

Vikaraman vs Central Bureau Of Investigation on 23 February, 2021

Author: Ashok Menon

Bench: Ashok Menon

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 23RD DAY OF FEBRUARY 2021 / 4TH PHALGUNA, 1942

Bail Appl.No.997 OF 2019

AGAINST THE ORDER/JUDGMENT IN CRMP 2113/2015 DATED 08-07-2015 OF
DISTRICT COURT & SESSIONS COURT, THALASSERY

CRIME NO.780/2014 OF Kathirur Police Station , Kannur

PETITIONER/S:

- 1 VIKARAMAN,
AGED 46 YEARS, S/O. BALAN,
KATTIL MEETHAL HOUSE, KIZHAKKE KADIRUR,
THALASSERY TALUK, KANNUR DISTRICT.
- 2 JIJESH C.P,
AGED 36 YEARS, S/O. DAMU NAMBIDI,
KUNIIYIL HOUSE, KIZHAKKE KADIRUR,
THALASSERY TALUK, KANNUR DISTRICT.
- 3 PRABHAKARAN T,
AGED 42 YEARS, S/O. ACHU,
LUDHIYA NIVAS, KUNNUMMAL HOUSE,
MALOOR P.O, KANNUR DISTRICT.
- 4 SHIBIN,
AGED 30 YEARS, S/O. GANGADHARAN,
OTHYOTH HOUSE, VETTUMMAL, KADIRUR,
THALASSERY TALUK, KANNUR DISTRICT.
- 5 SUJITH P,
AGED 32 YEARS, S/O. SURENDRAN,
CHOOALAVIL HOUSE, KOTTAYAMPOYIL P.O,
THALASSERY TALUK, KANNUR DISTRICT.

6 VINOD @ VINU,
AGED 35 YEARS, S/O. BALAKRISHNAN,
NANDIATH HOUSE, KADIRUR P.O,
THALASSERY TALUK, KANNUR DISTRICT.
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7 RIJU,
AGED 30 YEARS, S/O. AANDI,
MEETHALA THACHARATH HOUSE, KAVILMOOLA P.O,
MALOOR, KANNUR DISTRICT.

8 SINIL,
AGED 37 YEARS, S/O. LATE NARAYANAN,
SINIL NIVAS, KUNNUMMAL, THOLAMBRA P.O,
KANNUR DISTRICT.

9 BIJESH POOVADAN @ BIJU,
AGED 34 YEARS, S/O. BALAKRISHNAN,
MEETHALA THACHARATH , KAVILMOOLA P.O,
MALOOR, KANNUR DISTRICT.

10 VIJESH @ MUTHU,
AGED 30 YEARS S/O. BHASKARAN,
KANATHIL HOUSE, UKKAS MOTTA, KADIRUR,
THALASSERY TALUK, KANNUR DISTRICT.

11 VIJESH @ GEORGEKUTTI,
AGED 36 YEARS, S/O. VALSAN,
VALIYAPARAMBATH, UKKAS MOTTA, KADIRUR,
THALASSERY TALUK, KANNUR DISTRICT.

12 MANOJ,
AGED 43 YEARS, S/O. RAGHAVAN,
KANNOOTH HOUSE, BRAHMAVU MUKKU,
KIZHAKKE KADIRUR, THALASSERY TALUK,
KANNUR DISTRICT.

13 SHABITH,
AGED 33 YEARS, S/O. GOVINDAN,
MEETHALE VALIYOTH, BRAHMAVU MUKKU,
EAST KADIRUR, THALASSERY TALUK,
KANNUR DISTRICT.

14 NITH @ NIJITH,
AGED 30 YEARS, S/O. RAJAN,

VAKKUMMAL, AMBILAD P.O, NIRMALAGIRI,
KOOOTHUPARAMBA, THALASSERY TALUK,
KANNUR DISTRICT.

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15 P.P. RAHIM @ JAGA RAHIM,
AGED 39 YEARS, S/O. MUHAMMED,
POOLAKKANDI PARAMBA, AMBILAD P.O,
NOW RESIDING AT C.K. QUARTERS, 24/393,
KUTHUPARAMBA MUNICIPALITY, PAZHAYANIRATH,
THALASSERY TALUK, KANNUR DISTRICT.

