

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

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

Thursday the 1st day of August, 2024/ 10th Sravana, 1946

Crl.M.P. 291/2024

In

RC No.02/2022/NIA/KOC

(SC No. 02/2023/NIA)

Petitioner/Accused No. 68

Shihab P., Aged 42 years, S/o. Aboobacker,
Nadukandi Paracheri House, Aravankara
Pookkottur, Malapuram

**By Adv. Sri. E.A. Haris 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 Criminal M.P coming on for hearing before me on 25.07.2024 and the
Court on 01.08.2024 passed the following:-

ORDER

This is an application for bail submitted by the 61st accused under Section
439 CrPC.

2. The brief facts of the case, as revealed from the final report and the objection filed by the investigating officer are as follows:- The Central Government had 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 the proscribed terrorist organisation, SIMI, maintain operational nexus with other proscribed international terrorist organisations like Lashkar-e-Taiba (LeT), Islamic State of Iraq and Syria (ISIS)/Daesh and Al-Qaida. Some of the members of PFI cadres are also the members of these proscribed terrorist organisations. PFI has created organisational web which is stretched to recruit vulnerable Muslim youths into proscribed international terrorist organisations to commit terrorist acts. 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 movements 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. In the last few years, they have been responsible for many violent incidents and murders

in Kerala that have created terror in the minds of general public. PFI, its members and office bearers are also indulged in unlawful activities 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.

3. The Central Government formed an opinion that the above activities of the Popular Front of India are offence under sections 120B, 153A of the IPC and sections 13, 18, 18B, 38 and 39 of UA (P) Act, 1967 which are scheduled offences under the National Investigation Agency Act, 2008. Considering the gravity of the offences and its repercussions on national security, the Government of India, Ministry of Home Affairs, CTCR Division vide order No.11011/82/2022-NIA dated 16.09.2022, directed the NIA to take up investigation of the aforesaid case. Accordingly, the case was registered as RC 02/2022/NIA/KOC at NIA Police Station, Kochi on 19.09.2022 under sections 120B, 153A of the IPC and sections 13, 18, 18B, 38 and 39 of UA(P) Act, 1967.

4. Investigation revealed that Crime No.318/2022 of Palakkad Town South P.S. (Srinivasan Murder Case) 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 the NIA to investigate crime No. 318/2022 of Palakkad Town South PS as per section 8 of NIA Act. In pursuance to this order and subsequent orders of Hon'ble High Court of Kerala and the jurisdictional Court, the case records and materials relating to that case

were transferred to this Court on 30.01.2023. The case diaries were taken over by the NIA on 02.02.2023.

5. Crime No.318/2022 of Palakkad Town South Police Station was registered on the allegation 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 murdered one Srinivasan, who was available. Kerala Police had filed charge-sheet in that case against 44 persons for offence 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 7 of the Religious Institutions (Prevention of Misuse) Act, 1988.

6. Investigation revealed that Popular Front of India (PFI), a society registered under the Societies Registration Act, 1860, as registration No. S/226/Dist. South/2010, New Delhi, was formed in 2006 merging the three radical organizations with extremist ideologies, viz., National Democratic Front (NDF) from Kerala, Manitha Neethi Pasarai (MNP) from Tamil Nadu and Karnataka Forum for Dignity (KFD) from Karnataka. The founder leaders of PFI were former cadres and leaders of Students Islamic Movement of India (SIMI), an organisation proscribed by the Government of India in 2001. The Popular Front of India (PFI) has the strongest presence in Kerala, where it has been repeatedly involved in cases of murder, rioting, intimidation, and having links with terrorist organisations.

7. The PFI possesses a well-knit organizational setup with various functional bodies viz. Unit, Area Committee, Division Committee, District Committee, State General Assembly, State Executive Committee, State Secretariat, National General Assembly, National Executive Committee and Central Secretariat. The 15 Member National Executive Committee is the supreme decision making body which frames policies and formulates programs of the organization.

