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2026:KER:15120

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 24th DAY OF FEBRUARY 2026 / 5TH PHALGUNA, 1947

CRL.A NO. 1731 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN CRL MP 70/2024 IN SC
NO.4 OF 2021 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANT/PETITIONER/9TH ACCUSED:

SATKUNAM @ SABESAN (M/A - 49)
AGED 33 YEARS
S/O SACHITHANANDAM 33, MURALI KRISHNA NAGAR MAIN
ROAD, VALSARAVAKKAM CHENNAI, TAMIL NADU PRESENTLY
CONFINED AT CENTRAL PRIUSON (RP. 582) VIYYUR JAIL,
THRISSUR, KERALA ... APPELLANT/PETITIONER/9TH
ACCUSED, PIN - 600087

BY ADVS.
SHRI.CIMIL CHERIAN KOTTALIL
SRI.B.VINOD

RESPONDENTS/COMPLAINANT:

UNION OF INDIA
REP. BY NATIONAL INVESTIGATION AGENCY, KOCHI (RC.
01/2021/NIA/KOC) ...
RESPONDENT/RESPONDENT/COMPLAINANT, PIN - 682001

BY ADVS.
SHRI.T.C.KRISHNA, SENIOR PANEL COUNSEL
O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
19.02.2026, THE COURT ON 24.02.2026 DELIVERED THE
FOLLOWING:



**SUSHRUT ARVIND DHARMADHIKARI,
&
P.V.BALAKRISHNAN,JJ.**

Crl.Appeal. No. 1731 of 2024

Dated this the 24th day of February 2026

JUDGMENT

P.V.BALAKRISHNAN,J

This appeal, under Section 21 of the National Investigation Agency Act,2008 (hereinafter referred to as 'the NIA Act', for short) is filed by the petitioner in Crl.M.P.No.70/2024 in SC No.4/2021/NIA, challenging the order dated 22.04.2024, passed by the Special Court for trial of NIA Cases, Ernakulam, dismissing his application seeking bail.

2. The appellant is the 9th accused in SC 4/2021/NIA on the files of the Special Court for trial of NIA Cases, Ernakulam. The appellant is facing charges under Section 120B read with Section 125 IPC, Section 120B IPC, read with Sections 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, (hereinafter referred to as 'the UA(P) Act' for short), Section 120B IPC read with Sections 7 and 25(1AA) of the Arms Act 1959, Section 8(c) read with Sections 21(c), 23(c), 24, 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the NDPS Act', for short), Section 125 of IPC and Sections



18,20,38,39 and 40 of UA(P) Act.

3. The prosecution allegation against the appellant in brief is as follows:

The appellant is a Sri Lankan citizen, residing in Chennai as a refugee. He is an armed cadre of LTTE in Sri Lanka and was a member of the outer security wing of the LTTE leader Prabhakaran. Being a core cadre of LTTE, he got associated with accused Nos. 7,8,10 and others, who are active supporters and members of LTTE and formed a terrorist gang. As a member of the terrorist gang, he conducted and attended various conspiracy meetings with accused Nos.7,8,10,12 and others at various places in Tamil Nadu, with an intention to revive LTTE and furthering its activities in India and Sri Lanka, for waging war against Sri Lanka. In furtherance of the conspiracy, the terrorist gang including the appellant, decided to conduct illegal trafficking of narcotic drugs, arms and ammunitions in huge quantities to achieve their goal. In furtherance of a larger conspiracy, accused Nos. 15 and 7 with the assistance of the 8th accused, conspired with accused Nos. 11,13 and others, and arranged 300.323 kilograms of heroin, prohibited arms - 5 numbers of Type 56 rifles and ammunitions -1000 rounds of 9 mm, for the revival of LTTE; furthering its activities in India and Sri Lanka; for



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raising funds for LTTE and to commit terrorist acts. The appellant also accrued huge funds and assets by sale of narcotic drugs, arms and ammunition both, in Sri Lanka and India and part of the funds were utilised for furthering the activities of LTTE in India and Sri Lanka. The funds raised by illegal dealings were received by the appellant in India through gold/hawala and other means with the assistance of the 14th accused. Huge funds were also converted into movable and immovable property, with an intention to liquidate the same for providing funds for furthering the activities of LTTE in India and Sri Lanka. Hence, the prosecution alleges that the appellant has committed the afore offences.

4. During the pendency of SC No.4/21, the appellant filed Crl.MP No.70/24 before the trial court seeking regular bail. The said petition was dismissed by the trial court on 22.04.2024 vide the impugned order.

