



2025:KER:27791

Crl.A. Nos.228/2025,
225/2025 & 242/2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

CRL.A NO. 228 OF 2025

AGAINST THE ORDER DATED 18.12.2024 IN CRMP 354/2024 IN SC
NO.2 OF 2023 OF SPECIAL COURT FOR TRIAL OF NIA CASES,
ERNAKULAM

APPELLANT/PETITIONER/ACCUSED NO.33:

NASSAR
AGED 47 YEARS
S/O.MAMMY, KALLIVALAPPIL HOUSE, KUMARIKAYATTAM,
KEEZHAYUR, PATTAMBI POST, PALAKKAD DISTRICT,
PIN - 679303

BY ADVS.
E.A.HARIS
P.P.HARRIS



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RESPONDENTS/RESPONDENTS/COMPLAINANT

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

- 2 INSPECTOR OF POLICE
 NATIONAL INVESTIGATION AGENCY, NIA KOCHI UNIT,
 KOCHI, PIN - 682020

BY ADVS.
SREENATH S
SASTHAMANGALAM S. AJITHKUMAR (SR.), DSGI FOR NIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.04.2025, ALONG WITH CRL.A.225/2025 & 242/2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

CRL.A NO. 225 OF 2025

AGAINST THE ORDER DATED 20.12.2024 IN CRMP 482/2024 IN SC
NO.2 OF 2023 OF SPECIAL COURT FOR TRIAL OF NIA CASES,
ERNAKULAM

APPELLANTS/PETITIONERS/ACCUSED NOS. 25, 27, 31 & 32:

- 1 JAMSHEER H
AGED 31 YEARS
S/O.HAKEEM, 32/192(1), KAREEM NAGAR, PUTHUPALLITHERU,
PALAKKAD DISTRICT, KERALA (SUNDARAM COLONY, KALPATHY,
PALAKKAD DISTRICT, PIN - 678004
- 2 ABDUL BASITH
AGED 29 YEARS
S/O. MUHAMMED SHEREEF, 48/1248, U.P SCHOOL PALLI
STREET, BOC ROAD, PATTIKKARA, PALAKKAD DISTRICT,
PIN - 678014
- 3 MUHAMMED SHEFEEK K
AGED 25 YEARS



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S/O. KOYA. M @ KOYAKUTTY, PULINTHARAKKAL HOUSE,
CHADANAMKURUSSI, THANAL NAGAR, NURANI, PALAKKAD
DISTRICT, PIN - 678004

4 ASHRAF K
AGED 35 YEARS
S/O. KOYA, 13/379, KUNDUKATTIL HOUSE, PARUVAKKADAVU,
PATTAMBI, PALAKKAD, PIN - 679303

BY ADVS.
E.A.HARIS
P.P.HARRIS

RESPONDENTS/RESPONDENTS/COMPLAINANT:

- 1 UNION OF INDIA
REPRESENTED BY SUPERINTENDENT OF POLICE, NATIONAL
INVESTIGATION AGENCY, KOCHI, PIN - 682020
- 2 INSPECTOR OF POLICE
NATIONAL INVESTIGATION AGENCY, NIA KOCHI UNIT, KOCHI,
PIN - 682020

BY ADVS.
SREENATH S
SASTHAMANGALAM S. AJITHKUMAR (SR.), DSGI FOR NIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.04.2025, ALONG WITH CRL.A.228/2025 & CRL.A.242/2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

CRL.A NO. 242 OF 2025

AGAINST THE ORDER DATED 18.12.2024 IN CRMP 481/2024 IN SC
NO.2 OF 2023 OF SPECIAL COURT FOR TRIAL OF NIA CASES,
ERNAKULAM

APPELLANTS/PETITIONERS/ACCUSED NOS. 29, 30 & 51

- 1 JISHAD B
AGED 33 YEARS
S/O. BADARUDHEEN, MEB MANZIL, NAVAKKODE,
KODUVAYUR, PALAKKAD DISTRICT, PIN - 678501
- 2 ASHRAF @ ASHRAF MOULAVI
AGED 49 YEARS
S/O.KUNJAPPU MUSLIYAR, CHAPPANGATHODI HOUSE,
MARUTHUR POST, PATTAMBI, PALAKKAD DISTRICT,
PIN - 679303



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3 SIRAJUDHEEN
 AGED 39 YEARS
 S/O. ALAVI, NJARAKATTIL HOUSE, OMACHAPPUZHA,
 KARINKAPPARA, TIRUR, MALAPPURAM DISTRICT,
 PIN - 676101

BY ADVS.
E.A.HARIS
P.P.HARRIS

RESPONDENTS/RESPONDENTS/COMPLAINANT:

⋮

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

2 INSPECTOR OF POLICE
 NATIONAL INVESTIGATION AGENCY, NIA KOCHI UNIT, KOCHI,
 PIN - 682020

BY ADVS.
SREENATH S
SASTHAMANGALAM S. AJITHKUMAR (SR.), DSGI FOR NIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
02.04.2025, ALONG WITH CRL.A.228/2025 & CRL.A.228/2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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"CR"

J U D G M E N T

[CRL.A Nos.228/2025, 225/2025 & 242/2025]

Raja Vijayaraghavan, J.

These Criminal Appeals have been preferred under Section 21 of the National Investigation Agency Act, 2008.

2. Crl. Appeal No. 225 of 2025 is preferred by the accused Nos. 25, 27, 31 and 32, Crl. Appeal No. 228 of 2025 is preferred by the accused No. 33 and Crl. Appeal No. 242 of 2025 is preferred by the accused Nos. 29, 30 and 51 in S.C.No. 2/2023/NIA on the file of the Special Court for Trial of NIA Cases, Ernakulam.

3. In the above case, they, along with the rest of the accused, stand indicted for having committed offences punishable 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. Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 and Sections 13, 16, 18, 18A, 18B, 20, 22C, 23, 38



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& 39 of Unlawful Activities (Prevention) Act, 1967 and Section 25 (1) (a) of the Arms Act, 1959.

4. By the order passed by the learned Special Court, the applications for bail preferred by the appellants were dismissed.

5. **The brief facts of the case are as follows:**

5.1. The Central Government received credible and actionable intelligence indicating that the office bearers, members, and cadres of the Popular Front of India (PFI)—a registered society—and its affiliated organisations in Kerala had conspired to instigate communal violence and radicalise their cadres to commit terrorist acts in the State of Kerala and other parts of the country.

5.2 The intelligence revealed that PFI members and office bearers based in Kerala, many of whom had earlier s with the proscribed terrorist organisation SIMI (Students Islamic Movement of India), maintained operational linkages with other internationally proscribed terrorist organisations such as Lashkar-e-Taiba (LeT), the Islamic State of Iraq and Syria (ISIS)/Daesh, and Al-Qaeida. Some members of the PFI cadres were themselves members of these banned terrorist groups.



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5.3 It was revealed that the PFI had allegedly created an organised network with the objective of recruiting vulnerable Muslim youth into proscribed international terrorist organisations to facilitate the commission of terrorist acts. Moreover, PFI and its members were reportedly engaged in activities prejudicial to public order and harmony by inciting hatred between different religious communities through incendiary speeches, publications, articles, and social media posts. Their actions were aimed at disrupting public tranquillity, and evidence pointed to organised movements intending to train participants in the use of criminal force against individuals of other religions or groups—thereby instilling fear, terror, and a sense of insecurity among members of other communities.

