

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 31<sup>ST</sup> DAY OF MAY 2022 / 10TH JYAISHTA, 1944

CRL.A NO. 127 OF 2022

AGAINST THE ORDER IN CRL.MP 116/2021 IN SC 1/2021/NIA OF SPECIAL  
COURT FOR TRIAL OF NIA CASES,ERNAKULAM

APPELLANT :

VIJITH VIJAYAN @ PACHHA @ BALU @ MUSAFIR @ AJAY  
AGED 27 YEARS  
S/O.VIJAYAN V.K.,CHAITHRAM HOUSE, PUZHAMUDI P.O.,  
KALPETTA, WAYANAD - 673 121, KERALA.

BY ADVS.  
K.S.MADHUSOODANAN  
THUSHAR NIRMAL SARATHY  
M.M.VINOD KUMAR  
P.K.RAKESH KUMAR  
K.S.MIZVER  
M.J.KIRANKUMAR

RESPONDENTS :

UNION OF INDIA  
REPRESENTED BY NATIONAL INVESTIGATION AGENCY (N.I.A.)  
GIRINAGAR HOUSING COLONY, GIRINAGAR HOUSING SOCIETY,  
KADAVANTHRA, ERNAKULAM - 682 020.

BY ADVS.  
S.MANU  
MANU S. ASG OF INDIA  
SMT.MINI GOPINATH, CGC (CG-375)

OTHER PRESENT :

SRI SREEJITH V S , PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23.05.2022,  
THE COURT ON 31.05.2022 DELIVERED THE FOLLOWING:

K. Vinod Chandran & C.Jayachandran, JJ

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CrI.A. (V) No.127 of 2022  
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Dated this the 31<sup>st</sup> May, 2022

JUDGMENT

Vinod Chandran, J.

By the impugned order in the above appeal, the Special Court for the trial of NIA cases, Ernakulam, rejected the application for bail filed by the appellant herein. The appellant is accused No.4 in S.C.No.1/2021/NIA/KOC. The allegations against the accused were under S.120B of IPC and Ss.13, 38 & 39 of Unlawful Activities (Prevention) Act, 1957 [hereinafter 'UA(P)A']. The arraignment of A4 in the case was an offshoot of the arrest of two young men found under suspicious circumstances, on 01.11.2019 at around 6.15 p.m by the Pantheerankavu Police while on patrolling duty. Out of the three, one ran away and the others were apprehended. Annexure A1 FIR 507/2019 was registered

under Ss.20, 38 & 39. Search was conducted in the house of A1 & A2, apprehended under suspicious circumstances, and various documents seized. Later, A1 was released on bail by this Court and A2's application was rejected. National Investigation Agency [NIA], who had by then taken over the investigation on 16.12.2019 and filed FIR 4/2019, appealed against the grant of bail to A1. The said appeal was taken along with the appeal against rejection of bail by A2 by the Hon'ble Supreme Court in which the NIA's appeal was rejected and A2's appeal allowed. The appellant strongly relies on the judgment of the Hon'ble Supreme Court reported in Thwaha Fasal and Another v. Union of India [2021 (6) KHC 228 (SC)]. Even before that a final report was filed by the NIA against A1, A2 & A3, the last unidentified at that point of time. On 27.04.2020, S.20 was omitted and a charge laid with A2 charged additionally under S.13 of UA(P)A. On further investigation, the house in which A4 & A5 were residing was raided on 01.05.2020, from where documents and pen-drives were recovered allegedly belonging to A4. On

27.07.2020 by Annexure A4, A4 & A5 were sought to be arraigned as accused. A4 was arrested much later on 21.01.2021.

2. Sri.K.S.Madhusoodanan, learned Counsel appearing for the appellant, argued that there is absolutely no incriminating material connecting A4 to the crime alleged or the allegations raised. The materials recovered on search of the house cannot at all be connected to A4. A4 did not have exclusive possession of the house, which was rented out by three individuals, A4, A5 and CW97. CW97, at the time of search, admittedly was not residing there. A4 was residing with A5 and there is also evidence to indicate that another friend of the accused, CW111, had been residing with the accused. Annexure A4 report, by which the seizure was made, was seriously challenged by the learned Counsel. A4 report shows that the searched premises was a two-storied building. The seizure made is haphazard and not in a sequential order as is expected from the Police. Some of the materials were collected from a bag and the other

