IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

THURSDAY, THE 14TH DAY OF AUGUST 2025 / 23RD SRAVANA, 1947

CRL.A NO. 1172 OF 2025

CRIME NO.RC-02/2021 OF NATIONAL INVESTIGATION AGENCY KOCHI, Ernakulam

AGAINST THE ORDER DATED 24.05.2025 IN SC NO.2 OF 2021 OF SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM

APPELLANT/PETITIONER/5TH ACCUSED:

T K RAJEEVAN, AGED 53 YEARS
S/O KRISHNAN, THOTTUMKARA HOUSE, CHANDRASEKHARA STREET,
KOOTHUPARAMBA, KANNUR, PIN - 670643

BY ADVS.
SHRI.KALEESWARAM RAJ
KUM.THULASI K. RAJ
SMT.APARNA NARAYAN MENON

RESPONDENT/RESPONDENT/COMPLAINANT:

UNION OF INDIA, REPRESENTED BY THE NATIONAL INVESTIGATION AGENCY, KOCHI- INVESTIGATION AGENCY,
KOCHI, ERNAKULAM, PIN - 682020

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

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05.08.2025, THE COURT ON 14.08.2025 DELIVERED THE FOLLOWING:

JUDGMENT

K. V. Jayakumar, J.

This criminal appeal is preferred by the 5th accused in Crl.M.P.No.214/2025 in S.C.No.2/2021 pending before the Special Court for Trial of NIA Cases, Ernakulam. The appellant, along with others, was discharged for the offences punishable under Section 120B, 121, 121A, 122 of the Indian Penal Code, Sections 18, 18A, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 ['UA (P) Act', for the sake of brevity], Section 27(1)(e)(iv) of the Kerala Forest Act and Section 7 r/w 27(2) of the Arms Act.

2. The prosecution case in brief is that, the accused, T. K. Rajeevan @ Manoj @ Udayan @ Ajmal, being a member of the proscribed terrorist organisation CPI(Maoist) and the South Zonal Committee member of proscribed terrorist organisation CPI(Maoist), conspired with co-accused inside the deep reserve forest of Malappuram District of Kerala on different occasions in the year 2016, for conducting and participating in physical and arms training so as to commit terrorist acts and to wage war against the Government of India, collected arms and men and abetted waging war. Being a member of proscribed terrorist organisation CPI(Maoist) which is involved in terrorist acts, he along with co-accused trespassed into the reserve forest of Malappuram District and he

actively participated and supervised the physical and arms training using prohibited arms imparted to co-accused, in the period between last week of May 2016 to last week of September 2016, to strengthen the proscribed terrorist organisation with intention to commit terrorist acts for furthering the activities of CPI(Maoist) and thereby to wage war against the Government of India.

3. The case was registered on the basis of the information given by the first accused, Kalidas, when he was arrested by the DySP, Agali on 21.09.2017 in connection with crime No.153/2017 of Sholayur Police Station. An investigation was conducted by the Edakkara Police by registering crime No.249/2017 against 19 persons. Later, the case was handed over to the Anti-Terrorist Squad Police Station, Ernakulam, and renumbered as crime No.32/2020/ATS on 19.03.2020. The Anti-Terrorist Squad laid chargesheet against 5 accused before the District and Sessions Court, Manjeri on 18.05.2021. Thereafter, the Government of India, as per order dated 19.08.2021 directed the NIA to take over the investigation, and the case was re-registered in the present number and transferred to the Special Court for trial of NIA cases, Ernakulam. The NIA also filed a supplementary chargesheet on 24.03.2022 in the above case.

4. Sri. Kaleeswaram Raj, learned counsel for the appellant, submitted that the appellant was arrested in the above case on 20.11.2020 and is in judicial

custody till date. It is submitted that the appellant has been in judicial custody for the past four years and 8 months in the High Security Prison, Viyyur. The trial of the case has not yet commenced.

5. The learned counsel submitted that no prima facie case has been established against the appellant, and that the mandatory sanction required under Section 45(2) of the Unlawful Activities (Prevention) Act was not obtained before the prosecution of the appellant. The learned counsel further pointed out that the appellant is 53 years old and is the sole breadwinner of his family, which comprises his wife and a son studying in the 7th standard. His wife, who belongs to a tribal community, is currently suffering from hypothyroidism and is unable to work regularly.

6. The charge was framed by the Special Court only on 22.01.2025. There are 274 witnesses and numerous documents in this matter. The learned counsel further submitted that there is no likelihood of the trial being completed at any time in the near future. The prolonged incarceration of 4 years and 8 months already undergone by the appellant and his continued detention amount to a violation of Article 21 of the Constitution of India. The learned counsel has placed reliance on the judgments in **Union of India v. K. A. Najeeb**[1]**, Sheikh**

[1] (2021)3 SCC 713

Javed Iqbal v. State of Uttar Pradesh[2], Javed Gulam Nabi Sheikh v. State of Maharashtra[3], Rabi Prakash v. State of Odisha[4], Athar Parwez v. Union of India[5] and **Shaheen Welfare Association v. Union of India and Ors.[6].**

7. The learned counsel would further submit that the 1st accused, Kalidas, has already been enlarged on bail by this Court in Crl. Appeal No. 443/2025. Therefore, the petitioner claims bail on the ground of parity. The learned counsel submitted that the charges as per the chargesheet against the 1st accused and the 5th accused herein are identical.

8. Smt. O. M. Shalina, the learned Deputy Solicitor General of India, submitted that the charge sheet in the present case has already been filed after collecting sufficient and credible evidence against all the arrested accused, and that charges have also been framed. She further submitted that the trial in S.C. No. 2 of 2021 is likely to be completed within a year. The Special Court has appreciated all the relevant laws, rulings and procedural formalities, while pronouncing the order against the bail application of the applicant.

