

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

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

Saturday the 2nd day of March, 2024/12th Phalguna, 1945.

**Crl.M.P. 547/2023, Crl.M.P. 565/2023, Crl.M.P. 61/2024 and
Crl.M.P. No.72/2024**

in

**SC No.02/2023/NIA
(RC No.02/2022/NIA/KOC)**

Crl.M.P. No. 547/2023

Petitioner/ Accused No.3

: Abdul Sathar (A3), aged 52 years, S/o. Alikunju, Matherayathu House, Kulasekarapuram P.O, Karunagappally, Kollam District.

Represented by Adv. M/s. P.C Noushad, Abdurahiman P.K, Muhammed Rifa.

Respondent/ Complainant

: Inspector of Police, National Investigation Agency, NIA Kochi Unit, Kadavanthara.

Represented by Sri. Ajith Kumar.S (Special Public Prosecutor, NIA) and Sri. Sreenath.S (Public Prosecutor, NIA).

Crl.M.P. No. 565/2023

Petitioners/

Accused Nos.11 and 12.

1. Yahiya Koya Thangal (A11), Aged 48 years, S/o. Kunji Koya Thangal, Adhinayil House, Perumbilavu Post, Kunnamkulam.
2. Abdul Raoof C.A (A12), aged 38 years, S/o. Mohammed Musliyar, Chappangathodiyil, Maruthur, Pattambi.

A11 represented by Adv. M/s. P.C Noushad, Abdurahiman P.K, John S. Ralph and Wakarulislam K.S.

A12 represented by Adv. M/s. P.C Noushad, Abdurahiman P.K, Wakarulislam K.S. and Muhammed Rifa.

Respondent/ Complainant

Inspector of Police, National Investigation Agency, NIA Kochi Unit, Kadavanthara.

**Represented by Sri. Ajith Kumar.S
(Special Public Prosecutor, NIA) and
Sri. Sreenath.S (Public Prosecutor, NIA).**

Crl.M.P. No. 61/2024

Petitioners/

Accused Nos. 42 and 43

1. Muhammed Rizwan (A42), aged 22 years, S/o. Abdul Rasheed, Near Railway Track, Shankuvaramedu, Kalpathi, Palakkad.
2. Ashfaq @ Unni (A43), aged 24 years, S/o. Haneefa (late), Pallichanthu, Kunnumpuram, Kalpathi, Palakkad.

**A42 and A43 represented by Adv.
M/s. Abdul Latheef, Abdurahiman P.K,
Wakarulislam K.S. and Muhammed Rashid.**

Respondent/ Complainant

Inspector of Police, National Investigation Agency, Kochi.

**Represented by Sri. Ajith Kumar.S
(Special Public Prosecutor, NIA) and
Sri. Sreenath.S (Public Prosecutor, NIA).**

Crl.M.P. No.72/2024

Petitioner/ Accused No.53

Abdul Kabeer, aged 43 years, S/o. Kunjumoideen, Melecherukunnath House, Cherukode, Vallapuzha, Pattambi, Palakkad District.

**Represented by Adv. M/s. Abdul Latheef,
Abdurahiman P.K, Wakarulislam K.S. and
Muhammed Rashid.**

Respondent/ Complainant

Inspector of Police, National Investigation Agency, Kochi.

**Represented by Sri. Ajith Kumar.S
(Special Public Prosecutor, NIA) and
Sri. Sreenath.S (Public Prosecutor, NIA).**

These petitions coming on for hearing before me on 28.02.2024 and the Court on 02.03.2024 passed the following:-

ORDER

These applications are filed by the accused in SC 2/2023 for bail u/s.439 CrPC. Crl.M.P. 547/2023 is filed by the 3rd accused (Abdul Sathar), Crl.M.P. 565/2023 is filed by A11 (Yahiya Koya Thangal) and A12 (Abdul Raoof @ C A Rauf), Crl.M.P. 61/2024 is filed by A42 (Muhammed Rizwan, A47 in RC) and A43 (Ashfak @ Unni, A48 in RC) and Crl.M.P.72/2024 is filed by accused No.53 (Abdul Kabeer, A58 in RC).

2. The petitioner in Crl.M.P.547/2023, the 3rd accused, is charge sheeted for offence u/s.120B, 153A & 120B r/w.s.302 of IPC and Sections 13, 18, 18A, 18B, 20 and 22C of UA(P) Act. In addition to these offences, the other petitioners are charge sheeted for offence u/s.120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w.s.149 of IPC and S.3(a)(b)(d) r/w.s.7 of the Religious Institutions (Prevention of Misuse) Act 1988.

