

IN THE SPECIAL COURT FOR NIA CASES, ERNAKULAM, KERALA

Present:-

Shri. Kamanees.K, Judge, Special Court for NIA Cases, Ernakulam

Wednesday, the 27th day of July, 2022/ 5th Sravana, 1944.

SESSIONS CASE NO. 3/2021/NIA

(R.C. No. 5/2010/NIA/KOC)

Complainant

: Union of India represented by
National Investigation Agency,
Kochi, Ernakulam.

By Adv. Shri.Arjun Ambalapatta
Sr. Public Prosecutor, NIA

Accused

- : 1. Nazeer Thadiyantavidatha @ Ummer Haji
@ Haji (A1), aged 46 years,
S/o. Abdul Majeed, Bithul Hilal Veedu,
Thayyil Desom, Kannur, Kerala.
2. Sabir Buhari (A5), S/o. Buhari, aged 43 years,
House No. 52, Ward No. 20,
Puthukkadan Veedu, West of Fire Station,
Perumbavoor Village,
Kunnathunadu Taluk, Ernakulam, Kerala.
3. Thajudin (A7), S/o. Abdul Rasak,
aged 46 years,
House No. 188, Ward No. 8,
North Paravoor Village & Taluk,
Makkanai Bhagam, Kizhakkethoppil Veedu,
Chittatukara Panchayat, Ernakulam, Kerala.

By Adv. Issac Sanjay

Charges

: Offences punishable under Sections 120B r/w
121A, 364, 323, 506(ii), 435 r/w 34 of IPC,
section 4 of the Prevention of Damage to Public
Property Act, 1984 and sections 16(1)(b) and 18
of Unlawful Activities (Prevention) Act, 1967.

Plea of the accused

: Guilty.

- Finding of the Judge : The accused persons Shri.Nazeer Thadiyantavidatha @ Ummer Haji @ Haji (A1), Shri. Sabir Buhari (A5) and Thajudin (A7) are convicted of the offences under sections 120B, 121A r/w 34 IPC, 364 r/w 34 IPC, 323 r/w 34 IPC, 506(ii) r/w 34 IPC, 435 r/w 34 IPC and section 4 of PDPP Act r/w 34 IPC, section 16(1) (b) Unlawful Activities (Prevention) Act r/w 34 IPC and section 18 of Unlawful Activities (Prevention) Act, 1967 r/w 34 IPC.
- Sentence or Order : (1) For an offence under section 16(1)(b) of the UA(P) Act, the accused Nos. 1 and 5 are sentenced for rigorous imprisonment for a term of 7 years and pay a fine at the rate of Rs.50,000/-. The accused No.7 is sentenced for rigorous imprisonment for a term of 6 years and pay a fine at the rate of Rs.25,000/-. Default sentence shall be two months rigorous imprisonment for A1 & A5 and one month for A7.
- (2) For an offence under section 18 of the UA(P) Act, the accused Nos. 1 and 5 are sentenced for rigorous imprisonment for a term of 7 years and pay a fine at the rate of Rs.50,000/-. The accused No.7 is sentenced for rigorous imprisonment for a term of 6 years and pay a fine at the rate of Rs.25,000/-. Default sentence shall be for two months rigorous imprisonment for A1 & A5 and one month for A7. .
- (3) For the offence under section 120B IPC, the accused Nos. 1 and 5 are sentenced to undergo rigorous imprisonment for a term of 7 years and to pay a fine of Rs.50,000/- or in default shall undergo rigorous imprisonment for a period of two

months. The A7 is sentenced to undergo rigorous imprisonment for a term of 5 years and to pay a fine of Rs.25,000/- or in default, to undergo rigorous imprisonment for a period of one month.

(4) For the offence under section 121A IPC, the accused Nos. 1, 5 and 7 are sentenced to undergo rigorous imprisonment for a period of 6 years and to pay a fine of Rs.25,000/ each- or in default, to undergo rigorous imprisonment for a period of one month.

(5) Under section 364 IPC, all the accused persons are sentenced to rigorous imprisonment for a period of 4 years and to pay a fine of Rs.25,000/- or in default undergo rigorous imprisonment for a period of one month.

