

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE V.K.MOHANAN  
&  
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V  
THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937**

**CRL.A.No. 346 of 2015 ()**  
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**AGAINST THE ORDER IN CRMC 293/2015 of SESSIONS COURT,  
THALASSERY DATED 04-03-2015  
CRIME NO. 780/2014 OF KADIRUR POLICE STATION  
(CBCID DR. 141/CR.HHW-III/KKD/14/KANNUR) - RC 10(S)/2014/CBI/SCB/TVPM.**  
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**APPELLANT/ACCUSED NO.12 :**  
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**A.RAMACHANDRAN @ RAMAN, AGED 54 YEARS,  
S/O.GOVINDAN, PUTHALATH POYIL, KIZHAKKE KADIRUR  
THALASSERY TALUK.**

**BY ADVS.SRI.K.GOPALAKRISHNA KURUP (SR.)  
SRI.ABHISHEK KURIAN  
SRI.P.N.SUKUMARAN  
SRI.K.VISWAN**

**RESPONDENT :**  
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**1. CENTRAL BUREAU OF INVESTIGATION,  
SPECIAL CRIME BRANCH, THIRUVANANTHAPURAM  
REP.BY DEPUTY SUPERINTENDENT OF POLICE.**

**ADDL. R2 IMPEADED :**

**2. SUNIL KUMAR E., AGED 34 YEARS,  
S/O. CHATHUKUTTY, ELAMNDHOTTATHIL HOUSE,  
PATTIYAM, KATHIRUR, KANNUR DISTRICT**

**ADDL. R2 IS IMPEADED AS PER ORDER DT 18/6/2015 IN CRL.M.A. 2926/2015.**

**R1 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.  
ADDL. R2 BY SRI. K. RAMAKUMAR SENIOR ADVOCATE  
BY ADV. SRI.S.RAJEEV  
BY ADV. SRI.K.K.DHEERENDRAKRISHNAN**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD  
ON 05/06/2015, ALONG WITH CRA. 347/2015, CRA. 383/2015,  
THE COURT ON 18-06-2015 DELIVERED THE FOLLOWING:**

**bp**

CRL.A.No. 346 of 2015 ()

**APPENDIX**

**PETITIONER'S ANNEXURES :**

- ANNEXURE A1:** COPY OF THE FIR IN CRIME NO. 780/2014 OF KADIRUR POLICE STATION.
- ANNEXURE A2:** COPY OF THE STATEMENT OF SASIDHARAN, ON THE BASIS OF WHICH ANNEXURE A1.
- ANNEXURE A3:** COPY OF THE REPORT DT 1/9/2014.
- ANNEXURE A4:** COPY OF THE ORDER DT 4/3/2015 IN CRL. M.C. NO. 293/2015 OF SESSIONS COURT, THALASSERRY IN CRIME NO. 780/2014 OF KADIRUR POLICE STATION (CB CID DR. 141/CR.HHW-III/KKD/14/KANNUR) - RC 10(S)/2014/CBI/SCB/TVPM.

**RESPONDENT'S ANNEXURES :** NIL.

**//TRUE COPY//**

**P.A. TO JUDGE**

**bp**

**V.K.MOHANAN & RAJA VIJAYARAGHAVAN, JJ**

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Crl.Appeal. Nos. 346 of 2015, 347 of 2015

&

383 of 2015  
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Dated 18<sup>th</sup> June, 2015  
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**JUDGMENT**

Raja Vijayaraghavan.J.

1. The accused Nos.3, 11 and 12 in R.C.10(S)/2014/CBI/SCB/Tvpm on the file of the Sessions Court, Thalassery, have preferred separate Appeals under Section 21(4) of the National Investigation Agency Act r/w Section 43D of the Unlawful Activities [Prevention] Act, 1967, (for short “UA(P) Act”) and Section 439 of the Code of Criminal Procedure (for short “the Code”) challenging the orders dismissing the applications for bail filed by them before the Sessions Court , Thalassery.

2. Crl.A.383 of 2015 is preferred by the 3<sup>rd</sup> accused challenging the order dated 11.2.2015 in Crl.M.C. 1 of 2015, Crl.A.346 of 2015 has been preferred by the 12<sup>th</sup> accused challenging the order dated 4.3.2015 in Crl.M.C.295 of 2015, and Crl.A.347 of 2015 has been

filed by the 11<sup>th</sup> accused challenging the order dated 4.3.2015 in Crl.M.C.No.279 of 2015.

3. The gravamen of the prosecution case is that on 01.09.2014 while one Manoj, a leader of RSS, was driving his Omni van bearing Registration No KL-58 G 4530 along with his friend Pramod along the Kizhakke Kathirur – Ukkas Motta Road in Kathiroor Amsom, he was attacked by a group of CPI (M) workers with dangerous weapons, like Bombs, pruning Knife etc., with intention to murder Manoj and his friend Pramod and that bombs were hurled towards the van and the assailants thereupon, hacked Manoj to death and caused grievous injuries on Pramod. It is further alleged that the assailants hurled bombs with intention to strike terror in the people at the place of occurrence and created a terrorizing situation in the area.

4. It was on the basis of a statement given by one V. Sasidharan that Crime No 780/14 u/s 143, 147, 148, 324 , 307 302 r/w S 149 IPC and S . 3 & 5 of Explosive

Substance Act and S 13 (a) of UA(P) Act, was initially registered by the Kathiroom Police Station, Thalasserry, Kannur District, Kerala. Subsequently as per Notification issued by the Government of Kerala, Home Department, dated 12.9.2014 under Section 6 of the DSPE Act, 1946, and Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi Notification dated 27.10.2014 under Section 5 of the Delhi Special Police Establishment Act, 1946, the investigation in the above crime was entrusted with them and thus, the CBI, Special Crime Branch, Thiruvananthapuram, re-registered the case as R.C. 10 (S)/ 2014 /CBI /SCB/TVPM on 28.10.2014 and took up Investigation on 5.11.2014.