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[2] 2024(8) SCC 293
[3] 2024(9) SCC 813
[4] 2023 SCC Online SC 1109
[5] 2024 SCC Online SC 3762
[6] 1996(2) SCC 616

9. The learned DSGI has placed reliance on the judgment of this Apex Court in **Harpreet Singh Talwar @ Kabir Talwar v. The State of Gujarat**[7] and held that mere incarceration for a long period cannot be considered as a ground for pre-trial release of an accused. It is further submitted that the appellant's plea for pre-trial bail on the ground of parity with the first accused, Kalidas, is irrelevant, as the said accused had undergone judicial custody for a period of eight years, whereas the appellant has been in custody for approximately four years and eight months. The appellant is involved in multiple serious cases registered under stringent provisions of law, which indicate a continuous pattern of unlawful and terror-related activities. It is contended that granting bail to the appellant would pose a serious threat to public peace and national security.

10. We have carefully considered the submissions of the learned counsel for the petitioner and the learned DSGI.

11. On a perusal of records, it is evident that the appellant/5th accused was arrested on 20.11.2020 and has been in judicial custody for the past 4 years and eight months in the High Security Prison, Viyyur. Although the learned Special Judge has framed charges in S.C. No. 2 of 2021, the trial has not yet

[7] MANU/SC/0675/2025

commenced.

12. The Apex Court has categorically held, in a catena of decisions, that when the precious right of an accused under Article 21 of the Constitution is infringed, the restriction on bail envisioned in Section 43D(5) of UA(P) Act would not be a bar for the Courts to grant bail to the accused. In **Najeeb** (supra), the Apex Court has laid down the position in paragraphs 17, 18 and 19 of the judgment which reads as under:

> "17. It is thus clear to us 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 commencement of proceedings, the 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 Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

> 18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.
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> 19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc."

13. In paragraph 42 of **Sheikh Javed Iqbal** (supra), the Apex Court observed as under:

> "42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us."

14. The Apex Court in **Javed Gulam Nabi Sheikh** (supra)**, Rabi Prakash** (supra) and **Athar Parwez** (supra) has emphasized that when a speedy trial is denied to an accused who has suffered prolonged incarceration, the rigorous restriction on the grant of bail with penal statutes would not be a bar for the constitutional court to grant bail.

15. In **Shaheen Welfare Assn** (supra), the Apex Court observed as under:

> "That a pragmatic and constitutionally sensitive approach has to be taken where an undertrial is deprived of personal liberty for an extended period and that there is no reasonable prospect of the trial concluding within a reasonable time frame. It was also observed by the Apex Court in Shaheen Welfare Assn. that where undertrials are not directly accused of engaging in any terrorist acts, but are instead booked under S.120B IPC, or booked merely on the ground that they are found in possession of incriminating materials, a lenient view has to be taken."

16. We find that though charge was framed in this case on 22.01.2025, the trial has not yet commenced. There are 274 witnesses, numerous documents and material objects. The 1st accused in the instant case, Sri Kalidas, was enlarged on bail by this Court in Crl. Appeal No.443/2025. In paragraph 11 of the judgment in **Kalidas @ Sekhar @ Mani v. Union of India**[8] in which case, this court had observed as under:

> "11. Be that as it may, the accusation against the appellant as contained in paragraph 18.1 of the final report reads thus:
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> "That, the accused Kalidas @ Sekhar @ Mani @ Thyagu @ Ramachandra @RC (A - 1), being a District Committee member of the proscribed terrorist organisation CPI (Maoist) and the Commander of the Shiruvani Dalam (Squad) of CPI (Maoist) organisation, active in Tri - Junction of Kerala, Karnataka and Tamil Nadu, conspired with co - accused inside deep reserve forest of

[8] 2025 KHC OnLine 1707

Malappuram District of Kerala, during different occasions in the year 2016, for conducting and participating in physical and arms training so as to commit terrorist acts and to wage war against the Government of India, collected arms and men and abetted waging war. Being a member of proscribed terrorist organisation CPI (Maoist) which is involved in terrorist acts and also being an in - charge of the training camp of CPI (Maoist), he along with co - accused trespassed into the reserve forest of Malappuram District in Kerala and actively participated in the physical and arms training using prohibited arms, in the period between last week of May 2016 to last week of September 2016, to strengthen the proscribed terrorist organisation CPI (Maoist) with intention to commit terrorist acts for furthering the activities of CPI (Maoist) and thereby to wage war against the Government of India."

As revealed from the extracted passage, the accusation against the appellant, in essence, is that he has participated in physical and arms training so as to commit terrorist acts and to wage war against the Government of India as also collected arms and men and abetted waging war against the Government of India. The particulars of the evidence stated to have been collected by the Investigating Agency as narrated in the written objection, if true, would make the allegations more serious. On a specific query by this court as to whether there are any allegations against the appellant in any of the cases registered against him that he participated in any armed rebellion, the answer of the learned Additional Solicitor General was in the negative. As noted in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616, referred to by this Court in Nassar, the Apex Court has observed that a pragmatic and constitutionally sensitive approach has to be taken where an undertrial is deprived of personal liberty for an extended period and that there is no reasonable prospect of the trial concluding within a reasonable time frame. It was also observed by the Apex Court in Shaheen Welfare Assn. that where undertrials are not directly accused of engaging in any terrorist acts, but are instead booked under S.120B IPC, or booked merely

> on the ground that they are found in possession of incriminating materials, a lenient view has to be taken. Similarly, as already mentioned, S.43D(5) of the UAPA does not by itself bar constitutional courts from granting bail, especially when the continued detention amounts to violation of the rights guaranteed under Part III of the Constitution of India. In Sk. Javed Iqbal, the Apex Court has held that bail cannot be denied in such cases on the ground that the charges are serious."

