

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

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

Tuesday the 20th day of May, 2025/30th Vysakha, 1947

Crl.M.P. 174/2025

In

SC No.03/2023/NIA

Petitioner/Accused : Savad @ Savadh @ Shajahan (A1), Age 40/2024, S/o Meerankkutty, Muthuvassery House, Odakkali, Nooleli, Ernakulam District.
By adv. Abdurahiman P.K

Respondent/Complainant : Union of India represented by National Investigation Agency, Kochi.
By Sri. Arjun Ambalapatta (Senior Public Prosecutor, NIA) and Sri. Sreenath.S (Public Prosecutor, NIA).

This petition coming on for hearing before me on 16.05.2025 and the Court on 20.05.2025 passed the following:

ORDER

This is an application for bail filed by the 1st accused in this case.

Prosecution case:

2. The prosecution case, in brief is as follows: Shri T. J. Joseph was working as Professor of Malayalam in Newman Collage, Thodupuzha. He had

prepared Malayalam question paper for the internal examination for 2nd semester B.Com. students for the academic year 2009-2010. In the question paper, there was one question allegedly containing some derogatory remarks against Prophet Mohammed. The accused, who are active members of PFI/SDPI, which was having close links with SIMI, proscribed under UAPA. They decided to take the law into their own hands, conspired to retaliate by creating terror in the minds of the general public through the attack on Professor T. J. Joseph. After engaging in conspiracy and making preparations, on 04.07.2010 at 8.00 Hrs., the accused intercepted his car near his house at Hostelpadi in Muvattupuzha by placing a Maruti Omni van across the road. The accused, at the leadership of the petitioner, attacked him with weapons, chopped off his right palm, and threw it into a nearby compound as part of executing their radical beliefs. To prevent family members and others from rescuing the victim, and to spread fear and panic, the accused hurled country-made bombs and fled the scene.

3. The Kerala Police initially investigated the case, which was later taken over by the National Investigation Agency and filed the final report alleging offence punishable u/s.143, 147, 148, 120B, 341, 427, 323, 324, 326, 506(ii), 201, 202, 212, 153A and 307 r/w.s.149 of IPC and S.3 of Explosive Substances Act and Ss.15 r/w.s.16, 18, 18B, 19 and 20 of the Unlawful Activities (Prevention) Act against 27 persons.

4. This court tried the case and convicted some of the accused.

Since the petitioner, Savad @ Savadh, was absconding, the case against him was split-up and refiled as SC No.03/2023/NIA. He was later arrested from Beram, Mattannur, Kannur on 10.01.2024, where he was residing in the pseudo name Shajahan. The petitioner was produced before this court. Since then he is in remand.

Petitioner's case

5. The petitioner's case is that he is arraigned as 1st accused in the case. The petitioner is innocent of the offence. The petitioner was arrested on 10.01.2024 without being informed on the grounds of arrest. The petitioner has been in judicial custody for more than a year without trial. The co-accused of the petitioner were acquitted and granted bail by the Hon'ble High Court of Kerala.

The objection

6. The investigating officer filed objection stating that the petitioner went absconding immediately after committing the terrorist act on 04.07.2010. Despite the earnest efforts carried out by the NIA, such as completing proceedings under Sections 82 and 83 CrPC, issuance of Non-Bailable Warrants (NBWs), Look Out Circulars (LOCs), and declaring a reward of ₹2 lakhs, which was later enhanced to ₹10 lakhs, the accused evaded arrest for nearly 14 years by taking shelter in various locations in Tamil Nadu and Kerala. He was finally arrested only on 10.01.2024. The case against the petitioner is ripe for trial.

7. There are materials to show that the petitioner has committed the offences punishable under various section of IPC and UAPA, including the offences punishable under Chapter IV of the UAPA. There are reasonable grounds for believing that the accusation against the petitioner is prima facie true and hence there is bar under sec.43(D) of UAPA in granting bail to the accused. The petitioner is not entitled to bail and the application is only to be dismissed.

Argument and discussion:

8. When the petition came-up for consideration, I have heard the counsel for the petitioner and the Senior Public Prosecutor appearing for the respondent. I have perused the final report and connected records.

