IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

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THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 29TH DAY OF JULY 2025 / 7TH SRAVANA, 1947

CRL.A NO. 1184 OF 2025

AGAINST THE JUDGMENT DATED 27.05.2025 IN CRMP NO.248 OF 2025 OF SPECIAL COURT FOR TRIAL OF NIA CASE, ERNAKULAM

APPELLANT:

SHAMNAD E.K.
AGED 34 YEARS
S/O ALAVI, ELLIKKAL HOUSE, KARAKKUNNU POST, PAZHEDAM, MANJERI, MALAPPURAM DISTRICT, PIN - 676123

BY ADV SHRI.E.A.HARIS

RESPONDENTS:

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 ADV SRI.SREENATH SASIDHARAN
SRI. SASTHAMANGALAM AJITHKUMAR
SMT.O.M. SHALINA, DSGI

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 29.07.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Raja Vijayaraghavan V., J.

The challenge raised in this appeal, filed under Section 21 of the National Investigation Agency Act, 2008, is directed against the order dated 27.05.2025 passed by the Special Court for the trial of NIA cases (Ernakulam). By the said order, the application filed by the Investigating Officer for police custody of the appellant was allowed, and police custody was granted from 12:30 p.m. on 27.05.2025 till 5:00 p.m. on 31.05.2025. The appellant underwent police custody and was thereafter remanded back to judicial custody on 31.05.2025. The instant appeal was however filed only on 23.06.2025. The contention of the appellant is that the order remanding him to police custody invoking powers under Section 43D(2) is illegal. Though the issues posed before us are purely academic, we shall address the issues raised by the learned counsel for the appellant.

2. Since the issues raised are purely legal in nature, an elaborate narration of the facts may not be necessary. Suffice it to state that the appellant is the 20th accused in R.C.No.02/2022/NIA/KOC, registered for offences punishable under Sections 120B, 34, 109, 115, 118, 119, 143, 144, 147, 148, 449, 153A, 341, 302, 201, and 212 r/w. Section 149 and 120B r/w. Section 302 of the Indian Penal Code, Sections 3(a), (b), and (d) r/w. Section 7 of the Religious Institutions (Prevention of

Misuse) Act, 1988, Sections 13, 16, 18, 18A, 18B, 20, 22C, 23, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967, and Section 25(1)(a) of the Arms Act.

3. The appellant was arrested by the NIA on 04.04.2025 and produced before the Special Court, where he was initially remanded to judicial custody. On 08.04.2025, an application was filed seeking police custody of the appellant for a period of 7 days. The Special Court allowed the application and granted police custody from 09.04.2025 to 15.04.2025.

4. Thereafter, on the 53rd day of his arrest, the NIA preferred Annexure-A4 application for further police custody before the Special Court invoking the second proviso to Section 43D(2)(b) UAPA for a period of 4 days. Since the application was preferred after 30 days raising various contentions, the appellant filed Annexure-A5 objection. The appellant contends that the learned Special Court without considering the objection and without taking note of the fact that such an application is not maintainable allowed the application by the impugned order.

5. The learned counsel for the appellant submits that in **Senthil Balaji v. State**[1], the Hon'ble Supreme Court, while expressing doubts over the correctness of the dictum in **CBI v. Anupam J. Kulkarni**[2], referred the matter to a larger Bench. It is further submitted that there has been non-compliance with Section 43D(2)(b) of the UAPA, in as much as the NIA failed to assign any specific reasons for seeking

[1] [(2024) 3 SCC 51]
[2] [(1992) 3 SCC 141]

police custody at a belated stage and did not offer any explanation for the delay in filing the application. According to the learned counsel, the use of the conjunction "and" in the said provision mandates that both conditions, providing reasons for custody and explanation for delay, must be satisfied cumulatively.

6. In response, Sri. Sasthamangalam Ajithkumar, the learned counsel for the respondent, contended that this Court need not undertake a purely academic exercise. He submits that police custody was, in fact, granted within the initial 30-day period. Relying on the judgment in **Gautam Navlakha v. National Investigation Agency**[3], it is urged that there is no embargo on filing a subsequent application for police custody, provided it is within the larger period of 90 days or 180 days, as the case may be, which was available for filing the final report under the UAPA. He further submitted that in **Senthil Balaji** (supra), the issue was referred to a larger Bench, and hence the judgment cannot be treated as binding precedent. In that view of the matter, it would not be appropriate for this Court to undertake a conclusive adjudication, particularly in the peculiar facts of the present case. It is finally submitted that the order of police custody was passed by the learned Special Judge in accordance with law and does not warrant interference.