17. We do not find any reason why the principles laid down in **Kalidas** (supra) cannot be applied to the appellant. The reason why the learned Sessions Judge rejected the application despite him having been in custody for over four years is on the ground that the release of bail on account of prolonged incarceration can only be granted by the Constitutional Courts.

18. In **Vinubhai Haribhai Malaviya and Ors. v. State of Gujarat and Anr.[9], the Apex Court has observed as under in** Paragraphs 17 and 18 of the judgment:

> "17. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , be "right, just and fair and not arbitrary, fanciful or oppressive" (see para 7 therein). Equally, in Commr. of Police v. Delhi High Court [Commr. of Police v. Delhi High Court, (1996) 6 SCC 323 : 1996 SCC (Cri) 1325] , it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived

[9] 2019 (17) SCC 1

> on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice.
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> 18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit."

19. Having regard to the fact that the appellant has been in incarceration for approximately four years and eight months, and noting that the trial has not yet commenced, coupled with the substantial number of witnesses—about 274 in total—and numerous exhibits to be examined, it is evident that the completion of the trial in the near future is highly improbable. In these circumstances, any further incarceration of the appellant would amount to a violation of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Furthermore, it is pertinent to note that the 1st accused in the same case was granted bail by this Court vide judgment dated 11.04.2025 in Crl. Appeal No. 443/2025, and the charges against the 1st accused and the appellant are identical in nature.

20. In view of the discussion above, the impugned order passed by the learned Special Court refusing bail to the appellant is set aside. Crl.A.No. 1172 of 2025 is allowed. The appellant shall be released on bail on executing a bond for a sum of Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Special Court. It shall be open to the Special Court to impose such additional conditions as it may deem fit and necessary in the interest of justice. However, the conditions shall mandatorily include the following:

a) The appellant shall remain in the Revenue District of Ernakulam till the trial is over.

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

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

d) The appellant shall use only one mobile number during the period of bail and shall communicate the said number to the Investigating Officer of the NIA. He shall remain accessible on the said number throughout the duration of bail and shall not, under any

circumstances, switch off or discard the device associated with it without prior intimation.

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

f) The appellant shall not engage in or associate with any activity that is similar to the offence alleged against him or commit any offence while on bail.

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

Sd/-

RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-

K.V. JAYAKUMAR,
JUDGE

Sbna/

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 9TH DAY OF SEPTEMBER 2025 / 18TH BHADRA, 1947

CRL.A NO. 1367 OF 2025

CRIME NO.RC/02/2021 OF NATIONAL INVESTIGATION AGENCY KOCHI, ERNAKULAM

AGAINST THE ORDER DATED 09.07.2025 IN SC NO.2 OF 2021 OF SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM

APPELLANT/ACCUSED NO.4:

DR. DINESH D, AGED 34 YEARS, S/O.DHANAPALAN D, NO.1, THULLARIMUKAM STREET, ULIYAKULAM, COIMBATORE, TAMIL NADU- 641 045

BY ADVS.
SHRI.ABDUL KHADER KUNJU S.
SHRI.SHAIQ RASAL M.
SHRI.A AL FAYAD

RESPONDENTS/STATE:

UNION OF INDIA, REPRESENTED BY THE DIRECTOR GENERAL, NATIONAL INVESTIGATION AGENCY, KOCHI, ERNAKULAM-682 020

ADV.O. M. SHALINA, DSGI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.08.2025, THE COURT ON 09.09.2025 DELIVERED THE FOLLOWING

JUDGMENT

K. V. Jayakumar, J.

This Criminal Appeal is preferred by the 4th accused in Crl.M.P.No.281/2025 in S.C.No.2/2021 pending before the Special Court for Trial of NIA Cases, Ernakulam. The appellant, along with others, was charged for the offences punishable under Sections 120B, 121, 121A and 122 of the Indian Penal Code, Sections 18, 18A, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 ['UA(P) Act', for the sake of brevity], Section 27(1)(e)(iv) of the Kerala Forest Act, 1961 and Section 7 r/w 27(2) of the Arms Act.

2. The prosecution case in brief is that, the accused, Dr. Dinesh D., being a member of the proscribed terrorist organisation, CPI(Maoist), convened meeting and training camp during September 2016 in the reserve forest of Karulai in Malappuram district with arms, including automatic rifles for the purpose of furthering the activities of proscribed terrorist organisation, CPI (Maoist), in order to wage war against the Government of India.

3. The case was registered on the basis of the information given by the first accused, Kalidas, when he was arrested by the Dy.S.P, Agali on 21.09.2017 in connection with crime No.153/2017 of Sholayur Police Station. During the

investigation, 25 accused persons were arrested; out of them, 8 accused persons died in different incidents, and 4 are absconding. An investigation was conducted by the Edakkara Police by registering crime No.249/2017 against 19 persons. Later, the case was handed over to the Anti-Terrorist Squad Police Station, Ernakulam, and renumbered as crime No.32/2020/ATS on 19.03.2020. During the investigation of Anti-Terrorist Squad Police Station (ATS), Kerala, seven more accused were identified, and they were also arraigned as accused 19 to 25. Later, the ATS filed charge sheet against five accused persons including the appellant herein under Sections 120B, 121, 121A, 122 of IPC, Section 27(1)(e)(iv) of Kerala Forest Act 1961, Section 7 r/w Section 27(2) of the Arms Act, Sections 18, 18A, 20, 38 and 39 of the UA(P) Act 1967. In the meanwhile, the Government of India, as per order dated 19.08.2021, directed the NIA to take over the investigation and the case was re-registered as S.C.No.02/2021/NIOA/KOC on 20.08.2021 and after investigation, final report was submitted before the Special Court for the Trial of NIA Cases, Kochi on 23.04.2022, citing 274 witnesses and more than 408 documents.

