

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

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

Tuesday the 23rd day of April, 2024/3rd Vysakha, 1946

Crl.M.P. 143/2024 in SC No.02/2023/NIA

Petitioner/Accused No.59 : Jaleel.P, Age 38/2023, S/o Kunhi Muhammed, Perumbilayil House, Moozhikkal, Mamburam, Chemmad, Tirurangadi, Malappuram District.

**By Advs. Sri. Abdurahiman.P.K.
Adv.Sri.Abdul latheef and
Wakarulislam K.S**

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

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

This petition is coming on for hearing before me on 18.04.2024 and the Court on 23.04.2024 the day passed the following:

ORDER

This is an application for bail submitted by the 59th accused in the case u/s.439 CrPC.

2. The case of the petitioner is that the petitioner is made an accused in the above case on the allegation that he being a cadre of PFI participated to the conspiracy meeting held on 16.04.2022 and harboured accused No.26. He allegedly committed the offences punishable u/s.120B, 34, 178, 419, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302, r/w.s.149 of

IPC and Sections and S.3(a)(b)(d) r/w.s.7 of the Religious Institutions (Prevention of Misuse) Act, along with offences u/s 153A of IPC and Sections 13, 18 & 20 of UA(P) Act.

3. It is his case that investigation was conducted by the local police and final report filed in Crime No.318/2022 of Palakkad Town South Police Station. The arrest of the petitioner was recorded by the local police on 28.11.2022. Investigation of the case has been taken over by the NIA and a consolidated final report was incorporating UAPA offence against the petitioner in which the police were already filed final report. The petitioner is totally innocent to the allegations and he is falsely implicated to this case. Hence, the petitioner filed the application for regular bail.

4. The petitioner contended that he is innocent and falsely implicated to this case. He is under judiciary custody for more than 490 days. The allegation against the petitioner in the final report in Crime 318/2022 and in the final report filed by the NIA are different. The offences alleged against the petitioner is vague and nothing is brought before the Court to show that the petitioner acted in accordance with the conspiracy. The petitioner is no way connected with the allegations in the final report. There is no materials to prove the alleged conspiracy.

5. The petition is opposed by the prosecution and a detailed objection is filed by the investigating officer. It is contended that the petitioner is a member of Popular Front of India. PFI has a mission to establish Islamic

Rule in India by their "India 2047" vision and this is evident from document No.1376, voice clip recovered from the mobile phone of accused Muhammed Mubarak (A-15) and the statements of the protected witness 2, 14 & 16 & statement of approver recorded u/s 164 of CrPC).

6. It is alleged that the accused committed terrorist act of murder of one 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. This is evident from the documents referred above and also the hit list prepared by PFI (MO- 583), document Nos. 240, 242 to 246, and protected document Nos. 1, 2, 13, 17 to 24, 26, 27, 29 to 34, 40 to 43, and also the protected witness 19, 20, 22, 25, 39 to 47, CW-605 to 608).

7. It is contended that the petitioner, Jaleel P (A-66, now A-59) is an active cadre of PFI and this is evident from the statement of approver A-57 and document Nos.494 to 497, (Tejus magazines of PFI seized from his house) and MO-212 (Mobile Phone). These documents contain PFI related photos and videos. PFI posters with wearing PFI T-Shirt and CAP, letter with his name and PFI designation as programme convener AR Nagar, Malappuram, PFI Poster with his photo and writings 'Babari Masjid Aneethiyude ira, online conference on 09.11.2021 also shows the role of the petitioner. Document No.498 mobile phone contains the voice clip stating that he is the in-charge of PE wing of PFI.

8. It is alleged that the petitioner is a member of the terrorist gang formed by PFI to commit terrorist act as a part of larger conspiracy hatched by PFI and its office bearers and cadres since last few years to enact their "India 2047" agenda. The petitioner attended the conspiracy meetings held at Palakkad on 16th of April 2022 for committing terrorist act of murder of Srinivasan. He 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 evident from the statement of approver A-57, CW-37 and CW-38 and document Nos.13, 522, 523, 532, 454 (CDR which shows the location of the petitioner at conspiracy place).

9. It is further alleged that the petitioner knowingly and intentionally harboured Khaja Hussain (A-30, now A26), in his house, after commission of the terrorist act. This can be proved from the statement of CW-356, who has stated that A-30 was taken to medical lab by the petitioner during his absconding period. Documents Nos.500 & 501, medical documents of Khaja Hussain seized from the lab based on the confession of the petitioner shows this fact.

