

# Mohammed Ali vs National Investigation Agency on 2 November, 2021

**Author: K.Vinod Chandran**

**Bench: K.Vinod Chandran**

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943  
CRL.A.NO.356 OF 2021

AGAINST THE ORDER IN CRL.M.P.NO.212 OF 2020 IN S.C.NO.01/2021/NIA  
(RC NO.02/2020/NIA/KOC) DATED 22.03.2021 OF THE COURT FOR TRIAL OF  
NIA CASES, ERNAKULAM, KERALA.  
APPELLANT/ ACCUSED NO.7:-

MOHAMMED SHAFI P., AGED 36 YEARS, S/O ABOOBAKKAR,  
PANNIKKOTTIL HOUSE, AYIKKARAPADI P.O, MALAPPURAM  
DISTRICT.

BY ADV SRI.NIREESH MATHEW (K/973/1994)-18544

RESPONDENT/RESPONDENT-COMPLAINANT:

NATIONAL INVESTIGATION AGENCY, KOCHI,  
REPRESENTED BY ITS SPECIAL PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 023.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.369/2021 AND CONNECTED CASES, THE COURT ON  
02.11.2021 DELIVERED THE FOLLOWING:

Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021 - 2 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943  
CRL.A.NO.369 OF 2021

AGAINST THE ORDER IN CRL.M.P.NO.208 OF 2020 IN S.C.NO.01/2021/NIA  
(RC NO.02/2020/NIA/KOC) DATED 22.03.2021 OF THE COURT FOR  
TRIAL OF NIA CASES, ERNAKULAM, KERALA.  
APPELLANT/ACCUSED NO.6:

JALAL A.M., AGED 38 YEARS, S/O.SMT.KHADEEJA,  
ARYANKALAYIL HOUSE, ANICADU, MUVATTUPUZHA,  
ERNAKULAM DISTRICT, PIN - 686 661.

BY ADVS.  
SRI.C.C.THOMAS (SR.)  
SRI.NIREESH MATHEW

RESPONDENT/RESPONDENT/COMPLAINANT:

NATIONAL INVESTIGATION AGENCY, KOCHI,  
REPRESENTED BY ITS SPECIAL PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 023.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.356/2021 AND CONNECTED CASES, THE COURT ON  
02.11.2021 DELIVERED THE FOLLOWING:

Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021 - 3 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943  
CRL.A.NO.370 OF 2021

AGAINST THE ORDER IN CRL.M.P.NO.56 OF 2021 IN S.C.NO.01/2021/NIA  
(RC NO.02/2020/NIA/KOC) DATED 22.03.2021 OF THE COURT FOR  
TRIAL OF NIA CASES, ERNAKULAM, KERALA.  
APPELLANT/ACCUSED NO.10:

RABINS KARIKKANAKUDIYIL HAMEED @ RABINS HAMEED,  
AGED 42 YEARS, S/O.HAMEED K.M.,  
KARIKKANAKUDIYIL HOUSE, PERUMATTAM,  
VELLORKUNNAM VILLAGE, PUTHUPPADI (P.O.),

ERNAKULAM DISTRICT.

BY ADV.SRI.NIREESH MATHEW

RESPONDENT/RESPONDENT/COMPLAINANT:

NATIONAL INVESTIGATION AGENCY, KOCHI,  
REPRESENTED BY ITS SPECIAL PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 023.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.356/2021 AND CONNECTED CASES, THE COURT ON  
02.11.2021 DELIVERED THE FOLLOWING:

Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021 - 4 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943  
CRL.A.NO.379 OF 2021

AGAINST THE ORDER IN CRL.M.P.NO.214 OF 2020 IN S.C.NO.01/2021/NIA  
(RC NO.02/2020/NIA/KOC) DATED 22.03.2021 OF THE COURT FOR  
TRIAL OF NIA CASES, ERNAKULAM, KERALA.  
APPELLANT/ACCUSED NO.5:

RAMEES K.T., AGED 33 YEARS, S/O.ABDUL SATHAR,  
KANNANTHODI, THEKKEKALATHIL HOUSE, VETTATHOOR P.O.,  
PERINTHALMANNA, MALAPPURAM DISTRICT.

BY ADVS.  
S.SREEKUMAR (SR.)  
P.MARTIN JOSE  
P.PRIJITH  
THOMAS P.KURUVILLA  
M.A.MOHAMMED SIRAJ  
R.GITHESH  
MANJUNATH MENON  
SACHIN JACOB AMBAT  
HARIKRISHNAN S.

RESPONDENT/RESPONDENT/COMPLAINANT:

NATIONAL INVESTIGATION AGENCY, KOCHI  
REPRESENTED BY ITS SPECIAL PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, ERNAKULAM, KOCHI 682 023.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES..

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.356/2021 AND CONNECTED CASES, THE COURT ON  
02.11.2021 DELIVERED THE FOLLOWING:  
Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021 - 5 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943  
CRL.A.NO.452 OF 2021  
AGAINST THE ORDER IN CRL.M.P.NO.211 OF 2020 IN S.C.NO.01/2021/NIA  
(RC NO.02/2020/NIA/KOC) DATED 22.03.2021 OF THE COURT FOR TRIAL OF  
NIA CASES, ERNAKULAM, KERALA.  
APPELLANT/ACCUSED NO.1:

SARITH.P.S., AGED 35 YEARS, S/O.SADANAKUMAR,  
MUDRA, TC 65/2055, HRA-48, THIRUVALLOM,  
THIRUVANANTHAPURAM-695 027.

BY ADVS.  
DR.S.GOPAKUMARAN NAIR (SR.)  
SRI.SOORAJ T.ELENJICKAL  
SRI.ASWIN KUMAR M J  
HELEN P.A.  
SRI.ARUN ROY  
SRI.SHAHIR SHOWKATH ALI

RESPONDENTS/COMPLAINANT & STATE:

- 1 UNION OF INDIA REPRESENTED BY SUPERINTENDENT OF POLICE,  
NATIONAL INVESTIGATION AGENCY, 28/443, KADAVANTHRA,  
ERNAKULAM-682 020.
- 2 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,ERNAKULAM-682 031.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.356/2021 AND CONNECTED CASES, THE COURT ON

02.11.2021 DELIVERED THE FOLLOWING:

Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943

CRL.A.NO.438 OF 2021

AGAINST THE ORDER IN CRL.M.P.NO.27 OF 2021 IN S.C.NO.01/2021/NIA

(RC NO.02/2020/NIA/KOC) DATED 22.03.2021 OF THE COURT FOR

TRIAL OF NIA CASES, ERNAKULAM, KERALA.