4. During the investigation, it was revealed that Crime No.536/2016 was registered by the Edakkara Police in connection with the exchange of fire between the Maoists and the security forces on 24.11.2016, in which two Maoists died. During the investigation of the Edakkara Police Station, various electronic

gadgets, including laptop, pendrive, etc, were recovered from the scene of the occurrence.

5. The learned counsel for the appellant, Sri. Abdul Khader Kunju S., submitted that the appellant was arrested in connection with the case on 04.02.2021 by Edakkara Police and has been in custody ever since his arrest. The application submitted by the appellant for bail was dismissed by the Special Court vide order dated 09.07.2025 in Crl.M.P.No.281/2025 by placing reliance on the rigour of Section 43D(5) of the UA(P) Act. It is submitted that the appellant has been in judicial custody for over four years and five months and is therefore entitled to be released on bail due to the prolonged period of incarceration without trial. The trial of the case has not yet commenced.

6. The learned counsel submitted that no prima facie case has been established against the appellant, and that the mandatory sanction required under Section 45(2) of the UA(P) Act was not obtained before the prosecution of the appellant. The learned counsel further pointed out that the appellant is suffering from serious cardiac ailments and his further detention would adversely affect his health.

7. The learned counsel further submitted that there are 274 witnesses and numerous documents in this matter. There is no likelihood of the trial being

completed at any time in the near future. The prolonged incarceration of 4 years and 5 months already undergone by the appellant and his continued detention amounts to a violation of Article 21 of the Constitution of India. The learned counsel has placed reliance on the judgments in **Union of India v. K. A. Najeeb**[1], **Sheikh Javed Iqbal v. State of Uttar Pradesh**[2], **Javed Gulam Nabi Sheikh v. State of Maharashtra**[3] **and Vernon v. The State of Maharashtra**[4]

8. The learned counsel would further submit that the 1st accused, Kalidas, has already been enlarged on bail by this Court in Crl. Appeal No. 443/2025. Therefore, the petitioner claims bail on the ground of parity. The learned counsel submitted that the charges as per the chargesheet against the 1st accused and the 4th accused herein are identical.

9. A written objection has been filed by the NIA in the appeal, contending that the appeal is not maintainable either in law or on facts and the same is liable to be dismissed. Smt. O. M. Shalina, the learned Deputy Solicitor General of India, submitted that the charge sheet in the present case has already been filed after collecting sufficient and credible evidence against all the arrested

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[1] (2021)3 SCC 713
[2] 2024(8) SCC 293
[3] 2024(9) SCC 813
[4] 2023 SCC OnLine SC 885

accused, and that charges have also been framed. She further submitted that the trial in S.C. No. 2 of 2021 is likely to be completed within six months. The Special Court has appreciated all the relevant laws, rulings, and procedural formalities, while pronouncing the order against the bail application of the applicant. It is contended that the investigation revealed that the appellant being a member of the proscribed terrorist organisation, CPI (Maoist), conspired with co-accused inside deep reserve forest of Malappuram District of Kerala at different occasions in the year 2016 for conducting and participating in physical and arms training so as to commit terrorist acts and to wage war against the Government of India and had collected arms and men and abetted the waging of war. The appellant also possessed various documents related to CPI (Maoist) and its frontal organizations for furthering the activities of CPI (Maoist).

10. The learned DSGI has placed reliance on the judgment of this Apex Court in **Harpreet Singh Talwar @ Kabir Talwar v. The State of Gujarat**[5] and held that mere incarceration for a long period cannot be considered as a ground for pre-trial release of an accused. It is further submitted that the appellant's plea for pre-trial bail on the ground of parity with the first accused, Kalidas, is irrelevant, as the said accused had undergone judicial custody for a period of eight years, whereas the appellant has been in custody for

[5] MANU/SC/0675/2025

approximately four years and five months. The appellant is involved in multiple serious cases registered under stringent provisions of law, which indicate a continuous pattern of unlawful and terror-related activities. It is contended that granting bail to the appellant would pose a serious threat to public peace and national security.

11. We have carefully considered the submissions of the learned counsel for the petitioner and the learned DSGI.

12. On a perusal of records, it is evident that the appellant/4th accused was arrested on 04.02.2021 and has been in judicial custody for the past four years and five months. Although the learned Special Judge has framed charges in S.C. No. 2 of 2021, the trial has not yet commenced.

13. The Apex Court has categorically held, in a catena of decisions, that when the precious right of an accused under Article 21 of the Constitution is infringed due to prolonged incarceration, the restriction on bail envisioned in Section 43D(5) of UA(P) Act would not be a bar for the Courts to grant bail to the accused. In **Najeeb** (supra), the Apex Court has laid down the legal principles in paragraphs 17, 18 and 19 of the judgment which reads as under:

> "17. It is thus clear to us 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 commencement of proceedings, the 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 Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.”

14. In paragraph 42 of **Sheikh Javed Iqbal** (supra), the Apex Court observed as under:

> "42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us."

