2025:KER:30311

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 2362 OF 2024

CRIME NO.2/2023 OF NATIONAL INVESTIGATION AGENCY KOCHI, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED 20.09.2024 IN CRMP NO.218/2024 IN SC NO.1 OF 2024 OF SPECIAL COURT FOR TRIAL OF NIA CASES,ERNAKULAM

APPELLANT/PETITIONER/ACCUSED NO.3:

SHIYAS T.S.
AGED 32 YEARS
S/O SIDHEEQ, THARAYIL HOUSE, NEDUMPURA CENTRE,
KATTOOR P.O., THRISSUR, PIN - 680702

BY ADVS.
E.A.HARIS
M.A.AHAMMAD SAHEER
MUHAMMED YASIL
FATHIMA SHERIN

RESPONDENT/RESPONDENT/COMPLAINANT:

UNION OF INDIA
REPRESENTED BY SUPERINTENDENT OF POLICE, NATIONAL

2025:KER:30311

INVESTIGATION AGENCY, KOCHI, PIN - 682020

OTHER PRESENT:

ADV. A R L SUNDARESAN, ASGI FOR NIA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, THE COURT ON 8/4/2024 DELIVERED THE FOLLOWING:

2025:KER:30311

RAJA VIJAYARAGHAVAN V,
&
P.V.BALAKRISHNAN,JJ.
---.
Criminal Appeal No. 2362 of 2024

Dated this the 8th day of April 2025

JUDGMENT

P.V.BALAKRISHNAN,J

This appeal is filed by the 3rd accused in SC No.01/2024/NIA on the files of the Special Court for the Trial of NIA Cases, Ernakulam challenging the order passed in Crl.M.P.No.218/2024 dismissing his petition filed under Section 439 of Cr.P.C.

2. The prosecution case is that, the appellant/3rdaccused knowingly and willingly became a member of the ISIS module in 2022, which was established by the first and the second accused and took oath of allegiance in favour of ISIS. Thereafter, accused Nos. 1 to 3 attempted to recruit the 4th accused and others to the

2025:KER:30311

module in Kerala and the third accused identified gullible youths for recruitment to ISIS for furthering the activities of the terrorist organization, and solicited and obtained funds from them for pro-ISIS activities. Accused Nos. 1 to 3 also conspired and conducted recce of Hindu Temples and prominent persons of other communities for targeting them, as well as to loot them. They also identified and recruited vulnerable youths into ISIS and propagated ISIS ideology through social media and secret communication platforms. Hence, it is alleged that the 3rd accused has committed the offences punishable under Section 120B of IPC. and Sections 20, 38 & 39 of the Unlawful Activities (Prevention) Act, 1967 (for short "UAPA").

3. The learned Counsel for the appellant Adv.E.A.Haris contended that the appellant is totally innocent of the allegations levelled against him and he has been falsely implicated due to political rivalry. He argued that the appellant has been arrested

2025:KER:30311

and kept in custody by the NIA illegally, by flouting all the statutory norms. He submitted that the appellant, at the time of his arrest, was not even informed about the grounds of his arrest in writing and thereby has violated his constitutional rights. He, by relying on the decisions in **Pankaj Bansal v. Union of India [2023 KHC 6887]**, **Prabir Purkayastha v. State (NCT of Delhi) [2024 KHC 6286]** and **Vihaan Kumar v. State of Haryana [2025 KHC Online 6116]**, argued that non compliance with the requirement of informing the grounds of arrest under Article 22(1) of the Constitution of India renders the arrest itself illegal. He further contended that the appellant is undergoing custody from 2/8/2023 onwards and there is no reasonable chance of the trial in this case commencing in near future. He also argued that, as per the order dated 27/3/2024 in Crl.M.P.No.76/2024 of the trial court, further investigation in this case is still progressing, making the chances of commencement of trial in near future,

2025:KER:30311

bleak. He relied on the decisions in **Union of India v. K.A. Najeeb [(2021) 3 SCC 713], Javed Gulam Nabi Shaikh v. State of Maharashtra (2024 SCC Online SC 1693**), **Shoma Kanti Sen v. State of Maharashtra (2024 KHC 6182**), **Athar Parwez v. Union of India (2024 KHC 6719)**, to contend that even in cases under UAPA Act, the Apex Court has held that long incarceration and unlikely likelihood of trial being completed in near future is a ground for exercising its constitutional role by the Constitution courts to grant bail. He submitted that the afore dictums can be squarely made applicable to the facts of the present case. He also, by relying on Section 6 of NIA Act, and specially clause 5 of that Section, contended that the NIA does not have the power to register an FIR directly except in cases falling under sub clause (8) and therefore, the registration of FIR directly by the NIA in the present case is illegal. He would also submit that the 5th accused, against whom similar allegations were raised, has

2025:KER:30311

been granted bail by Hon'ble Apex Court after undergoing incarceration for 11 months. Hence he prayed that this appeal may be allowed.