5. The final report was laid before the Principal District and Sessions Court, Thalassery, on 07.3.2014 u/s 120B r/w 143, 147, 148, r/w 302, 201,, 202, 212, 324 and 307 of the IPC, 16(a) r/w 15(1)(a)(i) and Section 19 of Unlawful Activities(Prevention) Act, 1967 Section 3 and 5 of

Explosives Substances Act, 1908 and Section 27 of Arms Act, 1959, against 19 accused persons.

6. The impugned orders incidentally were passed immediately prior to the filing of the final report which was on 07.03.2015. It was thereafter, that the impugned orders were challenged by filing the Criminal Appeals under Section 21(4) of the National Investigations Agency Act r/w Section 43 (D) of the UA(P) Act and S 439 of the Code of Criminal Procedure.

7. The learned Sessions Judge after hearing the appellants through their counsel and also the Public Prosecutor dismissed the applications for bail. The learned Sessions Judge has taken note of the fact that the offense alleged against the appellants herein would attract the provisions of the UA(P) Act and that the prosecution allegation is that the appellants had concealed the whereabouts of the 1<sup>st</sup> accused and had harbored him at various places. The learned Sessions Judge has also

observed that there are startling revelations of the role played by the appellant and there are reasonable grounds for believing that the accusation made against the 3<sup>rd</sup> accused is prima-facie true. After expressing the apprehension that the appellants, if released on bail, would intimidate the witnesses, it was held that it would not be just and proper to release the appellants on bail. The said orders are under challenge in these appeals.

8. We have heard Sri K. Gopalakrishna Kurup, learned Senior counsel Appearing for the appellants in all the three Appeals as instructed by Sri P.N. Sukumaran, Sri P. Chandrasekaran Pillai, learned standing counsel for the CBI, and Sri K. Ramakumar, the learned senior counsel as instructed by Sri S. Rajeev appearing for and on behalf of Sunil Kumar. E, the brother of the victim who got impleaded as additional 3<sup>rd</sup> respondent opposing the prayers of the appellants.

9. The Learned counsel, Sri K. Gopalakrishna Kurup,

submitted that the 3<sup>rd</sup> accused was arrested on 15.9.2014, the 11<sup>th</sup> accused was arrested on 6.2.2015 and the 12<sup>th</sup> accused was arrested on 7.1.2015 and they are undergoing pre-trial detention. The allegations against them even if taken to be true constitute only bailable offenses, but to make it appear grave, Section 19 of the UA(P) Act has been included. According to the learned counsel, the prosecution has no case that they have participated in the act of annihilating Manoj and in attempting to murder Pramod. It was pointed out that even if the prosecution case is admitted in its entirety, the allegation against the appellants are that they have arranged facilities to render medical treatment for the 1<sup>st</sup> accused and nothing else. It was argued by the learned senior counsel that there is no whisper anywhere in the report filed under Section 173 of the Code that the appellants had played a part in the first phase of the conspiracy leading to the brutal murder of Elamthottathil Manoj and the attempt to commit murder of Pramod. No overt act is alleged against them and no materials are

there in the final report which even remotely suggest that they were part of the Conspiracy, According to the learned senior counsel, merely because the Investigating Officer has incorporated the provisions of the UA(P) Act, the provisions of the Act which, he termed as draconian, will not be attracted and the learned Sessions Court was bound under law and as per precedents laid down by the Apex Court to consider carefully the materials available on record and apply its mind to see whether the provisions of the UA(P) Act is attracted. Taking us through the UA(P) Act and its various provisions, it was argued that the Act was enacted for the purpose of arming the state to have effective prevention against certain unlawful activities of individuals and associations and dealing with terrorist activities and according to the learned senior counsel, the incident which led to the murder of Manoj, by no stretch of imagination can be categorized as a terrorist Act, with the potentiality or intent to threaten or likely to threaten the Unity, Integrity, security, economic security or sovereignty of India. It was further argued by the

learned senior counsel that merely because of the allegation that a couple of country bombs were used by some assailants during the commission of a murder, the same will not attract the provisions of the UA(P) Act as against the appellants herein more so when they were not participants in the act/crime. The activity which is intended to be punished under the Act has to be such as which cannot be classified as a law and order problem or disturbance of public order or even disturbance of the ordinary tempo of the life of the community of any locality but must be of the nature which cannot be tackled by the ordinary criminal activity under the ordinary Penal Law by the normal law enforcement agencies. According to the learned counsel, the act by no stretch of imagination will tantamount to anti-national activities which throw a challenge to the very integrity and sovereignty of the country. Taking us through the counter affidavit filed by the CBI, it was pointed out that it is the specific case of the Investigating Agency that out of political enmity, the 1<sup>st</sup> accused Vikraman, sometime after 2014, had entered

into a criminal conspiracy at Kathiroor with unknown persons. This was relied on to submit that even at the time of filing the final report the prosecution has no case that there was, in fact, a conspiracy with the appellants and if there was one, the said fact would have been specifically mentioned in the charge sheet. It was pointed out that in the final report, the details and address of the accused Nos. 3 and 12 would reveal that they are actually residents of East Kathiroor and working in the Patyam Milk Society situated in the same village and members of the CPI(M) political party. It was pointed out that the 3<sup>rd</sup> accused is the President of the Patyam Milk Society and the 12<sup>th</sup> accused is the Milk tester in the same society. According to the learned counsel, it is not unusual for the aforesaid accused to be present in the Village and the mere fact of their presence in the Village has been taken as a ground to allege conspiracy, it is submitted. We were taken through the statement of CW78, who is cited by the prosecution, to point out that it is the specific case of the prosecution that on 31.8.2014, a doctor from the southern

side of Kerala had come to the Patyam Society and the driver was directed to present himself early in the morning on 1.9.2014 to take the doctor to the Railway Station and it was during the Journey to the railway station by the 3<sup>rd</sup> accused accompanying the Doctor that the Car was stopped near to the scene of occurrence and it was informed about some untoward incident in the area. The statement of CW78 was highlighted by the learned senior counsel to appraise us that even in the final report, there is statement of witnesses which justify the presence of A3 near the vicinity of occurrence. It was also submitted that there is no absolute embargo in granting bail and this Court, on an appraisal of the materials, can under Section 439 r/s S. 43 (D)(5) enlarge the petitioners on bail. It was finally pointed out that the learned Sessions Court has not appreciated the falsity of the prosecution case and it was submitted that there are no reasonable grounds to come to a conclusion that the accusation against the appellant is prima facie true. He also placed reliance on **Hitendra Vishnu Thakkur &**