15. The Apex Court in **Javed Gulam Nabi Sheikh** (supra) has emphasized that when a speedy trial is denied to an accused who has suffered prolonged incarceration, the rigorous restriction on the grant of bail with penal statutes would not be a bar for the constitutional court to grant bail.

16. We find that the trial has not yet commenced in this case. There are 274 witnesses, numerous documents and material objects. The 1st accused in

the instant case, Sri Kalidas, was enlarged on bail by this Court in Crl. Appeal No.443/2025. In paragraph 11 of the judgment in **Kalidas @ Sekhar @ Mani v. Union of India**[6], this court had observed as under:

> "11. Be that as it may, the accusation against the appellant as contained in paragraph 18.1 of the final report reads thus:
>
> "That, the accused Kalidas @ Sekhar @ Mani @ Thyagu @ Ramachandra @RC (A - 1), being a District Committee member of the proscribed terrorist organisation CPI (Maoist) and the Commander of the Shiruvani Dalam (Squad) of CPI (Maoist) organisation, active in Tri - Junction of Kerala, Karnataka and Tamil Nadu, conspired with co - accused inside deep reserve forest of Malappuram District of Kerala, during different occasions in the year 2016, for conducting and participating in physical and arms training so as to commit terrorist acts and to wage war against the Government of India, collected arms and men and abetted waging war. Being a member of proscribed terrorist organisation CPI (Maoist) which is involved in terrorist acts and also being an in - charge of the training camp of CPI (Maoist), he along with co - accused trespassed into the reserve forest of Malappuram District in Kerala and actively participated in the physical and arms training using prohibited arms, in the period between last week of May 2016 to last week of September 2016, to strengthen the proscribed terrorist organisation CPI (Maoist) with intention to commit terrorist acts for furthering the activities of CPI (Maoist) and thereby to wage war against the Government of India."
>
> As revealed from the extracted passage, the accusation against the appellant, in essence, is that he has participated in physical and arms training so as to commit terrorist acts and to wage war against the Government of India as also collected arms and men and abetted waging war against the Government of India. The

[6] 2025 KHC OnLine 1707

> particulars of the evidence stated to have been collected by the Investigating Agency as narrated in the written objection, if true, would make the allegations more serious. On a specific query by this court as to whether there are any allegations against the appellant in any of the cases registered against him that he participated in any armed rebellion, the answer of the learned Additional Solicitor General was in the negative. As noted in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616, referred to by this Court in Nassar, the Apex Court has observed that a pragmatic and constitutionally sensitive approach has to be taken where an undertrial is deprived of personal liberty for an extended period and that there is no reasonable prospect of the trial concluding within a reasonable time frame. It was also observed by the Apex Court in Shaheen Welfare Assn. that where undertrials are not directly accused of engaging in any terrorist acts, but are instead booked under S.120B IPC, or booked merely on the ground that they are found in possession of incriminating materials, a lenient view has to be taken. Similarly, as already mentioned, S.43D(5) of the UAPA does not by itself bar constitutional courts from granting bail, especially when the continued detention amounts to violation of the rights guaranteed under Part III of the Constitution of India. In Sk. Javed Iqbal, the Apex Court has held that bail cannot be denied in such cases on the ground that the charges are serious."

17. We do not find any reason why the principles laid down in **Kalidas** (supra) cannot be applied to the appellant. The reason why the learned Sessions Judge rejected the application despite him having been in custody for over four years is on the ground that the release of bail on account of prolonged incarceration can only be granted by the Constitutional Courts.

18. In **Vinubhai Haribhai Malaviya and Ors. v. State of Gujarat and Anr.[7], the Apex Court has observed as under in** Paragraphs 17 and 18 of the judgment:

> "17. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , be "right, just and fair and not arbitrary, fanciful or oppressive" (see para 7 therein). Equally, in Commr. of Police v. Delhi High Court [Commr. of Police v. Delhi High Court, (1996) 6 SCC 323 : 1996 SCC (Cri) 1325] , it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice.
>
> 18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit."

19. Having regard to the fact that the appellant has been in incarceration for approximately four years and five months, and noting that the

[7] 2019 (17) SCC 1

trial has not yet commenced, coupled with the substantial number of witnesses—about 274 in total—and numerous exhibits to be examined, it is evident that the completion of the trial in the near future is highly improbable. In these circumstances, any further incarceration of the appellant would amount to a violation of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Furthermore, it is pertinent to note that the 1st accused in the same case was granted bail by this Court vide judgment dated 11.04.2025 in Crl. Appeal.No. 443/2025, and the charges against the 1st accused and the appellant are identical in nature. The 5th accused was also enlarged on bail by this Court as per the judgment dated 14.08.2025 in Crl. Appeal No.1172/2025.

20. In view of the discussion above, the impugned order passed by the learned Special Court refusing bail to the appellant is set aside. Crl.A.No. 1367 of 2025 is allowed. The appellant shall be released on bail on executing a bond for a sum of Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Special Court. It shall be open to the Special Court to impose such additional conditions as it may deem fit and necessary in the interest of justice. However, the conditions shall mandatorily include the following:

a) The appellant shall remain in the Revenue District of Ernakulam till the trial is over.

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

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

d) The appellant shall use only one mobile number during the period of bail and shall communicate the said number to the Investigating Officer of the NIA. He shall remain accessible on the said number throughout the duration of bail and shall not, under any circumstances, switch off or discard the device associated with it without prior intimation.

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

f) The appellant shall not engage in or associate with any activity that is similar to the offence alleged against him or commit any offence while on bail.