9. The learned counsel for the petitioner submitted that the petitioner is innocent of the allegations. The petitioner is undergoing detention for more than one year. The NIA has not complied the mandatory requirements at the time of arrest of the petitioner. According to him, before recording the arrest, the police officer is bound to inform the accused about the grounds of arrest. According to the learned counsel, since the arrest is illegal, the petitioner is entitled to be released on bail on that ground alone. The learned Senior Public Prosecutor submitted that this is not a case where the accused was not informed about the grounds of arrest. The arrest was recorded pursuant to the non-bailable warrant issued by this court. The petitioner is a proclaimed offender and he was absconding for nearly 14 years. At the time of arrest,

grounds of arrest was explained to the petitioner, which he acknowledged and recorded in his own handwriting on the arrest memo. A copy of this memo was duly handed over to his wife with acknowledgment, and the remand report containing the grounds of arrest was served to the petitioner's counsel.

10. As submitted by the learned Public Prosecutor, the petitioner is the first accused in the case and he was absconding for more than 14 years. Trial against most of the accused is over and some of them were convicted by this court. Steps u/s.82 and 83 of the CrPC was completed against the petitioner and he was a proclaimed offender. He was arrested on the basis of the non-bailable warrant issued from this court. Section 50 of CrPC requires a police officer arresting an accused to inform of his right to get a communication in writing regarding the offence for which he is arrested and the grounds of arrest. Section 50 comes under Chapter V, which deals with arrest of persons without warrant. A non-bailable warrant for arrest of the petitioner was issued under Chapter VI, which deals with "Process to compel appearance". Chapter VI deals with procedure for arrest of a person with warrant and the manner in which he is to be dealt with. Section 50 has no application for arrest in execution of a warrant issued under Chapter VI. So, even if the argument of the counsel for the petitioner is accepted in toto, the petitioner is not entitled to be released on bail on that ground.

11. The other contention of the learned counsel for the petitioner is that the petitioner is innocent to the allegations. According to him, the

petitioner was not absconding as contended by the prosecution. The learned Public Prosecutor submits that the petitioner, as a member of the terrorist gang, brutally attacked Prof. T. J. Joseph and chopped off his right palm using an axe, alleging blasphemy in the question paper. The Prosecutor pointed out that multiple eyewitnesses, including witnesses CW-1 to CW-6, have given statement about the role of the petitioner in the incident. Witnesses CW-7 to CW-30 have spoken about the incident and the fear it created in the community. Furthermore, CW-2, CW-3, and CW-4 identified the petitioner in the Test Identification Parade (T.I.P.). The Call Data Records (CDR) of the mobile number 9947594068, used by the petitioner during the relevant period, establish his close contact with M.K. Naser (A-3 in SC 01/2015) and other assailants. Trial against other accused has already taken place. This court convicted 19 accused, including the main accused who was sentenced to life imprisonment.

12. It is submitted by the Public Prosecutor that the petitioner, being a member of SDPI/PFI, has strong connections with fundamentalist groups. If the petitioner is released on bail, there is a high risk that he may abscond again, intimidate or influence witnesses and tamper with evidence.

13. The statements of the witnesses mentioned above and other materials, including the CDRs, and other documents point towards the role of the petitioner in the commission of the offence. Co-accused are already tried and convicted by this court. The materials placed before the court show that

there are sufficient materials to prima facie show that the petitioner was actively involved in the commission of the terrorist act.

14. The offences alleged against the petitioner come under Chapter IV of the UA(P) Act. As submitted by the Public Prosecutor, when there is prima facie case against the petitioner, the bar u/s. 43D (5) of the UA(P) Act is applicable and the petitioner is not entitled to be released on bail.

15. 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 UAPAct modifies the application of the general bail provisions in respect of offences punishable under Chapter IV and Chapter VI of the UAP Act.

17. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It

lays down that if the Court, 'on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure', is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43D(5) of the 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)

16. 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)**.

17. 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 decision *Gurwinder Singh's case*. The decision in *Gurwinder Singh's case* is still good law and applicable to the facts and circumstances of this case.

18. In the light of the above discussion, it can be seen that the bar u/s.43D(5) is applicable in this case. The materials placed before the court prima facie supports the view that the petitioner has committed the offence as alleged by the prosecution. Moreover, the petitioner was absconding for more than 14 years. His submission that he was not absconding is difficult to believe. It is brought to notice that the petitioner was living inside and outside Kerala by changing his name and attire. So, he was willfully evading the

process of the court. If he is released on bail, he may again abscond and he will not be available for trial. Now the final report is filed and the case is ripe for trial. There is no delay in the trial of the case.

19. Considering the serious nature of the offence alleged against the petitioner and in view of S.43D(5) of UA(P) Act and other reasons stated above, I am not inclined to release the petitioner on bail at this stage. 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 20th day of May, 2025.

Appendix: Nil

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

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

//True Copy//

Sd/-
Sheristadar.