BY ADVS.
SRI.K.GOPALAKRISHNA KURUP (SR.)
SRI.P.N.SUKUMARAN
SRI.K.VISWAN
SMT.DEEPTHI S.MENON
SMT.ANURROOPA JAYADEVAN

RESPONDENT/S:

CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY SUPERINTENDENT OF POLICE,
C.B.I., SCB, THIRUVANANATHAPURAM.

R1 BY SRI. SASTHAMANGALAM S. AJITHKUMAR, SPL.P.P.
FOR C.B.I.

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD
10.11.2020, THE COURT ON 23.02.2021 PASSED THE FOLLOWING:
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ON

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O R D E R

Dated this the 23rd day of February 2021 Application filed under Section 439 of the Cr.P.C for regular bail.

2. The applicants are accused Nos.1, 2, 4 to 10, 13 to 17 and 19 in crime No. 780/2014 of Kadirur Police Station for having allegedly committed offences punishable under Sections 143, 147, 148, 201, 202, 212, 324, 307 and 302 read with Section 149 of the I.P.C and under Section 120-B I.P.C, under sections 3 and 5 of the Explosive Substances Act 1908 and under Section 27 of the Arms Act as also under Section 15 (1) (a) (i) read with Sections 16 and 19 of the Unlawful Activities (Prevention) Act

1967 (hereinafter referred to as UAPA). After investigation was handed over to the Central Bureau of Investigation, the crime was re-registered as RC No.10 (S)/2014/CBI/SCB/TVPM. On completion of the investigation, the CBI filed the final report against 19 persons arraigned as accused before the Court of Session, Thalassery as S.C. No. 200/2015. Later, vide order dated 07/03/2017 of the Hon'ble Apex Court in CrI. A. Bail Appl.No.997 OF 2019 No. 519/2017 the case was transferred to the Court of the Special Judge, (SPE/CBI)-III, Ernakulam and taken on file of that Court as S.C. No. 343/2017 and is still pending trial before that Court. After further investigation, supplementary final report was filed, and at present, there are a total of 25 accused arrayed in the crime. The six additional accused implicated later, are enlarged on bail.

3. The prosecution case can be encapsulated as thus:

There was a rivalry existing between members of R.S.S and the members of the C.P.I (M) within the station limits of Kadirur Police Station. The deceased Manoj was a leader of the R.S.S and had by his activities invited the wrath of members of C.P.I (M) in the locality. He was also an accused in a case of attempted murder of Sri P.Jayarajan, the District Secretary of C.P.I (M), Kannur district.

And hence, they were after his blood seeking revenge. It is alleged that the accused had a conspiracy to eliminate Manoj and accordingly on 01/09/2014 at about 11 AM, 16 accused persons under the leadership of the first accused (A1), Vikraman, lay in wait at a house under construction belonging to one Rijeesh @ Riju near the scene of crime. The deceased and his friend Pramod came in a Maruti van bearing registration No. KL-58/G-4530 driven by the Bail Appl.No.997 OF 2019 deceased. When the van reached a place named Palluvathu valavu in Kadirur, A1 hurled the bomb at the deceased. He lost control of the vehicle and it dashed against an electric post and halted.

Immediately the accused persons lying in wait for him, pounced upon him and indiscriminately inflicted fatal blows on him with swords and choppers etc. A1 also inflicted cut injury with a chopper on Pramod (CW 49) and attempted to murder him. Pramod managed to flee but the deceased succumbed to the fatal injuries sustained by him. The commotion attracted persons in the locality and they began to reach the scene of crime. To scare them away, the accused persons exploded another bomb.

4. Several applications were filed by the applicants seeking bail before the Sessions Court, Thalassery as also appeals before this Court. Application was also filed for statutory bail under Section 167 (2) Cr.P.C. But the same also was dismissed by the Sessions Court, Thalassery. After the case was made over to the Special Court, Ernakulam, bail applications were filed again which got dismissed repeatedly. The accused persons had filed W.P.(C) No.25403/2017 before this Court challenging the order granting sanction by the Central Government for prosecution under the Bail Appl.No.997 OF 2019 provisions of UAPA and taking of cognizance of the offences by the trial Court on the basis of that order. It was urged that the competent authority to grant sanction for prosecution is the Government of Kerala. The Writ Petition was allowed in part holding that the

cognizance taken by the Sessions Court, Thalassery prior to the grant of sanction was bad in law. The trial Court was therefore directed to consider the matter afresh and to decide whether cognizance has to be taken or not. Thereafter, The Court of the Special Judge took fresh cognizance of the offences against the applicants. Writ Appeal is filed by the applicants as WA No.766/2018 challenging the order in W.P.(C) No. 25403/2017. The same is admitted and pending disposal.