5.4 The PFI and its members were allegedly responsible for several violent incidents and murders in Kerala, which created a sense of terror in the minds of the general public. Additionally, it is alleged that PFI, its office bearers, and its members were indulging in unlawful activities with the intent to foment disaffection against the Indian State by provoking individuals, especially innocent members of the Muslim community, to defy the Government and institutions established by law—thereby undermining the sovereignty and integrity of India.



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5.5 Based on the above facts and the gravity of the allegations, the Central Government formed the opinion that the activities of the Popular Front of India attracted offences punishable under Sections 120B and 153A of the Indian Penal Code, 1860, and Sections 13, 18, 18B, 38, and 39 of the Unlawful Activities (Prevention) Act, 1967, which are scheduled offences under the National Investigation Agency Act, 2008.

5.6. Being satisfied that the above acts had serious ramifications for national security, the Ministry of Home Affairs, Government of India, CTCR Division, vide Order No. 11011/82/2022-NIA dated 16.09.2022, directed the National Investigation Agency (NIA) to take up the investigation. In compliance with the said direction, a case was registered as RC-02/2022/NIA/KOC at the NIA Police Station, Kochi, on 19.09.2022 under the aforementioned provisions, and the First Information Report (FIR) was submitted before the jurisdictional Court.

5.7. During the course of the investigation, it was revealed that Crime No. 318/2022 of Palakkad Town South Police Station, which involved the murder of one Sreenivasan, a BJP activist, was a connected offence under Section 8 of the NIA Act. In the said case, the Kerala Police had laid a final report arraying 44 persons as the



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accused and charged them for having committed offences punishable under Sections 120B, 34, 118, 119, 109, 115, 143, 144, 147, 148, 449, 341, 201, 212, 302 r/w. Section 149 of the Indian Penal Code and Section 3(a)(b)(d) r/w. Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988. The case records in Crime No. 318 of 2022 of Palakkad Police Station were transferred to the Special Court.

5.8 Accordingly, the Government of India, Ministry of Home Affairs, vide order dated 11011/82/2022/NIA, directed the NIA to investigate FIR No. 318/2022 dated 16.04.2022 of Palakkad Town South Police Station, Kerala, under the provisions of the NIA Act, 2008.

5.9. It is alleged that the 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).

5.10. On 28.09.2022, the Government of India declared the Popular Front of India and its affiliates/frontal organisations as an "Unlawful Association" under the provisions of the Unlawful Activities (Prevention) Act, 1967.



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5.11. The prosecution alleges that the 1st accused, Popular Front of India, its office bearers, leaders and members besides their affiliates, hatched a conspiracy during the past 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 carried out various activities including uniting Muslims under the flag of PFI, forming alliances with certain groups, stockpiling weapons and explosives, etc. They also intended to eliminate those who act against the interest of PFI and recruit enough trained cadres and stockpile of arms to declare a new Constitution based on Islamic Principles.

5.12. 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, and 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



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to "Target" the individuals as and when required by the terrorist gang. The PFI had trained its cadres for the collection of such data and had stored them, and provided the same to their assault teams in 'Service Wing' for attack as and when decided by their leadership.

5.13. 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 its multiple facilities and affiliated institutions, including the institutions run in the name of 'Trusts', besides other places, to conduct such training camps and secret meetings. The PFI used these trained cadres to eliminate 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".



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5.14. The PFI, its office bearers and cadres had conspired to commit the terrorist act by killing any targeted person of another religion/section of the society to create terror in the minds of other communities and the public at large. In furtherance to that, PFI leaders and cadres carried out intensive recce on members of other religions, particularly the Hindu community and compiled the same for targeting through their 'Service Wing/Hit teams'.

5.15. In murder cases involving PFI cadres, including the one in Crime No. 318 of 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 in a particular community and were killed to create terror in the society. Several persons were recce'd to become possible targets. The PFI through such acts intended to disturb harmony among the society and to terrorise people within the society with a view to creating a sense of fear and insecurity in their minds. The PFI also intended to instill confidence among its cadres by executing such acts. The plans so made were executed to prevent any defiance of their command in future.



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5.16. 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. Srinivasan of Palakkad. They, in furtherance to the conspiracy, set out to commit terrorist act on 16.04.2022 for which 5 accused persons (A-17 to A-21) came on three 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 murder him brutally, so as to create terror in the mind of other communities and public at large. The above act of murder is in furtherance of the larger conspiracy of the 1st accused, to create terror.

5.17 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



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propagation. The PFI, its leaders and cadres have incited the people by provocative speeches and slogans to cause communal disharmony.

5.18. 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. Section 302 of IPC, Section 3(a)(b)(d) r/w. Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 and Sections 13, 16, 18, 18A, 18B, 20, 22C, 23, 38 & 39 of Unlawful Activities (Prevention) Act, 1967 and Section 25 (1) (a) of Arms Act, 1959.

6. The case of the appellants:

6.1 According to the appellants, the common case against them in the final report is that they attended a conspiracy and conducted recce along with other accused and took a prominent part in facilitating the murder of Sreenivasan. They raise the following contentions to assail the order passed by the learned Special Court and to persuade this Court to set them at liberty by granting bail to them.



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- a) In Crime No. 318/2022, the investigation was conducted by the Kerala Police, and they came to the conclusion that the murder was committed in retaliation to the murder of a PFI Activist by name 'Subair'. In other words, it was a case of political murder. However, when the NIA took up the investigation and laid the final report, they came up with an allegation that there was a larger conspiracy to commit the murder of Hindu leaders. A communal colour is being given to the whole incident to invite the provisions of the Unlawful Activities (Prevention) Act.
- b) A proper evaluation of the records will not reveal that the allegations attract the provisions of Section 15 of the UAP Act.
- c) The records collected by the NIA would not reveal that any of the appellants have acted to establish Islamic Rule in India within the year 2047.
- d) The PFI was categorised as an unlawful organisation in the month of September 2022 and even if the appellants were members of the said organisation prior to the imposition of the ban, they cannot be roped in under UAP Act. The mere fact that there are some photographs showing that some of the appellants were in PFI uniform prior to the ban cannot be taken as an



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incriminating circumstance against them.

- e) The invocation of Section 8 of the UAP Act with a view to make Crime No. 318 of 2022 of the Palakkad Town South Police Station, a connected case to the case registered by the NIA, is illegal.
- f) The final report filed by the NIA includes more than 1600 documents, 900 witnesses, 52 protected witnesses, 670 material objects and ten terabytes of FSL reports. There is no likelihood of the case concluding in the near future as the proceedings have been stayed by the Apex Court in SLP (Crl) No. 3658/2024, interdicting the framing of the charge. In view of the law laid down in **Union of India v. K.A.Najeeb¹, Javed Gulam Nabi Shaikh v. State of Maharashtra and Another², Athar Parwez v. Union of India³, Jalaluddin Khan v. Union of India⁴**, some of the appellants who have been in custody for more than two years and four months are entitled to bail.
- g) The details of the period during which the appellants have been in custody are as under:

¹ [(2021) 3 SCC 713]

² [(2024) SCC OnLine SC 1693]

³ [(2024) SCC OnLine SC 3762]

⁴ [2024 SCC OnLine SC 1945]



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Accused No. 29 (Jishad)- from 10.5.2022 onwards

Accused No. 30 (Ashraf @ Ashraf Moulavi) from 24.5.2022 onwards

Accused No. 51 (Sirajudheen) from 16.09.2022 onwards

Accused No. 33 (Nassar) from 14.05.2022 onwards

Accused No. 25(Jamsheer) from 31.10.22 onwards

Accused No. 27 (Abdul Basith Ali) from 26.04.2022 onwards

Accused No. 31 (Mohammed Shefeek) from 13.12.2022 onwards

Accused No.32 (Ashraf K.) from 07.11.2022 onwards.

