

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

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

Saturday the 31st day of August, 2024 / 9th Bhadra, 1946.

Crl.M.P. 318/2024 In SC No.02/2023/NIA

Petitioner/Accused No. 39 : Sahad.M, Age-23/2023, S/o.Muhammed Basheer,
Parappathodi House, Industrial Estate,
Thazhemurali, Puduppariyaram, Palakkad District,
Kerala.

By Adv. M/s. Sri. N.A. Shafeek

Respondent/Complainant : National Investigation Agency, represented through
Public Prosecutor, Special Court for trial of NIA
Case, Ernakulam.

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 29.08.2024 and the
Court on 31.08.2024 passed the following:

ORDER

This is an application for bail submitted by accused No.39 under
Section 483 of the BNSS.

Prosecution case:

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 the investigation of the case. Accordingly, a case was registered as RC 02/2022/NIA/KOC at NIA Police Station, Kochi on 19.09.2022 for offence under sections 120B and 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. 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 recce 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 Tarbiyath 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. Supplementary final report against A27 was filed on 06-11-2023 and against A68 was filed on 12-04-2024 and they are arraigned as A60 and A61 in this case. A further supplementary final report against A65 and A71 was filed on 07-08-2024 and they are arraigned as A62 and 63 in this case.

The petition :

19. The petitioner is the 39th accused in the case. His contention is that he was arrested on the allegation that he being the secretary of PFI Puthuppariyaram Unit, knowingly and intentionally became a member of terrorist gang formed by PFI to commit terrorist act as part of larger conspiracy and he attended the conspiracy on 15.4.2022 and 16.04.2022.

20. The petitioner is innocent of the charges levelled against him and there is no material or other prima facie evidence to connect the petitioner with the alleged offence. Nothing was seized from the possession of the petitioner and there is nothing to suggest that this petitioner abetted the commissoin of the alleged offence. The custody of the petitioner is not required for the purpose of investigation. Investigation is completed and final report filed before the court. The petitioner is ready to cooperate with the investigation and is ready to abide any condition that may be imposed by the court. The petitioner

is falsely implicated in the case. If the petitioner is not enlarged on bail, it would cause irreparable injury and hardship to him.

The objection

21. The National Investigation Agency (NIA) opposed the application and filed a detailed objection. It is contended that the PFI has a mission to establish Islamic rule in India by their "India 2047" vision and 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. The petitioner had active role in the commission of the offence. He had participated in the conspiracy to commit the offence. The petitioner is not entitled to bail and the application is only to be dismissed.

22. When the matter came-up for hearing, both sides were heard in detail. I have gone through the records of the case.

Arguments and discussion:

23. The learned counsel for the petitioner reiterated the contentions in the petition. He contended that the petitioner is innocent of the allegations and he is undergoing detention for long period. The petitioner is ready to abide by any conditions that may be fixed by the court.

24. The learned Special Public Prosecutor contended that the petitioner was part of the larger conspiracy to accomplish the mission of the PFI to establish Islamic rule in India by their "India 2047" vision. He submits that the accused committed terrorist act of murder of Srinivasan on 16.04.2022

as a part of larger conspiracy.

25. The learned Prosecutor submits that document No.1376, seized from PFI cadres at Bihar on 11.7.2022 in Crime No. 827/2022 of Pulwarisharif PS, being investigated by NIA as crime No.RC-31/2022/NIA/DLI), reveals the India 2047 vision of PFI, ie., the hidden agenda to overthrow the democracy in India and to implement Islamic rule in India by 2047. It is submitted that as per the plan, first stage is recruiting and training members into their PE department wherein they should be given arms training. In second stage, the talented cadres to be given advanced training on weapons including fire-arms and explosives. In the third stage, to 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 fourth stage PFI has planned that the party (SDPI) should become the undisputed leader, gain political power, intrude into the loyal cadres in judiciary, army and police, eliminate those go against the interest of PFI.

26. The Prosecutor submits that the contents of the said document are corroborated by the statement of protected witnesses 2, 14, 16 and approver, Aboobacker Sidik (A-52) and the voice clips recovered from the mobile phone of Muhammed Mubarak (A-16 now A-15), which further corroborated with the statement of protected witness No. 14 (former cadre of PFI) who stated that *"I came to know about India 2047 plan of PFI, through the audio messages circulated secretly among the dedicated cadres of PFI with*

clear instructions to delete the voice clips after listening".

27. It is submitted by the Prosecutor that in India 2047 agenda it is clearly mentioned that "eliminate those go against the interest of PFI". Therefore PFI, through their secret wing "Reporters wing" collected and maintained the personal details of the people of other community, including their position, name, age, photo, etc. The same is established through the seizure of various hit lists were prepared by PFI cadres through their secret wing called 'Reporters wing'. It is submitted that documents containing the hit list of about 240 persons of other community, i.e., document Nos.Doc- 242 to 245, 250, 252 to 254, were seized from accused Sirajudheen (A56, now A-51), who is a member of secret wing of PFI 'Reporter Wing', as per seizure mahazer dated 17.09.22 (document No.240).

