (Prevention of Misuse) Act, 1988, Section 13, 16, 18, 18A, 18B, 20, 22C, 23, 38 & 39 of Unlawful Activities (Prevention) Act, 1967 and section 25(1) (a) of Arms Act, subject to the permission sought to continue the investigation against the absconding accused who were not charge sheeted.

8. Acting upon the final report, cognizance was taken against the charge sheeted accused and the case against them is numbered as SC.02/2023 which is the present case. Petitioner Muhammed Sadik is accused no.17 in SC.02/2023.

9. The petitioner was arrested on 17.01.2023. From that date onwards he is in judicial custody. During investigation petitioner fully co-operated with investigating agency and he has diverged every information in his knowledge with regard to PFI and its activities. Petitioner made a full and true disclosure of the whole of the facts and circumstances within his knowledge to a court of law. His 164 statement was recorded on 28.01.2023 and 09.03.2023. Later, investigating agency moved CrI.M.P.223/2023 u/s.307 Cr.P.C to tender pardon to the petitioner and this court after conducting an enquiry, tendered pardon and the petitioner voluntarily accepted the same and accordingly as per order dated 26.05.2023 petitioner became an approver. Thereafter the court sent the petitioner back to jail with a direction to detain him in custody until further orders as such his detention is being continued.

10. Now comes the present application for bail. Petitioner would submit that he is fully co-operating with the prosecution whole heartedly. He had diverged all facts known to him related to this case. The allegation against him is that he is an active cadre of PFI and also a member of secret wing of PFI as a reporter. Considering the limited role of the petitioner, even if the petitioner is released on bail, no prejudice will cause to the prosecution in any manner. Further, he is the sole breadwinner of the family. His mother is undergoing treatment for cancer. The wife of the petitioner is a home maker and his children are of tender age. It is submitted that if bail is denied to the petitioner it will cause immense hardship to him. He has to continue in jail throughout the pendency of the proceedings which will definitely take years to complete. It is submitted that he is ready to furnish sufficient solvent sureties to the satisfaction of the court.

11. Copy served to NIA. Learned prosecutor filed detailed objection. It is

submitted that the investigation disclosed that the petitioner intentionally became a member of the terrorist gang and committed terrorist acts. During investigation he voluntarily came forward to give confession statement and accordingly his confession was recorded by Judicial First Class Magistrate u/s.164 Cr.P.C. subsequently this court granted pardon to the petitioner and thereby he turned as an approver. Sec.306(4) Cr.P.C. says that the person who has accepted the tender of pardon "shall, unless he is already on bail, be detained in custody until the termination of the trial." Since the petitioner is in judicial custody and voluntarily accepted the tender of pardon, he is not entitled for bail.

12. The objection taken up is purely legal, hence I will directly go to the relevant provisions. Sec.306 Cr.P.C. deals with tender of pardon to accomplice during the investigation stage and Sec.307 at the post committal stage. The terms and conditions regarding tender of pardon is dealt with in detail in Sec.306. Sec.307 would say that at post committal stage also the Court can exercise the power to direct the tender of pardon on the same condition to such person. The condition relevant for our consideration is Sec.306(4) Cr.P.C. which reads as follows:-

"(4) Every person accepting a tender of pardon made under Sub-Section (1)-

- (a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;
- (b) shall, unless he is already on bail, be detained in custody until the termination of the trial."

13. Therefore, there is a statutory embargo containing section 306(4)(b) Cr.P.C. in his case as he had not been released on bail yet.

14. This position had been dealt with in **Abdul Aziz vs. State of Kerala (MANU/KE/570/2019)**. It was held as follows by the High Court of Kerala :

“27. Therefore, this Court is of the considered opinion that a balanced and harmonious approach should be taken so that extremes from both sides are avoided. To hold that Sec. 306(4) would amount to a total prohibition and absolute fetter to release the approver on bail, is one extreme. On the other hand, to take the view that once an accused is granted pardon, he loses his status of an accused and become a witness and that therefore ordinarily the inherent powers under Sec. 482 of the Cr.P.C. could be exercised to release him on bail, is the other extreme. A realistic and golden middle ground has to be struck and it may not be possible to envisage a strait-jacket formula as to in what manner discretion is to be exercised by the High Court under Sec. 482 of the Cr.P.C. in cases of this nature. No straight jacket formula can be put forward. The basic approach should be that the provisions contained in Sec. 306(4)(b) of the Cr.P.C. would amount to a general bar but that in rare and exceptional cases, the said provision will not amount to total prohibition and absolute fetter on the High Court in exercising the inherent powers conferred under Sec.482 of the Cr.P.C. to consider the plea of an approver to be released on bail, after weighing in various relevant aspects of the matter.

28. In the light of above said aspects, this Court is of the considered opinion that the provisions contained in Sec. 306 (4) of the Cr.P.C. should be construed as a general bar in releasing the approver on bail, until the conclusion of the trial, if he is not already on bail, but at the same time, a vestige of discretion is available as per the inherent powers conferred on the High Courts as per Sec. 482 of the Cr.P.C. to consider the plea of the approver to be released on bail in rare and exceptional cases, after careful weighing of all relevant and crucial aspects of the case. So, this Court is of the view that the legal position laid down by this Court in Saidevan's Thampis' case (supra), Ismail's Case MANU/KE/10732016 :

2016 (3) KLT 445 : 2016 (4) KHC 26), Shammi Firoz's case (supra) do not require any serious reconsideration."

15. In this given circumstance, the statutory bar contained in section 306(4)(b) of Cr.PC squarely applies to the case in hand. The power to grant bail in such cases lies with the Hon'ble High Court only, and this court shall refrain from exercising its jurisdiction on such bail matters. Therefore, it will be inappropriate to go into the merits of the bail application.

In the result, petition stands dismissed.

Dictated to the Confidential Asst., typewritten by her directly to computer system, corrected and pronounced by me in open court on this the 09th day of June, 2023.

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

Appendix : Nil.

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

// True Copy //

Sd/-
Sheristadar