3. The prosecution allegation is that the accused have committed the terrorist act of murder of one Srinivasan on 16.04.2022 as part of the larger conspiracy hatched by the Popular Front of India and its office bearers and cadres to enact their "India 2047" agenda of establishing Islamic rule in India.

4. It is contended by the prosecution that the Central Government received credible information that, the office bearers, members and cadres of Popular Front of India (PFI), a registered society and its affiliates in Kerala have

conspired to instigate communal violence and radicalize its cadres to commit terrorist acts in the State of Kerala and various other parts of the country. The PFI members and office bearers based at Kerala having earlier association with proscribed terrorist organization SIMI, maintain operational nexus with other proscribed international terrorist organization like Lashkar-e-Taiba (LeT), Islamic State of Iraq and Syria (ISIS)/Daesh and Al-Qaida. It is alleged that some of the members of PFI cadres are also the members of these proscribed terrorist organisations. PFI has created organizational web, which is stretched to recruit vulnerable Muslim youths into proscribed international terrorist organizations to commit terrorist acts. It is further alleged that PFI and its members are also indulging in activities prejudicial to the maintenance of harmony by creating feeling of enmity between people of different religions and groups through violent speeches, publications, articles, social media posts, etc. with intention to disrupt public tranquility and have been seen to have organised movement intending that the participants be trained to use criminal force against people of other religions and groups such as to cause terror, fear and alarm besides feeling of insecurity among members of other religions and groups. It is also alleged that PFI, its members and office bearers are also indulged in unlawful activity with the intention to cause disaffection against India by inciting people and innocent Muslims to defy Government and institutions established by law and thereby commit disruption of sovereignty and integrity of India.

5. It is the case of the prosecution that the Central Government formed an opinion that the activities of the PFI are offences coming under Sections 120B,

153A of IPC and sections 13, 18, 18B, 38 and 39 of UA(P) Act, 1967 which are scheduled offences to the National Investigation Agency Act, 2008. It is stated that considering the gravity of the offences and its repercussion on national security, the Government of India, Ministry of Home Affairs, vide order No.11011/82/2022-NIA dated 16.09.2022, directed the NIA to take-up investigation of the case. It is stated that a case was registered as RC.02/2022/NIA/KOC at NIA Police Station, Kochi on 19.09.2022 for offence under Sections 120B & 153A of IPC and sections 13, 18, 18B, 38 and 39 of UA(P) Act, 1967 and FIR was submitted to this court.

6. According to the prosecution, investigation revealed that the murder of Mr.Srinivasan (Crime No.318/2022 of Palakkad Town South P.S.) is a connected offence in terms of Section 8 of NIA Act and therefore, the Government of India, vide its order No.11011/82/2022/NIA (Part) dated 19.12.2022 directed NIA to investigate crime No.318/2022 dated 16.04.2022 of Palakkad Town South PS also as per Section 8 of NIA Act. It is submitted that in pursuance to the direction of the Government of India and subsequent orders of Hon'ble High Court of Kerala and the jurisdictional Court, the case was transferred to this court.

7. It is alleged by the prosecution that the PFI leaders and members conspired together with the intention to create terror and communal divide in the society, conducted intense recce of several Hindu leaders of that locality whom they had short-listed using their "Reporter Wing" and subsequently selected and brutally killed one Srinivasan. Kerala Police investigated the case and filed charge-sheet against 44 accused for offences under sections 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w.s.149 of IPC and

Section 3(a)(b)(d) r/w.s.7 of the Religious Institutions (Prevention of Misuse) Act, 1988.

8. The petitioners were arrested on various dates in connection with this case and since then they are in remand. They have approached this court for regular bail.

9. The petitioner in Crl.M.P. 547/2023 contends that he is implicated in the case on an allegation that being a leader of PFI, he conspired for a common agenda of 'India 2047' for establishing Islamic rule in India by committing terror in the society. The case was registered on 19.9.2022 and the arrest of the petitioner was recorded on 28.9.2022. It is contended that the petitioner is innocent and no way connected with the allegations in the final report. The petitioner is not a member of any of the banned organizations till his arrest and nothing is brought before the Court to show that the petitioner acted in accordance with the larger conspiracy. The organization was not banned till 28.09.2022. There is no incriminating material against the petitioner in the evidence collected by the investigating agency.