5. Heard Adv.Cimil, the learned counsel appearing for the appellant and Adv.Shalina, the learned DSGI appearing for the respondent. A report was also called for from the trial court regarding the status of SC 4/2021.

6. The learned counsel for the appellant submitted that there are absolutely no materials available to show that the accusation



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against the appellant is prima facie true. He submitted that the materials/evidence projected by the prosecution, even if it is accepted in toto, will not attract the offences as alleged. He argued that there is no substantive evidence to inculcate the appellant and the prosecution is relying upon the sole statement of an approver, which has no value. He contended that the appellant is in custody from 05.10.2021 onwards and considering the number of witnesses to be examined, documents to be marked and other formalities, there is no likelihood of the trial being completed in near future. He also submitted that the appellant is suffering from various ailments, including tuberculosis and has a family to support and that he is ready to abide by any conditions imposed by this Court.

7. Per contra, the learned counsel for the respondent vehemently opposed the submissions made by the learned counsel for the appellant and submitted that the offences alleged against the appellant are very grave. She, after taking us through the charge sheet and Annexures R1(b) to R1(k) contended that the appellant, after entering into India through illegal means, has conspired with other accused for the revival of LTTE and procurement of arms, for the purpose of waging war against Sri Lanka. She argued that the funds were raised through drugs and



arms dealings, and substantial amounts were invested in properties in Tamil Nadu. She also submitted that if the appellant, who is having criminal antecedents and who was convicted earlier in a drug trafficking case, is released on bail, there are chances of him absconding, using forged documents. She argued that apart from the bar under Section 43-D(5), the bar under Section 43-D(7) of the UA(P) Act is also applicable in the instant case, since the appellant is not an Indian citizen and he has entered the country unauthorisedly/illegally. Hence, she prayed that this appeal may be dismissed.

8. In the instant case, it is an admitted fact that the appellant is in custody from 05.10.2021 onwards. The report obtained by this Court from the trial court shows that SC 4/2021 is not ripe for trial and there is no possibility of commencing the trial in near future. It is stated in the report that the trial can probably commence in January 2027 and if so commenced, can be completed only by December 2027. The materials on record also show that there are 209 witnesses cited for examination and about 446 documents to be marked. If so, the question to be considered is whether the appellant, who has undergone such a long period of incarceration and where there is no possibility of the trial being



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completed in near future, is entitled to be released on bail. While considering the afore question, the law laid down by the Apex Court on this issue assumes relevance. A three Judge Bench of the Hon'ble Apex Court in **Union of India v. K.A.Najeeb (2021 KHC OnLine 6045)**, while considering the bail application of an accused involved in a case charged inter alia, under Sections 16, 18, 19 and 20 of UA(P) Act and who had undergone a long period of incarceration, after considering the rigor of Section 43-D (5) of the UA(P) Act held as follows:

“18. It is thus clear to us that the presence of statutory restrictions like S.43-D(5) of UAPA *per-se* does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like S.43 - D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

While holding so, the Apex Court also observed that Section 43-D(5) of the UA(P) Act is comparatively less stringent than Section 37 of the NDPS Act.

9. Subsequently, in the decision in **Shoma Kanti Sen v. State of Maharashtra (2024 KHC OnLine 6182)**, the Hon'ble



Apex Court, by relying on the decision in **Najeeb's case** (*cited supra*) and rejecting the contentions of the prosecution, that unless the conditions specified in Section 43-D(5) of the UA(P) Act are fulfilled the accused is not liable to be enlarged on bail, went on to hold thus :

"38. Relying on this judgement, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfil the conditions specified in S.43D(5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Art.21 of the Constitution of India. This was in the case of **Najeeb** (*supra*), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail - restricting provision of S.43D(5) of the 1967 Act. Pre - conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post - chargesheet stage has the sanction of law broadly on these reasonings. But any form of deprivation of liberty results in breach of Art.21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprivation must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre - trial detention, both at investigation and post - chargesheet stage."

10. While dealing with the provisions of UA(P) Act, the Hon'ble



Apex Court in **Athar Parwez v. Union of India (2024 KHC 6719)** again followed the principles laid down in **Najeeb's** case (*cited supra*) and observed as follows:

"20. At the initial stage, the legislative policy needs to be appreciated and followed by the Courts. Keeping the statutory provisions in mind but with the passage of time the effect of that statutory provision would in fact have to be diluted giving way to the mandate of Part III of the Constitution where the accused as of now is not a convict and is facing the charges. Constitutional right of speedy trial in such circumstances will have precedence over the bar / strict provisions of the statute and cannot be made the sole reason for denial of bail. Therefore, the period of incarceration of an accused could also be a relevant factor to be considered by the constitutional courts not to be merely governed by the statutory provisions."