(6) Under section 323 IPC, all the accused persons are sentenced to simple imprisonment for a period of 6 months.

(7) Under section 506(ii) IPC, all the accused persons are sentenced to rigorous imprisonment for a period of one year.

(8) For an offence under section 435 IPC, all the accused persons are sentenced to rigorous imprisonment for a period of 3 years and to pay a fine of Rs.10,000/- or in default, to undergo rigorous imprisonment for a period of one month.

(9) For an offence under section 4 of PDPP Act, all the accused persons are sentenced to rigorous imprisonment for a period of 4 years and to pay fine of Rs.25,000/- or in default, rigorous imprisonment for one month.

(10) All the sentences, except the default sentences, shall run concurrently.

(11) The accused No. 1 is allowed set off for a period from 23.04.2010 till this day, as he is in custody. The accused No. 5 is allowed set off for a period from 25.10.2005 to 25.01.2006 and from 06.03.2012 to till this day. The accused No. 7 is allowed set off for a period from 13.06.2006 to 03.08.2006 and from 03.03.2014 to till this day.

(12) With respect to the orders of destruction of property, the same be reserved until the culmination of trial against other accused persons.

DESCRIPTION OF THE ACCUSED

Sl. No	Name of Accused	Father's Name	Occupation	Age	Residence
1.	Nazeer Thadiyantavidatha @ Ummer Haji @ Haji (A1)	Abdul Majeed	Ac Mechanic and Painter	46	Bithul Hilal Veedu, Thayyil Desom, Kannur, Kerala.
2.	Sabir Buhari (A5)	Buhari	Timber business	43	House No. 52, Ward No. 20, Puthukkadan Veedu, West of Fire Station, Perumbavoor Village, Kunnathunadu Taluk, Ernakulam, Kerala.
3.	Thajudin (A7)	Abdul Rasak	Purchase & sale of animal bones and fish	46	House No. 188, Ward No. 8, North Paravoor Village+Taluk, Makkanai Bhagam, Kizhakkethoppil Veedu, Chittatukara Panchayat, Ernakulam, Kerala.

Date of

Occurrence	Complaint	Apprehension	Release on bail	Commitment / Date of filing
09.09.2005	09.09.2005	A1-23.04.2010	A1- Nil	----
		A5- 25.10.2005	A5-25.01.2006 Bail cancelled on 06.03.2012	
		A7-13.06.2006 & 03.03.2014	A7-03.08.2006	

Commence -ment of trial	Close of trial	Date of Judgment	Sentence /order	Service of copy of judgment for finding on accused	Explanation for delay
----	----	27.07.2022	01.08.2022	01.08.2022	----

This case came up on for final hearing before me on 27.07.2022 and the court on the same day delivered the following :-

JUDGEMENT

1) Based on the charge sheet alleging offences under sections 120B, 121A, 364, 323, 506(ii), 435 r/w 34 of IPC, section 4 of Prevention of Damage to Public Property Act, 1984 (PDPP Act) and sections 16(1)(b) and 18 of Unlawful Activities (Prevention) Act, 1967 (UA(P) Act), the present accused persons Shri.Nazeer Thadiyantavidatha @ Ummer Haji @ Haji (A1), Shri. Sabir Buhari (A5) and Thajudin (A7) were also charged with offences under sections 120B,

121A r/w 34 IPC, 364 r/w 34 IPC, 323 r/w 34 IPC, 506(ii) r/w 34 IPC and 435 r/w 34 IPC, section 4 of PDPP Act r/w 34 IPC, section 16(1)(b) UA(P) Act r/w 34 IPC and section 18 of UA(P) Act r/w 34 IPC.

2) The charge had been read over to the accused persons. However, at a later stage, by filing CrI.MP No. 138/2022, the accused persons again wanted to have their plea recorded so as to answer the charge positively and receive punishment. After passing a speaking order on the same dated 13.07.2022, the petition had been allowed.