The above dates reveal that the accused have been in custody, ranging from two years and four months in the case of Accused No. 32 and 2 years and 11 months in the case of Accused No. 27.

- h) The allegation against the appellants is that they were part of the larger conspiracy and underwent physical and arms training imparted by PFI at Malabar House. It is also alleged that some of them had harboured the accused and provided vehicles for conducting recce. However, no credible materials have been collected to substantiate the above allegations. The bail applications filed by the co-accused were considered by a coordinate bench of this Court and



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persons facing identical allegations have been granted bail.

- i) Accused No.31 (Mohammed Shefeek K.) has not been arrayed as an accused in Crime No. 318/2022 of the Palakkad Town South Police Station.

6.2. The respondents filed objections clearly narrating the role played by each appellant. According to them, clinching materials have been collected to substantiate that the appellants and their associates, being members of an Unlawful Association like the PFI, have conspired to establish Islamic Rule in India under a hidden agenda. The records collected also reveal that they were members of a terrorist gang and they were preparing themselves for the commission of a terrorist act by imparting/undergoing arms training, collecting the details of targets and also committing a terrorist act of murder of Sreenivasan on 16.04.2022, as part of a larger conspiracy to instil fear on Hindu community and to establish Islamic Rule in India. We shall deal with the objections while considering whether the allegations against the applicant can be held to be prima facie true at the time of consideration of the bail application.

6.3. Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an



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application for bail. They are:

- (i) whether there is any prima facie reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail. [See: **State of U.P. v. Amarmani Tripathi⁵**].

7. **The implications of 43D(5) of the Unlawful Activities (Prevention) Act, 1967:**

7.1. Section 43-D of the 1967 Act, inserted by Act 35 of 2008 w.e.f. 31-12-2008 provides for a modified application of certain offences punishable under Chapters IV and VI of the Act. It would be apposite to refer to Sub-sections (5), (6)

⁵ (2005) 8 SCC 21



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and (7) of Section 43-D.

"43-D. Modified application of certain provisions of the Code.—

- | | | | |
|-----|--------|-------|-----|
| (1) | xxxxxx | xxxxx | xxx |
| (2) | xxxxxx | xxxxx | xxx |
| (3) | xxxxxx | xxxxx | xxx |
| (4) | xxxxxx | xxxxx | xxx |

- (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

- (6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.
- (7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if



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he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

7.2. A bare reading of sub-section (5) of Section 43-D shows that apart from the fact that subsection (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 43-D 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. (See **Gurwinder Singh v. State of Punjab⁶**).

7.3. In **Gurwinder** (supra), the Apex Court followed and reiterated the observations in **NIA v. Zahoor Ahmad Shah Watali⁷**, in which case elaborate

⁶ [(2024) 5 SCC 403]

⁷ [(2019) 5 SCC 1]



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guidelines on the approach that courts must partake in, in their application of the bail limitations under the UAP Act were laid down. Those guidelines are the following:

32.1. **Meaning of “prima facie true” :**

On the face of it, the materials must show the complicity of the accused in the commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

32.2. **Degree of satisfaction at pre charge-sheet, post charge-sheet and post-charges — compared :**

“26. ... once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. A similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after the filing of the first report made under Section 173 of the Code”



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32.3. **Reasoning, necessary but no detailed evaluation of evidence :**

"24. ... the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage."

32.4. **Record a finding on broad probabilities, not based on proof beyond doubt**

"The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

32.5. **Duration of the limitation under Section 43-D(5)**

"26. ... the special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof."

32.6. **Material on record must be analysed as a "whole"; no piecemeal analysis**

"27. ... the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance."



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32.7. **Contents of documents to be presumed as true :**

"27. ... The Court must look at the contents of the document and take such document into account as it is."

32.8. **Admissibility of documents relied upon by prosecution cannot be questioned :**

The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.... In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.

7.4. In **Thwaha Fasal v. Union of India**⁸, the Apex Court dealt with the scope of Section 43-D(5) UAPA. It was held as follows in para 26 of the judgment:

26. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available

⁸[(2022) 14 SCC 766]



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against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the court while examining the issue of prima facie case as required by sub-section (5) of Section 43-D is not expected to hold a mini trial. The court is not supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the court has to take the material in the charge-sheet as it is.

8. Long incarceration and delay in trial whether a consideration for grant of bail.

8.1. In another line of decisions of the Apex Court, while considering applications for bail involving cases under the TADA Act, PMLA, and UAPA, has explained that the Constitutional Courts shall have the power to grant bail taking note of the long period of incarceration and the unlikelihood of the trial being completed anytime soon. It was held that such powers are traceable to Article 21 of the Constitution, notwithstanding the statutory embargo created by Section 43-D(5) of the UAPA.



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8.2. In **Shaheen Welfare Assn. v. Union of India**⁹, the Apex Court taking note of the long incarceration suffered by the accused, granted bail to the accused by categorising them into different groups based on their involvement and role and ordered their release if the conditions are satisfied. Reference was also made to the observations in **Kartar Singh v. State of Punjab**¹⁰, wherein it was held that no one can justify the gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21. It was held that there is a need to adopt a pragmatic and constitutionally sensitive approach in situations where an undertrial is deprived of personal liberty for an extended period and there is no reasonable prospect of the trial concluding within a foreseeable timeframe. In paragraph 14 of the said judgment, the Supreme Court observed that where undertrials are not directly accused of engaging in terrorist acts, but are instead booked under Sections 120B or 147 of the Indian Penal Code, or merely found in possession of allegedly incriminating material, a lenient view may be taken taking note of the long period of incarceration that has been undergone. The Court further held that in such cases, release may be considered if the undertrials have been in custody for periods of three years and two years, respectively.

⁹ [(1996) 2 SCC 616]

¹⁰ [(1994) 3 SCC 569]



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8.3. In **Union of India v. K.A. Najeed** (supra), the Apex Court has clarified that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. Reliance was placed on the judgment in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India**¹¹, wherein it was held that undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail. The Apex Court went on to observe 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 the commencement of proceedings, the courts are expected to appreciate the legislative policy against the 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

¹¹ [(1994) 6 SCC 731]



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substantial part of the prescribed sentence. Such an approach 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 the constitutional right to a speedy trial. (emphasis supplied)

8.4. In **Javed Gulam Nabi Shaikh** (supra), the Apex Court reiterated that the presence of statutory restrictions like Section 43D(5) or Section 37 of the NDPS Act, per se, do not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. In the said case, the accused had been undergoing incarceration for about 4 years. The following pertinent observations were made:

16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.