from the room itself. Serial No.15 in Annexure A4 is the Electoral ID Card of A4, which was recovered from a bag. The description of the bag is not found in the report nor is it seized. This assumes relevance, especially since CW99 categorically states that A4 used a brown bag. After serial No.15, the material in serial No.16 was seized from the corner of the room and so were serial Nos.17 to 25 alternatively from the room and a bag. Pertinently, there is no indication that the bag from which the other materials were seized was the bag in which the Electoral ID Card was found. From the sketch of the searched premises, prepared by the Village Officer, Peruvayal, it is pointed out that there is no half-wall between the bathroom and kitchen, while Annexure 5, S.164 statement of A5, asserts that incriminating material seized, were hidden on the top of that wall by A4.

3. The bulwark of the prosecution case is the supposedly inciting material revealed from the documents and the pen-drive. But without establishing the same having been recovered from the possession of A4; there

can be no *prima facie* truth ferreted out from such material. It is pointed out that the seizure of the Electoral ID has not been spoken of by A5. The statement that the association 'Padantharam' was connected with a proscribed organization is mere hearsay. The allegation of A5 that A4 used the SIM Card taken in his name and also his laptop are exculpatory statements of a co-accused, which cannot be relied on. The only allegation proved against A4 is a critique written by him of the popular play: '*Kattukadannal*', adapted from '*The Gadfly*'. The critique, which is now relied on to inculcate A4 was one recovered on search of the parental house of A4, long back in the year 2015. The said material was handed over to the Police Officials by the father of A4 and no further action was taken. What had not been considered an incriminating material at that point is now attempted to be foisted against A4. The adapted drama was one played all over the State, which was not banned. It is vehemently argued that after this appeal was elaborately heard and adjourned at the request of the learned ASGI,

the NIA has incorporated S.20 as a supplementary charge on 25.03.2022. The learned Counsel for the appellant points out that the additional charge at paragraphs numbered as 18 are only bland assertions not supported by any evidence. The only document produced in support of the additional charge is the letter recovered from A3 in another crime, ATS Crime 34 of 2020 [Crime No.471 of 2016 of Pandikkad Police Station]. The said letter is not dated, but shows it to be on the April of 2021, wherein there is a reference to the unfortunate arrest of two comrades without naming them. It is argued that the incorporation of the additional charges and S.20 of the UA(P)A is to frustrate the request for bail made by the appellant.

4. The Pointing Out Memos relied on by the prosecution, as to the places where A4 is said to have distributed inciting notices have no relevance under Ss.8 or 27 of the Evidence Act, as has been ruled by a Division Bench of this Court, reported in Thadiyantavida Nazeer v. State of Kerala [2022 (1) KLT 685]. Exclusive

possession of the residence or the room in which the recoveries were made having not been established, the seizures cannot form an incriminating material as declared by a learned Single Judge of the High Court of Bombay in Yasir Sayeed Anis Sayyed v. State of Maharashtra [Manu-MH-2487-2014]. The mere membership in a proscribed organisation will not make a person a criminal unless he engages himself in violence or incites others to violence or public disorder. Reliance is placed on Arup Bhuyan v. State of Assam [(2011) 3 SCC 377] and Indra Das v. State of Assam [(2011) 3 SCC 380]. Thwaha Fasal [supra] was read extensively to put forth the arguments. Shreya Singhal v. Union of India [(2015) 5 SCC 1] was relied on to contend that mere participation in discussion and deliberation cannot attract the offences under the UA(P)A. Further, it is pointedly argued, based on Shaheen Welfare Association v. Union of India [(1996) 2 SCC 616] that, in considering bail, even under stringent enactments dealing with terrorist activities, mitigating circumstances cannot be excluded. In the

present case there is no incriminating materials connected to the accused and the very search and seizure throw suspicion on the recoveries. There is lack of clinching evidence and the allegations are based on general assumptions. The search itself was conducted on 01.05.2020, after which A4 was questioned repeatedly on summons. The very application for arraigning A4 & A5 was filed on 27.07.2020. Prior to that or subsequently A4 had not absconded. A4 when he was arrested on 21.01.2021 was summoned to the Office of the NIA at Wayanad.