In the event of any breach of the aforesaid conditions or of any other condition that may be imposed by the Special Court in addition to the above, it shall be open to the prosecution to move for cancellation of the bail granted to

the appellant before the Special Court, notwithstanding the fact that the bail was granted by this Court. Upon such an application being made, the Special Court shall consider the same on its own merits and pass appropriate orders in accordance with law.

Sd/-

RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-

K.V. JAYAKUMAR,
JUDGE

Sbna/

APPENDIX OF CRL.A 1367/2025

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE JUDGMENT IN CRL. A NO. 443 OF 2025 ON THE FILES OF THE THE HIGH COURT OF KERALA
Annexure A2	TRUE COPY OF THE ORDER IN BA NO. 8537 OF 2021 DATED 23/12/2021 ON THE FILES OF THE THE HIGH COURT OF KERALA

2025:KER:31232

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

CRL.A NO. 443 OF 2025

AGAINST THE ORDER DATED 30.01.2025 IN CRMP NO.504 OF 2024

OF SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM

APPELLANT/PETITIONER/ACCUSED NO.1:

KALIDAS @ SEKHAR @ MANI
AGED 54 YEARS
S/O ARAKKAS, RESIDING AT 3/503, PONNAYYAPURAM,
PARAMBAKKUDY TALUK, RAMANATHAPURAM,
TAMIL NADU, PIN - 623501

BY ADVS.
KALEESWARAM RAJ
THULASI K. RAJ
CHINNU MARIA ANTONY
APARNA NARAYAN MENON

RESPONDENT/RESPONDENT/COMPLAINANT:

UNION OF INDIA
REPRESENTED BY DIRECTOR GENERAL,
NATIONAL INVESTIGATION AGENCY, KOCHI,
ERNAKULAM, PIN - 682020

SRI.AR.L.SUNDARESAN, ADDITIONAL SOLICITOR
GENERAL OF INDIA
SRI.K.S.PRENJITH KUMAR, CGC

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 02.04.2025, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

Crl. Appeal No.443 of 2025

Dated this the 11th day of April, 2025

JUDGMENT

P.B.Suresh Kumar, J.

This appeal is preferred invoking Section 21 of the National Investigation Agency Act, 2008 challenging an order passed by the Special Court for Trial of NIA Cases, Ernakulam (the Special Court) dismissing an application for bail submitted by the appellant who is the first accused in SC No.02/21/NIA/KOC.

2. The case was one originally registered by Edakkara Police based on the disclosure made by the appellant during the investigation pursuant to his arrest in connection with another crime. The disclosure made by the appellant was that he and others had organized a training camp during September 2016 in Karulai forest with arms, including automatic rifles for furthering the activities of the proscribed terrorist organization, CPI (Maoist), with a view to wage war against the Government of India. The case was

later transferred to the Anti Terrorist Squad of the State Government and whilst so, the National Investigation Agency (NIA) took over the investigation and concluded the same by submitting the final report. The offences alleged against the appellant are offences punishable under Sections 120B, 121, 121A and 122 of Indian Penal Code (IPC), Section 27(1)(e)(iv) of the Kerala Forest Act, 1961, Section 7 read with Section 27(2) of the Arms Act and Sections 18, 18A, 20, 38 and 39 of the Unlawful Activities (Prevention) Act (UAPA).

3. The appellant was arrested in connection with the case as early as on 17.10.2017 by Edakkara Police and he is in custody ever since his arrest. The application submitted by the appellant for bail was dismissed by the Special Court placing reliance on Section 43D(5) of the UAPA Act which provides that no person accused of an offence punishable under Chapters IV and VI of the UAPA Act shall, if in custody, be released on bail if the court, on a 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 is *prima facie* true.

4. A written objection has been filed by the NIA in the appeal contending, among others, that the case involves serious offences directly relating to anti-national activities, which require extensive judicial scrutiny; that while the right to a speedy trial is essential, it cannot supersede public safety and national security when the accused concerned are involved in terrorism related activities and that Section 43D(5) of the UAPA bars the court from granting bail to such accused. It was also contended in the objection that the appellant is accused in 19 other cases across multiple States and that his involvement in armed training camps, conspiracy, and other unlawful activities has been conclusively established through multiple forms of evidence collected by the Investigating Agency. The relevant passages in the objection dealing with the evidence collected against the appellant read thus:

> "A. Oral Evidence: Statements of witnesses CW-1, 2, 3, 11, 48, 49, 50, 66, 97, 117, and approver Shobha (A-20), confirms his role as an armed cadre of CPI (Maoist). The statement of Shobha (A-20) recorded u/s 164 of CrPC (D No-276) and 161 of CrPC proves the crime and the physical and arms training camp conducted by CPI (Maoist) in the deep reserve forest of Nilambur. It also establishes the participation of A-1 to A-28 in the said training camp during the period from May 2016 to September 2016 and the use of arms for training.
>
> a. The statement of CW-11 confirms the presence of the accused in the video of physical/arms training of CPI (Maoist), which was found in the seized digital devices of accused in Crime No. 536/2016 and analyzed by him.

b. The statements of residents of Mundakadavu colony proving the scene of crime, and the statements of residents of Pulimunda colony identifying A-1 as an armed cadre of CPI (Maoist) and confirming his presence in the video and Protected Witness- S and T.

c. The statements of relatives/neighbors of accused Kalidas (A-1), proving his deep influence by Maoist ideology, his long disappearance from home, and his presence in the video containing physical/arms training of CPI (Maoist).

d. The statements of proving the seizure of digital devices from the SOC of Crime No. 536/2016, containing videos related to physical/arms training of Maoist members, including A-1, corroborates the evidence of the approver.

e. The statement of Dy. SP (Arms), Thiruvananthapuram (CW-72), proves that the firearms used for training in the forensically extracted video are prohibited arms.