**Ors etc. V State of Maharashtra (AIR 1994 SC 2623), State of Kerala V Raneef (2011 (1) SCC 784)**

and also an unreported judgment of a Division Bench of this Court in Crl.A.957 of 2010 ( Anaz P.K. v. State of Kerala) to bring home the point that in spite of the restrictions contained in Section 43 D(5), this Court as well as the Apex Court has granted Bail in appropriate cases.

10. *Per Contra*, the learned standing counsel appearing for the CBI, Sri.Chandrasekharan Pillai submitted that the learned Sessions Court has properly analysed the facts and law involved and have denied the Bail to the Appellants taking note of the role played by the appellants in the ghastly murder of Elamthottathil Manoj. We were painstakingly taken through the Final Report submitted by the CBI before the Sessions Court and it was pointed out the specific case of the prosecution was that the appellants were also part of the Conspiracy to murder Manoj. It was further submitted that conspiracy is hatched

in secrecy and to obtain direct evidence for the same is never easy. It was submitted that inferences are a plenty, pointing out the role of the appellants. It was pointed out that the provisions of S. 15 of the UA(P)Act will come to play when any person commits an act with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country by using bombs or any other explosive substance which is likely to cause or to cause death or injuries to any person or persons. The intention of the appellants and the other accused who had participated in the brutal murder of Manoj would reveal that their predominant motive was to strike terror in that section of the community and also to prevent the withering of party men from one party to the other and to give a warning that they will be done away with if any such attempt is made. The case diary statements reveals, according to the learned standing counsel, that ample evidence have been obtained which reveals the role played by the appellants to harbour the principal accused after the crime was committed and the

only inference was that this was in pursuance to a prior conspiracy.

11. It was also pointed out that the call data records obtained from the network provider has revealed that telephone calls were made from the telephone of the wife of Accused No 1 who is a worker in the Patyam Society to that of the accused No 3. Several calls have also emanated from the phones of the accused persons to the 1<sup>st</sup> accused and also from the cell phones of the other accused which reveals that they were also parties to the Criminal Conspiracy. According to him, the crucial calls were from 02.08.14 till 02.09.14. There were also calls made by the accused No 12 to the third accused. This reveals that there is prior concert and sharing of mind between the local leaders of CPI (M) which is a relevant circumstance. It is pointed out that the appellants shared common intention with the first and second accused. It is also pointed out that from the statement of certain witnesses such as CW 78 and CW 63., that the third

accused was in his Bolero vehicle near the scene of occurrence at Brahma Muku immediately after the incident.

12. We were also taken through the charge No 1 laid before court detailing the acts and omissions of the appellants in harbouring the 1<sup>st</sup> accused and assisting in imparting treatment to him. The above gist of the charge, according to the learned standing counsel is the specific allegation against these appellants which would reveal the role played by the appellants.

13. The learned standing counsel brought to our notice the fact that the 3<sup>rd</sup> accused had approached this Court at an earlier stage challenging the dismissal of his application for bail by filing Crl.A. No.1084 of 2014 and the same was dismissed as per order dated 18.12.2014. It was submitted that there was, in fact, no change of circumstances and there was no reason why the impugned order be interfered in this Appeal. It was also

pointed out that a single Judge of this Court has dismissed the petition filed by the 1<sup>st</sup> accused under Section 482 of the Code of Criminal Procedure, which was filed challenging the report submitted by the Investigating Officer reporting the process of investigation u/s 15(1)(a) (i) r/w S.16(1)(a) UA(P) Act. This Court, it was submitted by the learned standing counsel, had held that the provisions of the UA(P) Act will be attracted in the facts of the instant case. This finding according to the learned standing counsel, has become final and there is no reason to take a different view.

14. Finally, it was submitted by the learned standing counsel by relying on Section 43D (5) of the UA(P) Act that the mandate in the Statute is that the accused facing a prosecution under the Act, shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable ground for believing that the accusation against such person is *prima*

*facie* true. It was argued that the restriction of granting bail u/s 43D(5) is in addition to the restriction under the Code or any other law for the time being in force on granting of bail. For the purpose of convincing this Court as regards the material available against the appellant, the final report filed before the Sessions Court Thalassery, and the 161 statements of CW 111, CW92, CW91, CW88, CW87, CW148, CW86, CW85, CW84, CW82, CW83, CW81, CW80, CW136, CW145, CW78, CW77, CW72 and CW63 along with copies of call data records were produced before us. Finally, the learned standing counsel prayed that the appeals are bereft of any merit and the same be dismissed.