7. We have carefully considered the rival submissions and perused the records.

[3] (2022) 13 SCC 542

8. In the case on hand, the crime was registered on 19.09.2022. The Cr.P.C. was repealed and the BNSS had come into force on 1.07.2024. The appellant was arrested on 4.4.2025 and he was remanded to judicial custody on the same day. On 08.04.2025 Annexure-A2 application seeking police custody was filed by the NIA. Police custody was granted by the learned Sessions Judge from 9.04.2025 to 15.04.2025. It is thereafter that Annexure-A4 application was filed on 25.5.2025 seeking police custody for four days which was allowed by the impugned order granting custody from 12.30 pm on 27.5.2025 till 5 p.m. on 30.5.2025.

9. Section 43D of the UAP Act provides for Modified application of certain provisions of the Code. The said provision reads as under:

> Section 43D (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.
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> (2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--
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> > (a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and
> >
> > (b) after the proviso, the following provisos shall be inserted, namely:--

> "Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:
>
> Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

10. The provision states that all offences under the UAPA will be treated as cognizable. Section 43D(2) modifies the usual rules under Section 167 of the CrPC regarding how long an accused can be kept in custody during an ongoing investigation. Firstly, it extends the maximum period of police custody from 15 days to 30 days. Secondly, even in cases where the punishment is less than 10 years, the time allowed to complete the investigation is increased from 60 days to 90 days. For serious offences punishable with 10 years or more, life imprisonment, or death, the standard 90-day period remains unchanged. However, if the investigation cannot be completed within 90 days, the court has the power to extend this period up to 180 days, but only if the Public Prosecutor submits a report explaining the progress of the investigation, and the court is satisfied that there are valid reasons to continue holding the accused in custody.

The section also provides that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody

11. Insofar as the implication of the modified application of Section 167 is concerned, the Apex Court in **Gautam Navlakha** (supra), has succinctly laid down the law. It would be apposite at this juncture to refer to the observations in paragraphs 153 to 155 of the judgment.

> 153. Under Section 43-D(2)(a), it is clear that the maximum period of police custody which is permissible has been increased from 15 days to 30 days. The further modification is that which is relevant which is incorporated in the second proviso. It contemplates that the investigating officer can seek with reasons and explaining the delay obtain the police custody of a person who is in judicial custody.
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> 154. We would think that the position under Section 167 as applicable in cases under UAPA is as follows : Undoubtedly, the period of 30 days is permissible by way of police custody. This Court will proceed on the basis that the legislature is aware of the existing law when it brings the changes in the law. In other words, this Court had laid down in CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141 , inter alia, that under Section 167 which provides for 15 days as the maximum period of police custody, the custody of an accused with the police can be given only during the first 15 days from the date of the remand by the Magistrate. Beyond 15 days, the remand can only

> be given to judicial custody. Ordinarily, since the period of 15 days has been increased to 30 days, the effect would be that in cases falling under UAPA applying the principle declared in Anupam Kulkarni (supra), the investigating officer in a case under UAPA, can get police custody for a maximum period of 30 days but it must be within the first 30 days of the remand. In this regard, the number of days alone is increased for granting remand to police custody. The principle that it should be the first 30 days has not been altered in cases under UAPA.
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> 155. As far as the second proviso in Section 43-D(2)(b) is concerned, it does bring about an alteration of the law in Anupam J. Kulkarni (supra) . It is contemplated that a person who is remanded to judicial custody and NIA has not been given police custody during the first 30 days, on reasons being given and also on explaining the delay, the Court may grant police custody. The proviso brings about the change in the law to the extent that if a person is in judicial custody on the basis of the remand, then on reasons given, explaining the delay, it is open to the Court to give police custody even beyond 30 days from the date of the first remand. We may notice that Section 49(2) of the Prevention of Terrorism Act is in pari materia which has been interpreted by this Court in Hussein Haji Abraham Umarji v. State of Gujarat (2004) 6 SCC 672 and the decision does not advance the case of the appellant though that was a case where the police custody was sought of a person in judicial custody but beyond 30 days.: 2021 SCC OnLine SC 382 at page 613. (emphasis supplied)