APPELLANT/ACCUSED NO.2:

SWAPNA PRABHA SURESH, AGED 39 YEARS,  
D/O.LATE SUKUMARAN SURESH, VAYALIL HOUSE, MUNCHIN ROAD,  
JAGATHI, THYCAUDU P.O., THIRUVANANTHAPURAM-695 014.

BY ADVS.

SRI.SOORAJ T.ELENJICKAL

SRI.ASWIN KUMAR M J

HELEN P.A.

SRI.ARUN ROY

SRI.SHAHIR SHOWKATH ALI.

RESPONDENTS/COMPLAINANT & STATE:

- 1 UNION OF INDIA,  
REPRESENTED BY SUPERINTENDENT OF POLICE,  
NATIONAL INVESTIGATION AGENCY, 28/443, GIRINAGAR,  
KADAVANTHRA, ERNAKULAM-682 020.
- 2 STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.356/2021 AND CONNECTED CASES, THE COURT ON  
02.11.2021 DELIVERED THE FOLLOWING:

Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943  
CRL.A NO. 426 OF 2021

AGAINST THE ORDER IN CRL.M.P.NO.81 OF 2021 IN S.C.NO.01/2021/NIA  
(RC NO.02/2020/NIA/KOC) DATED 18.06.2021 OF THE COURT FOR TRIAL OF  
NIA CASES, ERNAKULAM, KERALA.

APPELLANT/ ACCUSED NO.11:

SHARAFUDEEN K.T., AGED 38 YEARS, S/O. MOIDEEN K.T.,  
KURUPPANTHODI HOUSE, KAKKOOOTH ROAD,  
PERINTHALMANNA POST, MALAPPURAM DISTRICT.

BY ADVS.  
SRI.MANU TOM CHERUVALLY  
SRI.K.R.JITHIN  
SRI.BALAMURALI K.P.  
SRI.SHAJI T.M.

RESPONDENT/COMPLAINANT:

UNION OF INDIA,  
REPRESENTED BY SUPERINTENDENT OF POLICE,  
NATIONAL INVESTIGATION AGENCY, 28/443, GIRI NAGAR,  
KADAVANTHRA, ERNAKULAM, KERALA - 682020,  
REPRESENTED BY SPECIAL PROSECUTOR.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.356/2021 AND CONNECTED CASES, THE COURT ON  
02.11.2021 DELIVERED THE FOLLOWING:

Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021 - 8 -

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
TUESDAY, THE 2ND DAY OF NOVEMBER 2021 / 11TH KARTHIKA, 1943  
CRL.A.NO.648 OF 2021

AGAINST THE ORDER IN CRL.M.P.NO.83 OF 2021 IN S.C.NO.01/2021/NIA  
(RC NO.02/2020/NIA/KOC) DATED 18.06.2021 OF THE COURT FOR TRIAL OF  
NIA CASES, ERNAKULAM, KERALA.

APPELLANT/ ACCUSED NO.12:

(WRONGLY MENTIONED AS ACCUSED NO.10 IN THE CAUSE TITLE OF  
THE IMPUGNED ORDER)

MOHAMMED ALI, AGED 44 YEARS, S/O.ABDUL KHADER,  
MULLARIKATTU HOUSE, MUVATTUPUZHA, ERNAKULAM DISTRICT.

BY ADV.SRI.NIREESH MATHEW

RESPONDENT/RESPONDENT-COMPLAINANT:

NATIONAL INVESTIGATION AGENCY, KOCHI,  
REPRESENTED BY ITS SPECIAL PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI 682 023.

BY SRI.S.V.RAJU, ADDITIONAL SOLICITOR GENERAL OF INDIA  
BY SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA  
I/B.SRI.ARJUN AMBALAPPATTA, SENIOR P.P. FOR NIA CASES.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.10.2021,  
ALONG WITH CRL.A.356/2021 AND CONNECTED CASES, THE COURT ON  
02.11.2021 DELIVERED THE FOLLOWING:  
Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021 - 9 -

"C.R"

K.Vinod Chandran & C. Jayachandran, JJ.

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Crl.Appeal Nos.356, 369, 370, 379, 426,  
438, 452 & 648 of 2021  
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Dated, this the 02nd November 2021

#### JUDGMENT

Vinod Chandran, J.

The appellants lament; as the lyrics in a folk song in the vernacular intones, 'we are petty smugglers unduly labelled as terrorists', resulting in their continued incarceration pending investigation and trial, infringing their right to life guaranteed under Article 21 of the Constitution. Accused Nos.1, 2, 3, 4, 5, 8, 10 & 11 as per the Final Report (who are accused Nos.1, 2, 5, 6, 7, 10, 12 & 13 as per the FIR) in S.C.No.1/2021/NIA are the appellants in the Criminal Appeals, which impugn the common order of the Special Court for NIA Cases, Ernakulam, rejecting their bail applications.

2. The bulwark of the appellants' contentions is a decision of another Division Bench of this Court in Muhammed Shafi P. v. NIA Kochi, 2021 KHC 145; which is under challenge before the Hon'ble Supreme Court, as appealed against by the National Investigation Agency (for brevity 'NIA'). In the Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 10 -

cited decision, the bail granted by the Special Court to the various accused, in the same transaction in which the present appellants were also involved, was affirmed, as was the order declining bail to A7 (now A5), who was again before the Special Court and now in appeal before us.