15. Sri.K.Ramakumar, the learned senior counsel appearing for the additional respondent No.3, the brother of the victim, was also heard. According to the learned senior counsel, the appeals challenging the orders dismissing the application for bail, were filed much after the submission of the final report. We were taken through

the appeal memorandum and it was pointed out that it was without perusal of the final report that the appellants have preferred these appeals. It was submitted that even the learned Sessions Judge did not have an opportunity to peruse the final report while considering the bail application and it was based on the case diary that the learned Sessions Judge had passed the impugned order. Therefore, according to the learned senior counsel, the appeal is not maintainable due to change of circumstances and the appellants have to be directed to approach the Sessions court and to move a fresh application with reference to the materials available in the final report. It was also argued that the High Court under Section 21(4) of the UA(P) Act r/w Section 439 has no original jurisdiction to entertain the bail application. It was also submitted that unlike in an application under Section 439 of the Code, Section 21(4) of the UA(P) Act mandates a different procedure and since there is no challenge with regard to the findings of the Sessions Court and as the appellants have not *prima facie* demonstrated that the

findings of the learned Sessions Judge are palpably erroneous, this Court may not interfere in appeal. It was argued that in view of the finding of the learned Single Judge in Crl.M.C. No. 6110 of 2014, it cannot now be argued that the provisions of Section 15 of the UA(P) Act will not be attracted. It was further submitted with much force that the restrictions and limitations imposed on the Court under S.43D(5) will apply with full force and relying on the counter affidavit filed by the CBI before this Court, it was argued that the act of the accused will amount to striking terror in the people or any section of the people especially when explosive substances like bombs were used which resulted in Manoj sustaining fatal injuries and Pramod sustaining grievous injuries. It was finally submitted that the impugned order does not warrant any interference and sought for dismissal of the appeal.

16. After having heard the learned counsels *in extenso*, the issues for determination in these appeals are the

following:-

- (a). Whether the appeals are maintainable ?
- (b). Whether the orders passed by the Sessions Judge warrant interference ?

17. The learned senior counsel appearing for the Additional 3<sup>rd</sup> respondent has raised a contention that the appeals are not liable to be entertained since the impugned orders were passed prior to the submission of the final report. The learned Sessions Judge did not have an opportunity to peruse the final report submitted under Section 173 of the Code but had to rest content with the case diary statements. It is the specific contention of the learned senior counsel that in view of the above fact, the challenge raised in the appeal over the orders passed by the learned Sessions Judge cannot be interfered with in an appeal filed under Section 21(4) of the UA(P) Act, more so because of the mandate under the proviso 43D(5) of the UA(P) Act. We have to disagree. The proviso to

Section 43D(5) only obliges the Court to peruse the case diary or the report made under Section 173 of the Code before coming to an opinion as to whether there are reasonable grounds for believing that the accusation against the accused persons are prima facie true.

18. It has to be borne in mind that an appeal is a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court and in view of the express language and in S.21(1) of the NIA Act, 2008, the appeal would lie both on facts and law. (see **State of Gujarat V Salimbhai Abdulgaffer Shaikh & Ors ( 2003 (8) SCC 50)**). An order granting or allowing bail can be examined on its merits by the High Court without any fetters on its powers and the High Court can come to an independent conclusion as to whether the accused deserves to be released on bail on the merits of the case. But the only rider will be that the restrictions in S.43D(5) would apply on all fours even before the appellate court. It also deserves mention that the

respondents had produced before us the final report under Section 173 of the Code and also the statements and relevant exhibits to enable us to arrive at an independent finding as regards the merits of the case. Liberty of an individual is sacrosanct under our Constitution and when the appellants are undergoing incarceration for several months we cannot shut out eyes and relegate them back to the Sessions Court on technical grounds. The observations of a Division Bench of this Court in Crl. Appeal. No 1084/2015 ( Prakashan V State of Kerala), ]while dismissing the earlier application for bail filed by the appellant/accused No.3 cannot also be lost sight of. In view of the above , we hold that there is no legal or statutory bar in entertaining the appeal filed challenging of the impugned orders.

19. The next question is as to whether the impugned orders warrant interference .The charge against the appellants are under Section 120B r/w 143, 147, 148, r/w 302, 201, 202, 212, 324 and 307 of the IPC, 16(a) r/w 15

(1)(a)(i) and Section 19 of the UA(P) Act, 1967, Section 3 and 5 of Explosives Substances Act, 1908 and Section 27 of Arms Act, 1959. A perusal of the charge would reveal that there is no allegation that they have participated in the commission of the murder of Elamthottathil Manoj or caused grievous hurt to Pramod. They are in fact been arrayed as accused in the Charge No 1 which is the General Charge on the ground that they were also party to the criminal conspiracy to murder Elamthottathi Manoj. The specific charge against them are Charge No. 12 and Charge No. 13 in the final report .

### **Charge No 1**

That out of Political enmity , sometime after June 2014, Vikraman A1, along with other unknown persons entered into a criminal conspiracy at Kathiroom Thalassery, to murder Elamthottathil Manoj, an office bearer of RSS and an accused involved in the criminal case of attempt to murder P.Jayarajan, an office bearer and state level leader of CPI(M), so as to prevent flow of CPI(M) party workers of

Kannur District to BJP or RSS and also to take political revenge on the attack on P.Jayarajan, present district Secretary of CPI(M), Kannur District.

That in pursuance of the said criminal conspiracy, Vikraman A1, a resident of Kizhakke Kathirur and an accused in many politically motivated criminal cases conspired with CPI(M) sympathizers and workers/office bearers with criminal background from Kathirur, Maloor and Koothuparambu for committing the murder of Elamthottathil Manoj, in a ghastly manner by inflicting bodily injuries on him with deadly weapons so as to cause his death and kill him and also to explode one or more bombs with the intention to strike terror in the minds of the people of the locality and also in the rank and file of the RSS cadre to which Elamthottathil Manoj belonged to.