3) Accordingly, the accused persons have been physically brought before the court today. The charge has been again read over and explained to them. Before that, they were given sufficient time to interact with the lawyer of their choice Shri. Issac Sanjay, who had also explained to them the details and the consequences of charges and nature of punishment likely to be imposed on them. As a matter of fact, after the application was allowed, the accused persons had more than sufficient chances to reflect on their decision to have their guilt recorded.

4) The accused persons appeared quite composed, calm and informed. They seem to have understood the nature of proceedings, contents of the charge and extent of punishment that is likely to be imposed on them. Their lawyer has also

explained to them in detail inside the courtroom. The lawyer was present in the court when the accused persons were brought, he was again permitted to interact with the accused persons privately.

5) For these reasons, the plea is found voluntary and there are no reasons why this plea should not be accepted.

6) Accordingly, the plea is accepted. The accused persons are thus convicted under section 229 Cr.PC.

7) **In the result**, the accused persons Shri.Nazeer Thadiyantavidatha @ Ummer Haji @ Haji (A1), Shri. Sabir Buhari (A5) and Thajudin (A7) are convicted of the offences under sections 120B, 121A r/w 34 IPC, 364 r/w 34 IPC, 323 r/w 34 IPC, 506(ii) r/w 34 IPC, 435 r/w 34 IPC and section 4 of PDPP Act r/w 34 IPC, section 16(1)(b) Unlawful Activities (Prevention) Act r/w 34 IPC and section 18 of Unlawful Activities (Prevention) Act, 1967 r/w 34 IPC. The accused persons will be heard on the question of imposing sentences.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 27th day of July 2022.

Sd/-
Kamanees.K
Judge

8) I have heard the accused persons on the question of imposing sentences. Each of the accused persons have been questioned separately. The accused No.1, Shri.Nazeer Thadiyantavidatha states that he is behind the bar for the last 12 years. He had not been able to interact with his family members for long. His mother is ailing and there is no one to look after her. As a father, he could not attend to his children yet, nor could he discharge the obligations towards his parents. If minimum sentence is imposed on him, he may be able to fulfill his duties towards his parents as well as children.

9) Among the other accused, the accused No. 5, Shri. Sabir Buhari states that he is a cardiac patient for the last 3 years following a heart attack. He had to undergo angioplasty. His father is 75 years old and the father is also a cardiac patient. His mother is 70 years and father looks after his family consisting of his wife and children. His father is not in a position to continue to look after the family and he also seeks minimum sentence for that purpose. The accused No. 7, Shri. Thajudin states that he has to look after his wife as well as two daughters. His parents are no more and he is the only person to look after them. He is in jail for the last 12 years.

9) In the like situation when the accused No. 9 pleaded guilty, he had been sentenced as follows :-

“(1) For an offence under section 16(1)(b) of the UA(P) Act, the accused is sentenced for rigorous imprisonment for a term of 6

years and pay a fine at the rate of Rs.25,000/-. Default sentence shall be for one month rigorous imprisonment.

(2) For an offence under sections 18 of the UA(P) Act, the accused is sentenced for rigorous imprisonment for a term of 6 years and pay a fine at the rate of Rs.25,000/-. Default sentence shall be for one month rigorous imprisonment.

(3) For the offence under section 120B IPC, he is sentenced to undergo rigorous imprisonment for a term of 5 years and to pay a fine of Rs.25,000/- or in default shall undergo rigorous imprisonment for a period of one month.

(4) For the offence under section 121A IPC, he is sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.25,000/- or in default, undergo rigorous imprisonment for a period of one month.

(5) Under section 364 IPC, the accused is sentenced to rigorous imprisonment for a period of 4 years and to pay a fine of Rs.25,000/- or in default undergo rigorous imprisonment for a period of one month.

(6) Under section 323 IPC, the accused is sentenced to simple imprisonment for a period of 6 months.

(7) Under section 506(ii) IPC, the accused is sentenced to rigorous imprisonment for a period of one year.

(8) For an offence under section 435 IPC, the accused is sentenced to rigorous imprisonment for a period of 3 years and to pay a fine of Rs.10,000/- or in default undergo rigorous imprisonment for a period of one month.