B. Material Evidence: Seizure of prohibited arms MO-91 (Tapacha gun and ammunition) during his arrest in Crime No. 153/2017. Four numbers of 303 rifles were seized from crime scenes of Exchange of Fire (EOF) between Maoists and the Thunderbolts unit of Kerala Police in Crime 291/2019 (MO No-92) and Crime 292/2019 of Agali P.S. (MO No-93) and another in Crime 531/2020 of Padinjarathara P.S. (MO No-94).

C. Digital & Scientific Evidence: Seized laptop and memory card containing videos of arms training camps (MO NO-97, 98, 99 and 100).

a. Forensic examination of videos from Crime 536/16 of Edakkara, confirming his participation. The video comparison analysis by SFSL, Thiruvananthapuram, matching the Appellant’s image to arms training footage. (D No-277).

b. The video path (VID-20160719-141109) retrieved from the digital device seized from the crime scene of Crime No. 536/16 of Edakkara P.S, showing the appellant carrying a prohibited 303 rifle along with other co-accused, who were armed with a double-barrel gun, AK-47 and other deadly weapons.

> D. **Documentary Evidence:** Seizure mahazars, digital evidence reports, and other documents proves his active role. Arrest Memo (D No-3), Seizure mahazar (D No.8), Search list (D No-113), D No. 114 to 118, Certified copies of FIR of crime No-153/2017 (D No.353), seizure mahazar (D No.354), Arrest Memo (D No-355), and other documents (D No. 356), FIR in Crime No. 536/2016 of Edakkara P.S (D No.320), Scene Mahazar (D No.321), Seizure Mahazer (D No.322), and other documents (D No. 323 to 329) proves the seizure of digital devices (Asus Laptop, external Hard-disk, and one Memory card) which contain videos of physical/arms training organized by CPI (Maoist) in the instant crime. Forensic examination report of video comparison from SFSL, Trivandrum which provides positive result regarding the video of accused doing arms training (D No. 397). The disclosure cum pointing out proceedings of A-1 (D No.4), A-4, A-11, A-18, A-19, A-20, A-21, A-22, and A-24, proving the incident, scene of crime (SOC), and corroborating the 164 statement of A-20. The video identification proceedings (D No.277) prepared as disclosed by A-20, confirming the active participation of the accused in the training camp organized by CPI (Maoist).”

In short, according to the NIA, this is not a case where the court should extend indulgence to enlarge the accused on bail.

5. Heard Adv.Kaleeswaram Raj, the learned counsel for the appellant as also Sri.AR. L.Sundaresan, the learned Additional Solicitor General of India.

6. The learned counsel for the appellant pointed out that even though the final report in the case was submitted as early as on 22.05.2015, the trial is yet to begin and even if the trial begins shortly, its completion is unlikely for a considerably long period as there are as many as 274 witnesses to be examined in the case in terms of the final report. According to the learned counsel, inasmuch

as the appellant is in custody for almost 8 years now, his continued detention would violate his right to life guaranteed under Article 21 of the Constitution. It was argued by the learned counsel that the provisions in the nature of Section 43D(5) of the UAPA is not an impediment for this court in enlarging the appellant on bail, once it is established that he is being subjected to long incarceration and that the trial is unlikely to be completed for a considerably long period.

7. *Per contra*, the learned Additional Solicitor General supported the impugned decision pointing out that inasmuch as the case involves serious offences which are directly related to anti-national activities, the Special Court is justified in rejecting the request of the appellant for bail. It is all the more so, in the light of the evidence collected by the Investigating Agency, submitted the learned Additional Solicitor General. The fact that the appellant is a person involved in 19 other cases across multiple States has also been highlighted by the learned Additional Solicitor General, to justify the argument that the impugned decision is in order. As regards the argument advanced by the learned counsel for the appellant based on the fundamental right guaranteed to the

appellant under Article 21 of the Constitution, the learned Additional Solicitor General contended that inasmuch as the appellant is involved in terrorist activities, the delay in the trial is not a ground to seek bail. The learned Additional Solicitor General relied on the decisions of the Apex Court in **Gurwinder Singh v. State of Punjab**, (2024) 5 SCC 403 and **Sk. Javed Iqbal v. State of U.P.**, (2024) 8 SCC 293, in support of his contentions.

8. In the course of the arguments, the learned Additional Solicitor General has made available, the particulars of various other cases in which the appellant is involved and the same would show that out of the 20 cases including the present one, the appellant was enlarged on bail in 18 cases and the said cases include even cases registered under Sections 124A and 121 IPC as in the case on hand.

9. We have examined the arguments advanced by the learned counsel for the parties on either side.

10. Bail cannot be refused to an accused who is subjected to long incarceration, if the trial is unlikely to be completed within a reasonable time. This proposition applies even to accused in cases involving offences punishable under penal statutes

containing clauses restricting grant of bail. There cannot be any doubt to these propositions. A Division Bench of this Court has reiterated these propositions in a recent case namely, **Nassar v. Union of India**, 2025 KHC OnLine 410. The relevant passages in the said decision read thus:

> 8.2. In Shaheen Welfare Assn. v. Union of India ((1996) 2 SCC 616), 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 ((1994) 3 SCC 569), 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 Art.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 S.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.
>
> 8.3. In Union of India v. K.A. Najeeb (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 ((1994) 6 SCC 731), 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 S.43D(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 substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like S.43D(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 S.43D(5) or S.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.
>
> 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 Art.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. Art.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 Art.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 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 Art.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.