4. Per contra, learned Assistant Solicitor General of India Adv.Sundareshan vehemently opposed the submissions made by the learned Counsel for the appellant and contended that no interference is required with the impugned order. He submitted that the NIA, after investigation, has filed the final report against the appellant and others and the evidence collected by them would clearly show that the allegations levelled against the appellant are well substantiated. He submitted that there are reasonable grounds for believing that the accusation against the appellant is *prima facie* true and therefore, considering the mandate of Section 43-D(5), the appellant is not entitled to be released on bail. He relied on the decisions in **Gurwinder Singh v. State of Punjab & Anr[(2024) 5 SCC 403**], **Mazhar Khan v. NIA [(2024) 6 SCC**

2025:KER:30311

627] and **National Investigation Agency v. Zahoor Ahmad Shah Watali [(2019) 5 SCC 1],** in support of his contentions. He further submitted that the decision in Pankaj Bansal's case (cited supra) is not applicable to the facts of the present case since, the said decision operates only prospective. He relied on the decision in **Ram Kishor Arora v. Directorate of Enforcement (2023 SCC Online SC 1682**) and contended that the Apex Court has specifically held that the decision in Pankaj Bansal's case (supra) is prospective in nature. He argued that since the appellant in this case has been arrested only on 2/8/2023 much after the decision in Pankaj Bansal's case (supra) which was rendered on 3/10/2023, the said decision is not applicable to him. He also distinguished the decision in Vihaan Kumar's case (cited supra) and submitted that the arrest in that case was made only on 10/6/2024 after, the decision in Pankaj Bansal's case (supra). As regards the contention raised by relying on Section 6 of the NIA Act, the learned counsel

2025:KER:30311

submitted that in the decision in **Ali K. @ Ragam Ali v. Union of India (2023 KHC 816)**, this Court has already held that the Central Government has power under Section 6 (5) to direct the NIA to investigate a scheduled offence which is brought to its notice and which in its opinion requires to be investigated by the NIA, even if the offence in respect of which no case has been registered. Hence, he prayed that this appeal may be dismissed.

5. The first and foremost contention raised by the appellant is regarding non intimation of grounds of arrest to him in writing. The respondent does not dispute the fact that the appellant was not informed in writing of the grounds of his arrest. It is true that in Pankaj Bansal's case (cited supra), the Apex Court found that unless a copy of written grounds of arrest is furnished to the arrested persons, the arrest itself becomes vitiated.But, it is also to be taken note that while ordering so, the Apex Court held that such necessity will only be 'henceforth'. Subsequently, in the

2025:KER:30311

decision in Ram Kishor Arora's case (cited supra), the Apex Court considered the decision in Pankaj Bansal's case (supra) and categorically held that the judgment in Pankaj Bansal's case (supra) will be prospective in operation. In the decision in Prabir Purkayastha's case (supra) and Vihaan Kumar's case (supra), the dictum laid down in Pankaj Bansal's case (supra) was made applicable to the accused since the arrest in those cases were made after rendering of the judgment in Pankaj Bansal's case (supra). In the present case, as stated earlier, the appellant has been arrested on 2/8/2023 much before the pronouncement of the judgment in Pankaj Bansal's case (supra). If so, we have no doubt in our mind that the appellant is not entitled to the benefit of the dictum laid down in Pankaj Bansal's case (supra).

6. Coming to the next contention of the appellant, by relying on the decisions in Najeeb's case, Shoma Kanti's case and Athar Parwez's case (all cited supra) that since he has undergone

2025:KER:30311

incarceration for a significant period of time and there is no possibility of the trial being conducted in near future, he is entitled to be released on bail, we are of the view that there is some merit in it. It is an admitted fact that the appellant has been arrested as early as on 2/8/2023 and that he is in custody therefrom. It is also an admitted fact that as on today, charge has not been framed against him and further investigation is going on in this case. It is true that initially, a final report was filed in this case on 12/1/2024. But, the records show that an order for further investigation has been issued by the Trial Court on 27/3/2024 based on an application filed by the prosecution as Crl.M.P.No.76/2024. Even as per the final report filed, the prosecution has cited 147 witnesses, and 161 documents and 55 material objects have been produced to substantiate the charge against the accused. In the afore circumstances, we have no hesitation in our mind that the trial in this case is not likely to commence and end in near future.