3. Briefly put, the allegations against the accused are of smuggling gold through the diplomatic channel availing the intimate connection, A1 and A2 had with the Consulate of United Arab Emirates at Thiruvananthapuram; wherein the two accused were formerly employed. A particular baggage was detained by the Customs Officials, when 30.422 kgs. of gold worth Rs.14.82 crores were seized. The investigation revealed repeated consignments of contraband having been brought into the country, camouflaged as diplomatic baggage. Muhammed Shafi P.(supra) held that smuggling of gold is covered by the provisions of the Customs Act and will not fall within the definition of a 'terrorist act' as defined under Sec.15 of the Unlawful Activities (Prevention) Act, 1967 (for brevity 'UA(P)A'). It was also held that unless evidence is brought out to show that such smuggling was done with the intent, to threaten or likely to threaten, the economic security or monetary stability of India, by attempting to indulge in any Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 11 -

manner in the counterfeiting of high quality notes or coins, then and then alone, Sec.15 would be attracted.

4. The Special Court noticed the above decision and has relied on the decision of the Hon'ble Supreme Court in NIA v. Zahoor Ahamad Shah Watali [(2019) 5 SCC 1] to examine whether there are materials suggesting that the accusation against the accused is true; prima facie, as required under sub-sec.(5) of Sec.43D of the UA(P)A. The learned Judge found that there exists materials revealing the conspiracy, multiple manifold endeavors to smuggle gold into the country and plans devised to continue such activities with impunity as prima facie revealed from the voice clips, confession statement and travel details of the accused; which together prevailed upon the Court to reject the bail applications. The appellants herein were found to be front liners in the smuggling operations and hence a distinction was drawn from those released on bail in Muhammed Shafi P. (supra) who, it was held, were only back liners.

5. Sri.S.Sreekumar, learned Senior Counsel, instructed to appear for A5 (now A3)(Crl.A.No.379 of 2021), commenced arguments pointing out that the bail applications rejected are that of accused Nos.1, 2, 3, 4, 5, 8, 10 & 11 as Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 12 -

per the Final Report. The offences alleged are under Sections 16, 17 and 18 of the UA(P)A Act. As has been held in Muhammed Shafi P. (supra), the above provisions are attracted only if the alleged actions of the accused amount to a terrorist activity, under Section 15(1) & (iii) of UA(P)A. In addition to the reasoning of the Division Bench, the definition of 'high quality counterfeit Indian currency' in the Explanation to Section 15 is pointed out along with the Third Schedule of the Act and Investigation of High Quality Counterfeit Indian Currency Rules, 2013. This further fortifies the reasoning in Muhammed Shafi P. (supra) that the threat to economic security, which is brought under the definition of a 'terrorist act' is only relating to counterfeiting of currency or coins, that too of a high quality. The requirement as per Explanation (b) of Section 15 of a declaration by a forensic



authority about the quality of the counterfeit currency makes it explicit that an ordinary smuggling of gold, with motive of mere profit and evasion of duty, would not be threat to 'economic security' as defined under the UA(P)A. Learned Senior Counsel also took us through the explanation of the Ministry of Home Affairs before the Department Related Parliamentary Standing Committee on Home.Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 13 -

Affairs to further buttress the above contention. The attempt of the Parliament was only to curb State sponsored counterfeiting, from across the borders of the nation. The final report filed before the Special Court has also been read over, to impress upon us that there is not even an iota of evidence of a terrorist act having been committed by the accused herein.

6. Dr.S.Gopakumaran Nair, learned Senior Counsel, instructed to appear for A1 (Crl.A.No.452 of 2021), while adopting the arguments of A5, points out that A1 was the former PRO of UAE Consulate who resigned in September, 2019. The prosecution has alleged criminal conspiracy, after his resignation and there is nothing to indicate that he had been acting on behalf of the Consulate at the relevant time. The specific allegation against A1 in the final report has been read over to assert that the smuggling of gold alleged, does not come within the definition of Section 15. It was pointed out that none of the witnesses talked about A1 and the authorization said to have been issued to A1 by the Consulate is of the year 2016, which stands revoked by his resignation. The learned Senior Counsel summarizes his arguments as, (i) the charge-sheet does not make out any offence under UA(P)A, Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 14 -

(ii) there is neither funding of, or any financial transaction relating to, terrorism, (iii) nor is there any legal evidence to bring the alleged actions under Section 15 of the Act. If at all, the accused were indulging in smuggling, that comes under the Customs Act; there is no reason to apply the rigour under Section 43D(5) of the UA(P)A in considering their bail applications. The accused have been languishing in prison for more than an year and their right to life which includes a right to live with dignity has been infringed by the gruesome incarceration.

7. Sri.C.C.Thomas, learned Senior Counsel, instructed to appear for A6 (now A4) (Crl.A.No.369 of 2021), reads out paragraphs 33 and 34 of the Division Bench judgment to urge the compelling fact that smuggling of gold simplicitor cannot be brought under the definition of a terrorist act. It is pointed out that the final report was not before the Division Bench in Muhammed Shafi P. (supra), though it had been filed on 05.01.2021, before the decision. But the hearing was over much earlier to that and this Court has the further benefit of finding no ingredient of a terrorist act from the definite charge sheet now placed before Court. There is no allegation that the sale proceeds Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 15 -

or profit generated from the activity was used in any terrorist act and by reason of Section 6 of the NIA Act, 2008, the NIA is dis-entitled from prosecuting the offence, since it is not a 'Scheduled Offence' under that Act.

8. Adv.Sooraj T. Elenjical appears for A2 (Crl.A.No.438 of 2021) and refers us to the FIR to argue that she has been roped in merely for the reason that she had earlier worked as Secretary to Consul

General at the UAE Consulate. The order which rejected the earlier application for bail produced as Annexure A2 in Crl.A.438 of 2021 and paragraph 12 therein is read over. Even at that stage, as noted by the Special Court, there was nothing on record to show that the proceeds of gold were used or intended to be used for terrorism. But, the learned Judge rejected the bail applications opining that a deeper probe would be required in view of the transnational forces likely to have been involved in the case. Now the final report is before Court and there is neither an inkling of evidence connecting any of the accused to any terrorist act or organization nor has the involvement of any transnational forces been unearthed. The distinction drawn between the various accused apprehended;

ie: front-liners and back-liners, hence pales into  
Crl.Appeal Nos.356, 369, 370, 379,  
426, 438, 452 & 648 of 2021 - 16 -

