IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

WEDNESDAY, THE 23RD DAY OF JULY 2025 / 1ST SRAVANA, 1947

CRL.A NO. 767 OF 2025

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

AGAINST THE ORDER IN SC NO.1 OF 2024/MIA OF SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM

APPELLANT/PETITIONER/ACCUSED NO.2:

SEYID NABEEL AHAMMED, AGED 36 YEARS
S/O. KUNJI SEETHI THANGAL, AITTANDIYIL HOUSE, PADOOR P.O.,
VENKIDANGU, THRISSSUR, PIN - 680509

BY ADVS.
SHRI.E.A.HARIS
SHRI.M.A.AHAMMAD SAHEER
SRI.MUHAMMED YASIL
SMT.AAGI JOHNY

RESPONDENT/RESPONDENT/COMPLAINANT:

UNION OF INDIA, REPRESENTED BY INSPECTOR OF POLICE, NATIONAL INVESTIGATION AGENCY, KOCHI, PIN - 682020

BY ADVS.
O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.07.2025, THE COURT ON 23.07.2025 DELIVERED THE FOLLOWING:

'CR'

JUDGMENT

K. V. Jayakumar, J.

This appeal has been preferred by accused No.2 against the order of the Special Court for the Trial of NIA Cases, Ernakulam dated 11.04.2025 in Crl.M.P.No.106/2025 in S.C.No.1/2024/NIA. By the impugned order, the learned Special Judge dismissed the bail application filed by the appellant/accused No.2.

Prosecution Case

2. The prosecution case as revealed from the final report is as follows:

2.1) The Central Government received credible information that, an ISIS/IS-KP Module was working secretly with the purpose of committing acts prejudicial to the sovereignty and integrity of India by conspiring to target certain prominent members of society and religious places of the other communities to commit terrorist acts and to create communal disharmony in the society. As part of the larger conspiracy to further the activities of the ISIS/IS-KP, a proscribed terrorist organization, the members of the module

identified gullible Muslim youths and radicalized them through encrypted communication channels to join ISIS/IS-KP. In order to raise funds for furthering the activities of ISIS/IS-KP, they have committed criminal/illegal activities.

2.2) The Central Government was of the opinion that the above activities have serious ramifications. Accordingly, the Ministry of Home Affairs, Government of India vide order F.No.11011/58/2023/NIA dated 10.07.2023 directed the NIA to take-up investigation of the matter and a case was registered as FIR No.RC-02/2023/NIA for offences under sections 120B and 153A of IPC, Section 17, 18, 18B, 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act at NIA Police Station, Kochi on 11.07.2023, against Mr.Mathilakath Kodayıl Ashif @ Ashif (A-1), Seyid Nabeel Ahammed @ Nabeel (A-2), Shiyas T.S. (A-3), Rayees P.A. (A-4) and others and investigated the case.

2.3) It is stated that the 1st and 2nd accused were active cadres of erstwhile National Democratic Front (NDF) and subsequently of Popular Front of India (PFI). The first accused, after acquiring physical and arms training from Green Valley, a PFI training centre had participated and carried out murder for PFI. The 2nd accused had participated in violent agitations on behalf of PFI. The 1st and 2nd accused, while employed in Qatar, had worked for India Fraternity

Forum (IFF), an overseas forum of PFI.

2.4) While the 1st and 2nd accused were working in Qatar, they had acquainted with one Abu Tahir, who was also working with India Fraternity Forum (IFF) and had subscribed to violent pro-Jihad ideologies of Jabath al Nusrah, precursor to ISIS. Abu Tahir had later physically joined Jabath al Nusrah in Syria. Abu Tahir had instilled the ideology of Jabath al Nusrah and incited the 1st and 2nd accused to violent jihadi ideologies while working with IFF in Qatar.

2.5) In the year 2016, while in Qatar, the 1st and 2nd accused associated with one Abu Bara @ Shihas, an accused in RC-02/2016/NIA/KOC and other Indian nationals who had joined ISIS in Afghanistan or Syria, through encrypted online media, and got further radicalised to pro-ISIS ideologies. Consequent to their radicalisation, the 1st and 2nd accused, while in Qatar, planned to perform Hijrah to physically join ISIS in their controlled territories. However, due to various restraints, including financial, they were unable to migrate to Syria. Accordingly, they further conspired while in Qatar to return to India, to establish an ISIS module in Kerala and recruit gullible youths to the module with the intention to further the activities of the ISIS module. They further conspired to raise funds for furthering the activities of ISIS and to

perform Hijrah by committing crimes as per Ghanimah ideology of looting the wealth of non-believers.

