

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

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

Wednesday the 18th day of December, 2024/ 27th Agrahayana, 1946

Crl.M.P. 481/2024 in SC No.02/2023/NIA

Petitioner/Accused Nos.29, 1. Jishad B, Age-32/2023, S/o.
30 & 51

Badarudheen, MEB Manzil, Navakkode,
Koduvayur, Palakkad District, Kerala.

2. Ashraf @ Ashraf Moulavi Aged-48 years,
S/o.Kunjappu Musliyar, Chappangathodi
House, Maruthur Post, Pattambi,
Palakkad District, Kerala.

3. Sirajudheen, age 39/2023, S/o. Alavi,
Njarakattil House, Omachappuzha,
Karinkappara, Tirur, Malappuram District,
Kerala.

**A29 - By Adv. M/s. P.C. Noushad,
Muhammed Rifa and Wakarulislam K.S.**

A30 - By Adv. Sri. M P Abdul Latheef.

**A51 - M/s. Abdul Latheef, Abdurahiman
P.K, Wakarulislam K.S. and
Muhammed Rashid.**

Complainant/Respondent : 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 04.12.2024 and the
Court on 18.12.2024 passed the following:

ORDER

This is an application for bail submitted by Accused Nos. 29, 30, 51 under Section 439 CrPC.

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 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. 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 petitioners are the accused No. 29, 30 and 51 in the case. The allegation against them is that they became members of terrorist gang and intended to commit terrorist acts as a part of larger conspiracy hatched by the office bearers and cadres of PFI to enact their "India 2047" agenda of establishing Islamic rules in India and as part of large conspiracy they committed murder of one Mr.Sreenivasan on 16.04.2022 at Palakkad and thereby committed the alleged offences punishable u/s 153A, 120B, 34, 118,

119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w 149 of IPC, Section 3(a)(b)(d) r/w 7 of Religious Institutions (Prevention of Misuse) Act and Section 13, 18, 20 of Unlawful Activities (Prevention) Act.

20. It is alleged that the 29th accused attended conspiracy and conducted recce along with another accused, Muhammed Shafeek by using motorcycle bearing No. KL-49-E-9433 to commit the murder of Sreenivasan. He was arrested on 10.05.2022

21. The allegation against the 30th accused is that he attended conspiracy and prepared the route map of other community leaders for eliminating and conspired to destroy evidence after the commission of the act. He was arrested on 24.05.2022.

22. The 51st accused allegedly attended the conspiracy and harboured one Kaja Hussain @ Robot Kaja after commission of the terrorist act. He was arrested on 16.09.2022.

23. It is contended that there is no material produced to prove their involvement in the alleged terrorist acts and there is no reasonable grounds for believing the accusation as prima facie true. The prosecution failed to produce the FSL report of the D-1376 voice clip recovered from the mobile phone of A15. There is no evidence connecting the petitioners with A15. The documents, statements of witnesses as well as approvers produced by the prosecution are not sufficient to prove the connection of the petitioners with the alleged conspiracy.

24. The petitioners are not associated with any terrorist gang or participated in any conspiracy for committing terrorist activity. They are falsely implicated in this case. The petitioners are law abiding citizens and they are ready to obey any condition that may be imposed by the Court.

The objection

25. The National Investigation Agency (NIA) opposed the application and filed a detailed objection. It is contended that the petitioners are members of the terrorist gang formed by PFI to commit terrorist act as a part of the larger conspiracy hatched by PFI and its office bearers and cadres since last few years to enact their "India 2047" agenda of establishing Islamic rule in India and they attended conspiracy meetings to commit terrorist act of murder of Sreenivasan on 16.04.2022, collected the details of targets, conducted recce of the targets to eliminate them, provided arms and vehicles for committing the terrorist act etc. Accordingly final report has been filed against them for the offences punishable under various section of IPC and UAPA including the offences punishable under Chapter IV and VI of the UAPA. The petitioners are not entitled to bail and the application is only to be dismissed.