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17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

18. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

19. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

8.5. In **Athar Parwez** (supra), the facts were that Athar along with the co-accused were arrested on the ground that he was an active member of the PFI and that they were planning to cause disturbance during the proposed visit of the Prime Minister to Patna. During the raid that was carried out certain recoveries were carried out, prominent amongst them was a document titled "India 2047 towards rule of Islam in India. His application for bail having been dismissed, he approached



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the Apex Court seeking bail. One of the contentions was prolonged incarceration without trial. In the said case, the accused had been undergoing incarceration for 2 Years and 4 months at the time of consideration of the Appeal by the Apex Court. While allowing the application on the ground of prolonged incarceration, the Apex Court observed as under:

32. The Appellant was arrested on 12.07.2022. He has undergone custody for more than two years and four months. Chargesheet was filed on 07.01.2023 but till date charges have not been framed which is an admitted position. There are 40 accused and 354 witnesses cited by the prosecution to be examined. There can be no doubt that the trial is not likely to complete soon, and as has been laid down by various judgments of this Court as has been referred to above, the Appellant cannot be allowed to languish in jail indefinitely and that too without a trial. If such an approach is allowed Article 21 of the Constitution of India would stand violated. The ratio as laid down by this Court in Union of India v. K.A. Najeeb (supra) as also the other judgments in Javed Ghulam Nabi Shaikh v. State of Maharashtra (supra) and Thwaha Fasal v. Union of India (supra) would be applicable to this case and would squarely apply entitling the Appellant for grant of bail.



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8.6. In the light of these guiding principles, we shall now proceed to decide whether the appellants have made a case for the grant of bail for which purpose we shall briefly detail the charge levelled against the particular accused and the objections raised by the respondent. We shall also consider the nature of accusations against the respective appellants in light of the principles laid down in **Shaheen Welfare Assn.** (supra) and **Athar Parwez** (supra) and examine whether the period of incarceration undergone by them and the likelihood of the trial being delayed will entitle them to bail.

9. **Allegations and materials against the accused in general:**

As against all the appellants, some allegations are common. They are all part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047. The statements of protected witnesses 2, 14, 16 are relied on to substantiate the same. Voice clips, which were recovered from the mobile phone of Mohammed Mubarak (A15), are relied upon to prove the conspiracy. Reliance is also placed on the statements of protected witnesses to substantiate that Arms training was being imparted and attended by PFI cadre and leaders at various



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training centres of PFI. The hit list of 197 persons seized from the custody of Muhammed Sadik (A17 now approver) is another material relied on by the prosecution. Statement of Mohammed Shajid (A37 now approver), to prove that the assailants attended Arms training at Falah Mosque and Valluvanad House at Palakkad. Route Maps of a temple at Edappal, photo of main witness in Crime No. 618 of 2017 seized from the possession of Sirajudheen (A51). Protected Document Nos. 1 and 2 and Document Nos. 40 to 43, containing a hit list of various persons.

10. Allegations and Role of the concerned appellant:

10.1 Crl. A. No. 228/ 2025

Appellant - Nassar (Accused No. 33 in charge)

Date of arrest: 14.05.2022

(Period of pre-trial detention undergone - 2 Years 10 Months and 17 Days)

Charge:

That, the accused Nassar @ Laden Nassar, being an active cadre of PFI, knowingly and intentionally became a member of terrorist gang formed by PFI



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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. Being a member of terrorist gang, he attended conspiracy meeting held at his Curtain Shop at Pattambi on 15th of 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 which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. He provided his Red Swift car with Regn No. KL-55-D-4700 to Abdul Rasheed (A-28) for recce and also for committing terrorist act of murdering Srinivasan. He along with Ansar (A-25), Abdul Rasheed (A-28), Ashraf Maulavi (A-34) and Ali (A-43) conspired at his shop for destroying of evidence and in furtherance to the same, he concealed the vehicle used for the offence and mobile phone of A-28. He also committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

Contentions of the appellant:

- a) The appellant is innocent of the allegations.



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- b) No case for the State Police that the murder of Sreenivasan was a terrorist act.
- c) There is no material to substantiate that the appellant was a member of the conspiracy to overthrow the democracy in India and to implement "Islamic Rule by 2047". The mere fact that he is alleged to have taken part in the conspiracy to murder Srinivasan will not show that he had participated in the larger conspiracy and had connections with the main offence alleged in R.C.No.2 of 2022.
- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047" - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) The mere fact that in some of the photographs, the appellant was found wearing PFI uniform cannot be used to connect him with the conspiracy. Crime No. 318 of 2022 occurred on 16.04.2022, whereas



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PFI was branded an unlawful only during September 2022. The mere fact that the appellant was having membership in the said Organisation prior to his ban will not constitute any offence.

- g) The appellant has been in custody for more than 2 years and 10 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) Nassar (A33) is part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047.
- b) He attended a conspiracy meeting held in his curtain shop at Pattambi on 15.04.2022. The CDR shows his presence.
- c) He provided his KL-55 D/4700 Red Swift car for conducting recce of targets and also for committing the terrorist act of murdering



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Srinivasan.

- d) Conspired with co-accused at his shop for destroying the evidence by concealing the red Swift car and the mobile phone of A28 (Abdul Rasheed).
- e) While in custody, the appellant assaulted two police officers in jail and a crime was registered.

Entitlement for bail of Nassar (A33)

- a) As is evident from the materials on record, the appellant has undergone pre-trial detention for more than two years and ten months. The trial proceedings remain stayed pursuant to an order passed by the Hon'ble Supreme Court. The final report submitted by the National Investigation Agency (NIA) is voluminous, comprising over 1600 documents, 900 witnesses, 52 protected witnesses, 670 material objects, and ten terabytes of forensic science laboratory (FSL) reports. Given the magnitude of the case of the prosecution and the stay on proceedings issued in SLP (Crl.) No. 3658/2024, which



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specifically interdicts the framing of charges, there is no foreseeable possibility of the trial commencing or concluding in the near future. Even if proceedings were to resume, the sheer number of witnesses and extensive volume of documentary and material evidence clearly indicate that the trial would remain pending for several years.

- b) As regards the allegation of a conspiracy to overthrow the democratic system of governance and establish Islamic rule, it is pertinent to note that there is no direct evidence linking the appellant to this conspiracy. He has been implicated solely on the basis of certain photographs allegedly depicting him in the uniform of the Popular Front of India (PFI). However, those photographs date back to a period prior to September 2022, the date on which the Central Government declared PFI an Unlawful Association under the Unlawful Activities (Prevention) Act. With respect to the murder of Srinivasan, the allegation against the appellant is that he was a co-conspirator and had allegedly provided his vehicle for conducting reconnaissance. In this context, the principles laid down by the Hon'ble Supreme Court in **Shaheen**



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Welfare Assn. (supra) would apply. The Apex Court stressed the need to adopt a pragmatic and constitutionally sensitive approach in situations where an undertrial is deprived of personal liberty for an extended period and there is no reasonable prospect of the trial concluding within a foreseeable timeframe. In paragraph 14 of the said judgment, the Supreme Court observed that where undertrials are not directly accused of engaging in terrorist acts, but are instead booked under Sections 120B or 147 of the Indian Penal Code, or merely found in possession of allegedly incriminating material, a lenient view may be taken. The Court further held that in such cases, release may be considered if the undertrials have been in custody for periods of three years and two years, respectively.

- c) Further the Hon'ble Supreme Court in **K.A. Najeeb** (supra) and **Athar Parwez** (supra), wherein it was held that the existence of statutory restrictions such as Section 43-D(5) of the UAPA does not, by itself, bar constitutional courts from granting bail, especially when the continued detention amounts to a violation of the rights guaranteed



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under Part III of the Constitution of India.

- d) It is also relevant to note that a Coordinate Bench of this Court, in Criminal Appeal No. 139 of 2024 and connected matters, has granted bail to A38, A40, A41, A45, A46, A56 and A57 in Crl.A.No. 1141 of 2023 and A42, A43 in Crl. A.No. 619 of 2024 and A53 in Crl.A.No. 628 of 2024. They face similar charges as those of A33.