10. The petitioners in Crl.M.P.565/23 also have taken the similar contentions. According to them, their arrest was recorded by the NIA on 22.09.2022 and they were formally arrested by the Palakkad Police for crime No.318/22 on 8.11.2022 and 25.11.2022. They were made accused in the supplementary final report filed by the Palakkad police and taken on file as CP 61/2022 by the Magistrate Court.

11. The case of the petitioners in Crl.M.P.61/2024 is that the allegation

against them is that they being cadres of PFI and members of terrorist gang and part of the conspiracy dated 16.4.2022, the first petitioner (A42) collected the mobile phones of the accused Nos.17, 19, 20 and 22 and the 2nd petitioner (A43) collected the mobile phones of the accused Nos.19, 20 along with that of A42 for screening the offenders who committed the murder of Srinivasan as a political retaliation. The Palakkad police recorded the arrest of the first petitioner on 21.4.2022 and the 2nd petitioner on 22.4.2022. A final report was filed implicating the petitioners as accused Nos.30 and 31. The allegations against the petitioners in the final report in crime No.318/2022 of the state police are entirely different from the final report of the NIA.

12. The petitioner in Crl.M.P. 72/2024 contends that the allegation against him is that he being the cadre of PFI, attended the conspiracy meetings held on 15.04.2022 and 16.04.2022 for committing murder of Mr.Sreenivasan on 16.04.2022 and that after committing the offence he along with other accused conspired and dismantled the motorcycle used by the accused Nos.18 and 23. According to him, the allegation against him is vague and nothing is produced before the court to prove his involvement in the alleged terrorist activity.

13. The investigating officer filed detailed objection in all the bail applications contending that the accused had active role in the conspiracy and they have committed terrorist act. It is also contended that the petitioners are not entitled to bail in view of the Proviso to Section 43D(5) of the UA(P) Act.

14. I have heard the counsel for the petitioners and the Special Public Prosecutor in detail. Perused the final report and other documents submitted by

the prosecution.

15. The learned counsel for the petitioners attacked the prosecution case on various grounds, even by challenging the authority of the National Investigation Agency to register a case and investigate the offence allegedly committed by the petitioners and the other accused. He submitted that admittedly the entire incident started with the murder of one Subair on 15.04.2022 at Ellapully, Palakkad. Even as per the prosecution case, as a retaliation for the murder of Subair, one Sreenivasan was murdered by a group of persons on 16.04.2022 at 1.00 p.m. A case was registered by the local police as crime No.318/2022 on 16.04.2022 itself. Investigation was conducted and a final report was submitted on 13.07.2022 by the Palakkad Town South Police. He submits that the case was taken on file by the Judicial First Class Magistrate and committed to the Sessions Court, Palakkad and taken on file as SC 983/2022. The Magistrate has taken cognizance of the offence and on the basis of the committal order, the Sessions Court also took cognizance of the offence. Summons was issued to the accused who were named in the final report and they appeared before the Sessions Court. Later, a supplementary final report was also filed before the Judicial First Class Magistrate on 12.12.2022 and the same was also taken on file by the learned Magistrate. The learned counsel submits that till the filing of the supplementary final report or thereafter, the state police had no case that any offence coming under the Schedule to the National Investigation Agency Act has been made out during the investigation. According to him, as per document No.1464 dated 16.09.2022 produced along with the final report filed by

the NIA, the investigation was entrusted with the NIA. He submits that later, another order was issued on 19.12.2022, which is produced as document No.1465 by which the Government directed the National Investigation Agency to take up investigation of Crime No.318/2022 under section 6(5) r/w. section 8 of the National Investigation Agency Act, 2008. He submits that the NIA has registered an FIR on 19.09.2022 itself, which according to him, is totally illegal. He submits that under sub-section 5 of Section 6, the National Investigation Agency is not competent to register a case. He submits that Section 8 of the Act has no application in this case as the scope of that section is entirely different. He submits that as per Section 8, the NIA is authorised to investigate any other offence which the accused is allegedly committed while investigating any scheduled offence, if such offence is connected with the scheduled offence. According to him, in order to invoke the power u/s. 6(5) of the Act, the Central Government must be satisfied that an investigation in respect of a scheduled offence is in progress and the Government must be of the opinion that the offence is required to be investigated under the Act. According to him, a reading of the order dated 16.09.22 and 19.12.2022 does not show that the Government had sufficient materials before it, to come to a decision that scheduled offence has been committed. He submits that though in the order dated 16.9.2022 it is alleged that the suspect/accused have involved in certain activities described therein, there is no mention regarding the death of Sreenivasan. He also submitted that as per order dated 19.12.2022, which is produced as document No.1465 along with the final report, investigation is directed to be conducted u/s.8 of the Act.