insignificance. The description of the accused together, as a terrorist gang, is not supported by any substantial evidence. The final report does not attract Sections 15 to 18 of the UA(P)A and any reasonable man would have expected the NIA, a prestigious investigating agency created by statute, to have filed a refer report leaving the accused to be prosecuted for smuggling and not under the UA(P)A. Section 135 of the Customs Act is sufficient to penalize the accused if the allegations are proved and it takes in repeated offences also. The large quantities or the multiple transactions, alleged of smuggling does not enable a prosecution under the UA(P)A and the NIA has no role to play. There is no question of applying the rigour of prima facie truth in the allegations under Section 43D(5). Out of the twenty accused now charge-sheeted, eleven were granted bail and one was not arrested due to health reasons. There is a pending investigation against nine suspects and the eight, now in appeal before this Court, are unnecessarily kept in custody. The prosecution has put forth 247 witnesses, 329 documents and 194 Material Objects. The accused have been in custody for more than an year and the decision in Union of India v. K.A.Najeeb (2021) 3 SCC 713] squarely applies since there is Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 17 -

no possibility of the trial commencing and concluding in the near future. The proposition in K.A.Najeeb has been followed by the Delhi High Court in Asif Iqbal Thanha v. State of NCT of Delhi [MANU/DE/1095/2021] and by the Gauhati High Court in Akhil Gogoi v. The National Investigation Agency [MANU/GH/0002/2021]. Individually, on A2, it is pointed out that there is no direct evidence against her, she having resigned from the post of Secretary to UAE Consul General in August 2019. There is no evidence of she having carried out any odd jobs for the UAE Consulate along with A1, after her resignation. A2 is arrayed as an accused only by reason of her name having been mentioned by those who were involved in the alleged smuggling activity. A2 is a lady with recurrent cardiac and epileptic problems and is the mother of two children. She has been away from her nine year old son and nineteen year old daughter for more than an year and is now suffering from acute mental depression. She has no antecedents which would necessitate her further incarceration.

9. Adv.Nireesh Mathew appears for A7 (now A5) (Crl.A.No.356 of 2021), A10 (now A8) (Crl.A.No.370 of 2021) and A12 (now A10) (Crl.A.No.648 of 2021). It is pointed out Crl.Appeal

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that at the earlier instance the Special Court had declined the bail applications, not only of A7 but also of A12 and A13. A12 and A13 did not appeal and in the appeal of A7, the order declining grant of bail was affirmed only since he was seen to have travelled to other countries also. The final report does not allege any trans-national forces having been involved. Para 37 of Muhammed Shafi P. (supra) is read out to argue that the apprehension expressed therein does not survive at this point when the final report has been filed.

10. Adv.Manu Tom Cheruvally appearing for A13 (Crl.A.No.426 of 2021 - shown as A11) asserted that he has no direct connection or link with the alleged act of smuggling and is a mere victim of circumstances. He is alleged to have only assisted one of the accused to dismantle the electronic items. It is pointed out that one of the accused who is said to have been declared an approver is neither cited as a witness nor as an accused in the final report. A13 cannot be said to be even a back-liner in the smuggling activity and there is no question of his involvement in any terrorist activity.

11. Sri.S.V.Raju at the outset sought for a reconsideration of the dictum in Mohammed Shafi P. (supra).

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It is argued that there is no substance in falling upon the Customs Act, which penalize smuggling activities; to avoid a prosecution under the UA(P)A. Threats against economic stability would definitely be a terrorist act coming under S.15 of the UA(P)A. Counterfeiting is also a penal offence under S.489A to 489E IPC, which even going by the Division Bench decision can be prosecuted under the UA(P)A, deeming it to be a terrorist act. The Explanation to S.15 of UA(P)A and the Third Schedule merely defines high quality Counterfeit Indian Currency in the context of sub-clause (iiia) of clause (a) of S.15(1). This does not include the production, smuggling or circulation of 'any other material'. Specific reference is made to the Investigation of High Quality Counterfeit Indian Currency Rules, 2013 to emphasize the threshold limit of Rupees One lakh provided therein for finding damage to monetary stability of India. The learned ASGI points out that in the present case the smuggling activity runs into Crores and the seizure of contraband effected on 05.07.2020 itself would be far exceeding the threshold limit. The investigation has also revealed repeated smuggling by the syndicate, in which all the accused were members, the appellants being front-runners. The Explanation Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 20 -

and Third Schedule only deals with one specie, that is high quality currency notes and coins and there could be other materials and elements, which could disturb and damage the economic stability of the Country. U.P. State Electricity Board v. Hari Shanker Jain [(1978) (4) SCC 16] is relied on to urge this Court to avoid a narrow construction and to give effect to the intention of the Parliament.

12. It is pertinently pointed out that even if Muhammed Shafi P. (supra) is accepted and taken as a binding precedent, it has to be noticed that the bail application of A7 was rejected by the Division

Bench. What applies to A7, a front-liner, equally applies to all the appellants herein, who are front-runners. The same yardstick has to be applied in the case of the appellants, charge-sheeted as front-runners in the smuggling transactions, accused of graver offences than that of the back-runners. K.A.Najeeb (supra) is not applicable, since there, the accused granted bail was incarcerated for five years and the trial had not commenced. The learned ASGI has also argued relying on D.K.Trivedi & Sons. v. State of Gujarat [1986 (supp). SCC 20] that since the legal issue is under consideration of the Hon'ble Supreme Court, it is best that this Court waits for Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 21 -

an authoritative pronouncement from the Hon'ble Supreme Court.

13. The appellants have been consistently requiring a hearing, especially since the other accused, in the same transaction, were granted bail. The appellants alone are kept behind bars for reason of the opinion forged in the impugned order that they are the front-runners and those released are back-runners. It is pertinent that Muhammed Shafi P. (supra) confirmed the grant of bail made by the Special Court for reason of there being no evidence of any counterfeiting of high quality currency having been unearthed. In the case of A7, bail was declined by the Special Court on the reasoning that there should be a deeper probe, since at that time there was an apprehension of transnational forces having been involved in the smuggling activities carried on within the country. As of now the investigation is over and a final report is filed. In D.K.Trivedi (supra) the question raised was regarding the constitutionality of S.15(1) of the Mines and Minerals [Regulation & Development] Act, 1957 and the power of the State Government to make rules, enabling charge of dead rent and royalty, as also enhancement of the rates. The Division Bench dismissed the writ petitions, challenging Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 22 -