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(Portion which describes the main incident is not extracted)

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That Vikraman A1 who got injuries during the bomb explosion reached near Ananthan Master Club near Brahmavu Mukku immediately after the attack. In pursuance of the criminal conspiracy, Vikraman (A1) was immediately taken care of by Prakashan (A3) and Ramachandran @ Raman (A12), the local leaders of CPI (M), who had prior information about the plan to kill Manoj. Initially he was given shelter at the ancestral house of Ramachandran @ Raman (A12). His clothes were changed and a full sleeve shirt was provided to him, to cover the blast injuries suffered on his Right hand. During the remaining hours of the day time, he was sheltered there. Meanwhile Prakashan (A3) and Ramachandran (A12) took necessary guidance from unknown sources for the treatment of Vikraman. As per that, around 5 PM,

Prakashan (A3) proceeded to Kannur in a Bolero van with registration No. KL-58 C 1717 Driven by Vineesh. After reaching Kannur, Prakashan, (A3) contacted Krishnan (A11) who was entrusted by party leaders to make necessary arrangements for the treatment of Vikraman. Krishnan (A11) who joined the conspiracy in turn contacted party workers at Payyannur and made arrangements for treatment of Vikraman at Co-operative Hospital Payyannur, a CPI (M) controlled Hospital. Meanwhile Prakashan, A3, contacted Ramachandran, A12, and instructed to send Vikraman, A1, to Kannur where he was waiting near the office of Deshabimani, Kannur. Accordingly after sunset Ramachandran, A12, arranged an Innova car bearing registration No. KL 58 – L 4747 owned by Rijesh @ Riju , through Mahesh a relative of Vikraman and sent Vikraman along with Sujith @ Achar, A6, to Kannur in the Innova car driven by Renjith. Meanwhile, Krishnan also made arrangements to transit Vikraman from Kannur to Payyannur Co-operative Hospital. In this regard he contacted one of his friends

Shyju and asked him to come with his Maruti Alto Car since he got some urgent requirement to go to Payyannur. Shyju without knowing the plan of Krishna (A12), came with a vehicle Maruthi Alto bearing reg. No.KL-59 C 2610. Krishnan, A-11, gave him Rs 1000/ and asked him to fill fuel for the vehicle and wait near Deshabhimani office at Kannur. Accordingly after filling the fuel, Shyju waited near Deshabhimani office. After sometime around 9 PM Vikraman reached Kannur by the Innova. He was transferred to the Maruti alto to bring Krishnan, A-11, and Prakashan A3. The Innova along with Sujith @ Achar, A6, was sent back to Kadiroor by Prakashan A3. Krishnan, A-11, boarded the Maruti Alto along with Vikraman, A1, and as directed by Krishnan, A-11, the car proceeded to co-operative Hospital, Payyannur. Prakashan, A3, accompanied them in the Bolero car, he came from Kathiroor. At the hospital, Krishnan, A-11, and Vikraman, A1, were received by Sujit from CPI (M) Area Committee office as directed by Sri T.I.Madhusudanan, CPI (M) Area committee Secretary,

Payyannur and other hospital staff. Smt. Anitha, the duty nurse in the casualty cleaned the injuries and informed the duty doctor Dr.Nabeel Beeran. Dr.Nabeel Beeran examined Vikraman and found that the injuries suffered by Vikraman were from an explosion and it is to be treated as a Medico Legal case. Sensing the danger Sujith contacted Sri T.I Madhusoodanan and in turn T.I Madhusoodanan contacted Dr.Kunhikannan, Chief Medical Officer of the hospital and asked him to direct the duty doctor to treat Vikraman without creating any record in the Hospital. Dr Kunhikannan contacted Dr. Nabeel Beeran and asked to provide treatment to Vikraman and send him without making any entry in the hospital records. Accordingly, the wounds were cleaned and dressed with necessary medicines. Dr.Nabeel prescribed some medicines to Vikraman in the name of Rajan and the same was issued from the hospital pharmacy. After the treatment, Prakashan returned to Kathiroor in the Bolero van. Vikraman, A1, was taken care by Krishnan and took to a house near Lourdes hospital between Payyannur

and Thaliparamba and was harboured there till his surrender on 11.9.14 before the honourable court.

Thus the 19 accused persons Vikraman-A1, Jithesh @ Nambidi Jitha-A2, Prakasan-A3, Prabhakaran-A4, Shibin-A5, Sujith @ Achar-A6, Vinu @ Andan-A7, Riju-A8, Sinil-A9, Bijesh Poovadan-A10, Krishnan-A11, Ramachandran-A12, Vijesh @ Muthu-A13, Vijesh @ George-A14, Manoj @ Manu @ Naikutty-A15, Shabith-A16, Nijith @ Nith-A17, Siraj @ kurukkan Siraj-A18, Jakka Rahim-A19, and one or more unidentified accused persons committed offence punishable under Section 120B r/w 143, 147, 148, 149 r/w 302, 201, 202 12, 324 and 307 of IPC. Section 16(a) r/w 15(1) (a)(i) & Section 19 of Unlawful Activities (Prevention) Act, 1967, Section 3 and 5 of Explosive Substance Act, 1908 and Sec. 27 of Arms Act, 1959.

### **Charge No. 12**

That Prakashan (A3), Krishnan (A11) and Ramachandran (A12) on 1.9.2014 sheltered and arranged treatment for Vikraman (A 1 )at Co--operative Hospital,

Payyannur and thereafter harbouring Vikraman (A 1) at a house near Lourdes hospital between Payyannur and Thaliparamba knowing that Vikraman (A1) has caused the death of Elamthottathil Manoj by forming an unlawful assembly hurling Bombs and causing explosion and hacking him with sharp edged weapons with the intention to strike terror in the minds of the people of the locality and also the rank and file of the RSS Cadre to which Manoj belongs to as narrated in charge number one and thereby committed an offence punishable under section 212 and causing disappearance of evidence of the injury committed an offence punishable under section 201 and 202 of IPC.

**Charge No. 13**

That Prakashan (A3), Krishnan A11 and Ramachandran A-12 on 1.9.2014 arranged treatment for Vikraman A-1 at Co-operative Hospital Payyannur and thereafter harboured Vikraman A 1 at a house near Lourdes hospital between Payyannur and Thaliparamba

knowing that Vikraman A1 has caused the death of Manoj by forming an unlawful assembly, hurling bomb causing explosion and hacking him with sharp edged weapons with the intention to strike terror in the minds of the people of the locality and also the rank and file of the RSS Cadre to which Manoj belongs to as narrated in charge 1 whereby committed an offence punishable under section 19 of the UA(P) Act.