According to him this shows that the Government was prejudiced that the death of Sreenivasan was a terrorist act committed by the accused and that the accused have committed some scheduled offence. He submits that the PFI was declared as an unlawful association as per gazette notification dated 28.09.2022, which is produced as document No.699 along with the final report. As per the notification the organisation is not declared as a terrorist organisation, whereas. it is only notified as an unlawful organisation and hence the offence under Chapter IV of the Act will not be attracted. He also submits that Clause (iii) in Page No.5 of the notification contains the details of criminal activities and murders allegedly carried out by PFI cadres and that does not include the death of Srinivasan. It is also contended that a reading of the notification shows that the Government of Kerala has no case that the PFI is an unlawful association or involving in any offence as alleged by the investigating officer. He also submitted that the prosecution is mainly relying on document No.1373 produced along with the final report, which is a disclosure cum recovery memo in Crime No. RC.02/22. According to him, it does not help the prosecution to establish that the accused have committed a terrorist act. He submits that as per that document, a sword is allegedly recovered on the basis of the statement given by accused No.16. It is also submitted that though the prosecution alleges that the accused are involved in terrorist activity on the basis of the statement in RC.31/22/Delhi, which was registered on the basis of a Bihar crime, none of the accused in this case are involved in that case or vice versa.

16. The learned defence counsel relying on the decision of the Hon'ble

High Court of Kerala in *Chaithanya v. Union of India* (2023 KHC 323) submitted that as per the provisions of the NIA Act, the agency cannot register an FIR or conduct investigation except under the direction of the Union Government. He also referred to the decision of the Hon'ble Supreme Court in *State of West Bengal v. Suwendu Adhikari* (2023 (5) KHC Short Note 6) and submitted that the Central Government has suo motu power to direct the NIA to investigate an offence only when it forms an opinion that a scheduled offence has been committed, which is required to be investigated by the NIA. He also referred to the decision of the Hon'ble Supreme Court in *Naser Din Abu Bakr Yafai v. State of Maharashtra and another* (2021 KHC 6630) and submitted that until the NIA takes over investigation on the basis of an order u/s 6(4) or (5), the state police is to continue the investigation. In this case, even before the order dated 16.09.2022, investigation was conducted by the Palakkad Town South Police and final report was submitted and no scheduled offence was made out during the investigation by the state police. The learned counsel also referred to the decision of the Hon'ble Supreme Court in *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019 KHC 6384) and submitted that the proviso to Section 43D(5) is entirely different from similar provisions in other special statutes and the degree of satisfaction under the proviso is to form an opinion that the accusation is prima face true and it is lighter as compared to similar provisions in some special statute. He also submitted that while compared with Section 37 of the NDPS Act and Section 45 of the PMLA Act, the proviso to section 43D(5) is lighter and in this case the accused is entitled to be released on bail. The learned counsel also

relied on the decision of the Apex Court in *Satender Kumar Antil v. CBI and another* (2022 (4) KHC 570) and submitted that the normal rule is that the accused is entitled to bail. He submits that the principle bail is the rule and jail is the exception has been well recognised by various pronouncements of the Apex Court and the liberty guaranteed under Article 21 of the Constitution cannot be taken away on a mere allegation, which is not supported by any materials. He also relied on the decision in *State of U.P. through CBI v. Amarmani Tripathi* (2005 KHC 1685) and also in *Thomas Daniel v. Enforcement Directorate, Ernakulam* (2023 (6) KHC 40). He also referred to the decision in *Supreme Court Legal Aid Committee representing under-trial prisoners v. Union of India and others* (1994 KHC 1078) and *Sanjay Chandra v. CBI* (2011 KHC 5051). He also relied on the decision in *State of Rajasthan v. Balchand* (1977 KHC 877) and argued that except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or intimidating witnesses and the like by the petitioner, he is entitled to be released on bail. He also referred to the decision in *Muhammed Shafi P. and others v. NIA* (2021 (6) KHC 485) and the decisions in *Union of India v. K. A. Najeeb* (2021 KHC 6045), *Vernon v. State of Maharashtra and another* (AIR 2023 SC 3926) and *Thwaha Fazal and another v. Union of India and another* (2021 (6) KHC 228).