5. The learned ASG Sri.S.Manu opened his arguments with the assertion that the appellant is a member of the semi underground cadre of the CPI(Maoist), entrusted with the task of operating and propagating the ideology in the urban areas. Document No.17, produced along with the supplementary charge-sheet is projected as a manual of activities carried on by the various wings of the proscribed organization, seized from the residence of the appellant. In addition to the so called critique published in Padantharam; it is argued that the same is

not only the name of the publication but also of the student organization propagating Maoist ideology. The learned ASG specifically refers to the statements of CWS118, 134, 137 and 138 to urge that even during the student days, the appellant who was an active member of the Students Federation of India (SFI) was misguided and ended up with the student's organization, Padantharam actively propounding the Maoist ideology. It is pointed out that 261 copies of notices were recovered from the residence of the appellant which were ready for distribution. It is argued that the distribution would not have taken place only for reason of the COVID protocol imposed in the State. The documents recovered from the pen drives were translations of propaganda materials in the Word and Pagemaker format, most commonly employed for desk top printing. CW99 and CW130 also spoke of the petitioner having often expressed extreme left-wing ideology and Maoist ideas of an armed revolt. The appellant had consciously avoided owning digital equipment but had used the phones and laptops of others

to generate inciting material for the consumption of the general public. The pen drives and memory cards recovered from the house of the appellant contains such inciting materials which were also in the handwriting of the appellant.

6. The learned ASG in addition to what is produced before the Special Court, produced before us the evidence of the handwriting expert dated 17.05.2022, now furnished before the Special Court. The handwriting in the materials recovered from the digital devices recovered from the residence of the appellant was compared with the handwritten verses of the critique which was published in Padantharam in the year 2015 and the specimen handwriting obtained on 08.07.2021 under orders of the Special Court. The handwriting expert had opined that the questioned writings, exhibited similarity with standard items in general writing characteristics, such as alignment, movement, slant etc.

7. The incorporation of S.20 according to the learned ASG is not to strengthen the grounds for

rejection of bail. Even otherwise S.38 and S.39 are included under Chapter VI and it has the same rigor under S.43D(5). The supplementary charge-sheet having been filed, there is no ground to allege delay and the trial would commence immediately is the submission. The learned ASG handed over the case diary and asserted that the materials disclose *prima facie* truth in the allegations raised against A2 and the same includes one of propagation of extremist ideology, laying bare the intention to further the activities of the terrorist organization. There is also no mitigating circumstance available, concludes the ASG.

8. Thwaha Fasal (supra) in considering the rigor of S.43D(5) approvingly referred to NIA v. Zahoor Ahamad Shah Watali [2019 (5) SCC 1] and Union of India v. K.A Najeeb 2021(3) SCC 713]. In Zahoor Ahamad Shah Watali their Lordships compared the rigor of 'reasonable grounds for believing the accusation as *prima facie* true' as against the 'reasonable grounds for believing the accused to be not guilty'; the latter of which is the rigor under

the TADA, NDPS Act etc. It was held that the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering whether there are reasonable grounds to indicate that the accused is not guilty. Their Lordships also opined that in considering whether there are reasonable grounds, the reference is not be confined to the accusation in the FIR, but the contents of the case diary including the charge-sheet and materials gathered by the investigation agency should also be looked into. What is expected by the Court, as is reiterated in Thwaha Fasal (supra) is neither to hold a mini trial nor to meticulously examine the defence of the accused, but to consider whether the material in the charge-sheet; as it is, brings forth a reasonable ground that the accusation against the accused is *prima facie* true.

9. Thwaha Fasal (supra) considered the release of A1 and A2 involved in the very same crime in which the

present appellant is impleaded as A4. The allegations against A1 and A2, as we discern from a reading of the decision in Thwaha Fasal and the accusation against A4, differ considerably. After examining the allegations coming forth from the charge-sheet, the printed material recovered and the FSL report of the digital devices it was succinctly stated in para 32 and 33 as extracted here under:

"32. Taking the charge sheet as correct, at the highest, it can be said that the material prima facie establishes association of the accused with a terrorist organisation CPI (Maoist) and their support to the organisation.

33. Thus, as far as the accused no.1 is concerned, it can be said he was found in possession of soft and hard copies of various materials concerning CPI (Maoist). He was seen present in a gathering which was a part of the protest arranged by an organisation which is allegedly having link with CPI (Maoist). As regards the accused no.2, minutes of the meeting of various committees of CPI (Maoist) were found. Certain banners/posters were found in the custody of the accused no.2 for which the offence under S.13 has been applied of indulging in unlawful activities. As stated

earlier, sub-section (5) of S.43D is not applicable to the offence under S.13."