the validity of notifications, directing the appellants to approach the Hon'ble Supreme Court as similar matters were pending there. The Hon'ble Supreme Court deprecated such practice and observed that if the High Court was of the opinion that the question pending before that Court was seized of by the Hon'ble Supreme Court, then the proper course of action would be to stay the hearing until the Hon'ble Supreme Court disposes of the matter. In fact, in these appeals by urging us to adjourn sine die, till the Hon'ble Supreme Court decides the matter, the learned ASGI would require us to do what the Hon'ble Supreme Court deprecated. The instant batch of appeals are not a challenge to the constitutionality of a provision or a notification. The appeals are against the orders of a Special Court refusing bail and as held in K.A.Najeeb (supra), in continued incarceration of under-trial prisoners, without just cause, there is also the issue arising of infringement of Article 21 of the Constitution of India. Especially in these appeals, since the continued incarceration is only by reason of the prosecution initiated under the UA(P)A and bail having been declined resorting to the rigor of S.43D(5). However; IF as the earlier Division Bench held in Muhammed Shafi P. (supra), Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 23 -

there is no ground to invoke the provisions of the UA(P)A, the accused are entitled to be released, especially when they have been granted bail in the cases filed under the Customs Act. If UA(P)A is not applicable, then necessarily S.439 Cr.P.C. has to be resorted to, the rigor of which is far lighter than that under the UA(P)A. The Hon'ble Supreme Court in the challenge against Muhammed Shafi

P. (supra) refused to interfere with the bail granted and issued limited notice to examine the question of law. In this context we have to notice that so far as this Court, there is a binding precedent, of a coordinate bench, which is in operation and if the dictum of that decision is followed, there is no question of distinguishing the various accused arrayed as front-runners or back-runners. Whatever be the role of the accused, the activity being smuggling of gold, which cannot be deemed to be a terrorist act under S.15 of the UA(P)A.

14. The Division Bench, in Muhammed Shafi P.(supra) held that sub-sec.(iiia) of Sec.15(1) can only rope in production, smuggling or circulation of high quality counterfeit Indian paper currency, coin or any other material; the last of which is relatable solely to Indian currency or coin. Any material connected with counterfeiting Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 24 -

including high quality paper and machinery or implements to produce, would come within the ambit of the provision; but not smuggling of gold, was the finding. The learned Judges relied on the principles of 'ejusdem generis' and 'noscitur a sociis', to hold that the arrangement of words in the provision would not include gold smuggling with a mere motive for illegal profiteering; which cannot, by any means, be defined to be a 'terrorist act'. Nor was it the intention of the legislature when 'economic security' was incorporated in sub-section (1) of Section 15 with simultaneous incorporation of sub-clause (iiia) of clause (a). It was also held that when other precious metals and stones of enormous value could be smuggled for unlawful gain, there is no reason to include gold alone along with counterfeit Indian currency or coin. The learned Judges referred to the UA(P) Amendment Bill 2011 to find that the intention was only to bring within the definition of terrorist activity, the production, smuggling and circulation of counterfeit Indian paper currency or coin or any other material intended at carrying on such counterfeiting.

15. The arguments addressed, for reconsideration of the decision earlier rendered by the Division Bench; we Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 25 -

reject since we are not inclined to differ from Muhammed Shafi P. (supra) for the following reasons. We remember the caution often expressed that penal statutes should be strictly construed [vide R.Kalyani v. Janak C.Mehta & Others [(2009) 1 SCC 516]. The Division Bench while referring to the UA(P) Amendment Bill of 2011, extracted from the Statement of Objects and Reasons. The specific emphasis was on the words "the existing provisions of the aforesaid Act do not include within their scope an act done with an intent to threaten or threaten likely to economic security of India and counterfeiting Indian paper currency or coin"(sic). The intent to threaten or the likelihood of threatening the 'economic security of India' referred to in Section 15(1) was brought in by the very same amendment that inserted sub-clause (iiia) of clause (a) and substituted the Explanation to that provision. The concern was primarily with the threat to economic security by way of production, smuggling and circulation of high quality Indian paper currency or coin. We specifically see from the presentation made by the Ministry to the Parliamentary Standing Committee of the Home Affairs that the amendments were recommended by the Financial Act Task Force (FATF), an independent inter-

Governmental body that develops and promotes policies

protect the global financial system against money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction. This has been specifically referred to by the Division Bench in paragraph 23 of the decision and the extract made speaks of "the fact that gold is a form of global currency and acts as a medium for exchange in criminal transactions" (sic). True; acts of destabilization of the economy, as distinguished from a physically violent subversive act could also be deemed to be a subversive act against the nation. If the intention was to widen the definition of terrorism, to bring in acts, destabilizing the economy; surely the Parliament had the power. But, the Parliament by inserting economic security in Sec. 15(1) and simultaneous insertion of sub-clause (iiia) of clause (a) by the very same amending act, restricted the definition of a terrorist activity, in so far as destabilizing the economy, to counterfeiting of high quality currency or coins. The words employed in sub-clause (iiia) of clause (a), 'any other material', has to be restricted adopting the principles of ejusdem generis and noscitur a sociis; as held by the Division Bench in Muhammed Shafi P. Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 27 -

(supra).

16. We perfectly accept the argument that counterfeiting is not the only activity which could threaten the economic security of a nation and it is also not the mere use of explosive substances or lethal weapons that could be brought within the ambit of a terrorist act as understood under Sec.15 of the UA(P)A. We refer to the decision of the Hon'ble Supreme Court in State of Kerala v. Mathai Varghese (1986) 4 SCC 746 from which the following extract in paragraph 6 is made:

"... The High Court cannot, do so for, the court can merely interpret the section; it cannot re write, recast or redesign the section. In interpreting the provision the exercise undertaken by the court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the powers to "legislate" have not been conferred on the court. When the expression "currency note" is interpreted to mean "Indian currency note", the width of the expression is being narrowed down or cut down. Apart from the fact that the court does not possess any such power, what is the purpose to be achieved by doing so? A court can make a purposeful interpretation so as to 'effectuate' the intention of the legislature and Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 28 -

not a purposeless one in order to "defeat" the intention of the legislators wholly or in part. When the court (apparently in the course of an exercise in interpretation) shrinks the content of the expression "currency note", to make it referable to only "Indian currency note", it is defeating the intention of the legislature partly inasmuch as the court makes it lawful to counterfeit notes other than Indian currency notes. The manifest purpose of the provision is that the citizens should be protected from being deceived or cheated. ...".