8. PFI has frontal organisations like Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organization (NCHRO), National Women's Front (NWF), Junior Front, Empower India Foundation and Rehab Foundation, in addition to their political wing, 'Social Democratic Party of India' (SDPI). On 28.09.2022, the Government of India declared the Popular Front of India and its affiliates/frontal organisations as an Unlawful Association as per the Unlawful Activities (Prevention) Act.

9. The first accused, Popular Front of India, its office bearers, leaders and members besides their affiliates, hatched conspiracy since last few years inside and outside Kerala, with their agenda to overthrow the democracy in India and to implement Islamic Rule in India by 2047, for which they prepared structured stages of progression. In pursuance to their plans, they intended to unite Muslims under the flag of PFI, endeavour mass mobilization under the leadership of PFI, form close alliance with SCs/STs/OBCs through their political wing SDPI, and win election in few seats initially, create split between the

community/groups in the Society, project the strength of PFI through uniformed march and physically intervening in the defiance of Muslim community and stockpiling of weapons and explosives. Finally, in the fourth and final stage PFI has planned that the party (SDPI) should become the undisputed leader and representative of entire Muslim community by side-lining all other Muslim organizations, gain political power, intrude the loyal cadres in judiciary, army and police, eliminate those go against the interest of PFI and recruit enough trained cadres and stockpiling of arms to declare new Constitution based on Islamic Principles.

10. In pursuance to their larger conspiracy, PFI had established 3 Wings - 'Reporters Wing', 'Physical and Arms Training Wing/PE Wing' and 'Service Wing/Hit teams'. Through their 'Reporters Wing' which is a quasi-intelligence division of the PFI, it collected private and personal information of prominent personalities in the society, besides leaders of other communities, especially the Hindu Community, including their day-to-day activities. The data is compiled at the PFI district level and communicated to their State hierarchy. The details are regularly updated and utilised to "Target" the individuals as and when required by the terrorist gang. The PFI had trained its cadres for collection of such data and had stored them besides providing the same to their assault teams in 'Service Wing' for attack as and when decided by their leadership.

11. In further pursuance to their agenda, the PFI through their Arms Training Wing, prepared master trainers to impart uniform physical and arms training under a common syllabus with set course to their cadres in various

stages under the guise of yoga training programs, rescue and relief activities, martial arts and other physical development activities. The PFI devised the program to filter the cadres through various stages and gave arms and explosives training to selected cadres through these stages. PFI used their various facilities and affiliated institutions including the institutions run in the name of 'Trusts' besides other places for conducting such training camps and for conducting secret meetings. The PFI used these trained cadres for eliminating shortlisted targets based on the decisions of their leadership as and when required. The PFI also used such selected cadres as executioners of the decisions of their pseudo court – "Darul Khada".

12. The PFI used their 'Reporters' and 'Service Wing' to eliminate many targeted personalities in Kerala. The PFI, its office bearers and cadres had conspired to commit terrorist act by killing any targeted person of other religion/section of the society to create terror in the minds of other community and public at large. In furtherance to that, PFI leaders and cadres carried out intensive recce on members of other religion, particularly Hindu community and compiled the same for targeting through their 'Service Wing/Hit teams'.

13. PFI, its leaders and cadres had, on many occasions, conspired to target innocent persons merely for being a prominent member of other community. They do recce of several persons of the other community listed through their "Reporter Wing" and search for their presence on the intended day of elimination and available person is executed by their "Service Wing/ Hit

Team". The whole process has created terror and fear in the minds of public at large. Fearing such targeting, people stay away from their home for long period.

14. In murder cases involving PFI cadres, including the one in Crime No. 318/2022 of Palakkad Town South Police Station, none of the accused had any personal enmity with the deceased. The victims have been selected solely because of their leadership/membership to a particular community and were killed to create terror in the society. Several persons were reced to become possible target. The PFI has been targeting people from different community as a part of their larger plan to achieve their objective to strike terror among the members of such organisation and community. The PFI through such acts intended to disturb harmony among the society and to terrorise people within the society with a view to create sense of fear and insecurity in their minds. The PFI also intended to instill confidence among their cadres by executing such acts. The plans so made were executed to prevent any defiance of their command in future, in one such specific incident in pursuance to their larger conspiracy, leaders and accused persons being members of Popular Front of India (PFI) conducted conspiracy at various places in Palakkad on 15th and 16th of April 2022, conducted reconnaissance of residences belonging to several leaders from Hindu community who appear in their target-list and chose and decided to eliminate one prominent Hindu leader named S. K. Sreenivasan of Palakkad. They, in furtherance to the conspiracy, set out to commit that terrorist act on 16.04.2022 for which 5 accused persons (A-17 to A-21) came on 03 two-wheelers, three of whom criminally trespassed into SKS Autos situated at