10. Their Lordships were of the opinion that a mere association with the proscribed organization, without any intention discernible to further the activities of such organization would be insufficient to find reasonable ground of *prima facie* truth in the allegations. But for the published material and certain photographs found in the custody of A1 and A2 and their participation in a protest/gathering organized by an outfit allegedly linked with CPI(Maoist), there was nothing in the charge-sheet to project active participation of the accused in the activities of CPI(Maoist). Neither were there any overt acts alleged nor was a reasonable inference possible from the materials available, of an intention on their part to further the activities or terrorist acts of the proscribed organization, was the finding which resulted in A1 and A2 being released on bail.

11. While considering the arguments of the learned Counsel for the appellant based on the inconclusive seizure effected we cannot but remind ourselves of the caution expressed in Thwaha Fasal (supra) about neither conducting a mini trial nor being exceedingly concerned with the defence of the accused, at this stage when the bail application alone is before us. We do appreciate the argument that the description of the bag from which the recoveries were made has not been disclosed in the seizure mahazar; but that is of no avail especially at this stage when document number 116 as produced along with the final report clearly indicate the searched premises having been rented out by A4, A5 and CW97. CW97 in his statement had categorically stated that he had resided in the premises only for a week when the rent arrangement commenced. The premises was occupied at the time of search exclusively by A4 and A5. A4's electoral ID card was recovered from the premises from a bag and so were the digital devices. A5 has distanced himself from the ideology and the allegations of the

prosecution and has also turned approver. In the context of the ground raised of exculpatory statements having been made, we would not look at Annexure A5, S.164 statement at this point, lest our observations influence the trial in any manner.

12. Obviously A4 is not projected as owning a laptop or even a mobile phone. The learned ASG has specifically referred to document No.17, according to him a manual of how clandestine activities are to be carried out. Eighteen numbers of the said document with the heading '*Tactics of the Enemy and Counter Tactics to be Employed*' were recovered from the residence of A4 and A5. The recitals in the documents clearly restrain the cadre from using mobile or land phones and internet facilities for the purpose of communication, which could result in the activities being tracked by the Administration. Despite A4 not having a laptop or mobile phone, he was using that of others to propagate the ideology as spoken of in the statements of the witnesses. In fact the laptop recovered from the searched premises was used for

operating the e-mail account of the appellant. The pen-drives recovered from the premises also contained materials inciting and promoting violent activities as per the ideology of CPI (Maoist). Very crucial is the fact that the handwritten documents scanned and kept in the pen-drives were found to be in the handwriting of A4 as per the analysis report dated 17.05.2022, obtained from the Regional Forensic Science Laboratory under the Police Department of the Government of Kerala. The questioned documents marked as Q1 to Q8 were similar to A1 to A7, which again was a handwritten draft of the article published in 'Padantharam' as obtained from the e-mail account of A4. The similarity extended to the standard specimens S1 to S25 obtained on 18.07.2021 as per the order of the Special Court in CMP No.70/2021. The handwritten material found in digital devices clearly establish the use of electronic equipment by A4 and since he does not own any, obviously he used that of others.

13. The critique that was authored by A4, which appeared in the magazine 'Padantharam' may not be

incriminating as such; but the questioned documents as examined by the FSL *prima facie* bring forth the intention of A4 to indulge actively in furtherance of the extremist ideologies of the Maoist movement. We have read through the questioned documents Q1 to Q8 available in the case diary which has the heading 'Janathipathya Kendreekaranaam' (Democratic Centralization). It exhorts the full democratization of the party cadres enabling even the new members to occupy leadership positions, which according to the document ensures total eradication of internal disputes and factional splits. The proposal is made based on the principles followed by the Chinese Communist Party. It speaks of action by the Government against revolutionary movements and the party, which has to be resisted by bringing unity amongst the general public and the party cadres by ensuring democratization within the party. It also speaks of the need to spread the tentacles of the party from the rural areas to the urban areas since the majority of the members now enrolling into the party are from rural areas. It

deprecates the laws made by the Parliament and Assemblies as fascist in nature, despite claims of democratic discussion being carried on by the law makers. The document finds fault with the front line communist parties who have been rendered rudderless due to dissension within the ranks; a direct result of forsaking the democratic functioning of the parties. The general purport of the document in the handwriting of A4 *prima facie* establishes the active participation of the accused in the organizational development and propagation of ideology, both running contrary to the established administrative machinery controlled by an elected Government.