2.6) In pursuance of the conspiracy, the 1st and 2nd accused established an ISIS module in Kerala and recruited the 3rd accused, Shiyas and others into the module for furthering the objectives of ISIS in Kerala besides attempting to recruit the 4th accused and others into the module. The accused Nos.1 to 3 pledged allegiance to the ISIS by taking Bayath (oath of allegiance) in favour of Abu Al Qureshi, the then leader of ISIS and appointed the 2nd accused as the Amir (leader) of the module. The 1st accused also started a Telegram channel by name 'Pet Lovers' for furthering the activities of the terror module and thereby of ISIS. In the said channel, the 1st accused with user id 'Rozario' added the 2nd accused with user id 'Solo' and also recruited two unidentified persons.

2.7) The accused Nos.1 to 3 identified gullible youths, disseminated pro-ISIS and radical propaganda materials of ISIS through various social media platforms, encrypted chat applications and offline through individual contacts and radicalized such youths with the intention to recruit them to the ISIS module and further the activities of the proscribed organisation. They encouraged such radicalized youths to join the proscribed terrorist organization, ISIS. The 3rd accused solicited and obtained funds from gullible youths for pro

ISIS activities.

2.8) In furtherance of Ghanimah ideology, accused Nos.1 to 3 conspired and decided to accrue wealth for the activities of the ISIS module by looting non-believers. The accused conducted recce Hindu temples and prominent persons of other communities for targeting as well as looting. As part of this, on 20.04.2023, the 1st and 2nd accused conspired with others and committed robbery of Rs.30 Lakhs by attacking one Prasanth, a collection agent of M/s.Indel Money, a native of Palakkad. In this regard, a case has been registered as Crime No.507/2023 under Section 392 and 34 IPC in the Palakkad Town South Police Station. 8 persons, including the 1st and 2nd accused herein were arrested in that case and a sum of ₹7,23,500/- was recovered.

Specific allegation against the appellant in the final report:

3. The specific charge alleged against the appellant in the final report is that he being an active cadre of Popular Front of India (PFI) and having involved in violent criminal activities of PFI, got acquainted with Mathilakath Kodayil Ashif @ Ashif (A-1) at Thrissur, associated with India Fraternity Forum (IFF), the overseas forum of PFI while in Qatar since 2012. In 2014, he knowingly and willingly subscribed to the violent jihadi ideologies of

Jabath Al Nusrah, precursor to ISIS (pro-AQIS). In 2016, while in Qatar he knowingly and willingly conspired with the 1st accused to physically join ISIS, a proscribed terrorist organisation by performing Hijrah to the controlled territories of ISIS, which did not materialize. Thereafter, he knowingly and willingly conspired with the 1st accused to return to India, to establish an ISIS module in Kerala and recruit gullible youths to the module. They further conspired to become members of ISIS, raise funds for furthering the activities of ISIS and to perform Hijrah by committing crimes of looting the wealth of non-believers as a part of Ghanimah ideology. Subsequently, in 2017, the 1st accused and in 2020, the 2nd accused returned to India.

4. The appellant established an ISIS module in Kerala along with the 1st accused and recruited Shiyas (A-3) and others into the module for furthering the activities of ISIS and thereby became members of ISIS. The accused Nos.1 to 3, knowingly and willingly, conspired and took Oath of Allegiance (Bayath) in favour of ISIS chief Abu al Qureshi and selected the 2nd accused as the Amir leader) of the module for the purpose of furthering the activities of ISIS. The appellant along with A-1 and A-3 knowingly and willingly attempted to recruit Rayees P.A @ Rahees (A-4) and others to the ISIS module in Kerala to further the activities of ISIS. For this purpose, the 1" accused started a Telegram

Channel named "Pet Lovers' for furthering activities of the module and included 2nd accused and others into the channel.

5. The appellant and the 1st accused knowingly and willingly conspired and committed crimes to raise funds for pro-ISIS activities and along with the 3rd accused, conducted recce of Hindu Temples and prominent persons of other communities for targeting as well as for looting. The appellant knowingly and willingly propagated ISIS ideology through the social media, secret communication platforms and in person. The appellant thus allegedly committed offences punishable under Sections 120B of IPC and sections 20, 38 & 39 of Unlawful Activities (Prevention) Act, 1967.