26. When the matter came-up for hearing, both sides were heard in detail. I have gone through the records of the case. The counsel for the petitioners filed a written notes of arguments.

Argument

27. The learned counsel for the petitioners contended that the

consolidated and supplementary final reports of the NIA are totally diverging from the final report of State Police in Crime No.318/2022. The NIA suppressed the finding of the State Police that the incident was allegedly happened in retaliation of murder of Subair, a PFI leader on 15.04.2022 and the crime No.203/2022 registered for the same by Kasaba P.S., Palakkad. Moreover, the deceased Sreenivasan is an RSS/BJP worker, whereas, the NIA has described him as a Hindu leader to mislead the court.

28. The State police had no case that the murder of Mr.Sreenivasan amounts to a terrorist act, which attract offence u/s.15 UAPA. The NIA upon their sole political agenda, diverged the entire facts and circumstance and mixed up the same with 'communal disharmony', sovereignty and integrity of the country.

29. No lethal weapon was used to attract the offence u/s. 15 of UAPA. It is pertinent to note that no provisions under Arms Act is incorporated in the police charge. Moreover, it is absolutely unbelievable that portraying the leaders of RSS/BJP or PFI as religious leaders which they belong to, and the usage of a lethal weapon' in the final report of NIA.

30. The NIA has no specific case that on which days or to whom the petitioner allegedly given physical training, and nothing can be seen from the final report. Further, there is no case that the persons allegedly received the training had committed any offence or they are implicated as accused in any case. It is the general principle of criminal jurisprudence that the allegation

made must be clear and specific. No specific date or time of the offence is mentioned in the final report, though the allegation is serious in nature.

31. The NIA mainly relies on the document No.1376, a voice clip allegedly recovered from the mobile phone of the 15th accused to establish the allegation of India 2047 Agenda (larger conspiracy). Document No.1376 is a compilation of four documents: (1) Re-registered FIR RC No.31/2022/ NIA, Delhi, (2) FIR No.827/2022 of Phulwarisherif Police station, Bihar, (3) Order of MHA to take up the investigation in FIR 827/2022, and (4) Document with title 'India 2047' having 6 pages, seized from one Mr. Muhammed Jamaludheen in FIR No. 827/2022. The NIA Delhi is conducting investigation with regard to the said crime and charge sheet filed against 26 accused. There is nothing to connect the accused therein with the petitioners. The said document is brought to the present case with dubious intention that there is a larger conspiracy and it has no legal sanctity.

32. The learned counsel for the petitioners relied on the decision of the Hon'ble Supreme Court in **Union of India v. K.A. Najeeb: 2021 (3) SCC 713** and contended that S.43D(5) of the UAPA is comparatively less stringent than S.37 of the NDPS Act. He also referred to the decision in **Dheeraj Kumar Shukla v. State of UP (2023 KHC 6545)** and argued that when there is delay in trial, the embargo u/s.37 of the NDPS Act can be dispensed with. He also referred to the decision in **Muhammed Muslim @ Hussain v. State (NCT of Delhi) [AIR 2023 SC 1648]** and contended that the right for bail under Article

21 also supports the case of petitioner. The petitioners are in custody for more than 2 years.

33. It is also submitted that the accused Nos. 4, 5, 7, 8, 9, 10, 14, 15, 38, 40, 42, 43, 45, 46, 53, 56, 57 were granted bail by Hon'ble High Court of Kerala by order dated 25.06.2024 [**Ashraf Moulavi and others v. Union of India (2024 KHC Online 529)**]. It was observed therein that :

"26. Over and above the principles gleaned from the precedents referred above, we feel that in cases such as the present, where the allegation against the accused is that they were complicit in terrorism related offences, a court examining the evidence against the accused under Section 43D of the UA (P) Act has also to guard itself against any confirmation bias that might creep in based on ideological biases and false narratives prevalent in society. Such an exercise would be required, not only in keeping with the requirement of safeguarding the personal liberty of the accused under Article 21, but also in the interests of upholding the fundamental right of an accused against arbitrariness and/or discrimination as envisaged under Article 14 of the Constitution. The role of any court, not just the constitutional courts, must be to lean in favor of the fundamental rights of the accused, and not in favors of the restrictions that can be imposed. on those rights."