5. The trial could not therefore commence and the applicants continue in detention as undertrial prisoners. The accused were all arrested on different dates from 17/09/2014 to 22/01/2015. They continue in custody. All the accused except the applicants are on bail. The formal charge proceeding trial is yet to be framed. It is stated that the applicants have been languishing in jail for more than 6 years. It is therefore prayed that the applicants may be released on bail.

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6. Heard Sri. K.Gopalakrishna Kurup, learned Senior Counsel appearing for the applicants instructed by Sri. P.N.Sukumaran and Sri.Sasthamanglam S.Ajithkumar, the learned Special Prosecutor appearing for the C.B.I.

7. The learned Senior Counsel draws the attention of this Court to a catena of decisions rendered by the Apex Court in *Om Prakash v. State of Punjab* [AIR 1961 SC 1782], *Usmanbhai Dawoodbhai Memon v. State of Gujarat* [AIR 1988 SC 922], *Harishchandrasing Sajjansinh Rathod & Ors v. State of Gujarat* [AIR 1979 SC 1232], *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar, Patna* [AIR 1979 SC 1360], *S.N. Thapa v. State of Maharashtra* [(1994) 4 SCC 38], *Hitendra Vishnu Thakur & Ors v. State of Maharashtra & Ors* [AIR 1994 SC 2623], *Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India* [1994(6) SCC 731], *Giani Pratap Singh v. State of Rajasthan & Ano* [AIR 1996 SC 74], *Shaheen Welfare Association v. Union of India & Ors* [AIR 1996 SC 2957], *R.D Upadhyaya v. State of A.P. & Ors* [(1996) SCC(Cri) 519], *Mahesh Kumar Bhawsinghka v. State of Delhi* [(2000) 9 SCC 383], *Vivek Kumar v. State of U.P.* [(2000) 9 SCC 443], *Sanjoy Kumar Das v. State of West Bengal* [2000(2) ACR Bail Appl.No.997 OF 2019 1056(SC)], *Ram Choubey v. State of Bihar & Ors* [AIR 2002 SC 2336], *Union of India v. Rajesh Ranjan* [(2004) 7 SCC 539], *State of Kerala v. Raneef* [AIR 2011 SC 340], *Sanjay Chandra v. CBI* [AIR 2012 SC 830] and *Umarmiya Ismailmiya Saiyed v. State of Gujarat* [AIR 2017 SC 707] and several other decisions rendered by different High Courts to impress upon this Court the importance of speedy trial and the entitlement of the accused to bail in case speedy trial is not possible.

8. The learned Senior Counsel submits that the prosecution is mainly relying upon the explosion of a bomb to scare the public from reaching the scene of occurrence as an act of terror so as to attract the provisions under the UAPA. Section 15 (i) (a) of the UAPA states about what is a terrorist act. Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological, Bail Appl.No.997 OF 2019 radioactive, nuclear or otherwise) of a hazardous nature or by any other

means of whatever nature to cause or likely to cause death of, or injuries to, a person or persons, commits a terrorist act. This Court has already considered this argument of the learned Senior Counsel in *Vikraman v. State of Kerala & Ors* [2015 (2) KLJ 113] and concluded that the alleged act of offence in this crime will attract the definition of terrorist activity under Section 15 of the UAPA. I am therefore not inclined to reopen that question in this application for bail.

9. The learned Senior Counsel has pointed out to the statements of the various witnesses recorded by the investigating agency and other materials to indicate that the complicity of the applicants is not satisfactorily established. A detailed examination of the evidence and statements of witnesses and other materials are not contemplated while considering application for bail (See *Kalyan Chandra Sarkar v. Pappu Yadav* [2005 KHC 604 : (2005) 2 SCC 42]). What is required under Section 43-D (5) of the UAPA to refuse bail is a prima facie case against the accused. The trial courts as also this Court in appeal had elaborated the reasons for declining grant of bail to the applicants and there are marginal enough reasons to Bail Appl.No.997 OF 2019 believe that the applicants were, prima facie, guilty of the accusations made against them. A reconsideration of the merits of the accusations made against the applicants is not contemplated. The argument of the learned Senior Counsel based on the fact that the applicants have been undertrial prisoners for more than six years and that there are no possibility of an expeditious disposal of the case is something which can be lend ears.