Submissions of the learned counsel for the appellant

6.1) The learned counsel for the appellant, Sri E.A. Haris, submitted that the appellant was arrested on 06.09.2023 without being informed of the grounds of arrest in writing, as mandated by law. It is further submitted that the National Investigation Agency is attempting to manipulate records and fabricate evidence against the appellant. The articles allegedly seized from the appellant do not indicate the commission of any offence. It is contended that the appellant has been falsely implicated in the case due to vested political

interests

6.2) The learned counsel for the appellant submitted that the alleged radicalization of the appellant and his purported allegiance to ISIS are entirely fabricated. It is contended that the modus operandi of the Investigating Agency involves fabrication and concoction of evidence with the aid of advanced technological tools. The entire prosecution case, as outlined in the final report, is primarily based on the alleged confessions and admissions of the accused regarding their involvement in the offence

6.3) The learned counsel further submitted that the appellant has only a minimal role in Crime No. 507/2023 of Palakkad Town South Police Station, which the Investigating Agency is attempting to portray as a material piece of evidence against him. It is contended that the appellant's past antecedents cannot be a valid ground for his continued detention or for implicating him in an offence of such a serious nature. It is also submitted that all other co-accused in the said crime have already been released on bail. The appellant herein is arrayed as the 9th accused in Crime No. 507/2023. The apprehension of the appellant is that the National Investigation Agency, by invoking Section 8 of the NIA Act, proposes to take over the investigation in the said crime with the intention of keeping the appellant incarcerated for an indefinite period

6.4) The learned counsel further submits that the final report submitted by the respondents contains several witnesses and numerous documents. There is no likelihood of the trial being completed in the near future. The Investigating Agency intends to make the trial an unending process and to keep the accused behind the bars as an undertrial prisoner indefinitely.

6.5) It is submitted that all the other accused, except the appellant, have been granted bail. Notably, the 4th accused has not even been arrested by the National Investigation Agency; instead, his statement under Section 164 Cr.P.C. was recorded without him being made an approver. In view of the above circumstances, the appellant is entitled to be released on bail on the ground of parity. Placing reliance on the judgment in **Union of India v. K.A Najeeb**[1], the learned counsel submitted that the prolonged custody of the appellant violates his right guaranteed under part III of the Constitution of India. The learned counsel has also placed reliance on the dictum laid down in **Javed Gulam Nabi Shaikh v. State of Maharashtra**[2], **Jalaluddin Khan v. Union of India**[3] and **Ashraf @ Ashraf Moulavi v. Union of India**[4].

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[1] (2021) 3 SCC 713
[2] 2024 SCC OnLine SC 1693
[3] 2024 KHC 6431
[4] 2024 LiveLaw (Ker) 386

6.6) The prosecution has failed to establish the prima facie case against the appellant.

Submissions of learned DSGI

7. The learned DSGI submitted that there is a prima facie case against the appellant and therefore, he cannot be released on bail. The appellant cannot claim bail as a matter of right on the basis of parity. There is no rule or provision in the Unlawful Activities (Prevention) Act 1967 [for the sake of brevity, "the UA(P) Act"] or any other enactment which mandates the grant of bail on the basis of parity. It is true that all other accused except the appellant have got bail in this matter after prolonged incarceration. However, that by itself is not a ground for the appellant to claim bail as a matter of right. The learned DSGI placing reliance on the dictum laid down in **Harpreet Singh Talwar v. State of Gujarat**[5] submitted that the rigour of Section 43D(5) of the UA(P) Act would, however, in an appropriate case yield to the overarching mandate of Article 21 of the Constitution of India. However, such relaxation cannot possibly be automatic and must be evaluated in the light of specific facts and risks associated with each case.

[5] MANU/SC/0675/2025

8. The learned DSGI submitted that the appellant is an accused in Crime No. 2 of 2023 registered for offence punishable under Sections 120B and 212 of IPC, Sections 19, 20, 38 and 39 of the UA(P) Act. The antecedents and criminal background of the accused suggest that, if released on bail, he is likely to engage in activities that could disturb the peace and tranquility of society.