34. He submits that the Apex Court in **Javed Gulam Nabi Shaikh v. State of Maharashtra and another (Crl. Appeal No.2787/2024)** by order dated 03.07.2024 observed that if the prosecuting agency cannot

ensure speedy trial, they should not oppose bail citing seriousness of offences.

35. The learned Special Public Prosecutor opposed the application submitting that the petitioners being active cadres of PFI, knowingly and intentionally became part of the larger conspiracy of PFI to enact their "India 2047" agenda of establishing Islamic rule in India. They committed conspiracy to do away Hindu leaders. In furtherance of the conspiracy, preparation for committing the terrorist act of murder of any available Hindu leader 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 the PFI cadres.

36. 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.

37. The Prosecutor submits that the contents of the said document is 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"*.

38. 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).

39. It is also submitted that 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 witness to the search list dated 22.9.2022 prepared at 'Periyar Valley campus' at Aluva. As per that a hit list containing 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.

40. 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).

41. 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.

42. 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.

43. The learned Public Prosecutor submitted that there are sufficient materials to show that the petitioners have committed the offences punishable under Chapter IV and VI of the UAPA and hence the prohibition under S.43D(5) is applicable in this case. The accused are not entitled bail.

44. Now the court has to consider the materials placed by the prosecution to substantiate the allegations against each of the accused to consider whether there is materials to prima facie show that he has committed any offence under the UA(P) Act.

Allegations and materials against A29

45. The first petitioner, Jishad B (A-33, A-29 in final report), is allegedly a PFI cadre and member of 'Reporter wing' of PFI in Palakkad District. The statement of approver Aboobacker Sidik, statement of witnesses CW 784, 786, 797, 798, 800, 801, 802, 809, 822 and 823, Doc-108 to 112 -Tejus magazines of PFI and other PFI related documents seized from his house during house search (D-107), books & documents (D-136 and D-137) which contain narratives about the personal details to be collected from each PFI cadre,

seized vide seizure mahazer (D-135) dated 18.05.2022 and photo of the petitioner in PFI uniform recovered from his mobile phone (MO-98) seized vide inspection memo dated 10.05.2022 (D-712), show that he is an active cadre of PFI. The voice clip recovered from the mobile phone (MO-98) of the first petitioner instructing other PFI cadres to present at District Hospital Palakkad on 15.04.2022 was compared scientifically with his sample voice by RFSL. It is reported that those voices are similar (D-1471).

46. The first petitioner herein, is allegedly 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 enact their "India 2047" agenda of establishing Islamic Rule in India. The discussion in the foregoing paragraphs will show that there are prima facie materials to show the larger conspiracy of the PFI to establish Islamic rule in India under their hidden agenda 'India 2047'. It will show that the accused in the 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.

47. It is alleged that the first petitioner along with the accused Mohammed Shafeek (A-35, now A-31) conducted recce of the targets on 16th April 2022 on motorcycle No.KL-49-E-9433 (MO-241), possessed A31, to commit terrorist act. CW-42 stated that he saw the first petitioner and A31 near

the shop of CW-153, who was one of the targeted persons on 16.04.2022. CW-134, 139 and CW-153 stated that they were the leaders of particular community and came to know that accused collected their details through Facebook and were targeted on 16.04.2022.

48. On the basis of the disclosure of the first petitioner regarding the places where he conducted recce of the targets, scene mahazer (D-117) was prepared on 11.5.2022 at the shop of CW-153. Seizure Mahazer (D-131) was also prepared on 18.5.2022, for the seizure of photos of Facebook profile (D-132 to D-134) of CW-134 who is also one of the targeted person, based on the first petitioner. On 20.5.2022, based on the disclosure of the first petitioner regarding the places where he conducted recce of the targets, scene mahazer (D-148) was prepared at the shop of one of the targeted person, CW-139. The CCTV footage (D-181 & 191) seized as per seizure mahazer dated 09.06.2022 and 23.06.2022 (D-180 & 190) respectively show the presence of the first petitioner along with A-31 at the place where they conducted recce of the targets on 16.04.2022.