12. In other words, it is only in cases wherein NIA was not granted police custody during the first thirty days that the legislature has mandated for reasons being given and for furnishing explanation on the delay. In the case on

hand, police custody was granted immediately after arrest and during the first 15 days itself. In the application seeking police custody the detailed reasons were stated as regards the need for custody and it was after being satisfied of the reasons that custody was granted by the learned Sessions Judge. In view of the observations in **Gautam Navulakha** (supra), there was no reason for the NIA to furnish an explanation for the delay. The situation would have been different if the NIA had not asked for police custody during the initial 30 days of remand.

13. Even otherwise, the contention that any illegality in passing the order would affect the authorisation and it will render the detention not authorised cannot be sustained. In **Gautam Navulakha** (supra), the Apex Court had occasion to consider the effect of illegality in the order under Section 167 and it was held as under:

> 107. Now, it is necessary to make one aspect clear. An order purports to remand a person under Section 167. It is made without complying with mandatory requirements thereunder. It results in actual custody. The period of custody will count towards default bail. Section 167(3) mandates reasons be recorded if police custody is ordered. There has to be application of mind. If there is complete non-application of mind or reasons are not recorded, while it may render the exercise illegal and liable to be interfered with, the actual detention undergone under the order, will certainly count towards default bail. Likewise, unlike the previous Code (1898), the present Code mandates the production of the accused before the Magistrate as provided in clause (b) of the proviso to Section 167(2). Custody

> ordered without complying with the said provision, may be illegal. But actual custody undergone will again count towards default bail.
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> 108. Take another example. The Magistrate gives police custody for 15 days but after the first 15 days, (not in a case covered by UAPA) it is not challenged. Actual custody is undergone. Will it not count? Undoubtedly, it will. The power was illegally exercised but is nonetheless purportedly under Section 167. What matters is "detention" suffered. The view taken in the impugned judgment [Gautam P. Navlakha v. NIA, 2021 SCC OnLine Bom 767] that sans any valid authorisation/order of the Magistrate detaining the appellant there cannot be custody for the purpose of Section 167 does not appear to us to be correct. The finding that if any illegality afflicts the authorisation, it will render the "detention" not authorised is inconsistent with our conclusion as aforesaid.

In that view of the matter, this appeal is meritless and the same is dismissed.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-
K.V. JAYAKUMAR,
JUDGE

PS/27/7/25

APPENDIX OF CRL.A 1184/2025

PETITIONER ANNEXURES

Annexure A1	**THE TRUE COPY OF THE APPLICATION FOR REMAND DATED 04.04.2025 IN RC NO.2/2022/NIA ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES ERNAKULAM**
Annexure A2	**THE TRUE COPY OF THE APPLICATION FOR POLICE CUSTODY DATED 08.04.2025 IN CRL. MP NO.155 OF 2025 IN RC NO.2/2022/NIA ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES ERNAKULAM**
Annexure A3	**THE TRUE COPY OF THE ORDER DATED 09.04.2025 IN CRL. MP NO.155 OF 2025 IN RC NO.2/2022/NIA ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES ERNAKULAM**
Annexure A4	**THE TRUE COPY OF THE APPLICATION FOR POLICE CUSTODY DATED 24.05.2025 IN CRL. MP NO.248 OF 2025 IN RC NO.2/2022/NIA ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES ERNAKULAM**
Annexure A5	**THE TRUE COPY OF THE OBJECTION FILED BY THE APPELLANT DATED 25.05.2025 IN CRL. MP NO.248 OF 2025 IN RC NO.2/2022/ NIA ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES ERNAKULAM**
Annexure A6	**CERTIFIED COPY OF THE ORDER DATED 27.05.2025 IN CRL. MP NO.248 OF 2025 IN RC NO.2/2022/ NIA ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES ERNAKULAM**
Annexure A7	**THE TRUE COPY OF THE REMAND APPLICATION DATED 30.05.2025 IN CRL. MP NO.252 OF 2025 IN RC NO.2/2022/NIA ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES ERNAKULAM**