20. We notice from the charge extracted above that the prosecution case against the appellants is that they have actively assisted the 1<sup>st</sup> Accused, namely Vikraman, who sustained injuries while exploding the Bomb, by transporting him to the Co Operative Hospital at Payyannur and by arranging treatment for him at Payyannur with the knowledge that he is an accused in the ghastly crime committed on Manoj. It is also the specific case of the prosecution that the appellants were also privy to the Criminal Conspiracy with the assailants who perpetrated the barbaric Act. Since the offense under

S. 19 under the UA (P) Act is alleged against the appellants and since there is a general charge of Conspiracy read with S 16 (a) r/w 15 (1) (a) (1) of the UA (P) Act, the restrictions and limitations imposed on the court in granting Bail to the accused who is charged for having committed an offense punishable under the UA(P) Act as provided under S. 43D of the Act as amended in 2008, will squarely apply.

21. We shall extract Section 43 D (5) for easy reference:

*Section 43D - Modified application of certain provisions of the Code*

*(1).....*

*.....*

*(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:*

*Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable*

*grounds for believing that the accusation against such person is prima facie true.*

*(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.*

*(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorizedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.*

22. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It lays down that if the Court, on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure, is of the opinion that there are reasonable grounds for believing

that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or Chapter VI of the UA(P) Act is *prima facie* true, such accused person shall not be released on bail or on his own bond. This position is further made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on granting of bail.

23. The courts are therefore, faced with a very delicate task. The courts seized of the bail application, if after hearing the public prosecutor and after perusing the final report or Case Diary comes to the opinion that there are reasonable grounds for believing that the accusations are *prima facie* true, bail has to be refused. In **Jayantha Kumar Ghosh V State of Assam (2010 (4) GLT, 1)**, a Division Bench of the Gauhati High Court have considered this issue in detail and held that the court should

determine whether the accusations are inherently improbable or wholly unbelievable. It was further held that the standard of “prima facie true” was lower than the standard of reasonable grounds for believing in the guilt of a person, which is currently a ground for granting Bail to an accused. Precedents galore that at the stage of bail, no minute scrutiny or microscopic dissection of materials collected during investigation be made, lest it may affect the trial which is to be held later.

24. Sufficient guidelines were issued by the Apex Court in **Ranjithsingh Brahmajith singh Sharma v. State of Maharashtra( AIR 2005 SC 2277 )** in which case, the interpretation and application of the Maharashtra control of organized crime Act, 1999 (for short “MCOCA”) came for consideration before the Apex Court. MCOCA also contains provisions curtailing the discretion of the Court in the matter of bail. The Apex Court held as follows :-

[47]. Does this statute require that before a

*person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offense whatsoever?*

*[48]. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose .*

*[49]. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. .*

*And further in para 57 it was held as follows :*

*[57]. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby. [Emphasis supplied]*

25. It is of course true that the language in UA(P)A is more restrictive and wider than that in MCOCA Act. But the principles enunciated in the above decision will act as a guiding principle as and when the courts are faced with

the mandate under S 43 D (5) of the UA (P) Act . Therefore when the provisions of the UA ( P ) Act are invoked , in addition to the basic considerations which normally weigh with the courts for granting bail in non bailable offenses , the limitations imposed in S 43 D should also be kept in view while deciding as to whether bail can be granted to the accused.

26. We can't be oblivious to the time honored and fundamental principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. It need not be reiterated that pretrial detention can be a cause for great obloquy .The Apex has laid down time and again that in our Country, where the Constitution reigns supreme, it would be quite contrary to the concept of personal liberty that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses

if left at liberty, save in the most extraordinary circumstances. It is also well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. The constitutional Courts will have to be on the look out when the appropriate matters come before it, to see that the provisions do not undermine Civil liberties of Citizens on which our entire Criminal Justice system is based upon.

27. Further in **Shamil Saquib Nachan V State of Maharashtra [MANU/MH/0486/2013]**, the High Court of Judicature of Bombay had occasion to consider a case where the Accused was roped in as a conspirator under S 120 B, 153 A, 307 of the IPC, S 3 (1) (ii), 3 (2) and 3 (4) of the M.C.O.C Act and under S 16 and 18 of the U.A (P) Act : In para 26 of the Judgment it was held as follows by the learned Single Judge:

*[26]. .... All that these provisions lay down is that a person arrested on the accusation of having committed the offence contemplated by the said provisions should not be released on bail, if there would be a prima facie case of such offence against him. If a rational and reasonable doubt is felt in that regard, then the court would not be precluded from granting bail even in such cases. Moreover, judging the existence of a prima facie case at the stage of bail, would not be the same as judging the existence of a prima facie case for proceeding against an accused by framing a Charge.*

*It is too obvious that an accused would never be required to put forth a stronger case for bail, than that would be required for a discharge. The tests that are applied at the time of bail cannot be as rigorous as are applied while considering the discharge of an accused from a particular case. The position as to when an accused can be discharged has not been changed by the legislature in cases of the offences punishable under the M.C.O.C. Act and the U.A.P. Act, in spite of introducing provisions curtailing the discretion of the court in the matter of grant of bail - although only in the event of the application being opposed by the Public Prosecutor.*

These observations were later confirmed by the Apex Court.

28. In the light of these principles we shall now peruse the materials produced before us which include the 173 report and the statement of witnesses to arrive at an opinion as to whether there are reasonable grounds for believing that the accusation against the appellants herein are prima facie true. It can't escape notice that though the allegation against the appellants are they are also part of the main conspiracy, the statement of witnesses will make it clear that the appellants are primarily arrayed as accused on the allegation that they have sheltered and arranged treatment for the 1<sup>st</sup> accused Vikraman at Co -Operative Hospital, Payyannur and thereafter, they have harbored Vikraman at a house near Lourdes Hospital with the knowledge that the aforesaid Vikraman has caused the death of Manoj.

