

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 16TH DAY OF DECEMBER 2021 / 25TH AGRAHAYANA, 1943

CRL.A NO. 325 OF 2021

AGAINST THE ORDER DATED 12.03.2021 IN CRL.M.P NO.34/2021 IN
S.C.NO.03/2016/NIA OF SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA,
ERNAKULAM

APPELLANT/PETITIONER/ACCUSED NO.8:

IBRAHIM @ BABU,
AGED 67 YEARS,
S/O. ABU,
MUKKILPEEDIKA,
NEDUMBALA, MEPPADI P.O. MEPPADI ,
WAYANAD DISTRICT PIN-673 577.

BY ADVS.
C.P.PEETHAMBARAN
SMT.MINI.V.A.
SMT.P.A.SHYNA

RESPONDENT/COMPLAINANT:

UNION OF INDIA,
REPRESENTED BY NATIONAL INVESTIGATION AGENCY (N.I.A.),
GIRINAGAR HOUSING COLONY,
GIRI NAGAR HOUSING SOCIETY KADAVANTHRA,
ERNAKULAM - 682 020.

OTHER PRESENT:

SRI.S.MANU - ASG OF INDIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
16.12.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

Crl.Appeal No. 325 of 2021

Dated this the 16th day of December, 2021

JUDGMENT

Vinod Chandran, J.

The appeal is against an order, refusing bail to the 8th accused in S.C.No. 3/2016/NIA. The offence alleged is under the Unlawful Activities (Prevention) Act, 1967. The learned Judge has looked at the precedents and has found that going by the teeth of the rigour of Section 43D(5) of the UAPA Act, the applicant cannot be granted bail, since the allegations against him are *prima facie* true. In fact, the allegation against the 8th accused was that he supplied arms to the group, who are propounding Maoist ideology. The said group had also trespassed into the house of a Police Officer, trained a gun at him and threatened him with death, if he does not resign his job and stop helping the Police in Anti-Maoist operations. The assailant group had also set ablaze the motor cycle of the said Police Officer, hurled pamphlets inside his house and pasted posters on the front wall of the house, calling for an

armed revolution against the Government of India.

2. Even according to the learned Judge, the evidence against the 8th accused is that of the approver. The learned counsel for the appellant specifically points out page 86 of the paper book, which is the approver's statement under Section 164. According to the approver, A7 and A8 were residing together and they were seen together at many places. It is also submitted that they shared the same ideology. As far as the specific allegation pointed by the learned counsel for the appellant, it was that when the approver was with A7 and A8, A7 made some statements about an intended action and there were 4 bags with A7, which from the weight and the shape of the objects inside it, appeared to be arms. But, for the fact that A8 shared the same ideology as A7 and was living along with him and that he was aware of the planning, which led to the said incident; *prima facie*, there is nothing to show his active involvement.

3. One other circumstance is the medical condition of the appellant, which is stated to be very critical. The appellant had also suffered one Cardiac Arrest, while he was in confinement. The appellant is aged 67 years old and is also suffering from multiple ailments. The learned ASG also submits that the trial is

going on and there should be no hindrance to the day to day examination of the witnesses.

4. Considering the totality of the circumstances, we are of the opinion that the appellant shall be released on bail, on the following conditions:

(i) The petitioner shall be released on bail on execution of a bond for Rs.50,000/-(Rupees fifty thousand only), with two solvent sureties, each for the like amount to the satisfaction of the Trial Court;

(ii) From the date of his release, he shall report before the S.H.O, Ernakulam Town Police Station between 10.00 A.M. and 11.00 A.M. on every Friday starting from 24.12.2021.

(iii) He shall not involve in any offence while on bail;

(iv) The appellant shall also file an affidavit before the lower court, undertaking not to object to the day to day proceedings of trial, which shall be carried out either in the presence of himself or his Advocate.

(v) The appellant/accused shall appear before the Trial Court when any witness is examined, who has to identify the appellant/accused and if not present, he shall waive his right to raise the question of identification.

(vi) The accused shall also not leave the jurisdictional limits of the Ernakulam District, without prior permission obtained from the Trial Court.

The Cr1.Appeal is disposed of.

**Sd/-
K.VINOD CHANDRAN
JUDGE**

**Sd/-
C.JAYACHANDRAN
JUDGE**

APPENDIX

PETITIONER'S ANNEXURES

- ANNEXURE A1 THE COPY OF FIR DATED 25.4.14 IN CRIME NO. 142/2014 OF VELLAMUNDA POLICE STATION, WAYANAD.
- ANNEXURE A2 THE COPY OF F.I.R. IN CRIME NO. 327/2015 OF PAYYOLI POLICE STATION, KOZHIKODE.
- ANNEXURE A2 (A) THE COPY OF F.I.S. IN CRIME NO. 327/2015 OF PAYYOLI POLICE STATION, KOZHIKODE.
- ANNEXURE A3 TRUE COPY OF RELEVANT PAGES OF THE CHARGE SHEET IN S.C. NO. 1/2016 ON THE FILES OF SESSIONS COURT, KALPETTA.
- ANNEXURE A4 CERTIFIED COPY OF 164 STATEMENT OF A6 TURNED APPROVER.
- ANNEXURE A5 TRUE COPY OF THE ORDER DATED 4.4.2016 IN CRL.M.P. NO. 39/2016 IN RC. NO. 01/2016/NIA/KOC OF SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA, ERNAKULAM.
- ANNEXURE A6 TRUE COPY OF THE ORDER DATED 25.5.2017 IN CRL.M.P. NO. 114/2017 IN S.C. NO. 3/2016/NIA OF SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA, ERNAKULAM.
- ANNEXURE A7 TRUE COPY OF THE ORDER DATED 8.9.2017 IN CRL. M.P. NO. 191/2017 IN S.C. NO. 3/2016/NIA OF SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA, ERNAKULAM.
- ANNEXURE A8 TRUE COPY OF THE ORDER DATED 7.11.2017 IN CRIMINAL APPEAL NO. 913/2017 OF THIS HON'BLE COURT.
- ANNEXURE A9 TRUE COPY OF THE RELEVANT PAGES OF SUPPLEMENTARY CHARGE SHEET IN S.C. NO. 3/2016 /NIA OF SPECIAL COURT FOR TRIAL OF NIA CASES , KERALA ERNAKULAM.
- ANNEXURE A10 TRUE COPY OF THE ORDER DATED 2.11.2018 IN CRL.M.P. NO. 144/2018 IN S.C. NO. 3/2016/NIA OF SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA, ERNAKULAM.
- ANNEXURE A11 TRUE COPY OF THE COVERING LETTER DATED 10.12.2021 SENT BY THE SUPERINTENDENT OF CENTRAL PRISON & CORRECTIONAL HOME, VIYYUR, THRISSUR TO THE SPECIAL COURT FOR NIA CASE, ERNAKULAM ALONG WITH MEDICAL RECORDS OF THE APPELLANT

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ANNEXURE A12

TRUE COPY OF THE DAILY STATUS OF CASE
NO.SC/0200003/2016 OF SPECIAL COURT FOR NIA
CASES, ERNAKULAM

RESPONDENT'S ANNEXURE

ANNEXURE R1(A)

TRUE COPY OF THE JUDGMENT DATED 13.12.2018 IN
CRL.APPEAL NO.1384 OF 2018

//TRUE COPY// PA TO JUDGE