Melamuri, Pallippuram, Palakkad run by S. K. Sreenivasan and inflicted grievous injuries on Sreenivasan and killed him by hacking his head and other parts of his body with choppers which the assailants were carrying with the sole intention and purpose to brutally murder him, so as to create terror in the minds of other community and public at large. The above act of murder is in furtherance of the larger conspiracy of the first accused, to create terror. Kerala Police filed final report sheet against 44 persons regarding incident in Cr. No.318/2022 of Palakkad Town South Police Station 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.

15. The investigation revealed that the leaders of PFI had justified the activities of cadres in support of the proscribed terrorist organisation ISIS and were found with the possession of ISIS propaganda videos and documents for propagation. Investigation also revealed that some cadres of PFI who joined ISIS were also arrested and convicted for those offences. PFI was involved in various unlawful activities including delivery of alternate justice. The PFI, its leaders and cadres have incited the people by provocative speeches and slogans to cause communal disharmony.

16. The activities and veiled objectives of PFI have strong communal and anti-national agenda to establish an Islamic rule in India. To achieve this, they conduct stage wise radicalisation of Muslim youths, mainly through their Tharbiyath classes, showing of videos, taking lectures and ensuring allegiance

through Bayath (oath) to the PFI in the name of Allah. During their Tarbiyath classes, the PFI radicalise vulnerable youths by communalising and magnifying stray incidents against Muslims with the intention to undermine democracy and establish Islamic rule in India by subverting the Constitution. The gullible Muslim youths were radicalised and motivated against the so called kafirs or non-believers and all who were opposed to their ideology, including the members of Muslim community, Government and leaders of Hindu organisations by repeatedly showing videos and photos of incidents such as Babri Masjid demolition, Gujarat riots, mob lynching, etc. to portray that the whole Muslim community in India are being targeted and oppressed by the entire State machinery and Government agencies.

17. In furtherance to the larger conspiracy, the accused in the case conspired at various places to indulge in unlawful activities for creating enmity between members of different religions and groups prejudicial to maintenance of harmony with the intention to disrupt public tranquility and cause disaffection against India, propagating alternative justice delivery system and justifying the use of criminal force causing alarm and fear amongst general public. The accused in this case have also encouraged vulnerable youths to join terrorist organisation - ISIS/Daesh for furthering its activities. They also being a part of terrorist gang formed by PFI, caused to recruit the cadres of PFI to that terrorist gang, collected the details of various leaders of Hindu community and the members of its organisations through their "Reporter Wing". They have attended, conducted, supervised and imparted physical and arms training to the

cadres of PFI, planned to stock weapons and explosives, possessed arms for preparing them to commit terrorist acts with intention to establish Islamic Rule in India. In furtherance of the larger conspiracy, accused in this case knowingly and intentionally took part in the conspiracy hatched at Palakkad on 15th and 16th of April 2022, for committing the terrorist act of murdering any prominent leader of Hindu community or its organisation, to create terror in the minds of Hindu community and public at large, which has resulted in the murder of Srinivasan on 16.04.2022 at Palakkad. Accused also committed offence of destruction of evidence and knowingly harboured the accused in this case after commission of the terrorist act.

18. On completion of investigation against A1 to A14, A16 to A19, A21 to A26, A29 to A40, and A42 to A63 and A66, final report has been filed against them (59 accused) on 17.03.2023, for offence under sections 120B, 34, 109, 115, 118, 119, 143, 144, 147, 148, 449, 153A, 341, 302, 201, 212 r/w.s. 149, 120B r/w.s. 302 of IPC, Section 3(a)(b)(d) r/w 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 and 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.