17. The learned Special Public Prosecutor opposed the application stating that there are ample materials before the court which prima face prove the involvement of the petitioners in terrorist activities. He submits that details of material evidence gathered against the petitioners during investigation are

narrated in the objection filed by the investigating officer. He submits that the PFI was acting to fulfill their mission to establish Islamic rule in India by their "India 2047" vision. He submits that this is clear from document No.1376, which is a voice clip recovered from the mobile phone of accused Muhammed Mubarak (A-15) and also the statement of the protected witness Nos.2, 14 & 16 and the statement of the approver recorded u/s 164 of CrPC. He submits that the accused committed terrorist act of murder of Srinivasan on 16.04.2022 as a part of larger conspiracy hatched by PFI and its office bearers and cadres to enact their "India 2047" agenda of establishing Islamic rule in India. According to him, this is evident from the hit list prepared by PFI, which is produced as MO 583 and also from document Nos. 240, 242 to 246 and protected document Nos. 1, 2, 13, 17 to 24, 26, 27, 29 to 34, 40 to 43 produced before the court and the statement of protected witness.

18. The Special Public Prosecutor submits that the petitioner in Crl.M.P. 547/23 (A3) is the General Secretary of Popular Front of India (PFI), Kerala and this is clear from the statements of CW609, 610, 611, 613, 614, 615, 617, 624, 629, 638, 639, 640, 641 and the protected witness Nos.3, 4, 18, 19, 20, 52 and also document Nos.272, 764, 1122 and other materials before the Court. It is alleged that A3 knowingly and intentionally became part of larger conspiracy hatched by PFI. It is alleged that A3 caused to recruit the cadres of PFI to the terrorist gang, he arranged and supervised the arms training to the cadres of PFI at its offices functioning at Karunya Trust, Karunagapally and Periyar Valley Trust, Aluva and other places on various occasions in last few years, as a part of

preparation for committing terrorist acts and this is evident from document No.1376 and statement of protected witness and other materials. It is alleged that he knowingly and intentionally took part in the conspiracy hatched at Palakkad on 16.04.2022 for committing terrorist act of murdering Srinivasan.

19. The learned Special PP submits that the first petitioner in Crl.M.P.565/2023, (A11), is a member of State Executive Council of PFI in Kerala and former State Vice President of SDPI and this is evident from the statement of protected witness Nos.1, 3, 10, 23, 24, 52 and statement of other witnesses. It is also submitted that the 2nd petitioner (A12) is the State Secretary of PFI Kerala and former State President of CFI, a frontal organization/affiliate of PFI and also a member of SDPI and this is clear from the statement of protected witness and other witnesses.

20. It is alleged that A11 and 12 knowingly and intentionally became part of larger conspiracy hatched by PFI and organised and supervised, arms and physical training to PFI cadres in PFI Office at Periyar Valley Campus as a part of preparation for committing terrorist acts and document Nos.1376 and 806 and the statement of witnesses and other materials proves the same. They also knowingly and intentionally took part in the conspiracy meeting hatched at Palakkad on 15.4.2022 for committing the murder of Srinivasan.

21. The learned Public Prosecutor submits that A42 is a cadre of PFI and attended arms training and this born out from the statements of approvers and also mobile phone (MO-29) recovered from Muhammed Bilal (A-22), which contains video showing the petitioner taking part in a procession organized by

PFI. It is alleged that A42 is a member of terrorist gang, attended the conspiracy meeting held at Palakkad 16.04.2022 for committing terrorist act. This is evident from the statement of approver, CW 37 and protected witness 18. It is submitted that in furtherance to the conspiracy, A42 collected the mobile phones of the assailants Abdu Rahman @ Adru (A-18), Abdul Khader (A-21), Firoz (A-22) and Bilal (A-24) and carried with him to screen the presence of assailants at Scene of Crime at the time of committing the terrorist act of murdering Sreenivasan on 16.4.2022.

22. It is also submitted by the Public Prosecutor that A43 is a cadre of PFI and attended arms training and this is proved by the statement of approver, MO-72 Mobile phone of Saddam Hussain (A-41) containing the image showing A43 taking part in a protest march organized by PFI. There are statements of the witnesses also to prove this fact. It is alleged that A43 is a member of terrorist gang, attended the conspiracy meeting held at Palakkad on 16.04.2002 for committing terrorist act. It is also alleged that in furtherance to the conspiracy, A43 collected the mobile phones of assailants Abdul Khader (A-21) and Firoz (A-22) from Mohammed Rizwan (A-47) to screen the presence of assailants at Scene of Crime at the time of committing the terrorist act of murdering Sreenivasan.