In that case, the contention raised, which was accepted by the trial court and the High Court, was that under Sec.489-A IPC an offence can be charged only if the counterfeiting is of Indian currency. In the enactment under our consideration, it is specifically mentioned as 'Indian currency' and the principle that "... a purposeful interpretation should effectuate the intention of the legislature and not a purposeless one to defeat that intention..." works in favour of the accused. The legislature had the power to bring in any act threatening the 'economic security' as a terrorist act, since it subverts the security and very stability of the country. But the insertions by amendments, made in Act of 2013, confined it to counterfeiting of high quality currency.

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17. Though, strictly only an aid to interpretation we cannot but notice the relevant Ministry's stand before the Parliamentary Standing Committee, which reads as under:

"(ii) The second major category of amendments comes from the requirement to make high quality fake Indian currency notes and the production and distribution thereof also a terrorist offence. Government of India wants to do that because there is mounting evidence to suggest that this high quality fake Indian currency note is actually being printed across the border and being distributed from there, both for financing terrorism as well as for disturbing the monetary stability of our country.

With regard to high quality Counterfeit Indian Currency, it is understood that it can only be breached by sovereign support. Therefore, the Government wanted to make it a terrorist offence. This necessitated some amendments and some insertions; ..."

The following clarification is also relevant :

"There are two things. One is the point which you made about some people being caught because of some fake currency notes coming out, four or five. I think, what you wanted to put across was that counterfeiting can also be for purposes other than terrorism. It need not necessarily be associated with terrorism. That is Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 30 -

why what we have criminalized here is not counterfeiting which is done by other small-time groups. What we have criminalized here is counterfeiting which can be done only by sovereign parties. That is why we have said high quality counterfeit notes, and we have defined that high quality counterfeit notes will be such counterfeit notes which have duplicated the features which have been mentioned in, I think, Schedule 3. Basically, I would like to draw your attention to this. I will read out the section again. "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 doing any of these things, and one of the things is damage to the monetary stability of India by way of production. That means clause 1

by itself is not sufficient. You have to read it with sub-clause (a), (i), (ii), (iii), (iiia), etc. sir, sub-sub-clause (iiia) of clause

(a) says, "damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material."

18. The recommendation of the Parliamentary Committee is also extracted herein below:

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"1.5.31 The Committee feels that the objective to provide definition is to relate economic security with the terrorist organizations indulging in counterfeit currency and circulating them in a big way. This is necessary to support the system.

1.5.32 The Committee, therefore, recommends that the term 'economic security' may be defined in Section 2 of the Act before its insertion in Section 15.

1.5.33 Subject to the above observation, the Clause is adopted."

Economic security stood defined by clause (ea) of Section 2 in the UA(P)A. But the further insertion of (iiia) in Section 15(1) restricted the definition of terrorist activity; the effective prevention and curbing of, which along with any unlawful activities as defined under clause (o) of section 2 was the intention behind UA(P)A. There is no accusation of any unlawful activity levelled here against any of the appellants.

19. A nation's currency is legal tender brought out by the Central Bank of that nation, in our case, the Reserve Bank of India. The observation made by the Division Bench with respect to smuggling of other precious metals with a Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 32 -

profit motive to find smuggling of gold having no distinctive status from those other precious metals is significant. Gold as was observed by the FATF is global currency and is a medium of exchange more so in India where there is a tendency to hoard that particular metal. In fact in our humble view even smuggling of gold and other precious metals which aims at destabilizing the economy would be covered under threats to economic security, as generally understood. But this element was not contemplated by the Parliament as is evident from the debates on the bill, which the members of the Treasury Bench supported on the specific ground of state/sovereign sponsored counterfeiting from across the borders. A petty counterfeiting carried on by a small operator/s was not intended to be covered under the UA(P)A. This is explicit from the Explanation to Sec. 15(1), requiring a declaration from a forensic expert of the counterfeit currency comprising of the key security features as specified in the Third schedule. The Rules of 2013 regulating the investigation of high quality Indian currency offences is another indication of the object of the amendment brought in by insertion of the words 'economic security' in Sec. 15(1) along with sub-clause (iiia) of clause (a). Rule 6 Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 33 -



of the said rules specify the procedure for applying the provisions of Section 15(1)(a)(iiia). According to us, in the guise of a purposive interpretation, the intent to threaten or the likelihood of threatening economic security in Section 15(1), if given a more expansive meaning, then it would be undermining the very intention of the Parliament which is explicit in sub-clause (iiia) of clause (a). If we do that then we would violate the dictum in Mathai Varghese (supra) and would be recasting, redesigning and rewriting the provision thus embarking upon a legislative exercise; which power this Court and every Court lacks. Section 15(1) and the various acts enumerated in the body of the provision has to be read with the clauses incorporated and we find no reason to differ from Muhammed Shafi P. (supra). We are of the opinion that counterfeiting; that too of high quality currency notes or coins and any material so to do is the only specie included under section 15(1)(a)(iiia).

20. In this context, we cannot, but notice the observations of the Hon'ble Supreme Court in NIA v. Zahoor Ahmad Shah Watali (supra). In paragraph 23 of the said decision, the Hon'ble Supreme Court considered the scope and ambit of sub-section (5) of Section 43-D of the UA(P)A and Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 34 -

similar provisions under the TADA, Maharashtra Control of Organized Crime Act, 1999 and Narcotic Drugs and Psychotropic Substances Act, 1985. The special enactments referred, required the Court, while granting bail "to record its opinion that there are reasonable grounds for believing that the accused is 'not guilty' of the alleged offence". In the UA(P)A, the restriction is insofar as refusing bail if, in the opinion of the Court, there are reasonable grounds to believe that the accusation against the accused person is prima facie true. Observing that there is a degree of difference as to the satisfaction to be recorded by the Court, it was emphasized that "By its very nature, the expression 'prima facie' true would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence"(sic). It was held that the degree of satisfaction is a tad lighter when the Court has to opine that the accusation is 'prima facie true' as compared to the opinion of the accused being 'not guilty' of the offence Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 35 -

alleged. However, under the UA(P)A the rigour definitely would be more and the degree of satisfaction will be higher than in considering an application for bail under Section 437 Cr.P.C. If the provisions of UA(P)A are not attracted prima facie, then obviously the consideration of bail need not be on the stricter terms contemplated in Sec. 43D(5), since then, there would be no prima facie truth in the accusations.