19. The petitioner, 61st accused, was arrested on 19.10.2023 and since then he is in judicial custody. He filed this application for bail.

20. The case of the petitioner is that he is made as the 61st accused in the case on the allegation that he organised and imparted arms and physical training, attended conspiracy meetings held at Palakkad and with A58 on

16.04.2022 and harboured A36 and others in his residence in connection with Crime 318/2022 of Palakkad Town Police Station.

21. It is his case that the investigation was conducted by the local police, and the final report was filed in Crime No. 318/2022 of Palakkad Town South Police Station. The petitioner contends that the only allegation against him is that he harboured an accused in Crime No. 318/2022 of Palakkad Town South PS, which was not considered as a terrorist act according to the final report of the state police. No incriminating materials have been produced before the court and none of the witnesses were listed against him to prove the allegations that he attended conspiracy meetings at Palakkad or with A58 and facilitated for harbouring. It is also contended by the petitioner that he has been in judicial custody for more than 8 months without trial and is not associated with any terrorist gang or participated in any conspiracy for committing terrorist activity. 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.

22. The petition is opposed by the prosecution and a detailed objection is filed by the investigating officer.

23. When the matter came-up for consideration, I have heard the counsel for the petitioner and the Public Prosecutor.

24. The learned counsel for the petitioner submitted that the petitioner is innocent of the allegations. He submits that the petitioner is in remand for a long period. He contends that the entire proceedings done by the NIA in this

case is without jurisdiction. According to him, the case pertaining to the murder of Srinivasan was investigated by the State Police and a final report and supplementary final report were filed before the Palakkad Court. As investigation was completed, there was nothing to be taken over by the NIA u/s.8 of the Act. It is also submitted that many of the other accused are already released on bail as per the orders of the Hon'ble High Court and the petitioner is also entitled to bail.

25. The petition is opposed by the prosecution and a detailed objection is filed by the investigating officer. The learned Special Public Prosecutor submits that the petitioner is a master arms trainer of PFI, as well as, branch president of SDPI, Aravangara Branch, Malappuram. He knowingly and intentionally became part of the larger conspiracy of PFI to enact their "India 2047" agenda of establishing Islamic rule in India. He became a member of terrorist gang and organized arms and physical training for PFI members at the Green Valley campus at Manjeri, Malappuram and other locations over the past several years, as a preparation for committing terrorist act of murdering any available Hindu leader with the intention of creating terror in the minds of the Hindu community and among public at large. This resulted in the murder of Sreenivasan by PFI cadres on 16.04.2022.

26. The learned Special Public Prosecutor submits that he conspired with accused No. 58, Noushad M, on 16.04.2022, at Palakkad, and harboured accused No.36, Muhammed Hakkeem K., and others at his residence after Sreenivasan's murder. He also committed acts prejudicial to the maintenance

of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

27. The petitioner was initially arraigned as accused No.53 in Crime No.318/2022 of Palakkad Town South PS. He was absconding during the investigation by the Kerala Police. He was arrested by the NIA on 19.10.2023. Investigation against him is completed and final report filed alleging that he committed offences punishable under sections 120B, 153A, 120B r/w.s. 302, 212 of IPC and sections 13, 18, 19 & 20 of UA (P) Act.

28. The learned Public Prosecutor submits that the PFI has a mission to establish Islamic rule in India by their "India 2047" vision and this is evident from document No.1376 submitted along with the final report, a voice clip recovered from the mobile phone of the 15th accused and the statements of the protected witness 2, 14 & 16 and statement of approver recorded u/s. 164 of CrPC. He submits that the murder of Mr.Srinivasan on 16.04.2022 was a part of larger conspiracy and this is evident from document Nos.240, 242 to 246, 250 to 254 and protected document Nos. 1, 2, 13, 17 to 24, 26, 27, 29 to 34, 40 to 43, and also the statements of protected witnesses 19, 20, 22, 25, 39 to 47 and CW-605 to 608.