9. The learned DSGI submitted that as per Section 20 of the UA(P) Act, mere membership in a terrorist organization is sufficient to attract the offence. It was contended that there are sufficient materials on record to establish that the appellant was a member of the proscribed organization, namely ISIS. She further submitted that the appellant stands on a different footing from the other accused, as he is alleged to be the leader of the group and therefore, the criminal appeal is to be dismissed. Hence, the trial court is justified in the dismissal of the bail application filed by the appellant.

10. The learned DSGI took us through the final report and accompanying records, and submitted that the allegations against the appellant are extremely grave. It was contended that, in view of the seriousness of the offences, this is not a fit case for the Court to adopt a lenient approach and grant bail to the appellant.

11. The learned DSGI placed reliance on the judgment rendered by the Apex Court in **Union of India v. Barakathullah**[6] and urged that, while considering an application for bail, the Courts are required to look into the nature and gravity of the alleged offence, the criminal antecedents etc,. If the materials/documents relied on by the respondent show that the case against the appellant is *prima facie* true, the embargo under Section 43D(5) of UA(P) Act would squarely be attracted.

The finding of the Special Court

12. The Special Court For Trial of NIA cases, Ernakulam, dismissed the application for bail (Crl.M.P No.106 of 2025), holding that considering the materials and documents produced before the court, would show that there is a *prima facie* case against the appellant and that he has committed the offence under Chapter IV and VI of the UA(P) Act. The investigation has been completed and the final report has been filed, specifically emphasizing the role of the appellant, who is arrayed as the 2nd accused. In view of the statutory embargo under the proviso to Section 43D(5) of the UA(P) Act, the appellant is not entitled to bail. It was also observed that bail was granted to the other

[6] 2024 SCC OnLine SC 1019

accused persons by the High Court and the Supreme Court, in exercise of their constitutional jurisdiction.

Analysis

13. The prosecution case in brief is that the Central Government received credible information that, ISIS/IS-KP module was working secretly with the purpose of committing acts prejudicial to the sovereignty and integrity of India by conspiring to target certain prominent members of society and religious places of the other communities to commit terrorist acts and to create communal disharmony in the society. As part of the larger conspiracy in furtherance of the activities of ISIS/IS-KP, a terrorist organization, the members of the module identified gullible Muslim youths and radicalized them through encrypted communication channels to join ISIS/IS-KP. In order to raise funds for such activities, they have committed criminal/illegal activities.

14. The specific charge against the appellant/2nd accused is that, he being the active cadre of Popular Front of India (PFI), involved in violent criminal activities of PFI. In 2024, he knowingly and willingly subscribed to violent pro-jihad ideologies of Jabath Al Nusrah, precursor to ISIS. In 2016, the appellant conspired with the 1st accused to physically join ISIS, a prohibited

terrorist organization by performing Hijrah to the controlled territories of ISIS, which did not materialise.

15. The learned counsel for the appellant, Sri. E.A. Haris, submitted that, altogether there are five accused persons in S.C. No. 1 of 2024. The appellant herein is the 2nd accused in S.C.No. 1 of 2024. The 5th accused was released on bail as per the order of the Apex Court on 13.12.2024. This Court has granted bail to the 1st and 3rd accused as per judgment dated 08.04.2025. The 4th accused was not arrested in this case and his statement under Section 164 Cr.P.C was recorded. The learned counsel submitted that the appellant has been in judicial custody from 06.09.2023.

16. The learned counsel for the appellant submitted that the 1st and 2nd accused are similarly placed with respect to the charges framed by the Investigating Agency. Therefore, it was contended that the appellant is equally entitled to be granted bail on the ground of parity. It was further pointed out that the final report has already been submitted in the case, and as such, the continued incarceration of the appellant is unwarranted and not necessary

17. The learned counsel would further urge that the 1st accused was arrested on 18.07.2023 and released on bail on 08.04.2025 after the incarceration of one year and eleven months. Likewise, the 3rd accused was

arrested on 02.08.2023 and released on 08.04.2025, ie., about 2½ years. The 5th accused was released after eleven months of his arrest.

18. The learned counsel for the appellant further submitted that there is no likelihood of the trial being completed in the near future. As per the final report, a total of 147 witnesses have been cited. Moreover, further investigation is still ongoing. It was also submitted that the voice recordings of the accused have been sent for forensic analysis, and the reports are awaited.