14. In addition to the above the learned Special Court has referred in detail about the documents recovered from the digital devices recovered from the searched premises. There were 261 notices titled '*Delhi Genocide*' obviously intended to be circulated among the public. There were also other notices/press release authored by persons having close contact with

CPI (Maoist). MO28 pen-drive contained circulars and resolutions of the CPI (Maoist) which further lays bare the close association of A4 with the proscribed association at the organizational level itself. We do not deal with every single document and contents, since it has been dealt with elaborately by the learned Special Court.

15. As was rightly pointed out by the ASGI, the close association of A4 with 'Padantharam' has been spoken of by CW118, 134, 137 & 138. All of them in one voice speak of A4 having, in his college days, while pursuing a graduation in Engineering, participated actively in the SFI, a student organization of the Marxist party. However in the final year A4 is said to have deviated to extremist ideology and developed close links with 'Padantharam', a student collective of the CPI (Maoist). The learned ASGI has specifically referred to document No.45 furnished along with the charge-sheet. The said document is a handwritten report of the activities in Kerala State seized in Crime No.536 of 2016 of

Edakkara Police Station, Malappuram District. It speaks of the 'Padantharam' magazine group having commenced operation among the students, which has been decided to be upgraded from a mere magazine group and raised to the organizational level. Even if the article of A4 published in 'Padantharam' in the year 2015 may not be incriminating, it establishes A4's close links with the magazine group, which even as per the report [document No.45 of May, 2016] has been raised to the organizational level.

16. The charges against A4 as available in the supplementary charge sheets dated 19.07.2021 and 25.03.2022 are as follows.

Supplementary charge-sheet dated 19.07.2021 :

17.24 During the further investigation, it has been revealed that, Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A-4), Age 27/2021, S/o Vijayan V.K, resident of Chaithram House, Puzhamudi Post, Kalpetta, Wayanad had associated with an organisation named "Padantharam", a frontal organisation of CPI (Maoist), from 2014 to 2016 while he was pursuing B.Tech (Mechanical Engineering) at Calicut University Institute of Engineering and Technology in the year 2011-2015 and during his PG Folklore Studies at Calicut University Campus. Investigation has also revealed that *Padantharam* was a frontal organisation of CPI

- (Maoist).
- 17.25 Investigation has also revealed that, A-4 joined in *Padantharam* since 2014, and was attracted towards extreme Maoist ideology and later in 2016, he joined proscribed terrorist organisation CPI (Maoist) and furthered its activities. A-4 had assumed names "Balu", "Musafir" and "Ajay" in CPI (Maoist) organisation with approval of senior functionaries, including A-3 and C. P. Jaleel.
- 17.26 Investigation has also revealed that during the unauthorised stay of A-4 at CUIET college hostel, in 2016, C.P Jaleel, (a slain PLGA cadre who had been killed on 6<sup>th</sup> March 2019 during the exchange of fire between PLGA cadres of CPI (Maoist) and Kerala Police at Vythiri Wayanad (Crime No.82/2019 of Vythiri PS)), had various conspiracy meetings with A-4 at Calicut University Campus, in 2016 and 2017 and also exchanged various CPI (Maoist) documents etc. for furthering the activities of CPI (Maoist). A-4 had also provided medicines procured by him, to C.P Jaleel in conspiracy meetings for further providing the same to People Liberation Guerrilla Army (PLGA) cadres of CPI (Maoist) to support and further the activities of CPI (Maoist).
- 17.27 Investigation has also revealed that, between 2017 and 2018, during the unauthorised stay of A-4 at college hostel, A-4 had secret meetings with the absconding accused Usman (A-3) and C.P Jaleel at Calicut University campus and exchanged CPI (Maoist) documents etc. for furthering the activities of CPI (Maoist). In the beginning of 2018, A-4 had another meeting with A-3 and provided medicines procured by him to A-3 for further providing the same to People Liberation Guerrilla Army (PLGA) cadres of CPI (Maoist) to support and further the activities of CPI (Maoist).
- 17.28 Investigation has also revealed that, during 2018, A-4 had a meeting with C.P Jaleel and another cadre of CPI (Maoist) near Kottakadavu bridge at Kozhikode for furthering the activities of CPI (Maoist). Further, in the mid of 2018, A-4 had secret meetings with C.P Jaleel near ICC Juma Masjid, Kalleri where, C.P Jaleel handed over a small laptop to A-4 and also exchanged soft copies of some CPI (Maoist) documents for furthering the activities of CPI (Maoist) organisation. In the

same place, absconding accused A-3 had secret meeting with A-4 and exchanged CPI (Maoist) documents in the 3rd Quarter of 2019. Investigation also revealed that, A-4 had secret meeting with another cadre of CPI (Maoist) near Mavoor Bus Stand in the third quarter of 2019 for furthering the activities of CPI (Maoist).