29. The Prosecutor contends that the petitioner is an active PFI cadre and the Unit Secretary of the PFI Aravangara Unit, Malappuram, and this is clear from the statements by protected witnesses Nos. 55 to 58, CW853, CW854 and Document No. 1572. He submits that protected witness Nos. 55 to 58 have disclosed that the petitioner is the Master PE trainer, imparting arms

training to the cadres of PFI at Green Valley in Manjeri, Malappuram. It is submitted that document No.1572, contains PFI posts and images found in his social media data established his association in SDPI. The Document No.1562 (CDR) shows the location of the petitioner which establishes his presence at Green valley academy on various occasions.

30. It is submitted by the Special Public Prosecutor that the petitioner attended the conspiracy meetings at Palakkad on 16th April, 2022 for committing terrorist act of murder of Srinivasan. According to him, the statements of protected witnesses 55, 56 and 57, approver A52, and disclosure of A42 clearly show the presence of the petitioner in the criminal conspiracy on 16.04.2022 and the Document Nos.1562 & 1574 (CDRs) shows his location at conspiracy place on that day.

31. It is further alleged that the petitioner harboured accused No.36 in his residence after the terrorist act of murder of Sreenivasan. This is evident from various documents and the statement of protected witness Nos.29, 58, CW417, CW418, CW846 to CW848 and document Nos. D539, D574, D575, D1570, D1571, D1580 and protected document No.D-23. Protected Witness No.29 stated that the petitioner harboured A36 in his own house in May 2022 and protected witness no. 58 stated that the petitioner made arrangements for a job and a rented house for him. The bank statement (D-1580) and a mobile message from Witness No. 58 show that the petitioner along with witness No.58 arranged a further shelter to accused No.36. CW417 stated that the petitioner arranged accommodation for harbouring at his rented house in Pookottur for

about three months. The statements of CW418 and CW846 to 848 show that the accused No.36 worked in their workshop under the alias name Safwan and the petitioner frequently visited there. According to the Prosecutor the materials on record establishes the petitioner's role in harbouring accused No.36 at his house. The defence counsel on the other hand contended that the prosecution has no case that A36 has any direct involvement in the murder of Srinivasan. He submits that the only allegation against A36 is that he dismantled the two wheeler used by the other accused involved in the murder case. According to him, even if it is found that the petitioner had given shelter to A36, it cannot be termed as harbouring an accused, as admittedly he had no direct involvement in the murder. It is also submitted that the offence of harbouring an accused is bailable and the petitioner cannot be detained in jail only on that allegations. A perusal of the materials on record show that there is prima facie materials to show that the petitioner harboured A36 after the murder of Srinivasan.

32. It is submitted by the Special Public Prosecutor that the petitioner committed the offences punishable under various sections of IPC and Chapters IV and VI of UA(P) Act and final report filed on 12.04.2024. He submits that the bar u/s. 43D(5) of the UA(P) Act is applicable in this case and the petitioner is not entitled to be released on bail.

33. The first contention of the petitioner is regarding the competency of the NIA to register an FIR and investigate the case. 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 petitioner is that the provision does not empower the Agency to "register a case", but only to "investigate" a case already pending investigation. According to him, as investigation of crime No.318/2022 was over and final report filed, there was nothing to investigate in that case. It is contended by the counsel for the petitioner that investigation of crime No.318/2022 was conducted by the Kerala Police. Though a final report and supplementary final report were filed, there was no allegation that the murder had any connection with the 'larger conspiracy' alleged in this case. He submits that the specific case of the Kerala Police was that the murder of Mr.Srinivasan was in retaliation for the murder of

one Subair on the previous day. He submits that after the NIA came to the picture, they have put-up a story of 'larger conspiracy' and took over the investigation. According to him, as investigation was completed, there was nothing more to be investigated by the NIA in Srinivasan murder case.

34. The materials on record show that the investigation by the NIA on the basis of the first order was regarding the larger conspiracy, During such investigation it was revealed that the murder of Mr.Srinivasan was also a part of the larger conspiracy and hence the 2nd order was issued by the Government of India. The connection of the Srinivasan murder with the larger conspiracy was revealed during investigation based on the first order. As further facts are stated to have disclosed during the investigation, prima facie, there is nothing wrong in conducting a further investigation.