19. The first submission by the learned counsel for the appellant is that the appellant is entitled to get bail on the ground of parity. He pointed out that the 1st and 2nd accused in this case are on the same footing and pedestal, even as per the charge framed by the investigating agency.

20. We have perused the charge sheet submitted by the investigating agency. The charge against the accused No 1 and 2 have been detailed as clause 18. A careful perusal of paragraphs 18.1 and 18.2 in Annexure A1 final report, it can be seen that the charges against the 1st accused and the appellant are identical. The learned counsel for the appellant pointed out that the 1st accused was released on bail after one year and eleven months of incarceration in jail. The 2nd accused was arrested on 06.09.2023. He has been in jail for about one year and ten months.

Rule of Parity

22. It is true that there is no absolute rule of law mandating the grant of bail on the ground of parity. However, courts are often persuaded to grant bail where a co-accused, who stands on the same footing as the applicant, has already been released on bail.

23. No one can claim bail as a matter of right solely on the ground of parity. Even if the co-accused, who are similarly placed, have been granted bail, it is always open to the courts to independently evaluate the facts and circumstances of each case before arriving at a conclusion. The grant or denial of bail depends on the specific facts and merits of the individual case. There is no hard and fast rule or straitjacket formula that can be laid down in such matters.

24. Indeed, the concept of parity emanates from Article 14 of the Constitution of India. The word 'equality' means and includes parity also. Article 14 of the Constitution of India is extracted hereunder:

> **"14. Equality before law**
>
> The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

25. The fundamental rights guaranteed under Article 14 of the Constitution of India, that is the right to equality before the law and equal protection of the laws are equally applicable to a person accused of an offence, whether he is in custody or released on bail.

26. The Apex Court in **Sunil Batra v. Delhi Admn.,**[7] held as under:

> "53. True, our Constitution has no 'due process' clause or the VIII Amendment; but, in this branch of law, after Cooper 1971 (1) SCR 512 and Maneka Gandhi 1978 (1) SCC 248 the consequence is the same. For what is punitively outrageous, scandalisingly unusual or cruel and rehabilitatively counter productive, is unarguably unreasonable and arbitrary and is shot down by Art.14 and 19 and if inflicted with procedural unfairness, falls foul of Art.21. Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or under trial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no, lest social justice, dignity of the individual, equality before the law, procedure established by law and the seven lamps of freedom (Art.19) become chimerical constitutional claptrap. Judges, even within a prison setting, are the real, though restricted, ombudsmen empowered to proscribe and prescribe, humanize and civilize the lifestyle within the concerns. The operation of Arts.14, 19 and 21 may be pared down for a prisoner but not puffed out altogether. For example, public addresses by prisoners may be put down but talking to fellow prisoners cannot. Vows of silence or taboos on writing poetry or drawing cartoons are violative of Art.19. So also, locomotion may be limited by the needs of imprisonment but binding hand and foot, with hoops of

[7] (1978) 4 SCC 494

steel, every man or woman sentenced for a term is doing violence to Part III. So Batra pleads that until decapitation he is human and so should not be scotched in mind by draconian cellular insulation nor stripped of the basic fellowship which keeps the spirit flickering before being extinguished by the swinging rope.

212. D. A. DESAI, J. (Concurring with Chandrachud, C. J.; S. Murtaza Fazal Ali; P. N. Shinghal, JJ.)
These two petitions under Art.32 of the Constitution by two internees confined in Tihar Central Jail challenge the vires of S.30 and 56 of the Prisons Act. Sunil Batra, a convict under sentence of death challenges his solitary confinement sought to be supported by the previsions of S.30 of the Prisons Act (for short 'the Act'); Charles Sobraj, a French national and then an under trial prisoner challenges the action of the Superintendent of Jail putting him into bar fetters for an unusually long period commencing from the date of incarceration on 6th July 1976 till this Court intervened by an interim order on 24th Feb., 1978. Such a gruesome and hair raising picture was painted at some stage of hearing that Chief Justice M. H. Beg, V. R. Krishna Iyer, J. And P. S. Kailasam J. who were then seized of the petitions visited the Tihar Central Jail on 23rd Jan., 1978. Their notes of inspection form part of the record.