29. To bring out the fact that they were privy to the general conspiracy to murder Manoj, the prosecution is relying on the call data records issued by the mobile services provider and also the statements of witnesses to

prove that the accused No 3 and 12 had found in the vicinity of the crime after the incident. The call data records have been listed as item No 4,5. 6 and 7 in the List of Documents annexed to the charge sheet. At the stage of hearing the learned standing counsel of the CBI had handed over to the court call data records pertaining to the 1<sup>st</sup> accused and the 12<sup>th</sup> accused but it was fairly submitted that it does not form part of the 173 report. Item 4, 5, 6 and 7 are the original Airtel CAF with ID proof pertaining to mobile No 9567101034 and 9746285745 belonging to one Nasar, K T, Keloth Thekkadath House, Kandamunnu, Nirmalagiri P.O., Thalasserry, Kannur and those records have nothing to do with the complicity of the appellants.

30. The statement of witnesses cited by the prosecution, viz , CW 111, CW92, CW91, CW88, CW87, CW148, CW86, CW85, CW84, CW82, CW83, CW81, CW80, CW136, CW145, CW78, CW77, CW72 and CW63 are in respect of the acts done by the appellants after the incident which

led to the death of Manoj. As per the charge sheet, the point to be proved by the witnesses cited to prove criminal conspiracy are detailed below:

|       |                  |                                                                                                                                                                                                                                                |
|-------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CW 63 | Shri.P.M.Nikhil, | Sees vehicle of Pattiam Social Service Society at Brahmavu Mukku at 11.00 AM on 1.9.2014.                                                                                                                                                      |
| CW 72 | Pradeep Kumar    | Sees Ramachandran (A-12), Mohanan, Suresh Babu coming out of the Society building . Saw Prakashan, Ramachandran and Vikraman were standing near Ananthan Master club with blood stains on the dresses of Vikraman (A1).                        |
| CW 77 | Shri.Rineesh,    | nephew of Ramachandran (A12) Speaks about Vikraman (A1) taking shelter at the verandah of the ancestral house of Ramachandran Saw Prakashan (A3), Jitha (a2), Achar (A6), Sunooty Shabith (A16), Manoj (A14) visiting Vikraman and discussing. |

|       |                   |                                                                                                                                                                                                                                                                                                                   |
|-------|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CW 78 | Vineesh.P.P.      | He is the driver of Bolero KL-58-C-1717 of Pattiyam Social Service Society for which Prakashan A3 is the Managing Director .Speaks about visit of Prakashan (A3)to Kannur for arranging treatment for Vikraman and of Prakashan (A3) using his mobile phone for contacting Ramachandran (A12) through his brother |
| CW 80 | Akhil,            | He noticed Sujith @ Achar (A2) and Vikraman (A1) boarding an Innova car in the evening of 1.9.2014 near Brahmavu Mukku, Thazhathupalli Junction. Ramachandran (A12), Mahesh, and Jitha. Ramachandran was talking with the persons who were in the car.                                                            |
| CW 82 | M.Sujith.         | Staff of Payyanoor Co-operative Hospital. Received instructions that a patient would come along with Krishnan (A11).                                                                                                                                                                                              |
| CW 83 | Shri.Viswanathan. | Local Secretary, CPI(M), Payyanoor.Arranged for the treatment of Vikraman at the Payyanoor Co-operative Hospital on 1.9.2014                                                                                                                                                                                      |
| CW 84 | Ramesan.C.S       | Staff of Payyanoor Co-operative Hospital. Received instruction from Madhusudhanan, CPI(M) Payyanoor Area Committee Secretary to help a person with injuries .                                                                                                                                                     |

|           |                   |                                                                                                                                                                               |
|-----------|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CW 85     | Dr.Nabeel Beeran, | Duty Doctor at Payyanoor Co-operative hospital who had treated Vikraman (A1). Gave treatment on the instruction of Dr.Kunjikannan, CMO of Payyanoor Hospital                  |
| CW 86     | Mrs.A.V.Anitha,   | Attended to cleaning of the wounds of Vikraman (A1) on 1.9.2014                                                                                                               |
| CW 87     | Rajesh Kumar,     | Saw Maruthi Alato Car and Bolero car at Payyanoor co-operative Hospital. Identified the person accompanied with Sujith as Vikraman when his photograph was published.         |
| CW 91     | Shri.P.Santhosh,  | Used him for creating false alibi to show as if Prakashan was at Kannur on 1.9.2014                                                                                           |
| CW 92     | Nishanth,         | Running ayurvedha medical centre.Stated that Prakashan (A3) approached him and asked him to create alibi by telling that Prakashan had come to Payyanoor on 1.9.2014          |
| CW11<br>1 | Dinesan A.        | On 3.9.2014 was requested by Prakashan (A3) and Ramachandran (A12) to harbor one person who was later identified as Jitha (A2).                                               |
| CW13<br>6 | Rejith.P.         | Statement recorded u/164. On 1.9.2014, evening on the request of Mahesh, he had driven Riju's Innova car carrying Vikraman (A1), Sujith @ Achar (A6) from Vettumal to Kannur. |

|           |                      |                                                                                                                                                                                                                                                          |
|-----------|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CW14<br>5 | Vijesh .P.P.,        | Brother of vineesh.Driver of Prakashan (A3). His mobile phone was used to communicate with Ramachandran (A12) by Prakashan (A3) and vice versa.                                                                                                          |
| CW14<br>8 | Dr.T.V.Kunhikkannan, | Chief Medical Officer, Payyanoor, Co-operative Hospital.Shri.Madhusudhanan, CPI(M) Payyanoor Area Committee Secretary contacted him to provide treatment to a person.Later, he came to know that person was Vikraman (A1) involved in Manoj Murder case. |