Reverting to the facts of the case on hand, the appellant was arrested on 17.10.2017, and since then, he is in custody. In other words, the appellant is in custody for almost 8 years. The appellant has by now, completed the maximum term of imprisonment provided for some of the offences charged against him. No doubt, as

already noticed, some of the offences charged against him are offences for which either life imprisonment or capital punishment is provided for. But that does not justify incarceration for such a long term without the trial being commenced. The greater the severity of the offence, the more expeditious the trial ought to be. Failure to adhere to this principle yields detrimental consequences to both the accused as also the society. For the accused, prolonged delay particularly in custodial cases, infringe upon his right to life and liberty and significantly impair the ability to mount a robust defence. For society, such delays erode public trust in the justice system, fostering a perception of inefficiency and undermining the rule of law. The next aspect concerns the trial. There is no dispute to the fact that the trial in the case is yet to begin. Similarly, there is also no dispute to the fact that as many as 274 witnesses have been cited in the final report, even though it was pointed out by the learned Additional Solicitor General that all the cited witnesses may not be examined. Even if the examination of some of the witnesses is dispensed with, having regard to the nature of allegations, we have no doubt in our minds that the trial is not likely to be concluded any time soon.

11. Be that as it may, the accusation against the appellant as contained in paragraph 18.1 of the final report reads thus:

> "That, the accused Kalidas @ Sekhar @ Mani @ Thyagu @ Ramachandra @RC (A-1), being a District Committee member of the proscribed terrorist organisation CPI (Maoist) and the Commander of the Shiruvani Dalam (Squad) of CPI (Maoist) organisation, active in Tri-Junction of Kerala, Karnataka and Tamil Nadu, conspired with co-accused inside deep reserve forest of Malappuram District of Kerala, during different occasions in the year 2016, for conducting and participating in physical and arms training so as to commit terrorist acts and to wage war against the Government of India, collected arms and men and abetted waging war. Being a member of proscribed terrorist organisation CPI (Maoist) which is involved in terrorist acts and also being an in-charge of the training camp of CPI (Maoist), he along with co-accused trespassed into the reserve forest of Malappuram District in Kerala and actively participated in the physical and arms training using prohibited arms, in the period between last week of May 2016 to last week of September 2016, to strengthen the proscribed terrorist organisation CPI (Maoist) with intention to commit terrorist acts for furthering the activities of CPI (Maoist) and thereby to wage war against the Government of India."

As revealed from the extracted passage, the accusation against the appellant, in essence, is that he has participated in physical and arms training so as to commit terrorist acts and to wage war against the Government of India as also collected arms and men and abetted waging war against the Government of India. The particulars of the evidence stated to have been collected by the Investigating Agency as narrated in the written objection, if true, would make the allegations more serious. On a specific query by this

court as to whether there are any allegations against the appellant in any of the cases registered against him that he participated in any armed rebellion, the answer of the learned Additional Solicitor General was in the negative. As noted in **Shaheen Welfare Assn. v. Union of India**, (1996) 2 SCC 616, referred to by this Court in **Nassar**, the Apex Court has observed that a pragmatic and constitutionally sensitive approach has to be taken where an undertrial is deprived of personal liberty for an extended period and that there is no reasonable prospect of the trial concluding within a reasonable time frame. It was also observed by the Apex Court in **Shaheen Welfare Assn.** that where undertrials are not directly accused of engaging in any terrorist acts, but are instead booked under Section 120B IPC, or booked merely on the ground that they are found in possession of incriminating materials, a lenient view has to be taken. Similarly, as already mentioned, Section 43D(5) of the UAPA does not by itself bar constitutional courts from granting bail, especially when the continued detention amounts to violation of the rights guaranteed under Part III of the Constitution of India. In **Sk. Javed Iqbal**, the Apex Court has held that bail cannot be denied in such cases on the ground that the charges are serious.

12. True, in **Gurwinder Singh** referred to by the learned Additional Solicitor General, the Apex Court has observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. In **Gurwinder Singh**, the Apex Court has referred to **Union of India v. K.A.Najeeb**, (2021) 3 SCC 713 and distinguished the same on the facts of that case. In other words, the observation aforesaid has to be understood as one made in the facts of that case. **Gurwinder Singh** cannot, therefore, be understood as one diluting the proposition of law laid down in **K.A.Najeeb.**

13. Paragraph 42 of the judgment in **Sk. Javed Iqbal** relied on by the learned Additional Solicitor General reads thus:

> "42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb [Union of India v. K.A. Najeeb, (2021) 3 SCC 713] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us."

As seen from the extracted passage, the proposition laid down is that even in a case involving interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which, liberty is an intrinsic part. No doubt, it is observed in Sk. Javed Iqbal that in the given facts of a particular case, a constitutional court may decline to grant bail. But the said observation was made to hold that merely on account of that reason, it is wrong to say that bail cannot be granted under a particular statute. The said judgment, according to us, does not in any manner, help the respondent to sustain the impugned order.

In the result, the appeal is allowed, the impugned order is set aside and the appellant is enlarged on bail on executing a bond for Rs.1,00,000/- with two solvent sureties each for the like sum to the satisfaction of the Special Court. It shall be open to the Special Court to impose such additional conditions as it may deem fit and necessary in the interests of justice. It is made clear that in the event of breach of any of the conditions, it shall be open to the prosecution to move for cancellation of the bail granted to the appellant before the Special Court, notwithstanding the fact that bail

was granted by this Court. Upon such application being made, the Special Court shall consider the same on merits and pass appropriate orders in accordance with law.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOBIN SEBASTIAN, JUDGE.

YKB