21. Admittedly, the charge-sheet has been filed in the above case, which we refer to, from Crl.Appeal No.379 of 2021, produced as Annexure-B. We have the responsibility at this stage, only of determining whether the accusations are prima facie true, in deciding the issue of grant of bail. We keep in mind the caution expressed by Muhammed Shafi P. (supra) and reiterated by us that the threat to economic security deemed to be a terrorist act, is confined to counterfeiting of high quality currency notes and coins or any other material manufactured, smuggled or circulated in relation to

such counterfeiting. We also keep in mind that if there are transnational forces involved in subverting the security and stability of the nation by any act; to further which the smuggling of gold was carried out, then too the provisions of the UA(P)A are attracted, specifically S.15.

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S.17 also speaks of punishment for raising fund

terrorist act and S.18 provides punishment for conspiracy, attempt to commit or even advocating, abetting, advising, inciting or directly or knowingly facilitating the commission of any such act or even any act preparatory to the commission of a terrorist act.

22. The facts of the case as seen from Annexure-B indicates the activities of the accused having been first detected, when contraband was seized from the import cargo addressed to the Charge D' Affaires at the Consulate General of the UAE, on 05.07.2020 at the Air Cargo Complex of Trivandrum International Air Port by the Customs [Preventive] Commissionerate, Cochin. A1 was first arrested, which led to the arrest of A2 to A4. The facts unearthed during investigation reveals a conspiracy entered into by A1 to A5 for facilitating smuggling through the diplomatic cargo addressed to the Consulate General of UAE. A1, with the knowledge and assistance of A2, to further the plans hatched, forged authorisation letters on behalf of the Consulate General and with the active connivance of the other accused carried out smuggling by clearing the contraband sent through diplomatic baggage and handed them over to the various Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 37 -

accused. They formed a telegram-messenger group to coordinate the gold smuggling activities, exchanging of forged documents and also carried out hawala operations, so as to refinance the purchase and dispatch of gold from the United Arab Emirates. The facts elaborately deal with the modus operandi, the conspiracy, the persons involved; ie. the financier, the kingpins, the operators etc, the multiple instances, the quantities smuggled, the actual smuggling through diplomatic channel and the hawala operation to recycle the profit generated for funding and facilitating more of such smuggling. The facts noticed and charges speak of " ... threatening the security and economic security of the country, destabilizing Indian economy and damage to the friendly relation to UAE and thus co-jointly committing the terrorist act. The accused had the motive to gain money, by causing extensive and irreparable damage to the security and economic stability of the country. For committing this terrorist act, the accused had conspired together, recruited people, formed a terrorist gang, raised funds and smuggled around 167 Kg of gold from UAE. With this intention, the accused had also conspired and contemplated smuggling of more gold from other countries, such as Saudi Arabia, Bahrain and Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 38 -

Malaysia." [sic.para17.12 of Annexure B]. The charge also as enumerated under the various paragraphs under serial No.18 reiterate the facts and we think it appropriate to extract paragraph 18.1:

"The accused in this case had the knowledge that an act of smuggling of gold into India, in large quantity, would threaten the security and economic security of the country, destabilize the Indian economy and damage the friendly relations with UAE. The accused had the motive to gain money, by causing extensive and irreparable damage to the security and economic stability of the country. For committing this terrorist act, the accused had conspired together, recruited people, formed a terrorist gang, raised funds and smuggled gold from UAE through the import cargo addressed to diplomats at the Consulate General of UAE in Thiruvananthapuram."

23. We cannot but observe that, but for interpolating the narration of facts and the allegations in the charge-sheet with the words 'damage to economic security and stability of the country and terrorist activities', there is nothing more to prima facie find the accused having indulged in such activities as defined under S.15 of the UA(P)A. We have looked at the witness schedule and conspectus Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 39 -

of the intention behind proffering them as witnesses from the charge-sheet, which again does not reveal any terrorist act as defined under S.15 of the UA(P)A. We make it clear that this is only a prima facie finding we have entered into and it is not to say that the provisions would not be attracted at all; which has to be left to the Special Court to decide, on the evidence led at the trial. As of now, the facts narrated and the charges alleged do not commend us to find the accused having any connection with any terrorist act under S.15, least of all, a threat to the economic security of the nation, which we have found; on an interpretation of S.15(1)(a)(iia); is restricted to counterfeiting high quality notes and coins and any other material dealt with, towards that end.

24. The impugned order has noticed the decision of the Division Bench of this Court in Muhammed Shafi P. (supra) and the Hon'ble Supreme Court in K.A.Najeeb (supra). The learned Judge has then referred to the decision in Zahoor Ahamad Shah Watali (supra) to find the applicants to be the principal conspirators. The evidence placed both digital and documentary were referred to, to find prima facie evidence regarding the conspiracy and the multiple instances of Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 40 -

smuggling activities carried on, as also the future plans to facilitate manifold activities of smuggling. It is hence, the bail applications were rejected. We are unable to agree with the Special Court. The prima facie evidence of conspiracy and smuggling of gold, as has been held in Muhammed Shafi P. (supra) does not prima facie give credence to an allegation of threat to economic security or irreparable damage to the economic security of the country; deemed to be a terrorist act under S.15(1) of UA(P)A. The definition restricts it to counterfeiting of high quality currency. Needless to say that neither the charge-sheet nor the learned Special Court speak of any other terrorist act as defined under S.15(1), but for the threat to economic security, which is confined to sub- clause (iia) of clause (a) of S.15(1). We also do not find any allegation or accusation, from the records now before us, of the profit generated having been used in for any terrorist activities as spoken of in Sections 15 to 18 of the UA(P)A. The prima facie truth of the accusation under S.43(D)(5) has to be, regarding an offence under the special enactment, the UA(P)A. That being not discernible, as of now from the available records, we cannot but set aside the order impugned and allow the bail applications of all

the accused. We do not Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 41 -

think the findings in Muhammed Shafi P. (supra), which led to the refusal of bail to one of the accused any longer applies, since on a deeper probe there is no element of terrorist activity unearthed and as of now the accusations and allegations are summarized in the charge-sheet; which, but for the interspersed words of terrorist act does not reveal any such act.