- 17.29 Investigation revealed that, in the 3rd quarter of 2018, A-4 had secret meeting with C.P Jaleel near Peruvayal Junction for furthering the activities of CPI (Maoist). In the mid of 2019, A-4 had secret meeting with absconding accused A-3 near Taluk Hospital Koothuparambu, Kannur and handed over some clothing (sweaters etc.) to him for providing the same to the People Liberation Guerrilla Army (PLGA) cadres of CPI (Maoist) to support and further the activities of CPI (Maoist).
- 17.30 Investigation revealed that, in the month of July 2019, A-4 had secret meeting with absconding accused A-3 and handed over CPI (Maoist) books with title "*Indiyayile Jathi Prashnam Nammude Kayichhappad May Dinam -2017*" in Malayalam language translated by A-4, at Vyttila, Ernakulam for furthering the activities of CPI (Maoist).
- 17.31 Investigation also revealed that, in the mid of 2019, A-4 had conspiracy meeting with A-1 and A-3 near college Campus Palayad and another conspiracy meeting was held in a rented house of A-1 at Palayad, Kannur where A-3 conspired with A-1 and A-4 for furthering the activities of CPI (Maoist).
- 17.32 Investigation also revealed that, as directed by A-3, in the month of October 2019, one APT (Appointment) was fixed between A-4 and A-1 near Pantheerankavu at Kozhikode. Accordingly, A-4 had waited for A-1 there but could not meet A-1 on that day. After few days from that missed APT (secret meeting), A-1 and A-2 had secret meeting with A-3 on 01.11.2019 near to the place fixed earlier and A-1 and A-2 were arrested by the police at the spot and A-3 was able to flee from there.
- 17.33 Investigation also revealed that, Vijith Vijayan (A-4) had conspiracy meeting with absconding accused Usman (A-3) at Kecheri, Thrissur and handed over 10 copies of quarterly magazine "*Vargasamaram*" of WGSZC, CPI (Maoist) to Usman (A-3) in December 2019 or January 2020. These secret meetings (APTs)

were all based on conspiracies for the purpose of furthering the activities of the banned organisation CPI (Maoist) by supporting PLGA members by providing their necessary materials.

- 17.34 During the search conducted at the rented house of A-4 on 01.05.2020, five quarterly magazines of CPI (Maoist) with title "Vargasamaram Volume-4", 261 notices in Malayalam with title "Dilli Vamsha hatya" issued by Jogi, Spoke Person, CPI (Maoist), Western Ghats Special Zonal Committee dated 14.3.2020 and one CD containing the soft copy of the same notices, various incriminating documents and digital devices including 03 mobile phones and 06 pen drives etc. were seized.
- 17.35 The digital devices seized during the house search of A-4 contained various incriminating documents related to Central Committee, Western Ghats Special Zonal Committee and Area Committee of CPI(Maoist) which include soft copies of various notices, Press releases, Circulars, Resolutions, Reports, Letters, Books/booklets, translated documents and drafts of various CPI (Maoist) documents. The seized digital devices of A-4 also contain certain images of handwritten documents intended for the purposes of the banned terrorist organisation.
- 17.36 The various incriminating CPI (Maoist) documents found in the seized digital devices of A-4 are also found in the digital devices seized in Agali Police Station Crime no. 291/19 (Crime 495/19 of Crime Branch HQ, Thiruvananthapuram, related to Manjakandi exchange of fire case in which PLGA cadres of CPI (Maoist) were killed) which has been forensically extracted by RFSL Thrissur vide their Cyber Forensic analysis report No. DD 345/19. Some of the CPI (Maoist) documents found in the digital devices and documents seized during the house search of A-4, were also seized in ATS Kerala Crime No. 32/2020 (Crime No 249/2017 of Edakkara PS).
- 17.37 Soft copies of some incriminating CPI (Maoist) documents, which were found in the digital devices of A-4, were also seized from the possession of A-2 during his arrest and house search in printed form.
- 17.38 Multiple copies of CPI (Maoist) documents and the digital devices contain documents claiming and supporting the secession of Jammu and Kashmir from India were seized during the house search of A-4.