10.2 Crl. A. No. 225/ 2025 -

i) 1st Appellant - Jamsheer H (Accused No. 25 in charge)

Date of arrest: 31.10.2022

(Period of pre-trial detention undergone - 2 Years 4 Months and 27 Days)

Charge:

That the accused Jamsheer H (A-25) being a Division President of PFI, Palakkad Division, knowingly and intentionally became 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



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their "India 2047" agenda of establishing Islamic Rule in India. Being a member of terrorist gang, in furtherance to the larger conspiracy, he attended conspiracy meetings at Palakkad on 15th and 16th of 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 which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. He provided vehicle - Deo Scooter bearing Regn No. KL-09-AL-1023 to Mohammed Bilal (A-24) for conducting recce of targets to eliminate on 15.4.2022 and for committing terrorist act of murdering Srinivasan on 16.4.2022. He also arranged weapons for commission of terrorist acts. He also concealed evidence in the case. He committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

Contention of the appellant:

- a) The appellant is innocent of the allegations.
- b) No case for the State Police that the murder of Sreenivasan was a



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terrorist act.

- c) There is no material to substantiate that the appellant was a member of the conspiracy to overthrow the democracy in India and to implement Islamic rule by 2047. Even otherwise, the mere fact that he is alleged to have taken part in the conspiracy to murder Sreenivasan will not show that he had participated in the larger conspiracy and had connections with the main offence alleged in R.C.No.2 of 2022.
- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047 - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) There is no allegation that the appellant had attended training in the final report. No weapons/arms were recovered from Falah Masjid.
- g) The mere fact that in some of the photographs, the appellant was



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found wearing PFI uniform cannot be used to connect him with the conspiracy. Crime No. 318 of 2022 occurred on 16.04.2022, whereas PFI was branded an Unlawful Association only during September 2022. The mere fact that the appellant was having membership in the said Organisation prior to his ban will not constitute any offence.

- h) The appellant has been in custody for more than 2 years and 4 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) Jamsheer (A25) is the Palakkad Division President of PFI. PFI related books were seized as per D361 Mahazar. Photograph of the appellant in a notice of the PFI was found in the mobile phone of Akbar Ali (A45). There is also a video of the appellant participating in a protest found in the mobile phone of Sadam Hussein (A41).



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- b) Jamsheer (A25) is part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047.
- c) He attended Arms Training conducted by PFI at Falah Masjid as preparation for conducting a terrorist act. CW835 stated that A25 imparted Arms training to A17 and others.
- d) Jamsheer instructed Rishil (A32, now an approver) and Abdul Basit (A27) to conduct recce.
- e) A25 attended a conspiracy meeting held near Khabaristhan on 15.04.2022 for committing the terrorist act.
- f) Arranged weapons and carried the same in his scooter bearing Reg. No. KL-09/AL-1023 and kept the weapons in the goods auto rickshaw of Abdul Rahman @ Adu (A17), one of the assailants.
- g) Provided his Deo Scooter with Reg. No. KL-09/AL-1023 to Mohammed Bilal (A22) for conducting recce and to locate the targets.
- h) Attended conspiracy meeting held at Palakkad on 16.04.2022 for



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committing the terrorist act of murder of Sreenivasan on 16.04.2022.

The intention was to create terror in the mind of Hindu community and the public at large.

- i) With a view to destroying the evidence, A25 concealed his mobile phone.

Entitlement for bail of Jamsheer (A25)

- a) As is discernible from the materials, the appellant has undergone pre-trial detention of more than 2 years and 4 months. The trial proceedings have been stayed by the order passed by the Apex Court. Even if the trial commences, the large number of witnesses of about 1000 and a huge number of exhibits and material objects would necessarily mean that the trial would be delayed for years. Insofar as the conspiracy to overthrow the democracy in India and to implement Islamic rule, there is no direct evidence against the appellant. Insofar as the murder of Sreenivasan is concerned, the role attributed to the appellant is that he was a conspirator and that he had provided his scooter for conducting recce. In view of the observations and



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principles in **Shaheen Welfare Assn.** (supra), a pragmatic approach has to be adopted in cases of deprivation of personal liberty without the prospect of trial being concluded within a reasonable time. As held in paragraph No. 14 of the judgment, undertrials who are roped in not because of any terrorist activity but by virtue of Section 120B or 147 of the IPC and those undertrials who were found possessing incriminating articles, a lenient view can be taken. The Apex Court had observed that cases of undertrials falling in the above categories can be dealt with leniently and can be released if they have been in jail for three years and two years respectively. We also note the pronouncement of the Apex Court in **K.A. Najeeb** (supra) and **Athar Parwez** (supra) wherein it was held 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 of India. Furthermore, we find that the Coordinate Bench of this Court in Crl. A No 139 of 2024 and connected cases had granted bail to the accused against whom the allegations were identical.



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(ii) 2nd Appellant - Abdul Basith Ali (Accused No.27 in charge)

Date of arrest: 26.04.2022

(Period of pre-trial detention undergone - 2 Years 11 Months and 1 day.)

Charge:

That, the accused Abdul Basith Ali (A-27) being a member and Reporter' of PFI in Palakkad District, knowingly and intentionally became 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. Being a member of terrorist gang, in furtherance to the larger conspiracy, he collected the details of various Hindu leaders whom PFI listed as possible targets to eliminate, attended conspiracy meetings held at Palakkad on 15th and 16th of April 2022 for committing terrorist act by murdering any available Hindu Leader with the intention of creating terror in



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the minds of the Hindu community and among public at large which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. In furtherance to the conspiracy, he along with Rishil (A-32) conducted recce on 15.4.2022 by using the Motorcycle of Rishil (A-32) bearing Regn. No. KL-09-M-4967, for finding the targets including victim Srinivasan to eliminate for the purpose of committing terrorist act. On 16.4.2022, he conducted the recce at Melamuri and confirmed the availability of Srinivasan, again went to Melamuri with Muhammed Mansoor (A-23) and had shown the shop and Srinivasan to Mohammed Mansoor (A-23). As located and shown by him, Mohammed Mansoor (A-23) along with other assailants, reached the Scene of Crime and committed terrorist act by killing Srinivasan. He also committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

Contentions of the appellant:

- a) The appellant is innocent of the allegations.
- b) No case for the State Police that the murder of Sreenivasan was a terrorist act.



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- c) The allegation against A27 is that he had attended the conspiracy meeting held on 15.04.2022 and 16.04.2022 and conducted recce with A28 on his bike. Mere movements on the bike and presence at various places will not amount to conducting recce. There is no material to substantiate that he was part of a larger conspiracy to overthrow the democracy in India.
- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047 - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) There is no allegation that the appellant had attended training in the final report. No weapons/arms were recovered from Falah Masjid.
- g) The appellant has been in custody for more than 2 years and 11 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the



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proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) A27 is a member of the Reporter Wing of the PFI in Palakkad District.
- b) A27 is part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047.
- c) He attended Arms Training conducted by PFI at Falah Masjid as preparatory for conducting a terrorist act. Protected Witness 17 stated that A27 also attended Arms Training along with the assailants.
- d) A27 collected personal details of the persons belonging to other communities for making them as possible targets. D58 and 59 are list of targeted persons maintained by A27 and the same was seized from his house vide D56 seizure mahazar.
- e) Conducted recce of short-listed targets along with Rishil (A32 now an approver) on 15.04.2022 in the bike of A28.