10. The Hon'ble Supreme Court had very recently, in *Union of India vs. K.A. Najeed* [2021 SCC OnLine SC 50] considered the propriety of granting bail to an accused who has allegedly committed an offence punishable under the UAPA. In that case, the accused was arrested on 10/04/2015 and was undertrial and this High Court held that undertrial accused could not be kept in custody for too long when the trial was not likely to commence in the nearer future, for not doing so would cause serious prejudice and sufferings to him. The learned Senior Counsel has relied upon the decision in *Najeed's case* (supra) to be pressed into service in the instant case as well despite the rigours of Section 43-D(5) of the UAPA.

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11. The learned Special Prosecutor appearing for the CBI, Sri. Ajithkumar, has vehemently opposed the application for bail by stating that the applicants were involved in a very ghastly crime committed during broad daylight openly defying law and order and they repeatedly blasted country made bombs to strike terror among the public and thereafter, slit open the throat of the deceased with the sharp edged weapon to make it sure that there are no signs of life left in him. Moreover, there is an embargo under Section 43-D (5) of the UAPA from granting bail to the applicants against whom there is prima facie material to indicate their complicity. In case the applicants are released on bail, there is every possibility of their committing offences of similar nature, intimidating and influencing the witnesses and creating terror among the public. CW-49 is a witness who was attempted to be murdered. He is an eye witness to the occurrence. In case the applicants are released on bail, there is every possibility of his life being endangered.

12. After having considered the entire facts and circumstances of this case, I have no doubt that the applicants under normal circumstances should be declined bail. In Najeeb's case (supra) relying on the decisions in Shaheen Welfare Association Bail Appl.No.997 OF 2019 case (supra) Supreme Court Legal Aid Committee case, Hussain vs. Union of India [(2017) 5 SCC 702] , and Parmjith Singh v. State (NCT of Delhi) [(1999) 9 SCC 252], it was held thus:

"18.It is thus clear to us that the presence of the statutory restrictions like Section 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. Instead, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of the 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 UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. 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 Bail Appl.No.997 OF 2019 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 joys and establish the charges beyond any doubt and simultaneously the respondent's right Guaranteed under Part III of our Constitution have been well protected.

20. 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. Unlike the NDPS 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 the UAPA. Instead, Section 43-D (5) of 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 accused of aiding the trial by absconsion etc."

The accused in K.A. Najeeb's case (supra), had undergone more than 5 years of imprisonment and the co-accused who were tried were awarded cumulative sentences ranging between 2 and 8 years of rigorous imprisonment. The accused who was absconding has therefore undergone a major portion of the sentence which could be Bail Appl.No.997 OF 2019 awarded to him in case of conviction.

Hence the Apex Court found that it is unnecessary to detain the accused therein any longer, and confirmed the order of granting bail. In the instant case, the applicants are accused of having committed an offence of murder and attempted murder and they could be sentenced to imprisonment for life or even with the death penalty. Under the circumstances, it may not be appropriate to release the accused on bail, submits the learned Special Prosecutor for the CBI.

13. Having considered the entire facts and circumstances in this case, I am prima facie convinced that the accused are guilty of committing the offences alleged against them. But it is also pertinent to note that the applicants have been in custody for more than 6 years and therefore, further incarceration of the applicants without trial may not be justified. Hence, I am of the opinion that the applicants are entitled to be released on bail.

In the result, the bail application is allowed and the applicants are directed to be released on bail on execution of a bond for 50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like amount to the satisfaction of the jurisdictional Court and on following further conditions:

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(i) They shall not enter Kannur District till the completion of the trial and shall appear before the jurisdictional Court on each day the case is posted for trial without fail, except on exemption granted by the Court.

(ii) They shall not intimidate or influence witnesses and shall not tamper with evidence.

(iii) They shall not get involved in any crime during the currency of the bail.

(iv) They shall surrender their passports before the jurisdictional Court and shall not go abroad without the permission of the jurisdictional Court.

Breach of any of the conditions shall entail in cancellation of bail on an application being filed by the prosecution before the jurisdictional Court.

Sd/-

ASHOK MENON JUDGE jg