Similar documents were also seized during the house search of A-2.

17.39 The extracted data of G-mail account of A-4 also contains relevant materials related to "Padantharam".

17.40 The confession statement of accused Eldos Wilson @ Eldos (A-5), Age-25/2021, S/o Wilson K.T, Kunathukudiyil, Cheppila, Kalanadikolly-Post, Pulpally, Wayanad, Kerala was recorded u/s 164 of CrPC on 04.06.2021 and A-5 was tendered pardon by this Hon'ble Court on 14.07.2021 vide order in Crl.MP 73/2021, for strengthening evidence against the accused being charge-sheeted.

18. CHARGE:

18.1 That, the accused Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A-4), aged 27/2021, s/o Vijayan V.K, resident of Chaithram House, Puzhamudi Post, Kalpetta, Wayanad District, Kerala, had associated with the frontal organisation of CPI (Maoist) named "Padantharam" from 2014 to 2016 while he was pursuing B.Tech (Mechanical Engineering) at Calicut University Institute of Engineering and Technology, Thenhipalam, Malappuram and later. While active in Padantharam, he had conducted conspiracy meeting (APTs) with A-1, near Mananchira, Kozhikode, later at Meenchantha, Kozhikode at the end of 2015 and handed over Padantharam Magazine to A-1. Then, A-4 being attracted towards extreme Maoist ideology since 2015 onwards and since 2016, was involved in furthering the activities of CPI (Maoist). He attended various conspiracy meetings (APTs) with C.P Jaleel, (a slain PLGA cadre of CPI (Maoist) who had been killed on 6<sup>th</sup> March 2019 during the exchange of fire between PLGA cadres and Kerala Police at Vythiri, Wayanad (Crime No.82/2019 of Vythiri PS)), Allan Shuaib @ Mamu @ Mammu @ Vivek(A-1), absconding accused C. P. Usman @ Usman @ M. Usman @ Mahesh @ Faizal (A-3) and other cadres of CPI (Maoist) since 2016 onwards at various locations in Kozhikode, Kannur, Ernakulam, Malappuram and Thrissur for furthering the activities of CPI (Maoist) organisation. He also clandestinely exchanged CPI (Maoist) secret documents, digital devices, procured and provided clothing, medicines etc. as per the direction of A-3 and other cadres of CPI (Maoist) for providing the same to PLGA Cadres of CPI

(Maoist) during that period. He intentionally and knowingly possessed the documents and digital devices related to proscribed terrorist organisation CPI (Maoist) for circulation among the cadres of this organisation to support and further the activities of CPI (Maoist) during that period. Being a part of Publication wing of CPI (Maoist), A-4 voluntarily and intentionally involved in translating the literatures authored by CPI (Maoist) from English to Malayalam language and circulating the same among the cadres of CPI (Maoist) and others to support and further the activities of the proscribed terrorist organisation CPI (Maoist). He also prepared and possessed multiple volumes of core documents of CPI (Maoist) claiming and supporting the secession of Jammu and Kashmir from India and circulated the same among cadres during December 2019 and January 2020 and was found in possession of the same. He also knowingly and intentionally prepared and kept in possession large quantity of notices authored by Jogi, Spoke Person, CPI (Maoist), Western Ghats Special Zonal Committee, meant for circulation among cadres and for furthering the activities of CPI (Maoist) and was found in possession. During the further investigation, it has been revealed that, Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A-4), Age 27/2021, S/o Vijayan V.K, resident of Chaithram House, Puzhamudi Post, Kalpetta, Wayanad had associated with an organisation named "Padantharam", a frontal organisation of CPI (Maoist), from 2014 to 2016 while he was pursuing B.Tech (Mechanical Engineering) at Calicut University Institute of Engineering and Technology in the year 2011-2015 and during his PG Folklore Studies at Calicut University Campus. Investigation has also revealed that *Padantharam* was a frontal organisation of CPI (Maoist).