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- f) Attended conspiracy meetings held at Khabaristan at Palakkad on 15.04.2022.
- g) Attended conspiracy meeting held at Palakkad on 16.04.2022 for committing terrorist act of murder of Srinivasan on 16.04.2022. The intention was to create terror in the minds of Hindu community and the public at large.

Entitlement for bail of Abdul Basith Ali (A27)

- a) As is discernible from the materials, the appellant has undergone pre-trial detention of more than 2 years and 11 months. The trial proceedings have been stayed by the order passed by the Apex Court. Even if the trial commences, the large number of witnesses of about 1000 and a huge number of exhibits and material objects would necessarily mean that the trial would be delayed for years. Insofar as the conspiracy to overthrow the democracy in India and to implement Islamic rule, there is no direct evidence against the appellant. He has been roped in on the ground that he is a member of the reporter wing and that he maintained a list of targets. He is also alleged to have



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conducted recce of targets with A28, who has turned approver. In view of the observations and principles in **Shaheen Welfare Assn.** (supra), a pragmatic approach has to be adopted in cases of deprivation of personal liberty without the prospect of trial being concluded within a reasonable time. As held in paragraph No. 14 of the judgment, undertrials who are roped in not because of any terrorist activity but by virtue of Section 120B or 147 of the IPC and those undertrials who were found possessing incriminating articles, a lenient view can be taken. The Apex Court had observed that cases of undertrials falling in the above categories can be dealt with leniently and can be released if they have been in jail for three years and two years respectively. We also note the pronouncement of the Apex Court in **K.A. Najeed** (supra) and **Athar Parwez (supra)** wherein it was held 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 of India.



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(iii) 3rd Appellant - Mohammad Shefeek K (Accused No.31 in charge)

Date of arrest: 13.12.2022

(Period of pre-trial detention undergone - 2 Years 3 Months and 14 Days)

Charge:

That accused Mohammed Shefeek K (A-31) being a member of 'Reporter Wing' of PFI at Chadanamkurissi Area, knowingly and intentionally became 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. Being a member of terrorist gang, he attended conspiracy meeting held at Palakkad on 16th of 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



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among public at large which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. He along with Jishad (A-33) conducted recce on 16th April 2022, by motorcycle bearing Regn No. KL-49 E-9433, arranged by Jishad (A-33) to locate the targets for the commission of terrorist act. He also committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

Contention of the appellant:

- a) The appellant is innocent of the allegations.
- b) No case for the State Police that the murder of Sreenivasan was a terrorist act.
- c) The allegation against A31 is that he had attended the conspiracy meeting held on 16.04.2022 and conducted recce with A29 in a bike arranged by A29. Mere movements on the bike and presence at various places will not amount to conducting recce. There is no material to substantiate that he was part of a larger conspiracy to



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overthrow the democracy in India.

- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047 - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) The appellant has been in custody for more than 2 years and 3 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) A31 is a member of the Reporter Wing of the PFI in the Chandanamkurissi area in Palakkad District. Books and other magazines seized from the house on the statements of witnesses revealed that he is a member of the PFI.



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- b) A31 is part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047.
- c) He conducted recce on 16.04.2022 along with A29 in a bike possessed by him to locate targets for committing the terrorist act.
- d) Attended conspiracy meeting held at Palakkad on 16.04.2022 for committing terrorist act of murder of Srinivasan on 16.04.2022. The intention was to create terror in the minds of Hindu community and the public at large.

Entitlement for bail of Mohammed Shefeek (A31)

- a) As is discernible from the materials, the appellant has undergone pre-trial detention of more than 2 years and 3 months. The trial proceedings have been stayed by the order passed by the Apex Court. Even if the trial commences, the large number of witnesses of about 1000 and a huge number of exhibits and material objects would necessarily mean that the trial would be delayed for years. Insofar as the conspiracy to overthrow the democracy in India and to implement



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Islamic rule, there is no direct evidence against the appellant. He has been roped in on the ground that he is a member of the Reporter wing and he is alleged to have conducted recce of targets with A29. In view of the observations and principles in **Shaheen Welfare Assn.** (supra), a pragmatic approach has to be adopted in cases of deprivation of personal liberty without the prospect of trial being concluded within a reasonable time. As held in paragraph No. 14 of the judgment, undertrials who are roped in not because of any terrorist activity but by virtue of Section 120B or 147 of the IPC and those undertrials who were found possessing incriminating articles, a lenient view can be taken. The Apex Court had observed that cases of undertrials falling in the above categories can be dealt with leniently and can be released if they have been in jail for three years and two years respectively. We also note the pronouncement of the Apex Court in **K.A. Najeer** (supra) and **Athar Parwez** (supra) wherein it was held 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



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the Constitution of India.

(iv) 4th Appellant - Ashraf K. (Accused No.32 in charge)

Date of arrest: 7.11.2022

(Period of pre-trial detention undergone - 2 Years 4 Months and 20 Days)

Charge:

That, the accused Ashraf. K (A-32) being a Former Area Secretary of PFI, Pattambi Area and an active cadre of PFI, knowingly and intentionally became 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. Being a member of terrorist gang, he attended conspiracy meetings held at Nasar's (A-33's) Curtain Shop at Pattambi on 15th of April, 2022 and in Palakkad on 15th and 16th of 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



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and among public at large which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. He along with Ansar (A-25) conducted recce of the target on 15.04.2022 on motorcycle bearing Regn No. KL-09-AQ-713 arranged by Abbas (A-52), for committing terrorist act. He also committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

Contention of the appellant:

- a) The appellant is innocent of the allegations.
- b) No case for the State Police that the murder of Sreenivasan was a terrorist act.
- c) The allegation against A32 is that he had attended the conspiracy meeting held on 15.4.2022 and 16.04.2022 and conducted recce of targets along with Ansar (A23). Mere movements on the bike and presence at various places will not amount to conducting recce. There is no material to substantiate that he was part of a larger conspiracy to overthrow the democracy in India.



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- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047 - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) The appellant has been in custody for more than 2 years and 4 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) A32 is a former Area Secretary of PFI, Pattambi area and an active cadre of PFI. Video clips have been collected showing the participation of the appellant in processions of the PFI.
- b) Attended conspiracy meeting held at the curtain shop of accused Nasar (A33) at Pattambi on 15.04.2022.



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- c) Attended conspiracy meeting held near Khabaristhan at Palakkad on the night of 15.04.2022 for the purpose of committing a terrorist act.
- d) Conducted recce for locating the targets on 15.04.2022 along with Ansar (A23) in a motorcycle arranged by Abbas (A47)
- e) Attended conspiracy meeting held at Palakkad on 16.04.2022 for committing the terrorist act of murder of Sreenivasan on 16.04.2022. The intention was to create terror in the minds of Hindu community and the public at large.