23. It is submitted by the Special Prosecutor that the petitioner in Crl.M.P.72/24, A53, is a PFI cadre and also the District Secretary of PFI Palakkad South District and this is evident from the statement of protected witness No.29, statement of approvers and the information recovered from the mobile phones. It is contended that he is a member of the terrorist gang and he attended the

conspiracy meetings held at PFI Office, Puthuppallitheru, Palakkad on 15.4.2022 and other places at Palakkad on 15th and 16th of April 2022, for committing terrorist act by murdering Srinivasan. He also committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquility in the State at large. This is supported by the statement of approver and protected witness Nos. 23, 24, 37 & 38 and also CW37 & 38 and document Nos.13 and 16 and the CDR. The Prosecutor submits that in furtherance to the conspiracy, after commission of the terrorist act, A53 along with A40, 42, 61 and 60 and others have conspired and dismantled the motorcycle used by the assailants Abdu Rahman (A-18) and Muhammed Mansoor (A-23) for committing the murder. This is evident from the statement of approver and protected document No.45.

24. The Special Public Prosecutor submitted that the materials placed before the court discloses prima facie case against the petitioners and therefore there is bar u/s 43D(5) of the UA(P) Act to release of the petitioners on bail.

25. The first contention of the petitioners is regarding the competency of the NIA to register an FIR and investigate the case. As rightly pointed out by the learned counsel for the petitioners, as per Section 6 of the Act the NIA can take over investigation of a case only on the basis of a direction of the Central Government u/s.6(4) or (5) of the UA(P) Act. A reading of the order dated 16.09.2022 produced as document No.1464 along with the final report shows that the Government received information that the office bearers, members and cadres of PFI and its allies in Kerala have conspired to instigate communal

violence and radicalize its cadres to commit terrorist acts in Kerala state and in various parts of the country. Based on the information and other materials, the Government formed the opinion that a scheduled offence under the NIA Act has been committed and considering the gravity of the offence and its repercussions on national security, the Government found that the case is to be investigated by the NIA and accordingly a direction u/s.6(5) was issued. A reading of Section 6 makes it clear that the Central Government can issue a direction for investigation of a case u/s.6(4) on the basis of the report of the State Government u/s.6(2). The power u/s.6(5) is independent and a direction under that provision can be issued suo motu, without a report of the State Government. The submission of the learned counsel for the petitioners is that the provision does not empower the Agency to “register a case”, but only to “investigate” a case already pending investigation. He also pointed out the difference in the wordings of Sub Section (8) and Sub section (4) and (5).

26. This Court is now considering the bail application and at this stage this court need not go to such contentions in detail. What is to be enquired into by this court at this stage is whether there is prima facie materials to substantiate the allegations against the petitioners. More over, it is admitted by the defence counsel that the similar contention raised on an earlier occasion was rejected by my predecessor in office and the matter is now pending consideration before the Hon'ble Hight Court. On going through the order dated 16.9.2022 and 19.12.2022 of the Central Government discussed above it is clear that there are prima facie materials to show that the Government has issued the direction for investigation

after complying requirements of the provisions. Further, the order dated 19.12.2022 was issued on the basis of the report dated 13.12.2022 of the NIA. Copy of the report dated 30.11.2022 of the District Police Chief, Palakkad addressed to the Director General of Prosecution was also made available by the Special Public Prosecutor at the time of hearing the petitions. On hearing the submission of the learned counsel for the petitioners and the Special Public Prosecutor and going through the record, I find no much force in the submission of the petitioners.

27. The other contention of the learned counsel for the petitioners is that there is no materials which prima facie show that the petitioners have committed an offence coming under Chapter IV or VI of the Act. I have already narrated the prosecution allegation against each of the petitioner and document/statements on which the prosecution rely on to substantiate the same. The learned counsel for the petitioner submitted that a case of similar fact came-up for consideration of the Hon'ble High Court of Madras in M.Muhammed Abbas v. Union of India and ors (Crl.A. No.678/2023 dated 01.8.2023) and the Court found that the accused are entitled to be released on bail. The learned counsel relied on the following observations of the Hon'ble Court:

“25.As regards bail, a careful perusal of proviso to Section 43D(5) of UAPA besides sub sections (6) and (7) thereat make two aspects of the matter clear. One aspect is, on a perusal of case diary or report under Section 173 of Cr.P.C, i.e., charge sheet, if this court forms a opinion that there are reasonable

grounds for believing that accusations against a person is prima facie true, bail plea should be negatived. To be noted, in the instant case, there is no report under Section 173 Cr.P.C., charge sheet as against the petitioner (A-17 in trial court) is yet to be filed. The charge sheet has been filed only against 10 out of 13 named accused in the impugned FIR. Therefore, in the case on hand, it is perusal of case diary alone. Be that as it may, it is deemed pertinent to mention that this Court did peruse the final report (section 173 Cr.P.C) as against the 10 named accused also as a matter of abundant caution though further investigation itself was sought only after filing of this charge sheet. To be noted, petition under Section 173(8) of Cr.P.C seeking permission to conduct further investigation was filed on 27.04.2023 after filing final report, i.e., charge sheet against 10 named accused on 17.03.2023.

26. The second aspect is, aforementioned condition is in addition to the other restrictions in Cr.P.C. It is clear from sub section (6) of Section 43D that the restrictions qua granting of bail specified in sub section (5) and proviso thereat is in addition to other restrictions qua a regular Section 439 Cr.P.C (bail) legal drill. Sub Section (7) does not come into play in the case on hand as that pertains to a person who is not a Indian citizen and who has entered the Country unauthorisedly.

27. Reverting to the case on hand, we find that no overt act with specificity has been set out qua petitioner. It has been averred that during investigation of the case, it was revealed that the accused persons (petitioner and four others who were added pursuant to further investigation under section 173(8) Cr.P.C) hatched a criminal conspiracy to commit certain acts preparatory to the commission of a terrorist act. It has been averred that as a result of conspiracy, they conducted physical efficiency classes to cadres, new recruits of PFI and that preparatory acts qua commission to train PFI cadre and recruits to do away with persons belonging to a particular religious group which is opposed to PFI ideology. It has also been averred that investigation has also revealed that members of PFI organization raised funds with the intention to further the activity of terrorist organization. The allegations are broad, generic and no overt act qua petitioner has been set out with specificity. This has to be seen in the context of the factum that recovery has been only long knives and axe, that too not from residence but from farm house and petitioner is contending that they are only agro / gardening equipments. To be noted, contents of pen drive is not known, it has been sent for forensic examination and nothing has brought out as regards the cellular phone (described as cell phone).

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In this view of the matter, the regular parameters under Cr.P.C. and more particularly parameters articulated by Hon'ble Supreme Court in Hussainara Khatoon case {(1980) 1 SCC 81}, reiterated and restated in Antil case being Satender Kumar Antil Vs. Central Bureau of Investigation reported in (2022) 10 SCC 51 do not pose much of a problem. In this regard, before going into the parameters adumbrated in Hussainara Khatoon, we respectfully remind ourselves of paragraph 95 of Antil case where Arnab Manoranjan Goswami case [(2021) 2 SCC 427] and paragraph 67 thereof has been reiterated by Hon'ble Supreme Court as it emphasizes Constitutional value of liberty which runs through the fabric of Constitution, balancing of societal interest and investigation of crime. Paragraph 95 of Antil case reads as follows:

95. This Court in Arnab Manoranjan Goswami v. State of Maharashtra [Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427 : (2021) 1 SCC (Cri) 834], has observed that : (SCC pp. 471-72, para 67)

“67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the

inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC 'or prevent abuse of the process of any court or otherwise to secure the ends of justice'. Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482CrPC, 1973] of the inherent power of the High Court must be construed as an aid

to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair

investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum —the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum —the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.” (emphasis supplied)

Hon'ble Supreme Court in Antil case, in paragraph 51, has reiterated and restated Hussainara Khatoon case principles to say that to determine whether the accused has his roots in the community which would deter him from fleeing, the court should take into account following factors concerning the accused :

- (i) The length of his residence in the community,
- (ii) his employment status, history and his financial condition,
- (iii) his family ties and relationships,

- (iv) his reputation, character and monetary condition,
- (v) his prior criminal record including any record of prior release on recognizance or on bail,
- (vi) the identity of responsible members of the community who would vouch for his reliability,
- (vii) the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance, and
- (viii) any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear.

To be noted, the aforementioned eight determinants / parameters have been applied and we are returning a finding in favour of the petitioner. It is further to be noted that this is articulated infra in the latter part of this order while discussing the trial court's order for the sake of a cogent narrative and convenience. This leaves us with proviso to Section 43D(5) of UAPA.