49. The motor cycle No. KL-49-E-9433 (MO-241) which was used by the first petitioner and A-31 for conducting recce of the targets to be eliminated, has been recovered vide seizure Mahazer (D-534) dated 20.12.2022, based on the disclosure of A-31.

50. On the basis of the disclosure statement of the first petitioner, the shirt and pants (MO-109 & 110) worn by him while he was conducting recce of

the targets on 16.4.2022, has been recovered through Recovery Mahazer (D-116) dated 11.05.2022. The CDR (D-229, D-237, D-238, D-1441) shows that the mobile phone of the accused Jishad.B (A-33, now A-29) the first petitioner was inactive on 16.04.2022 from 08.34.18 hrs to 10.03.05 hrs, i.e during the period of recce of the targets by him.

51. The first petitioner allegedly attended the conspiracy meetings held at Palakkad on 16th of April 2022 for committing terrorist act of murder of Sreenivasan on 16.4.2022. Protected witness 13 & 22 have stated that they had seen the first petitioner along with assailants Abdu Rahman @ Adu (A-17), Umam T (A-18), Bilal (A-22), Riyasudheen (A-24), Saheer (A-60) and accused Jamsheer (A-25), Basheer T E (A-49), Ameer Ali (A-55) and other PFI leaders on 16.4.2022 at noon (i.e. just before the murder of Sreenivasan) at vacant land near District Hospital Palakkad for committing terrorist act of murder of Sreenivasan on 16.4.2022. Approver Aboobacker Sidik, clearly stated in his statement recorded u/s 164 of CrPC that '*The plan was to kill anyone. The decision to kill Sreenivasan was taken near hospital premises and behind the hospital*'. He also stated that the said plan is to create terror/fear in the minds of public.

52. The first petitioner is a public servant as a Fire & Rescue Officer in Kerala Fire & Rescue Services Department concealed the design to commit offence and actively involved in the terrorist act of murder of Sreenivasan. The documents (D-143 to D-147) seized from Fire and Rescue Station, Kongad

vide seizure mahazer (D-142) dated 18.5.2022 and the statement of CW-140, Station Officer, Fire and Rescue Station, Kongad prove that the accused is a public servant and working at Fire and Rescue Station, Kongad.

53. The first petitioner herein, is also an accused (A-21) in Palakkad Town South PS Cr 1989/2021 (Sanjith Murder Case).

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

Allegations and materials against A30

55. The 2nd petitioner, Ashraf @ Ashraf Moulavi (A-34, now A-30) is alleged to be the Unit Secretary of PFI, Karimbully unit and an active cadre of PFI. The statements of CW 771, 772, 773, 786, 799, 800, 801, 803, 805, 833, 836 and 837, statement of protected witness - 3, the statement of approver Aboobacker Sidik, Tejus magazines of PFI and other PFI related documents (D-171, D-172, D-174, D-176) seized from Medicina Naturals Clinic run by the 2nd petitioner, PFI related photos and videos etc. found in his mobile phones (MO-131, MO-132) seized from his house vide seizure mahazer (Doc No.153) dated 25.05.2022 and in memory card (MO-136) seized from Medicina Naturals Clinic run by him, vide seizure mahazer (D-160) dated 29.05.2022, videos showing the protest of PFI in which the 2nd petitioner was found in the mobile phone (MO-137) of absconding accused Abdul Rasheed (A-28)

recovered vide recovery mahazer dated 15.05.22 (D-125) based on the disclosure of accused Nasar @ Laden Nasar (A-37, now A-33), prima facie show that the 2nd petitioner is an active cadre of PFI.

56. It is alleged that the 2nd petitioner is 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 enact their "India 2047" agenda of establishing Islamic Rule in India. The discussion in the foregoing paragraphs will show that there are prima facie materials to substantiate the allegation of the larger conspiracy of the PFI to establish Islamic rule in India. It also shows 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.