Entitlement for bail of Ashraf K. (A32)

- a) As is discernible from the materials, the appellant has undergone pre-trial detention of more than 2 years and 4 months. The trial proceedings have been stayed by the order passed by the Apex Court. Even if the trial commences, the large number of witnesses of about 1000 and a huge number of exhibits and material objects would necessarily mean that the trial would be delayed for years. Insofar as the conspiracy to overthrow the democracy in India and to implement



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Islamic rule, there is no direct evidence against the appellant. He has been roped in on the ground that he is a member of the Reporter wing, and he is alleged to have conducted recce of targets with A23. In view of the observations and principles in **Shaheen Welfare Assn.** (supra), a pragmatic approach has to be adopted in cases of deprivation of personal liberty without the prospect of trial being concluded within a reasonable time. As held in paragraph No. 14 of the judgment, undertrials who are roped in not because of any terrorist activity but by virtue of Section 120B or 147 of the IPC and those undertrials who were found possessing incriminating articles, a lenient view can be taken. The Apex Court had observed that cases of undertrials falling in the above categories can be dealt with leniently and can be released if they have been in jail for three years and two years respectively. We also note the pronouncement of the Apex Court in **K.A.Najeeb** (supra) and **Athar Parwez** (supra) wherein it was held 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



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the Constitution of India.

10.3 Crl.A. No. 242 of 2025:

(i) 1st Appellant- Jishad B (A29 in charge)

Date of arrest: 10.5.2022

(Period of pre-trial detention undergone - 2 Years 10 Months and 17 Days)

Charge:

That, the accused Jishad (A-29), a Government servant working as Fire and Rescue Officer in the Fire and Rescue Department of Government of Kerala, being a Media In-charge of PFI Pudunagaram and became 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. Being a member of terrorist gang, he attended conspiracy meetings held at Palakkad on 16th of 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 which



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resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. He along with Mohammed Shafeek (A-35) conducted recce on 16th April 2022 by motorcycle with Regn. No. KL-49 E-9433, arranged by A-35, to locate the targets for committing terrorist act. He also committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at Large.

Contention of the appellant:

- a) The appellant is innocent of the allegations.
- b) No case for the State Police that the murder of Sreenivasan was a terrorist act.
- c) The allegation against A29 is that he had attended the conspiracy meeting held on 16.04.2022 and conducted recce with A31 on a bike arranged by the said accused. Mere movements on the bike and presence at various places will not amount to conducting recce. There is no material to substantiate that he was part of a larger conspiracy to overthrow the democracy in India.



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- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047 - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) The appellant has been in custody for more than 2 years and 10 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) A29 is part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047.
- b) Jishad is a member of the PFI cadre and a member of the reporter wing of PFI in Palakkad District



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- c) He conducted recce on 16.04.2022 along with A31 (Mohammed Shefeek) to locate and identify targets for committing the terrorist act.
- d) Attended the conspiracy meeting held at Palakkad on 16.04.2022 for committing the terrorist act of murder of Srinivasan on 16.04.2022. The intention was to create terror in the minds of Hindu community and the public at large.
- e) He is an officer serving in the Fire and Rescue Services Department who got actively involved in terrorist activities.
- f) He is the 21st accused in Crime No 1989 of 2021 of the Town South Police Station, Palakkad, involving the death of one Sanjith.

Entitlement for bail of Jishad B (A29 in charge)

- a) As is discernible from the materials, the appellant has undergone pre-trial detention of more than 2 years and 10 months. The trial proceedings have been stayed by the order passed by the Apex Court. Even if the trial commences, the large number of witnesses of about



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1000 and a huge number of exhibits and material objects would necessarily mean that the trial would be delayed for years. Insofar as the conspiracy to overthrow the democracy in India and to implement Islamic rule, there is no direct evidence against the appellant. He has been roped in on the ground that he is a member of the Reporter wing, and he is alleged to have conducted recce of targets with A35. He is also alleged to have been present when the conspiracy was hatched. In view of the observations and principles in **Shaheen Welfare Assn.** (supra), a pragmatic approach has to be adopted in cases of deprivation of personal liberty without the prospect of trial being concluded within a reasonable time. As held in paragraph No. 14 of the judgment, undertrials who are roped in not because of any terrorist activity but by virtue of Section 120B or 147 of the IPC and those undertrials who were found possessing incriminating articles, a lenient view can be taken. The Apex Court had observed that cases of undertrials falling in the above categories can be dealt with leniently and can be released if they have been in jail for three years and two years respectively. We also note the pronouncement of the Apex



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Court in **K.A. Najeed** (supra) and **Athar Parwez** (supra) wherein it was held 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 of India.

(ii) 2nd Appellant - Ashraf @ Ashraf Moulavi (A30 in charge)

Date of arrest: 24.5.2022

(Period of pre-trial detention undergone - 2 Years 10 Months and 17 Days)

Charge:

That, the accused Ashraf @ Ashraf Moulavi (A-30) being Unit Secretary of PFI Karimbully unit, knowingly and intentionally became 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. Being a member of terrorist gang, he attended the conspiracy meetings held at Nasar's (A-33) Curtain Shop at Pattambi on 15th of April,



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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 in general which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. In furtherance to the conspiracy, he, by using his car bearing Regn No. KL-52-N-7561 went to ascertain the whereabouts of 04 leaders of other community short-listed by PFI for eliminating. He prepared the route map of Hindu leaders whom PFI identified as possible targets for committing terrorist act. In furtherance of the larger conspiracy, he, along with Ansar (A-25), Abdul Rasheed (A-28), Nasar (A-33), Ali (A-43), conspired to destroy the evidence after the commission of the terrorist act. He also committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

Contention of the appellant:

- a) The appellant is innocent of the allegations.
- b) No case for the State Police that the murder of Sreenivasan was a terrorist act.



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- c) There is no allegation that A30 underwent arms training in the final report. There is no material to substantiate that he was part of a larger conspiracy to overthrow the democracy in India.
- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047 - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) The appellant has been in custody for more than 2 years and 10 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) A30 is part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047.



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- b) He is the Unit Secretary of PFI Karimpully Unit and an active cadre of PFI.
- c) He conducted and supervised arms training conducted by the PFI at Periyar Valley, Aluva.
- d) Attended conspiracy meeting held at the curtain shop of Nassar (A33) on 15.04.2022 for committing murder of any available Hindu leader with the intention to create terror in the minds of Hindu community and the public at large.
- e) Prepared the route map of Hindu leaders whom PFI identified as possible targets.
- f) Conspired with the other accused for destroying evidence after committing the murder of Srinivasan and took active part in concealing the vehicle used for commission of the offence and the mobile phone of A 28 (Abdul Rasheed), the absconding accused.

Entitlement for bail of Ashraf @ Ashraf Moulavi (A30)

- a) The appellant has been in pre-trial custody for over two years and ten



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months. The trial proceedings remain stayed. In view of the large number of witnesses, including protected witnesses and more than 1000 exhibits, the trial is unlikely to proceed quickly. The main allegation is that the appellant took part in a conspiracy to overthrow India's democratic system and establish Islamic rule. However, there is no direct evidence against him. He has been implicated on the ground that he attended a meeting on 15.04.2022 and allegedly gave arms training as part of the conspiracy. In such circumstances, the guiding principles laid down in **Shaheen Welfare Assn.** (supra) would be applicable. The Apex Court emphasized that where an undertrial is in long-term detention and the trial is unlikely to conclude soon, a practical and balanced approach must be taken. In paragraph 14 of the judgment, the Court held that when undertrials are not directly involved in terrorist acts but are charged under Section 120B or 147 IPC, or merely found in possession of suspicious articles, courts can take a lenient view. The Court further clarified that such undertrials may be considered for release if they have spent three years and two years in jail, respectively. Furthermore, in **K.A. Najeeb** (supra) and



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Athar Parwez (supra) the Supreme Court held that statutory bars like Section 43-D(5) of the UAPA do not prevent constitutional courts from granting bail when there is a violation of fundamental rights under Part III of the Constitution.