29. As regards Section 43D(5) proviso of UAPA, we had the benefit of perusing the case file including transcript of one telecon between petitioner and A-3 and another telecon between the petitioner and another person (in 3 folders). To be noted, one telecon was on 23.04.2023. As already alluded to supra, in the case on hand, we only have the case diary to

peruse as Section 173 Cr.P.C final report has not been filed with regard to petitioner (A-17) and section 173 Cr.P.C report has been filed only with regard to named 10 persons out of 13 named persons in the FIR. In any event, we did peruse Section 173 statement qua 10 persons named in the original impugned FIR also as alluded to in earlier part of this order. We find that the case on hand does not pass muster qua reasonable grounds for believing that accusation against the petitioner is prima facie true, to put it differently, the case diary before us (specifically the portions including audio clips to which our attention was drawn) does not cut ice qua proviso to section 43D(5) of UAPA and reasons are as follows:

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30. Proviso to Section 43D(5) of UAPA came up for consideration of Hon'ble Supreme Court in Union of India Vs. K.A.Najeeb reported in (2021) 3 SCC 713, Thwaha Fasal Vs. Union of India reported in 2021 SCC OnLine SC 1000 and Yedala Subba Rao Vs. Union of India reported in 2023 SCC OnLine SC 426.

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33. As regards Yedala Subba Rao case, two accused were alleged to be members of Communist Party of India (Maoist) and they were alleged to be part of a team of 45 others which

stopped the convoy of a sitting MLA and Ex.MLA, both were taken towards a Y-Junction and they were thereafter taken in two separate directions and were killed with three gunshots. The trial court refused bail and the same was confirmed by Hon'ble jurisdictional High Court in appeal under section 21(4) of NIA. In Yedala Subba Rao case, Hon'ble Supreme Court reiterated K.A.Najeeb principle and after examining the materials which included seizure of certain materials pertaining to plantation of landmine, Hon'ble Supreme Court came to the conclusion that the embargo for grant of bail vide proviso to Section 43D(5) will not apply.”

28. The learned counsel also relied on the decision of the Hon'ble Madras High Court in Barakathullah v. Union of India and ors and connected cases (Judgment dated 19.10.2023 in Crl.A. No.98, 114 & 116/2023) rendered in the same lines. The learned counsel submitted that both the judgments were confirmed by the Hon'ble Supreme Court and the SLP was dismissed.

29. The allegations against the petitioners in this case and the materials placed before the court in support of the same show that there are prima facie materials to show that offences coming under Chapter IV of the UA(P) Act are made out against the petitioners. Investigation is completed as regards the role of the petitioners in the alleged crime and final report already filed. The court has taken cognizance of the offence against them.

30. 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 others tatute 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 Watali² 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)

31. The Apex Court has also considered guidelines laid down in Watali's

case regarding test for rejection of bail. Almost all decisions relied on by the defence counsel have been referred to in the judgment of the Hon'ble Madras High Court. In view of the decision of the Apex Court in *Gurwinder Singh's case*, I am of the view that the decisions relied on by the learned counsel are not applicable to the facts of this case.

32. In this case, the materials placed before the court prima facie makes out an offence under Chapter IV of the Act. Though the learned counsel for the petitioners contended that the PFI is not declared as a 'terrorist organization', but only an 'unlawful organization', that too after the alleged incident of murder of Srinivasan, I am unable to accept the same. In order to make out a "terrorist act" as defined in Section 15, the person need not be a member of the terrorist organisation. In the case in hand, there is specific allegation that the accused have hatched conspiracy to further their target of "India 2047", allegedly, to establish Islamic rule in India. It is further alleged that the murder of Mr.Srinivasan is part of their attempt to further such activities and part of the larger conspiracy. As stated above, there are materials which prima faice show that the petitioners had involved in the conspiracy. While considering an application for bail the court need not go deep into the evidence. The Apex Court in *Jagjeet Singh and ors v. Ashish Mishra @ Monu and anr* (2022 (3) KHC 449) has held that a court while deciding an application for bail, should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage.

33. 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 petitioners are prima facie true. The allegations against the petitioners are serious in nature. They allegedly committed the murder of Mr. Srinivasan in furtherance of their conspiracy. Final report is already filed and the case is ripe for trial. The Proviso to Section 43D(5) is applicable in this case and the petitioners are not entitled to be released on bail at this stage. Hence the petitions are only to be dismissed.

In the result, the petitions are dismissed.

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