We allow the appeals and direct the accused to be released on the following conditions:

(1) The appellants/accused shall be released on bail on their executing a bond for a sum of Rs.25,00,000/- (Rupees Twenty Five lakhs only) each with two solvent sureties each for the like-sum to the satisfaction of the Special Court.

(2) If they hold Passport, they shall deposit the same before the Special Court within three days of release from custody, and if they do not have it or is already surrendered, file an affidavit to that effect within the same period.

(3) They shall not leave the State of Kerala without the permission of the Special Court.

(4) They shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence, coerce or threaten any witness or other persons related to the Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 42 -

investigation.

(5) They shall not commit any offence while on bail, including that of like nature; ie; smuggling. (6) They shall appear before the SHO of the local police station in whose limit they reside, between 10 a.m. and 11 a.m. on every Sunday, until further orders. The SHO shall report to the Investigating Officer without any delay; if the appellants/accused fail to appear as directed. The appellants/accused shall also file a memo in three days showing the details of the police station where they intend to appear, to comply with the directions herein. Investigating Officer shall forward a copy of this order to the SHO of such Police Station for due compliance of the directions.

(7) Lastly, they shall not change their place of residence without prior information to the Investigating Officer.

Sd/-

K.Vinod Chandran Judge Sd/-

C.Jayachandran Judge vku/-

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APPELLANT'S ANNEXURE

Annexure A PHOTOCOPY OF THE COMMON ORDER DATED

15.10.2020 IN CRL.M.P NO.139/2020 PASSED BY THE SPECIAL COURT FOR NIA CASES, ERNAKULAM. Annexure B PHOTOCOPY OF THE COMMON JUDGMENT DATED 18.02.2021 IN CRL. APPEAL NO.826/2020 PASSED BY THIS HON'BLE COURT.

Annexure C PHOTOCOPY OF THE CHARGE SHEET FILED BY THE RESPONDENT BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM, DATED 05.01.2021.

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APPELLANT'S ANNEXURE

Annexure A PHOTOCOPY OF THE COMMON JUDGMENT DATED

18/02/201 IN CRL.APPEAL NO.826/2020 AND CONNECTED CASES, PASSED BY THIS HONBLE COURT. Annexure B PHOTOCOPY OF THE CHARGE SHEET FILED BY THE RESPONDENT BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM, DATED 05/01/2021.

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APPELLANT'S ANNEXURE

Annexure A PHOTOCOPY OF THE COMMON JUDGMENT DATED  
18.2.2021 IN CRL.APPEAL NO 826/2020 AND

CONNECTED CASES, PASSED BY THIS HON'BLE COURT Annexure B PHOTOCOPY OF THE CHARGE SHEET FILED BY THE RESPONDENT BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM, DATED 5.1.2021 Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 46 -

APPELLANT'S ANNEXURE ANNEXURE A PHOTO COPY OF THE COMMON JUDGMENT DATED 18.02.2021 IN CRL. APPEAL NO. 826/2020 AND CONNECTED CASES, PASSED BY THIS HONBLE COURT. ANNEXURE B PHOTOCOPY OF THE CHARGE SHEET FILED BY THE RESPONDENT BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM, DATED 05.01.2021.

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APPELLANT'S ANNEXURE

Annexure I	TRUE COPY OF THE FIR IN RC.NO.02/2020/NIA/KOC DATED 10.07.2020
Annexure II	TRUE COPY OF THE CHARGE SHEET DATED 05.01.2021 LAID BY THE NIA IN THE SPECIAL COURT
Annexure II(a)	TRUE COPY OF THE LIST OF WITNESSES DOCUMENT

MATERIAL OBJECTS ATTACHED TO THE CHARGE SHEET Crl.Appeal Nos.356, 369, 370, 379, 426, 438, 452 & 648 of 2021 - 48 -

APPELLANT'S ANNEXURE Annexure I TRUE COPY OF THE FIR IN RC.NO.02/2020/NIA/KOC DATED 10.07.2020.

Annexure II TRUE COPY OF THE ORDER DATED 10.08.2020 PASSED IN CRL.M.P.NO.64/2020 IN RC NO.02/2020/NIA/KOC ON THE FILES OF THE SPECIAL JUDGE FOR NIA CASES ERNAKULAM.

Annexure III TRUE COPY OF THE CHARGE SHEET DATED 05.01.2021 LAID BY THE NIA IN THE SPECIAL COURT.

Annexure III(a) TRUE COPY OF THE LIST OF WITNESS, DOCUMENTS AND MATERIAL OBJECTS ATTACHED TO THE CHARGE SHEET.

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APPELLANT'S ANNEXURE

ANNEXURE 1	THE TRUE COPY OF THE ORDER DATED 15.10.2020 BY HON'BLE NIA COURT.
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ANNEXURE 2	THE TRUE COPY OF THE ORDER DATED 23.10.2020
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BY HON'BLE NIA COURT.

ANNEXURE 3                      THE TRUE COPY OF THE COMMON ORDER DATED  
22.03.2021 BY HON'BLE NIA COURT.

ANNEXURE 4                      THE TRUE COPY OF THE BAIL APPLICATION FILED  
BY THE APPELLANT BEFORE THE HON'BLE NIA  
COURT.

ANNEXURE 5                      THE TRUE COPY OF THE STATEMENTS OF THE  
WITNESSES, CW-143 AND CW 144.

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426, 438, 452 & 648 of 2021                      -      50      -

APPELLANT'S ANNEXURE

ANNEXURE A                      PHOTOCOPY OF THE COMMON JUDGMENT DATED

18.02.2021 IN CRL.APPEAL NO.826/2020 AND CONNECTED CASES, PASSED BY THIS  
HONBLE COURT. ANNEXURE B PHOTOCOPY OF THE CHARGE SHEET FILED BY THE  
RESPONDENT BEFORE THE SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM,  
DATED 05.01.2021.