28. Document No.246 is a route map and document No.251 is a photo of one of the main witness who identified the assailants (PFI cadres) in crime No. 618/2017 of Tirur PS (Bipin murder case). Protected document No.1 is the search list dated 22.9.2022 prepared at 'Periyar Valley campus' at Aluva. As per that mahassar, protected document No.2, a hit list containing the details of 5 targeted persons, including one former District judge of Kerala has been seized from the wallet of Abdul Wahab (A-15) who is absconding since then. It is submitted that 'Periyar Valley' campus is an arms training centre of PFI which has been attached by NIA u/s.25 of UAP Act as 'Proceeds of terrorism' as per order dated 29.9.2022 and the same has been confirmed by the

Designated Authority.

29. It is also submitted that various documents pertaining to accused Muhammed Sadik (A-17, now approver), containing the hit lists (Protected document Nos.17 to 24, 26, 27, 29 to 31) of various persons of other community and pen drive (MO 583) containing the hit list of 197 persons were seized through seizure mahazar dated 04.01.2023 (Protected document No. 13).

30. He submits that the protected document Nos.32 to 35, containing hit list of 35 persons were also seized from the house of Muhammed Sadik (A-17, now approver) during the house search on 17.01.2023. During the search conducted on 05.03.2023, protected document Nos.40 to 43, pertaining to absconding accused Ayoob T A (A-69), containing the hit list of about 500 person were seized.

31. The learned Public Prosecutor submits that the above materials and other evidence collected during investigation and produced before the court clearly prove the larger conspiracy of the PFI to establish Islamic rule in India under their agenda 'India 2047'. It will also prove that the accused in this case are the members of terrorist gang, prepared for commission of terrorist act by imparting/undergoing arms training, collecting the details of targets and also by committing terrorist act of murder of Sreenivasan on 16.4.2022 as a part of larger conspiracy to establish Islamic Rule in India as per their hidden agenda India 2047.

32. As regards the materials against the petitioner, the learned Special Public Prosecutor submitted that the petitioner is an active cadre of PFI and Secretary of PFI Puthuppariyaram unit. It is submitted that the statements of CW 784, 786, 797, 798, 814, 822, 823 and 835, the statement of the approvers Aboobacker Sidhik (A-57, now A-52), Muhammed Shajid (A42, now A37) and photo of the petitioner extracted from the mobile phone (MO 72) of Sadam Hussain (A-41) establish that the petitioner is an active cadre of PFI.

33. It is further contended that the petitioner is a member of terrorist gang formed by PFI to commit terrorist act as 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.

34. The learned Public Prosecutor submitted that the petitioner attended arms training conducted by PFI at Falah Masjid at Chunnambuthara, Palakkad as a preparation for committing terrorist act. Protected witness No.17 has stated that arms training to the cadres of PFI were imparted at Falah Masjid at Palakkad. Approver Muhammed Shajid (A37) has stated that the petitioner attended arms training at Falah Masjid with assailants, Abdu Rahman @ Adru (A17), Abdul Khader @ Iqbal (A-19), Sadham Hussain @ Hussain Maulavi (A-41) and Akber Ali (A-45). A49 has given disclosure statement that himself and the petitioner attended the arms training. CW 835 has also stated that A49 is the master trainer of PFI.

35. It is pointed out that being a member of the terrorist gang, the

petitioner attended the conspiracy meeting held near Khabristhan at Palakkad on 15th April 2022 for committing terrorist act. CW 814 has given statement that he had seen the petitioner along with the assailants, Adru @ Abdul Rahman (A-17), Ummar @ Manu (A-18), Abdul Khader @ Iqbal (A-19), Muhammed Mansoor (A-21), Muhammed Bilal (A-22), Ansar K P (A-23), Riyasudhheen @ Riyas (A-24), Jamsheer (A-25), Abdul Basith Ali (A-27), Saheer K V (A-60) and the other accused Abdul Rasheed (A-28), Khaja Hussain @ Robot Khaja (A-26), Fayas (A-40), Sadham Hussain @ Hussain Maulavi (A-41), Akber Ali (A-45), Nishad (A-46), Abbas (A-47), Naushad (A-48), Basheer T E (A-49), Muhammedali (A-54), Ameer Ali (A-55), Abdul Kabeer (A-53) and other leaders and cadres of PFI in the conspiracy held near Khabrishtan at Palakkad, in the night of 15th April 2022, from where the teams left for recce the target to eliminate. The CDR/IPDR (document Nos.229, 237, 238, 522, 523, 1440 and 1548) location of the petitioner also show his presence at the place of conspiracy.

36. It is submitted by the Public Prosecutor that in furtherance of the conspiracy, the petitioner proceeded to Sanghuvaramedu with the assailant, Muhammed Bilal @ Bilal (A-22) on motorcycle No.KL-09-AP-9820 owned by him and collected the weapons from the goods autorickshaw of Abdul Rahman @ Adru (A-18) to hand over the same to the assailants. The statement of approver, Muhammed Shajid (A-37) show that the petitioner and A-22 collected the weapons. The No.KL-09-AP-9820 (MO-118) was used for

collecting the weapons by the petitioner and later used by the assailants Saheer K V (A-60) and Fayas (A-45) for committing terrorist act on 16.5.2022, was recovered as per seizure mahazar dated 22.04.2022 (document No.14) as per the disclosure statement of the petitioner. The petitioner also tampered the number plate of motorcycle No. KL-09-AP-9820. This is evident from the recovery mahazar dated 22.4.2022 (document No.14) and vehicle particulars (document No.633), produced by Joint RTO, Palakkad.