There are certain broad submissions common to both the petitions and they may first be dealt with before turning to specific contentions in each petition. It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed (see Procunier v. Martinex, (1974) 40 L Ed 2d 224 at p. 248). However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for a crime does not reduce the person into a non person whose rights are subject to the whim of the prison administration and, therefore,

the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards (see Charles Wolff v. McDonnell, (1974) 41 L ed 2d 935 at p. 937). By the very fact of the incarceration prisoners are not in a position to enjoy the full panoply of fundamental rights because these very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed. In D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh 1975 (2) SCR 24" (AIR 1974 SC 2092) one of us, Chandrachud J., observed (at p. 2094 of AIR):

"Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms like the rights to move freely throughout the territory of India or the right to "practice" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Art.21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law."

Undoubtedly, lawful incarceration brings about necessary withdrawal or limitation of some of these fundamental rights, the retraction being justified by the considerations underlying the penal system (see Eve Pell v. Procunier (1974) 41 L Ed 2d 495 at p. 501).

(emphasis supplied)

27. In **Maneka Gandhi v. Union of India**[8]**,** it is held as under:

"56. Now, the question immediately arises as to what is

[8] (1978) 1 SCC 248

> the requirement of Art.14: What is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E. P. Royappa v. State of Tamil Nadu 1974 (2) SCR 348: (AIR 1974 SCS 555) namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.14". Art.14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non arbitrariness pervades Art.14 like a brooding omnipresence and the procedure contemplated by Art.21 must answer the test of reasonableness in order to be in conformity with Art.14. It must be 'right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Art.21 would not be satisfied."
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> *(emphasis supplied)*

28. In **Sunil Batra**'s case (supra), the Apex Court held that the prisoners are not denuded of all the fundamental rights guaranteed under Part III of the Constitution. In **Maneka Gandhi**'s case (supra), the Apex Court

emphasizes the principle of equality as antithesis to arbitrariness, unjustness and unfairness.

29. In the light of the above discussion, we are of the considered opinion that the principle of 'equality' enshrined in the Constitution inherently includes the concept of 'parity'. Accordingly, an accused person who is languishing in jail is entitled to claim parity with the co-accused to whom bail has already been granted.

30. We are of the considered view that, as a general rule, an accused is entitled to bail if a co-accused, who is similarly placed as that of the accused to whom bail has already been granted. The principle of parity ordinarily favours the grant of bail, in such circumstances. Parity is a rule of prudence commonly accepted and practiced in Indian Courts. However, this rule is subject to certain exceptions. If it is shown that the earlier grant of bail to the co-accused was based on erroneous considerations or a misconception of facts, or ignorance of the provisions of a statute or rule, the denial of bail to the other accused on the ground of parity may be legally justified.

31. In the case on hand, it could be seen that the charge against accused Nos.1 and 2 are exactly similar. Therefore, we find no reason to reject the bail of the appellant on the basis of parity.

32. In **Tarun Kumar v. Assistant Director Directorate of Enforcement**[9], the Apex Court in paragraph 19 of the judgment observed as under:

> 19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Art.14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Art.14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision."

33. In **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and Another**[10], the Apex Court held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. The Apex Court observed in paragraph 22 of the judgment in **Ramesh Bhavan Rathod**'s case (supra) as under:

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[9] 2023 KHC OnLine 6995

[10] 2021 KHC OnLine 6243

> "22. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P., (2014) 16 SCC 508, this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed:
>
> "17. Coming to the case at hand, it is found that when a stand was taken that the 2nd Respondent was a history sheeter, it was imperative on the part of the High Court to scrutinize every aspect and not capriciously record that the 2nd Respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non - application of mind. That apart, as a matter of fact it has been brought on record that the 2nd Respondent has been charge sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside."

34. The Apex Court in In **Ramesh Bhavan Rathod**'s case (supra), made it clear that while granting bail, on the principle of parity, the Courts have to scrutinize every aspect and ensure proper application of mind.

35. The second submission advanced by the learned counsel for the appellant is that the appellant was arrested on 06.09.2023 and has remained in judicial custody since then. It is submitted that the continued incarceration of the appellant is unwarranted, especially in view of the fact that the final report has already been filed on 12.01.2024. Furthermore, considering the large number of witnesses cited, voluminous documents and material objects, it is unlikely that the trial would be concluded in the near future. In such circumstances, the prolonged detention of the appellant amounts to a violation of the fundamental rights guaranteed under Part III of the Constitution of India

36. In order to buttress the above arguments, the learned counsel placed reliance on the judgments in **Najeeb**'s case (supra), **Javed Gulam Nabi Shaikh**'s case (supra) and **Asharaf Moulavi**'s case (supra).