(9) For an offence under section 4 of PDPP Act, he is sentenced to rigorous imprisonment for a period of 4 years and to pay fine of Rs.25,000/- or in default, rigorous imprisonment for one month.

(10) All the sentences, except the default sentences, shall run concurrently.

(11) The accused is allowed set off for a period from 08.04.2016 till this day, as he is in custody.

(12) With respect to the orders of destruction of property, the same be reserved until the culmination of trial against other accused persons.”

10) When placing arguments, the counsel for the accused persons canvassed parity. However, it is pointed out by the prosecution that the particular accused who already pleaded guilty did not have any previous conviction. However the records have been received by this court confirming the conviction of the accused persons 1 and 5 in SC No. 1/2010/NIA, as confirmed in Crl.Appeal Nos. 1575/2013 and 1578/2013 of the Hon'ble High Court dated 09.05.2022. There are convictions and sentences imposed on the accused persons Shri.Nazeer Thadiyantavidatha (A1) and Shri. Sabir Buhari (A5).

11) This may not be confused with previous conviction warranting severe sentencing. In awarding sentence, this aspect shall have to be very well borne in mind. All the three accused persons, according to the prosecution records, had

been taking part in the criminal conspiracy and have contributed to setting ablaze the Tamil Nadu bus. Considering the gravity of the charges, a deterrent sentencing policy should prevail, it is argued.

12) The accused persons had been quite young at the time of perpetration of the crime. Their familial circumstances are also among other circumstances to weigh. There has to be a balancing between the aggravating circumstances and mitigating circumstances mentioned supra. The accused persons have volunteered to raise their plea to permit to plead guilty. No proscribed organisation has been seemed to be involved in the perpetration of the crime.

13) A minimum sentence of 5 years is prescribed for offences under sections 16(1)(b) and 18 of the UA(P) Act. Considering the facts and circumstances of the case and also considering the fact that no proscribed organisation had been involved in the perpetration of the crime, I find that the accused persons Shri.Nazeer Thadiyantavidatha (A1) and Shri. Sabir Buhari (A5) can be sentenced to rigorous imprisonment for a term of 7 years each under those counts. They shall also pay a fine at the rate of Rs.50,000/- each for those offences. Default sentences will follow. In case of Shri. Thajudin (A7), he can be sentenced to rigorous imprisonment for a term of 6 years each under those counts. He shall also pay a fine at the rate of Rs.25,000/- each for those offences. Default sentences will follow.

14) For the offence under section 120B IPC, the accused Nos. 1 and 5 shall have to be dealt with in the same manner as if they had abetted the offences. Therefore, under section 120B, they shall be punished with rigorous imprisonment for a term of 7 years and they shall also pay a fine of Rs.50,000/- or in default shall undergo rigorous imprisonment for a period of two months. In case of A7, he shall be punished with rigorous imprisonment for a term of 5 years and he shall also pay a fine of Rs.25,000/- or in default, shall undergo rigorous imprisonment for a period of one month.

15) For the offence under section 121A IPC, the accused Nos. 1, 5 and 7 shall be punished with rigorous imprisonment for a period of 6 years. They shall also be liable to pay a fine of Rs.25,000/- or in default, undergo rigorous imprisonment for a period of one month.

16) Under section 364 IPC, all the accused persons shall be sentenced to rigorous imprisonment for a period of 4 years and they shall pay a fine of Rs.25,000/- or in default, undergo rigorous imprisonment for a period of one month.

17) Under section 323 IPC, all the accused persons shall be sentenced to simple imprisonment for a period of 6 months only.

18) Under section 506(ii) IPC, all the accused persons shall be sentenced to rigorous imprisonment for a period of one year.

19) For an offence under section 435 IPC, all the accused shall be sentenced to rigorous imprisonment for a period of 3 years and they shall pay a fine of Rs.10,000/- or in default undergo rigorous imprisonment for a period of one month.

21) For an offence under section 4 of PDPP Act, all the accused persons shall be sentenced to rigorous imprisonment for a period of 4 years and shall also be liable to pay fine of Rs.25,000/ or in default undergo rigorous imprisonment for a period of one month-.