57. It is alleged that the 2nd petitioner conducted and supervised arms training imparted by PFI at Periyar Valley, Aluva. The statement of Protected Witness 3 and CDR locations supports this allegation.

58. The 2nd petitioner allegedly attended the conspiracy meeting held at the Curtain Shop of the accused, Nassar @ Laden Nassar (A-37, now A-33) at Pattambi on 15th April 2022 for committing terrorist act by murdering any available Hindu leader with the intention of creating terror in the minds of the Hindu community and among public at large. CW-122 has stated that in the evening of 15.4.2022, the 2nd petitioner, Ali. K @ Ragam Ali (A-38), Abdul

Rasheed (A-28), Muhammed Manzoor (A 21), Ashraf (A-32), Saheer K V (A-60), Ansar (A-23), Muhammed Shajid (A-37), Abdul Nazar @ Nizar (A-41), Kajahussain (A-35), Haneefa (A-34) and others had a secret meeting in the shop of A-33, wherein he heard saying them that "we have to retaliate". CW-121 also stated about the conspiracy meeting of the above accused in the shop of A-33 on 15.4.2022. Further, based on the disclosure of A-33 scene mahazer has been prepared at the conspiracy place on 15.5.2022 (D-128), CDR location (D-233 & D-238) also show the presence of the 2nd petitioner and others in the conspiracy place.

59. The 2nd petitioner allegedly prepared the route map of Hindu leaders, whom the PFI identified as possible targets for committing terrorist act, and further went to ascertain the whereabouts of 04 leaders of other community whom were short-listed by PFI for eliminating. CW-149 to CW-152 has given statement that they were the leaders of particular community and came to know that the accused prepared a route map of their houses. Based on the disclosure of the 2nd petitioner, scene mahazers (D-158 & D-159) were prepared at the houses of 04 targeted persons, whom were listed as possible targets to eliminate. Based on the disclosure of the 2nd petitioner, the route map of targeted people (D-161) prepared by him, diary (D-169) containing the format for collecting personal details of targeted people maintained by him were also seized vide seizure mahazer (Doc No. 160) dated 29.05.2022 from his clinic. The hand writings of the 2nd petitioner herein, in the seized route map and diary were forensically confirmed as per RFSL Report (D-1468).

60. It is stated that the Tata Tiago car (MO-117) which was used by the 2nd petitioner herein, for recce the targets, has been seized (D-153) on 25.5.2022, based on his disclosure. His CDRs locations (D-233 & D-238) also show his movement and presence at recce places.

61. The 2nd petitioner allegedly conspired at the Curtain shop of the accused Nassar @ Laden Nassar, with co-accused for destroying of evidence after committing the terrorist act of murder of Sreenivasan and in furtherance to the same they concealed the vehicle used for the offence and the mobile phone of absconding accused Abdul Rasheed (A-28). The CCTV footage (D-119) seized as per seizure mahazer dated 11.05.2022 (D-118) shows the presence of A-30 the 2nd petitioner, along with Abdul Rasheed (A-28), Ansar (A-25, now A-23), Nassar @ Laden Nassar (A-37, now A-33) and Ali @ Ragam Ali (A-43, now A-38) in the shop of A-33, after murder of Sreenivasan, wherein they decided for destruction of evidence. In furtherance to the conspiracy Abdul Rasheed (A-28) and A-33 concealed the car No. KL-55-D-4700 of A-33. The said vehicle (MO-122) along with mobile phone (MO-137) of accused Abdul Rasheed (A-28) etc. were recovered based on the disclosure of Nassar (A-37, now A-33) on 15.5.2022 (D-125).

62. The final report along with the evidence collected discloses prima-facie case against the 2nd petitioner herein and therefore there is bar u/s 43D (5) of the UA (P) Act for release of the accused on bail.