37. The learned DSGI, placing reliance on the judgment in **Harpreet Singh Talwar**'s case (supra), submitted that prolonged incarceration in jail, by itself, is not a ground for the grant of bail. Each case is to be evaluated independently in the light of specific facts and risks associated with each case. The learned DSGI referred paragraphs 23 and 24 of the case which reads as under:

> "23. It may merit to discuss at the outset, the the scope and application of Section 43D(5) of UAPA whereunder the court, at

> the stage of bail is not required to meticulously examine the admissibility and reliability of evidence. The degree of satisfaction required under this provision has to be lower than the proof beyond reasonable doubt, but must still be rooted in material that is not inherently improbable or ex facie unreliable.
>
> 24. The rigour of Section 43D(5) of the UAPA would, however, in an appropriate case yield to the overarching mandate of Article 21 of the Constitution, especially where the trial is inordinately delayed or where the incarceration becomes punitive. However, such relaxation cannot possibly be automatic and must be evaluated in light of the specific facts and risks associated with each case, as has been previously clarified."

38. It is submitted that even after his arrest and during his production in Court, the appellant displayed the 'one-finger salute' (MO-44) and CW-79 and CW-80) associated with ISIS before the media, demonstrating his unwavering support for the organisation. She further pointed out that a voice clip of the appellant is sent for forensic comparison and the results are awaited. In that voice message, he states that "killing and looting of other religious believers is permissible and a good deed in Islam (Halal)". This message reflects the extremist mindset and inclinations to terrorist organisation of the appellant, as well as his attitude towards other religious communities. The learned DSGI urged that the appellant, Seyid Nabeel Ahammed, has been involved in multiple heinous offences that pose a direct threat to public peace and national integrity.

The appellant is involved in Crime No.461/2008 of Pavaratti Police Station, charged under sections 143, 147, 148, 341, 324, 326, 307, 153(A) and 149 of the Indian Penal Code. The appellant is also involved in Crime No.462/2008 of the same police station registered under sections 120(B), 153(A), 143, 147, 148, 447, 435, 427 and 149 of the Indian Penal Code. The appellant is a habitual offender and poses a grave risk to the society, if released.

39. Now the crucial question before us is whether the embargo under Section 43-D(5) of the UA(P) Act would stand in the way of granting bail to the appellant.

40. In **Najeeb** (supra), paragraphs 15, 17, 18 and 20 reads thus:

> "15. The facts of the instant case are more egregious than these two above - cited instances. Not only has the respondent been in jail for much more than five years, but there are 276 witnesses left to be examined. Charges have been framed only on 27/11/2020. Still further, two opportunities were given to the appellant - NIA who has shown no inclination to screen its endless list of witnesses. It also deserves mention that of the thirteen co - accused who have been convicted, none have been given a sentence of more than eight years' rigorous imprisonment. It can therefore be legitimately expected that if found guilty, the respondent too would receive a sentence within the same ballpark. Given that two - third of such incarceration is already complete, it appears that the respondent has already paid heavily for his acts of fleeing from justice.
>
> 16. .....

17. As regard to the judgment in NIA v. Zahoor Ahmad Shah Watali (supra), cited by learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had re - appreciated the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini - trial and determined admissibility of certain evidences, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under S.43 - D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the bail.

18. It is thus clear to us that the presence of statutory restrictions like S.43 - D(5) of UA(P)A per - se does not oust the ability of 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, 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 would safeguard against the possibility of provisions like S.43 - D (5) of UA(P)A being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. .....

20. Yet another reason which persuades us to enlarge the Respondent on bail is that S.43 - D(5) of the UA(P)A is comparatively less stringent than S.37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to

> commit another offence while on bail; there is no such pre - condition under the UA(P)A. Instead, S.43 - D(5) of UA(P)A merely provides another possible ground for the competent Court to refuse bail, in addition to the well - settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc."

41. The Apex Court held that the statutory restrictions like 43-D(5) of UA(P) Act would not oust the ability of the constitutional Court to grant bail on the ground of violation of Part III of the Constitution, while holding that the accused has the right to a speedy trial and if the same is not possible, Courts are obligated to enlarge him on bail.