37. The autorickshaw No.KL-13-Z-947 (MO-121) owned by the assailant, Abdu Rahman @ Adu (A-18), in which the arms were collected by the petitioner and A-22 was also seized as per seizure mahazar dated 22.04.2022 (document No.12).

38. It is also submitted that in furtherance to the conspiracy, the petitioner along with accused Muhammed Bilal conducted recce for locating the targets on 15.04.2022 by using Dio Scooter No.KL-09-AL-1023 of Jamsheer (A-29) for committing the terrorist act. The statements of approvers Aboobacker Sidik (A-52) and Rishil (A-28) show that the accused conducted recce of target in the night of 15.4.2022. CW-203 has spoken about the suspicious movements of the accused in motor cycles in front of Kinfra at Lakkidi. The accused, including the petitioner, conducted recce of the targets CW-154 and 157 and others. The statements of CW-154 and CW-157 show that they are RSS/BJP workers and residing at the place where the accused conducted recce. The CCTV footage seized from Bismillah Motors, Pathiripala

and Kinfra, Lakkidi (document Nos.194 & D-198) show the movement of vehicles in which accused, including the petitioner, travelled to recce the target CW-154 and CW-157.

39. It is also submitted that being a member of the terrorist gang, the petitioner attended the conspiracy meeting held on 16th April 2022 at vacant land near District Hospital Palakkad for committing terrorist act of murder of Srinivasan. CW37 and protected witness 36 have clearly stated that they had seen the petitioner along with the assailants and other accused and other PFI leaders on 16.4.2022 at noon, *i.e. just before the murder of Srinivasan*, at vacant land near District Hospital Palakkad.

40. The approver, Aboobacker Siddik (A-52), has stated that '*the plan was to kill anyone. The decision to kill Sreenivasan was taken near hospital premises and behind the hospital*'. Besides the petitioner, Muhammed Riswan @ Riswan (A-42) and other accused were also the part of the conspiracy. Based on the disclosure statement of Muhammed Riswan @ Riswan (A-42) document No.13, scene mahazer, was prepared on 22.4.2022. The CDR/IPDR location of the petitioner also show his presence at the place of conspiracy place.

41. The specific allegation against the petitioner is that he participated in the conspiracy to commit the murder of late Srinivasan as part of the larger conspiracy and he along with the other accused collected the weapons and handed over to the assailants. It is also stated the he conducted recce for the

targeted persons and had also destroyed evidence by tampering the number plate of the vehicle supplied by him to the assailants and thereby caused destruction of evidence.

42. The contention of the learned counsel for the petitioner is that there is no material which prima facie show that the petitioner has committed the offence coming under Chapter IV or VI of the Act. I have already narrated the prosecution allegation against the petitioner. The learned Prosecutor has given the vivid picture of the document/statements on which the prosecution rely on to substantiate the allegations against the petitioners.

43. The documents pointed by the Prosecutor and the statements of witnesses as discussed above, show that the petitioner is an active member of PFI. It further show the presence of the petitioner at the place of conspiracy. The CDR also support this allegation. There are prima facie materials to show that the petitioner collected the weapons for commission of the murder of Srinivasan and supplied to the assailants. He had also provided his motorcycle for the use of the assailants. He also participated in the recce for the targeted persons at different places.

44. The allegations against the petitioner and the materials placed before the court in support of the same, show that there are prima facie materials to substantiate the offences coming under Chapter IV 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 them.

45. 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 other 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: 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)

46. 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)**. According to learned counsel for the petitioner, 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. Najeer (supra) holding that the appellant in K.A. Najeer (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."

47. 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.

48. 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.”

49. In this case, apart from the statement of witnesses, there are materials to prima facie suggest that the petitioner had an active role in the commission of the offence. The materials placed before the court prima facie make 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 facie show that the petitioner had involved in the conspiracy and had active role in the murder of Mr.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.

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

51. The learned counsel for the petitioner contended that the petitioner is undergoing detention for long time and considering the period of detention and the fact that the case is not ripe for trial, the petitioner is entitled to bail. It is true that the petitioner was arrested on 10.02.2023 and he is in remand since then. As regards the petitioner is concerned, investigation is completed and final report filed. The learned Prosecutor submitted that some of the accused have filed a petition as SLP (Crl.) 3658/2024 and the Hon'ble Supreme Court was pleased to pass an order restraining this Court from framing charge as per order dated 06-05-2024 and the order was extended until further orders on 15-07-2024. So, though the investigation is completed and final report against all the arrested accused filed, the trial of the case could not be proceeded with. The petitioner cannot take advantage of such a situation and seek bail.

52. 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 31st day of August, 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.