- 18.2 Therefore, Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A-4) committed offences punishable under section 120B of the Indian Penal Code besides sections 13, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

Supplementary charge-sheet dated 25.03.2022 reads as follows:

17.5 The further investigation revealed that, Vijith Vijayan (A-4), being part of the publication wing of CPI (Maoist), had knowingly and intentionally to further the activities of CPI (Maoist) including its terrorist activities possessed digital devices containing core documents related to the CPI (Maoist) and their armed Guerrilla cadre PLGA in the form of notices, circulars, pamphlets, drafts of documents, translated drafts in various file formats etc. Certain documents contain details about (1) the movement of Guerrilla fronts in Western Ghats, (2) condemnation of the death of PLGA cadre CP Jaleel who was an associate of A-4, (3) terrorist acts of PLGA and their attacks on Indian Security forces (4) rectification of the shortcomings in active participation in the Guerrilla War (5) military camp which was organized for all members from SZCMs to squad members who were allotted for the Tri-junction work (6) decisions required to militarily strengthen PLGA (7) commemoration of PLGA cadres who were killed in the year 2017-2018 during various operations across the country (8) directions to the cadres for intensifying and expanding people's struggles and guerrilla war (9) hailing of PLGA on their various attacks on Indian Security forces and details of various terrorist attacks executed by Western Ghats Special Zonal Committee in the name of Politico-Military-Campaign etc. A-4 collected necessary materials like medicines, sweaters etc. for further handing over through his associates to PLGA cadres who are waging war against the Nation.

18.1 That, accused A-1, A-2, A-3 and A-4 had, knowingly and intentionally, associated themselves and acted as members of Communist Party of India (Maoist) in short CPI (Maoist) which is involved in terrorist activities in India and is proscribed as a terrorist organization by the Government of India under section 35 of the Unlawful Activities (Prevention) Act, 1967 and included in the 1st Schedule to the Act.

18.4 That the accused A-4, being part of the Publication wing of Urban Area Committee of CPI(Maoist), knowingly and intentionally furthered the

activities of CPI (Maoist) which is involved in terrorist activities in India. A-4, who worked in the publication wing of the Urban Area Committee of CPI (Maoist) knowingly and intentionally supported the activities of CPI (Maoist) including its terrorist activities.

- 18.5 Therefore, Allan Shuaib @ Mamu @ Mammu @ Vivek (A-1), Thwaha Fasal @ Thaha @ Fasal @ Kishan (A-2), M. Usman @ C.P Usman @ Usman @ Mahesh @ Faizal (A-3) and Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A-4) also committed offence punishable under section 20 of the Unlawful Activities (Prevention) Act, 1967.

17. On a conceptual analysis of the materials produced before us we are unable to find any parallel between the charges alleged against A1 and A2 and that alleged against A4. The materials recovered, on search and further investigation, commend us to find *prima facie* truth in the allegation raised against A4, who is the appellant herein. The allegations raised are also not of mere possession of documents or presence in gatherings organized by the proscribed association. *Prima facie* it has to be found that the appellant was a member and occupied an important position at the organizational level; actively involved in propagating the ideology of revolt against the elected Governments and engaged in

recruitment as also defining the manner in which the ideology is to be effectively implemented in society. The learned Special Court has rejected the bail application on the strength of binding precedents in Zahoor Ahamad Shah Watali and Thwaha Fasal (both supra), which we cannot fault at all.

18. The Special Court has also considered the mitigating circumstances as propounded in K.A Najeeb (supra). As of now, we see that in addition to S.38 and S39, S.20 of the UA(P)A is also alleged against the appellant. The rigor of S.43D(5) applies equally to the above provisions. The appellant was arrested on 21.01.2021 and the supplementary charge-sheet has now been filed on 25.03.2022. The appellant is a person who commenced his association with the proscribed organization even when he was an undergraduate and continued it after his academics also. After obtaining a Degree in Engineering he continued in the same University as a Post-Graduate student of Folklore Studies. The materials recovered indicate that he is a part of the

organizational and operational activities of the proscribed movement and spearheaded the movement amongst the student community; as many witnesses spoke. We find no mitigating circumstance also to persuade us to grant bail on that count. We make it clear that the observations made by us are on a prima facie consideration and the same shall not regulate the trial or the final decision arrived at in trial. We reject the appeal.

Ordered accordingly.

Sd/-

K. Vinod Chandran, Judge

Sd/-

C. Jayachandran, Judge

jma/sp