42. In **Javed Gulam Nabi**'s case (supra), the Court reiterated the same principle. In this case, the appellant/accused was an under-trial prisoner for about four years without any charges being framed. Paragraphs 7 and 9 of the said judgment reads thus:

> "7. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India. Over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment.

43. In **Arvind Kejriwal v. CBI**[11], the Apex Court reiterated that the prolonged incarceration of an accused person, pending trial, would amount to unjust deprivation of personal liberty. The relevant paragraphs referred by the learned counsel are as follows:

> "38. The evolution of bail jurisprudence in India underscores that the 'issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process'(Gudikanti Narasimhulu v. Public Prosecutor, 1978 (1) SCC 240).The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty. This Court in Union of India v. K.A. Najeeb has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter 'UA(P)A') notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time (Union of India v. K.A. Najeeb, AIR 2021 SC 712).The courts would invariably bend towards 'liberty' with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law.

44. In **Athar Perwez v. UOI**[12] the Apex Court took the view that while deciding a case of bail under provisions of Section 43D UA(P) Act, the

[11] 2024 SCC OnLine SC 2550
[12] 2024 SCC OnLine Sc 3762

Court must go through the FIR and case diary to form an opinion by examining the broad probabilities of the allegations being prima facie true or not and when there is a gross delay in conclusion of the trial, a violation of Part III of the Constitution can be taken as a ground for releasing an under trial. Reference to paragraph 20 may be apposite.

> 20. 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 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.

45. We have carefully considered this point in view of the various judicial pronouncements of the Apex Court referred above. The embargo provided under Section 43D(5) of the UA(P) Act would not stand in the way of

the constitutional court in granting bail to an accused under Article 21 of the Constitution of India. In the instant case, even though the final report is filed, further investigation is going on. Voice recordings of the accused were taken and sent for analysis. As per the charge sheet, the prosecution has cited 147 witnesses, 161 documents and 55 material objects were produced to substantiate the charge. Therefore, there is no possibility of the completion of the trial in the near future, considering the large number of witnesses and voluminous documents. The appellant has been in jail for about one year and ten months. Considering the prolonged incarceration and the fact that the 1st accused, who stands on the same footing as the appellant, has already been released on bail, we are of the view that the appellant/2nd accused should also be released on bail, subject to stringent conditions

Conclusion

In the result,

(I) Crl.A.No. 767/2025 is allowed.

(II) The impugned order passed by the learned Special Court refusing bail to the appellant is set aside.

III) The appellant 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 each for the like sum to the satisfaction of the learned Special Court. 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) The appellant shall not leave the Revenue District of Ernakulam till the trial is over.

b) The appellant shall furnish to the Investigating Officer of the NIA, his place of residence in the district.

c) The appellant shall report before the investigating officer, NIA, on every Saturday and wednesday between 10 a.m. and 11 a.m. till the end of trial. However, it would be open for the appellant to seek modification before the Trial Court and if any such application is filed the same shall be considered on its merits and appropriate orders shall be passed.

d) The appellant 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 shall not tamper with evidence or attempt to influence or threaten any witnesses in any manner.

f) The appellant 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.

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 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/-

K. V. JAYAKUMAR
JUDGE

Sbna/

APPENDIX OF CRL.A 767/2025

PETITIONER ANNEXURES

Annexure A1	THE TRUE COPY OF THE RELEVANT PAGES OF FINAL REPORT IN SC NO.01/2024 BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA AT ERNAKULAM
Annexure A2	TRUE COPY OF THE ORDER DATED 13.12.2024 IN CRL.A. NO.5272/2024 ON THE FILES OF SUPREME COURT OF INDIA
Annexure A3	TRUE COPY OF THE JUDGMENT DATED 08.04.2025 IN CRL.A. NO. 2271/2024 ON THE FILES OF THIS HON'BLE COURT
Annexure A4	TRUE COPY OF THE JUDGMENT DATED 08.04.2025 IN CRL.A. NO. 2362/2024 ON THE FILES OF THIS HON'BLE COURT
Annexure A5	THE TRUE COPY OF THE ARGUMENT NOTES DATED 10.04.2025 IN CRL.M.P NO.106 OF 2025 IN SC NO.01/2024 BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA AT ERNAKULAM
Annexure A6	THE TRUE COPY OF THE OBJECTION DATED 04.04.2025 IN CRL.M.P NO.106 OF 2025 IN SC NO.01/2024 BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA AT ERNAKULAM