10. It is contended that the final report along with the evidence collected discloses prima- facie case against the petitioner and therefore there is bar u/s 43D (5) of the UA(P) Act for release of the petitioner/accused on bail.

11. I have heard the counsel for the petitioner and the Public

Prosecutor. Perused the final report and documents produced by the prosecution.

12. The learned counsel for the petitioner submitted that the only allegation against the petitioner in the final report filed by the police is that he harboured A30. There was no allegation that the petitioner participated in any conspiracy or he committed any terrorist act. According to him, there is no materials to show that the petitioner was involved in the conspiracy. According to him, even going by the prosecution documents shows that there is only an allegation of harbouring the accused and there is no materials to show that the petitioner participated in any conspiracy. It is submitted that since no offence under the UAPA is attracted, the bar U/s.43D(5) is not applicable in this case. The learned counsel further submitted that the petitioner is undergoing detention for more than 490 days and he is entitled to be released on bail.

13. The learned counsel relied on the decision of the Apex Court in *Shoma Kanti Sen v. State of Maharashtra* (2024 KHC Online 6182) and also the decisions of the Hon'ble High Court of Kerala in *Gireesh v. State of Kerala* (2024 KER 9572) AND *Vishnu Prasad @ Vishnu v. State of Kerala and others* (2024 KER 3087), *Muhammed Sadik v. Union of India* (2023 KER 39696) and also the decision of the Hon'ble High Court of Madras dated 12.12.2023 in Crl.A. No.542/2023 to strengthen his argument.

14. The allegations against the petitioner/accused is very serious in

nature. The location of the mobile phone and other materials prima facie shows the presence of the petitioner at the place where the conspiracy allegedly taken place. It is true that even if it is admitted that the petitioner was a member of PFI before it was banned by the Government and he harboured one of the accused, the same will not attract an offence under UA(P) Act. But, in this case it is alleged that the murder of Srinivasan was part of a larger conspiracy. There is specific allegation that the petitioner had participated in the conspiracy. The materials on record prima facie show that the petitioner was an active cadre of PFI and he, allegedly was a member of terrorist gang formed by PFI to commit terrorist act as a part of larger conspiracy hatched by PFI and its office bearers and cadres since last few years to enforce their "India 2047" agenda of establishing Islamic rule in India. It is alleged that the petitioner attended conspiracy meetings held at Palakkad on 16th April 2022 for committing terrorist act of murder with the intention of creating terror in the minds of the Hindu Community and among public at large, which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. There is prima facie materials to show that the petitioner harboured accused No.26, Khaja Hussain, in his house after commission of the terrorist act.

15. Committing conspiracy to commit a terrorist act is made punishable u/s.18 of the UA(P)Act and harbouring a person knowing that he is a terrorist is made punishable u/s.19 of the Act. Both the provisions come

under Chapter IV of the Act.

16. In the light of the above discussion it can be seen that 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 show that the petitioner has committed the offence under section 212 of the IPC and Section 18 and 19 of the UAPA. Investigation is completed as regards the role of the petitioner and final report already filed. The court has taken cognizance of the offence against him.

17. The Hon'ble Supreme Court in Gurwinder Singh v. State of Punjab (2024 KHC 6062) has considered the question of granting bail in offences under the UA(P) Act and the scope of the proviso to S.43D(5) of the Act. The Apex Court has observed that:

“The source of the power to grant bail in respect of non-bailable offences punishable with death or life imprisonment emanates from Section 439 CrPC. It can be noticed that Section 43D(5) of the UAP Act modifies the application of the general bail provisions in respect of offences punishable under Chapter IV and Chapter VI of the UAP Act.

17. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the

application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It lays down that if the Court, 'on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure', is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any others 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: “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)

18. 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 for the petitioner is not applicable to the facts of this case.

19. 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 petitioner submitted that there is no evidence to show that the petitioner has committed any offence, the prosecution relied on the

mobile phone location of the petitioner and also statement of witnesses and other materials to prove the allegations. 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.

20. 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. 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 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 23rd day of April, 2024.

Appendix: Nil

//True Copy//

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

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

Sd/-
Sheristadar.