22) All the sentences other than the default sentences shall run concurrently.

23) In the case of Shri.Tajudin (A7), the records revealed that he had been enlarged on bail on 03.08.2006 and later he was arrested and remanded in the Bangalore Blast Serial Cases. Consequently, he was produced before this court in answer to a production warrant issued on 03.03.2014. After that he continues to be in jail. Therefore, from the period of set off, the period from date of his release on bail (03.08.2006) and the date when he was produced before this court (03.03.2014) shall be excluded. Reference shall be had to the apex court decision

in **State of Maharashtra vs. Najakat Ali AIR 2001 SC 2255**. He shall be entitled to the remaining set off period.

In the result, the accused persons Shri.Nazeer Thadiyantavidatha (A1), Shri. Sabir Buhari (A5) and Shri. Thajudin (A7) are sentenced for the offences convicted as detailed below.

- (1) For an offence under section 16(1)(b) of the UA(P) Act, the accused Nos. 1 and 5 are sentenced for rigorous imprisonment for a term of 7 years and pay a fine at the rate of Rs.50,000/-. The accused No.7 is sentenced for rigorous imprisonment for a term of 6 years and pay a fine at the rate of Rs.25,000/-. Default sentence shall be two months rigorous imprisonment for A1 & A5 and one month for A7.
- (2) For an offence under section 18 of the UA(P) Act, the accused Nos. 1 and 5 are sentenced for rigorous imprisonment for a term of 7 years and pay a fine at the rate of Rs.50,000/-. The accused No.7 is sentenced for rigorous imprisonment for a term of 6 years and pay a fine at the rate of Rs.25,000/-. Default sentence shall be for two months rigorous imprisonment for A1 & A5 and one month for A7. .
- (3) For the offence under section 120B IPC, the accused Nos. 1 and 5 are sentenced to undergo rigorous imprisonment for a term of 7 years and to pay a fine of Rs.50,000/- or in default shall undergo rigorous imprisonment

for a period of two months. The A7 is sentenced to undergo rigorous imprisonment for a term of 5 years and to pay a fine of Rs.25,000/- or in default, to undergo rigorous imprisonment for a period of one month.

- (4) For the offence under section 121A IPC, the accused Nos. 1, 5 and 7 are sentenced to undergo rigorous imprisonment for a period of 6 years and to pay a fine of Rs.25,000/ each- or in default, to undergo rigorous imprisonment for a period of one month.
- (5) Under section 364 IPC, all the accused persons are sentenced to rigorous imprisonment for a period of 4 years and to pay a fine of Rs.25,000/- or in default undergo rigorous imprisonment for a period of one month.
- (6) Under section 323 IPC, all the accused persons are sentenced to simple imprisonment for a period of 6 months.
- (7) Under section 506(ii) IPC, all the accused persons are sentenced to rigorous imprisonment for a period of one year.
- (8) For an offence under section 435 IPC, all the accused persons are sentenced to rigorous imprisonment for a period of 3 years and to pay a fine of Rs.10,000/- or in default, to undergo rigorous imprisonment for a period of one month.

- (9) For an offence under section 4 of PDPP Act, all the accused persons are sentenced to rigorous imprisonment for a period of 4 years and to pay fine of Rs.25,000/- or in default, rigorous imprisonment for one month.
- (10) All the sentences, except the default sentences, shall run concurrently.
- (11) The accused No. 1 is allowed set off for a period from 23.04.2010 till this day, as he is in custody. The accused No. 5 is allowed set off for a period from 25.10.2005 to 25.01.2006 and from 06.03.2012 to till this day. The accused No. 7 is allowed set off for a period from 13.06.2006 to 03.08.2006 and from 03.03.2014 to till this day.
- (12) With respect to the orders of destruction of property, the same be reserved until the culmination of trial against other accused persons.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 1st day of August 2022.

Sd/-
Kamanees.K
Judge

APPENDIX

Nil

Sd/-
Judge
(By Order)

//True Copy//

Sheristadar

Copied by :
Comp. by :

S.C.No. 3/2021/NIA
Judgment dated 01.08.2022