35. Further, 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 material to substantiate the allegations against the petitioner. 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 have 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. On hearing the submission of the learned counsel for the petitioner and the Special Public Prosecutor and going through the record, I find no much force in the submission of the petitioners regarding

the competency of the NIA to investigate the case.

36. The contention of the learned counsel for the petitioner is that there is no material which prima facie show that the petitioner has committed an offence coming under Chapter IV or VI of the Act. I have already narrated the prosecution allegation against the petitioner and document/statements on which the prosecution rely on to substantiate the same. The materials on record prima facie show that the petitioner is an active worker and master trainer of PFI. There are materials to show his presence on 16.4.22 at Palakkad during the alleged conspiracy and also that he harboured A36. All these materials show his active involvement in the commission of the offences alleged against him.

37. 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 that offences coming under Chapter IV of the UA(P) Act. Investigation is completed as regards the role of the petitioner in the case and final report already filed. The court has taken cognizance of the offence against him.

38. 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 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 "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)

39. The learned counsel for the petitioner submitted that 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)** and did not follow the same. According to him, no reliance can be placed on the decision in *Gurwinder Singh’s* case. A reading of the judgment of the Apex

Court in *Javed Ansari's* case shows that the accused in that case was undergoing detention from February 2015 and the Apex Court considered the Special Leave Petition against the judgment rejecting the bail application in 2024. In para 31 of the judgment the Court observed that *"In Gurwinder Singh (supra) on which reliance has been placed by the respondent, a two Judge Bench of this Court distinguished K.A. Najeeb (supra) holding that the appellant in K.A. Najeeb (supra) was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in Gurwinder Singh, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail."*

40. The two Judge Bench of the Apex Court in *Union of India represented by the Inspector of Police, NIA, Chennai Branch v. Barakathullah (Crl.A. No.2715/2024 dated 22-05-2024, reported in 2024 INSC 452)* has referred to and followed the decisions in *Watali's case* and *Gurwinder Singh's case*. In the decision referred to by the counsel for the petitioner, the Apex Court distinguished the decision in *Gurwinder Singh's case* on facts. That decision was rendered on the fact that the accused was undergoing detention for long period without trial. So, there is no change in the law laid down in *Gurwinder Singh* and this court is bound to follow the same. In

this case, the petitioner was absconding for long time and he was arrested only on 19-10-2023. He is in remand only for 9 months. So, the decision relied on by the learned counsel has no application to the facts of this case. As the final report is filed, trial can be expedited.

41. The Hon'ble High Court of Kerala has disposed the appeals filed by some of the accused in this case against the rejection of their bail applications as per judgment dated 25-06-2024 in Crl.A.139/2024 and connected appeals. The Hon'ble Court was pleased to release some of the accused on bail and dismissed the appeals filed by the other accused. After referring to the decisions of the Apex Court regarding granting of bail in such cases, the Court observed in para 29 of the judgment that : *"Proceeding thus, we feel that it is only in respect of those appellants/accused, against whom the material relied upon by the prosecution, when taken as a whole, crosses the threshold of 'general allegations coupled with overt acts that would clearly suggest the complicity of the accused in the offence with which he is charged', that we can say with any degree of conviction that there are reasonable grounds for believing that there are reasonable grounds for believing that the accusation against the person is prima facie true. In other words, there has to be some corroborative materials, other than mere statement of witnesses, to show that there were overt acts or acts of active participation by the appellants/accused, such as authorship of offensive documents and/or speeches, in order to deny them bail."*

42. In this case, apart from the statement of witnesses, there are

materials to prima facie suggest that the petitioner had active role in the commission of the offence. The materials placed before the court prima facie makes out the offence under Chapter IV of the Act. 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 petitioner had involved in the conspiracy. It is specifically alleged that the petitioner harboured the 36th accused after committing the terrorist act of murder of Srinivasan. 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.

43. 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 are prima facie true. The allegations against the petitioner are serious in nature. 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 01st day of August, 2024.

Appendix: Nil

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

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

//True copy//

Sd/-
Sheristadar