Allegations and materials against A51

63. Mr.Sirajudheen (A-56, now A-51), the 3rd petitioner is alleged to be an active cadre of PFI and District Head of 'Reporter Wing' of PFI in Malappuram. CW-823, approvers Aboobacker Sidik and Muhammed Shajid stated that the 3rd petitioner is a PFI cadre and a 'Reporter' of PFI. Poster of Tejus (D-270) seized from the car of the 3rd petitioner, vide seizure mahazer (D-240) dated 17.09.2022, PFI related document (D-278) seized from his shop as per seizure mahazer (D-275) dated 17.09.2022, documents containing the 'hit lists' of about 240 persons of other community (D- 242 to 245, 250, 252 to 254) seized from him as per seizure mahazer dated 17.09.2022 (D-240) prima facie show that the 3rd petitioner he is an active cadre of PFI and District Head of Reporter Wing at Malappuram.

64. It is contended that the mobile phone (MO-139) of the 3rd petitioner contains the voice clip directing PFI cadres to reach PFI training centre 'VASS' (Vadakara Social Service Trust').

65. It is also alleged that the 3rd 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 of establishing Islamic Rule in India. The discussion in the foregoing paragraph prima facie show that there was a larger conspiracy of the PFI to establish Islamic rule in India under their hidden agenda India 2047. It also suggests that the accused in this case are members of terrorist gang, prepared for commission of the 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.

66. The 3rd petitioner alleged to have attended the conspiracy meetings held at Palakkad on 16th of April 2022 for committing the terrorist act of murder of Sreenivasan on 16.4.2022 with the intention of creating terror in the minds of the Hindu community and among public at large. CW-37 and CW-38 and protected witness 18 have given statement that they had seen the 3rd petitioner along with assailants Abdu Rahman @ Adu (A-17), Umam T (A-18), Abdul Khader @ Iqbal (A-19), Firoz @ Thambi (A-20) and Abdul Rasheed (A-28, now absconding), Muhammed Rizwan (A-42) and other PFI leaders on 16.4.2022 at noon (i.e just before the murder of Sreenivasan) at vacant land near District Hospital, Palakkad for committing terrorist act of murder of Sreenivasan on 16.4.2022. The CDRs (D-566, D-522 and D-523) also show his presence at conspiracy place.

67. It is stated that a document (D-248), containing writings in Malayalam language "10 peru 5 Bik 1. Mansoor, Saheer, Ansar, Asraf, Iqbal, PK, Bilal, PK Riyas, PK Abudu. PK Jasmsi c/o 3 ariyum etc," were also seized from the car (MO-154) of the 3rd petitioner vide seizure mahazer dated 17.09.2022 (D-240). This also suggest the active participation of the 3rd petitioner in the conspiracy to commit terrorist act.

68. It is also alleged that the 3rd petitioner knowingly and intentionally harboured Khaja Hussain (A-30, now A- 26), in his house, after commission of the terrorist act. CW-286 stated that the 3rd petitioner herein had purchased

medicines from him for the treatment of Khaja Hussain (A-30, now A-26). The bank account statement (D-486 to 489) of CW-286 seized vide seizure mahazer (D-485) and the bank account statement (D-507 to 509) of the 3rd petitioner prove the money transaction for the purchase of medicine. Etanercept Solution for Injection (MO-162) which was procured and kept by the accused the 3rd petitioner for providing to accused Khaja Hussain (A-30, now A-26) during harbouring period was seized from the car No. KL-53-B-2633 (MO-154) owned by the 3rd petitioner as per seizure mahazer (D-273) dated 17.09.2022. D-674 report of the Drug Inspectors (CW-280 and CW-281) proves that the medicine is used for Rheumatoid Arthritis. It is pertinent to note that, the accused Khaja Hussain @ Robot Kaja (A-30, now A-26) whom the 3rd petitioner harboured is suffering from Ankylosing Spondylitis as stated by CW-287. The mobile phone (MO-139) of the 3rd petitioner also contains the medical prescriptions and photo of the injection prescribed to Kaja Hussain (A-30, now A-28) and a hand written document giving direction to collect the injection etc.