11. At this juncture, we will also take note that in the decision in **Javed Gulam Nabi Shaikh v. State of Maharashtra [2024 (9) SCC 813]**, the Apex Court while granting bail to the accused prosecuted under the UA(P) Act, by taking into consideration his incarceration for a period of four years, observed that, 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. It was also held that Article 21 of the Constitution applies irrespective of the nature of the crime.



(emphasis supplied). It is also to be seen that in the recent decision in **Kapil Wadhawan v. Central Bureau of Investigation (2025 KHC OnLine 8024)**, the Apex Court has again reiterated the afore principles and reminded the Constitutional courts of its obligation to intervene, where long custody becomes disproportionate, arbitrary, or excessive. Further, the Apex Court in the decision in **Mohd. Muslim Alias Hussain v. State(NCT of Delhi) [(2023) 18 SCC 166]** has categorically held that even the rigour under Section 37 of the NDPS Act will not come in the way when the Court deals with the liberty of a person, because more the rigour, the quicker the adjudication ought to be. In the light of the dictums laid down by the Apex Court, considering the fact that the appellant herein is undergoing incarceration for a period of more than four years and four months and also the report received from the trial court, which shows that the trial is not likely to commence and end in near future, we are of the considered view that this is a fit case where the appellant can be granted the relief as sought for by him.

12. The contention of the respondent that Section 43-D(7) of the UA(P) Act places a complete embargo on this Court in granting bail to the appellant, does not have any legs to stand since, the



right to speedy trial enshrined in Article 21 of the Constitution is applicable to all persons and is not restricted to citizens of this country. The meaning of the word 'life' in Article 21 cannot be narrowed down and it is available not only to every citizen of the country, but also to a person, who may not be a citizen of the country (See **Chairman, Railway Board & Ors. v. Chandrima Das & Others [(2000) 2 SCC 465]**). In other words, the constitutional right of speedy trial will have precedence over the strict provisions such as Sections 43-D(5) and also 43-D(7) of the UA(P) Act, and as held in **Najeeb 's case** (*cited supra*), by passage of time, the effect of these statutory provisions will have to be diluted to give way to protect the Constitutional rights.

In the result, Criminal Appeal No.1731/2024 is allowed as follows :

i) The appellant/9th accused shall be released on bail on executing a bond for a sum of Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the Special Court for the trial of NIA cases, Ernakulam. It shall be open to the Special Court to impose such additional conditions as it may deem fit and necessary in the interest of justice. However, the conditions shall mandatorily



include the following:

- a) If the appellant/9th accused intend to leave State of Kerala, he shall obtain prior permission from the Special Court.
- b) If the appellant/9th accused is in possession of any passport, he shall surrender the same before the Special Court, forthwith.
- c) The appellant/9th accused shall furnish to the Investigating Officer of the NIA his complete and current residential address, including any changes thereto, and shall ensure that the same remains updated at all times.
- d) The appellant/9th accused shall use only one mobile number during the period of bail and shall communicate the said number to the Investigating Officer of the NIA. He shall remain accessible on the said number throughout the duration of bail and shall not, under any circumstances, switch off or discard the device associated with it without prior intimation.
- e) The appellant/9th accused shall report before the Station House Officer of the Police Station having jurisdiction over his place of residence on every first and third Saturdays, without fail.
- f) The appellant/9th accused shall not tamper with evidence or attempt to influence or threaten any witnesses in any manner.
- g) The appellant/9th accused shall not engage in or associate with any activity that is similar to the offence alleged against him or commit any offence while on bail.

ii) In the event of any breach of the aforesaid conditions or



of any other condition that may be imposed by the Special Court in addition to the above, it shall be open to the prosecution to move for cancellation of the bail granted to the appellant/9th accused before the Special Court, notwithstanding the fact that the bail was granted by this Court. Upon such application being made, the Special Court shall consider the same on its own merits and pass appropriate orders in accordance with law.

Sd/-
SUSHRUT ARVIND DHARMADHIKARI
Judge

Sd/-
P.V.BALAKRISHNAN
Judge

dpk