2025:KER:30311

In the decision in Najeeb's case (supra) of the Hon'ble Apex Court, while considering the bail application of an accused involved in a case charged inter alia under Sections 16,18,19 & 20 of UAPA and who has undergone a long period of incarceration, held as follows:

> "17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach

2025:KER:30311

> would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

While holding so,the court also considered and observed that Section 43-D(5)of UAPA is comparatively less stringent than Section 37 of the NDPS Act.

7.Subsequently, in the decision in Shoma Kanti Sen's case (cited supra) the Apex Court by relying on the decision in Najeeb's case (supra) and rejecting the contentions of the prosecution that unless the conditions specified in section 43-D(5) of UAPA are fulfilled the accused is not liable to be enlarged on bail, held thus:

> "38. Relying on this judgement, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfill

2025:KER:30311

the conditions specified in S.43D(5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Art.21 of the Constitution of India. This was in the case of Najeeb(supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail - restricting provision of S.43D(5) of the 1967 Act. Pre - conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post - chargesheet stage has the sanction of law broadly on these reasonings. But any form of

2025:KER:30311

> deprival of liberty results in breach of Art.21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre - trial detention, both at investigation and post - chargesheet stage."

8.The same principle was also followed by the Apex Court in Javed Gulam Nabi Shaikh's case and Athar Parwez' case (all cited supra). In the decision in Athar Parwez's case, the Apex Court after discussing Najeeb's case, went on to observe as follows:

> "At the initial stage, the legislative policy needs to be appreciated and followed by the Courts. Keeping the statutory provisions in mind but with the passage of time the effect of that statutory provision would in fact have to be diluted giving way to the mandate of Part III of the Constitution where the accused as of now is

2025:KER:30311

> not a convict and is facing the charges. Constitutional right of speedy trial in such circumstances will have precedence over the bar/strict provisions of the statute and cannot be made the sole reason for denial of bail. Therefore, the period of incarceration of an accused could also be a relevant factor to be considered by the constitutional courts not to be merely governed by the statutory provisions."

In the light of the above settled principles of law laid down by the Apex Court and considering the facts and circumstances of this case as narrated afore, we are of the view that this is a fit case where the appellant, who is undergoing incarceration since 02.08.2023, can be released on bail. At this juncture, we will also take note of the fact that the 5th accused in this case, who was charged under Section 19 of UAPA and Section 212 of IPC, has already been granted bail by the Apex Court, after a period of 11 months' incarceration, by taking into consideration the fact that

2025:KER:30311

the trial is not likely to commence in near future.

In the result, Criminal Appeal No.2362/2024 is allowed as follows:-

i) The appellant/3rd accused shall be released on bail on executing a bond for a sum of Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the Special Court for the trial of NIA cases, Ernakulam. It shall be open to the Special Court to impose such additional conditions as it may deem fit and necessary in the interest of justice. However, the conditions shall mandatorily include the following:

a) If the appellant/3rd accused intend to leave State of Kerala, he shall obtain prior permission from the Special Court.

b) If the appellant/3rd accused is in possession of any passport, he shall surrender the same before the Special Court, forthwith.

2025:KER:30311

c) The appellant/3rd accused shall furnish to the Investigating Officer of the NIA his complete and current residential address, including any changes thereto, and shall ensure that the same remains updated at all times.

d) The appellant/3rd accused shall use only one mobile number during the period of bail and shall communicate the said number to the Investigating Officer of the NIA. He shall remain accessible on the said number throughout the duration of bail and shall not, under any circumstances, switch off or discard the device associated with it without prior intimation.

e) The appellant/3rd accused shall report before the Station House Officer of the Police Station having jurisdiction over his place of residence on every first and third Saturdays, without fail.

f) The appellant/3rd accused shall not tamper with evidence or attempt to influence or threaten any witnesses in any manner.

2025:KER:30311

g) The appellant/3rd accused shall not engage in or associate with any activity that is similar to the offence alleged against him or commit any offence while on bail.

ii) In the event of any breach of the aforesaid conditions or of any other condition that may be imposed by the Special Court in addition to the above, it shall be open to the prosecution to move for cancellation of the bail granted to the appellant/3rd accused before the Special Court, notwithstanding the fact that the bail was granted by this Court. Upon such application being made, the Special Court shall consider the same on its own merits and pass appropriate orders in accordance with law.

Sd/-

RAJA VIJAYARAGHAVAN V
JUDGE

Sd/-

P.V.BALAKRISHNAN
JUDGE

dpk