(iii) 3rd Appellant - Sirajudheen (A51 in charge)

Date of arrest: 16.09.2022

(Period of pre-trial detention undergone - 2 Years 6 Months and 11 days.)

Charge:

a) That, the accused Sirajudheen (A-56) being an active cadre of PFI and District Head of 'Reporter Wing' of PFI, knowingly and intentionally became 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. In furtherance to larger conspiracy, he collected and possessed the list of various Hindu leaders targeted by PFI to eliminate by committing terrorist act. Being a member of terrorist gang, he



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attended the conspiracy meetings held at Palakkad on 15th and 16th of 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 which resulted in the murder of Srinivasan on 16.04.2022 by PFI cadres. In furtherance of the conspiracy, being a member of the terrorist gang, he knowingly and intentionally harboured assailant Kajahussain @ Robot Kaja (A-19) after the commission of terrorist act of murdering Srinivasan. He committed acts prejudicial to the maintenance of harmony between different religious groups and has disturbed the public tranquillity in the State at large.

Contention of the appellant:

- a) The appellant is innocent of the allegations.
- b) No case for the State Police that the murder of Sreenivasan was a terrorist act.
- c) The allegation against A51 is that he had attended the conspiracy meeting held on 15.04.2022 and 16.04.2022. The allegation that he



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had harboured Kaja Hussain(A26), one of the assailants, is not true. There is no material to substantiate that he was part of a larger conspiracy to overthrow the democracy in India.

- d) Section 43-D (5) of UAP Act will not be attracted against the appellant since there are no materials to show that the appellant has been involved or has indulged in a terrorist act.
- e) Doc No.1376 titled "India 2047 - Towards Role of Islam in India, is a vision document and the appellant has nothing to do with the same.
- f) The appellant has been in custody for more than 2 years and 6 months. There are more than 900 witnesses, 52 protected witnesses and 1600 documents, and since the trial has not even started, and the proceedings remain stayed, there is no likelihood of the trial being concluded in the near future.

Objection.

- a) A51 is an active cadre of PFI and the District Head of the Reporter Wing.



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- b) A51 is part of a larger conspiracy to overthrow the democracy in India and to establish Islamic Rule as per Agenda India 2047.
- c) He attended the conspiracy meetings held at Palakkad on 16.4.22 for murdering Srinivasan.
- d) He intentionally harboured Kaja Hussain (A26) in his house after the commission of the murder. He purchased medicines from CW286 for the treatment of Kaja Hussain.
- e) In order to accomplish the common objective of the PFI, A51 collected the personal details of various persons occupying organisational positions in the Thiroorangadi and Mangalam Area of Malappuram and Palakkad.
- f) He is the 23rd accused in Crime No 1989/2021 involving the murder of one Sanjith.

Entitlement for bail of Sirajudheen (A51)

- a) As is evident from the materials on record, the appellant has undergone pre-trial incarceration for a period exceeding two years and



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six months. The trial proceedings stand stayed pursuant to an order passed by the Hon'ble Supreme Court of India. Even assuming that the trial were to commence in the near future, the voluminous nature of the case, comprising nearly 1000 witnesses, along with an extensive array of exhibits and material objects, inevitably implies that the completion of the trial is unlikely to occur within a reasonable timeframe.

- b) With respect to the alleged conspiracy to overthrow the democratic framework of India and establish Islamic rule, it is pertinent to note that there is no direct evidence implicating the appellant. The prosecution's case against him is primarily based on his alleged membership as a PFI cadre member and his with the "reporter wing" and the maintenance of a purported list of targets. He is alleged to have harboured one Kaja Hussain, an accused in the murder of Sreenivasan. He is also alleged to have purchased medicines for the accused. In light of the principles laid down in **Shaheen Welfare Assn.** (supra), a pragmatic and constitutionally balanced approach



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must be adopted in cases involving prolonged deprivation of personal liberty, particularly where the possibility of a trial concluding within a reasonable time frame remains remote. As observed in paragraph 14 of the said judgment, where undertrial prisoners are implicated not for direct involvement in terrorist acts but solely on the basis of conspiracy charges under Sections 120B or 147 of the IPC, or for the mere possession of allegedly incriminating articles, a more lenient view is warranted. The Hon'ble Apex Court has explicitly recognized that undertrials falling within such categories may be granted bail, especially where they have remained in custody for extended durations—three years in conspiracy cases and two years in possession cases, respectively.

- c) We also take note of the authoritative pronouncement of the Hon'ble Supreme Court in **K.A. Najeed** (supra) and **Athar Parwez** (supra), wherein it was categorically held that the statutory bar under Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967, does not override the jurisdiction of constitutional courts to grant bail,



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particularly in cases involving violation of fundamental rights under Part III of the Constitution of India.

11. It would be apposite at this juncture to refer to the observations made by the Apex Court in **MOHD MUSLIM @ HUSSAIN v. STATE (NCT OF DELHI)**¹² wherein the Apex Court was confronted with the prolonged incarceration of a person accused of committing offence under the NDPS Act. The Hon'ble Court referred to the observations of a learned Single Judge of this Court (Chettur Sankaran Nair. J.) in **A Convict Prisoner v. State**¹³ and observed as under:

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31 December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk

¹² [(2023) 18 SCC166

¹³ [1993 Cri LJ 3242]



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of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State 1993 Cri LJ 3242 as "a radical transformation" whereby the prisoner loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

12. The respondents have a contention that the proceedings are dragging on in view of the order of stay granted by the Apex Court in SLP (Crl.) No. 3658 of 2024. The Apex Court by order dated 6.5.2024 has interdicted the Special Court from framing the charge and the said stay is still in force. The accused cannot be blamed for taking up legitimate contentions and approaching the highest court of the land to ventilate their grievances and obtain favourable orders. What matters essentially is the period of pre-trial detention that the accused has endured and the possibility of the trial being delayed even further. In view of the large number of witnesses, exhibits and material objects, there cannot be any doubt that the trial cannot be concluded in the near future even if the stay order is vacated. It would be profitable to remind oneself that the Apex Court in **Athar Parwez** (supra) had granted bail to the accused facing similar allegations as the appellants after noting



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that they had been undergoing pre-trial detention for 2 years and 4 months.

13. Conclusion:

In view of the discussion above, the impugned orders of the Special Court denying bail to the applicants are set aside. Crl.A.Nos.228 of 2025, 225 of 2025 & 242 of 2025 will stand allowed. The appellants in Crl.A. Nos.228/2025, 225/2025 & 242/2025 shall be released on bail on each of them 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) If the appellants intend to leave the State of Kerala, they shall obtain prior permission from the Special Court.
- b) If the appellants are in possession of any passport(s), they shall surrender the same before the Special Court forthwith.
- c) The appellants shall furnish to the Investigating Officer of the NIA their complete and current residential address, including



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any changes thereto, and shall ensure that the same remains updated at all times.

- d) The appellants shall each use only one mobile number during the period of bail and shall communicate the said number to the Investigating Officer of the NIA. They 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 appellants shall report before the Station House Officer of the Police Station having jurisdiction over their place of residence once every fortnight, without fail
- f) The appellants shall not tamper with evidence or attempt to influence or threaten any witnesses in any manner.
- g) The appellants shall not engage in or associate with any activity that is similar to the offence alleged against them or commit any offence while on bail.



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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 appellants 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**

PS/31/03/25