69. It is also also submitted that, based on the disclosure of the 3rd petitioner herein, scene Mahazer (D-274) was prepared at his house where he harboured accused Khaja Hussain @ Robot Kaja (A-30, now A-26) after committing the terrorist act of murder of Sreenivasan.

70. It is also alleged that in order to accomplish the common objective of the PFI, the 3rd petitioner collected the personal details with organizational positions of various persons of Thiroorangadi and Mangalam area of Malappuram and Palakkad. It is submitted that the documents containing the

hit lists' (D-242 to 245, 250, 252 to 254) of about 240 persons of other community seized from him as per seizure mahazer (D-240) dated 17.09.2022, a route map (D-246) and a photo (D-251) of one of the main witness who identified the assailants (PFI cadres) in Crime No. 618/2017 of Tirur Police Station (Bipin murder case), in Malappuram District Kerala, seized from him. It is also submitted that the witness number was also mentioned in the above said seized photo (D-251) as writings 'CW-3'. The handwriting of the 3rd petitioner in seized documents are also compared by RFSL and the report is produced (D-1469). The CW-371 to CW-378 who belong to a particular community in Malappuram and Palakkad, speak about the threat and social insecurity caused to them, being in hit list of PFI. Documents (D-247 to 249) in writing contain directions and instructions to be followed by the cadres of PFI organization were also seized from the 3rd petitioner, vide seizure mahazer (D-240).

71. The 3rd petitioner is alleged to be an accused (A-23) in Palakkad Town South PS Cr. 1989/2021 (Sanjith Murder Case). MO-140 and 141-Pen drives seized from the vehicle No. KL-53-B-2633 (MO-154) owned by the 3rd petitioner as per seizure mahazer (D-273) dated 17.09.2022, contained list of RSS/ BJP activist at Palakkad region and also video footage related to Sanjith Murder.

72. The final report along with the evidence collected discloses prima-facie case against the 3rd petitioner herein and therefore there is bar u/s 43D (5) of the UA (P) Act for release of the accused on bail.

73. It is submitted that the petitioners have committed offences punishable under various sections of IPC and Chapters IV and VI of UA(P) Act and final report along with the evidence collected discloses prima-facie case against the petitioners. The learned Public Prosecutor submits that the bar u/s. 43D(5) of the UA(P) Act is applicable in this case and the petitioners are not entitled to be released on bail.

Discussion and conclusion:

74. During the discussion in the above paragraphs I have already narrated the allegations against the petitioners and the evidence relied on by the prosecution to substantiate the allegations. The contention of the learned counsel for the petitioners is that there is no material which prima facie show that the petitioners have committed the offence coming under Chapter IV or VI of the Act. The evidence discussed above show that there are prima facie materials to show that the petitioners are active members of the PFI. It further show the presence of the petitioners at the place of conspiracy. There are also materials to show that the petitioners and others were available at Palakkad on the date of incident. The CDRs also support this allegation.

75. The allegations against the petitioners 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 and IV of the UA(P) Act. Investigation is completed as regards the role of the petitioners in the case and final report already filed. The court has taken cognizance of the offence against them.

76. 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 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)

77. 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. 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.*”

78. 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.

79. 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."

80. In this case, apart from the statement of witnesses, there are materials to prima facie suggest that the petitioners had 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 faice show that the petitioners had involved in the conspiracy and destruction of evidence. 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.

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

82. The learned counsel for the petitioners contended that the petitioners are undergoing detention for long time and considering the period of detention and the fact that the case is not ripe for trial, the petitioners are entitled to bail. It is true that the petitioners were arrested in the year 2022 and they are in remand since then. But, as regards the petitioners are 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 as per order dated 06-05-2024 was pleased to pass an order restraining this Court from framing charge 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 petitioners cannot take advantage of such a situation and seek bail.

83. In the light of the discussion in the foregoing paragraphs and on a careful scrutiny of the materials placed before me, I am of the view that there are reasonable grounds for believing that the accusation against the petitioners

is prima facie true. The allegations against the petitioners 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 petitioners are 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 18th day of December, 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.