31. These witnesses have been cited to prove that the appellants were instrumental in transporting the 1<sup>st</sup> accused Vikraman to the co-op. Hospital at Payyannur and in arranging treatment for him in the said hospital. CW 63, CW 72 and CW 80 are cited to prove that A 12 had come out from the Patyam society and also that A 3 and A 1 are seen together . CW 77 and 78 was cited to prove that the 3<sup>rd</sup> accused had traveled to Kannur and arrangements were made for transportation. The other witnesses are the doctors and staff of Co- Operative

hospital ,and they speak of the treatment imparted to the 1<sup>st</sup> accused .We find that even as per the charge, the residential house of the accused No 3 and Accused No 12 are at East Kathiroom and the accused No 3 is the Managing Director of the Patyam Social Service Society in which Smt. Sujina, wife of Vikraman (A1) is employed. A 12 is also an employee of the Patyam Milk Society. According to us , the mere presence of the accused No 3 and 12 will not , in view of the above facts , will not reveal the direct complicity of the accused in the murder of Elamthottathil Manoj so as to form an opinion, that there exist reasonable grounds to show that the accusation is "prima facie true". In the absence of such, or other similar factors, formation of opinion to the detriment of the accused would make a serious dent into the realm of the personal liberty. The prosecution will have to establish at the trial that the appellants who are charged with criminal conspiracy had agreed to pursue a course of conduct which they knew was leading to the commission of a crime by one or more persons to the agreement, of

that offense. Besides the fact of agreement the necessary mens rea of the crime is also required to be established. Hence prima-facie it cannot be held that the presence of A 3 and A 12 at East Kathiroom can be taken as a material circumstance to show their complicity or to conclusively establish conspiracy in view of the above facts. The question may be different at the stage of trial but as we are not dealing with the actual assailants but the conspirators and that too at the stage of consideration of the bail application.

32. We may also have to refer at this stage to Charge No 13 leveled against the appellants under S 19 of the UA (P)Act. Section 19 of the UA (P) Act reads as follows -

19. Punishment for Harbours, etc:  
Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person **knowing that such person is a terrorist** shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:                      Provided that this section shall not apply to any case in

which the harbour or concealment is by the spouse of the offender. [Emphasis supplied]

33. It is for the prosecution to prove that the appellants had harbored or concealed the accused knowing that such person is a terrorist. At this stage, by limiting our inquiry to the consideration of the bail application alone, and without dissecting the prosecution case under a microscope, we are of the opinion that it will be difficult to attribute the knowledge on the appellants that the 1<sup>st</sup> accused was a terrorist at the time when he was alleged to have been transported and provided medical assistance on 1.9.2014. We also take note of Annexure A-1 FIR produced along with the Appeals which reveals in unmistakable terms that Crime No 780 of 2014 was registered originally on 1.9.2014 for offense punishable under S 13 (a) of the UA (P) Act and under S 143 , 147, 148, 324, 307, 302 r/w 149 of the IPC and under S 3 and 5 of the Explosive Substances Act. Section 13 deals with Punishment for Unlawful Activities and is not akin to S 15

which deals with terrorist Act. It was later that Annexure-3 petition was submitted before the Jurisdictional Court to alter the section from S 13 to S 15 (1) (a) (1) r/w S 16 (a) of the UA (P) Act. Annexure-3 petition, though is initialed on 01.09.14 from the endorsement, it is seen to have reached the court only on 07.01.2015. It reveals that even the prosecution was in the dark on 01.09.14 when the crime was initially registered, that the Act committed by the assailants came under S S 15 (1) (a) (1) r/w S 16 (a) of the UA(P) Act. The appellants were also not arrayed as accused at that stage. When that be the case importing knowledge on the appellants that they were harboring a terrorist u/s. 19 will be far-fetched to believe at this preliminary state. All these aspects will have to be brought out at the stage of trial . On this issue also we are of the opinion that there are no reasonable grounds at this stage to prima-facie come to the conclusion that the accusation against the appellants in so far as relating to S 19 of the UA (P) Act is *prima-facie* true. We reiterate that these findings are solely for the purpose of disposal of this

Bail application and the trial court will have to consider the matter untrammelled of these observations.

34. Having arrived at an opinion as regards the accusation by the prosecution in so far as the petitioners are concerned, we also take note of the observations made by the Apex Court in **Shaheen Welfare Association V Union of India (1996 (2) SCC 616)**, in relation to grant of bail to under trials in TADA Cases. The Apex Court has held as follows :-

[12]. The proper course is to identify from the nature of the role played by each accused person the real hardcore terrorists or criminals from others who do not belong to that category; and apply the bail provisions strictly in so far as the former class is concerned and liberally in respect of the latter class. This will release the pressure on the courts in the matter of priority for trial. Once the total number of prisoners in jail shrinks, those belonging to the former class and, therefore, kept in jail can be tried on a priority basis. That would help ensure that the evidence against them does not fade away on account of delay. Delay may otherwise harm the prosecution case and the harsh bail provisions may prove counter-productive. A pragmatic approach alone can save the situation for,

otherwise, one may find that many of the under trials may be found to have completed the maximum punishment provided by law by being in jail without a trial. Even in cases where a large number of persons are tied up with the aid of Sections 120B or 147, I.P.C., the role of each person can certainly be evaluated for the purpose of bail and those whose role is not so serious or menacing can be more liberally considered. With inadequate number of courts, the only pragmatic way is to reduce the prison population of TADA detenus and then deal with hardcore under trials on priority basis before the evidence fades away or is lost. Such an approach will take care of both the competing interests. This is the approach which we recommend to courts dealing with TADA cases so that the real culprits are promptly tried and punished.

[13]. For the purpose of grant of bail to TADA detenus, we divide that under trials into three classes, namely -

- (a) hardcore under trials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular;
- (b) other under trials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act;
- (c) under trials who are roped in, not because of any activity directly attracting Section 3 and 4, but by virtue of Section 120B or 147, I.P.C., and;
- (d) those under trials who were found possessing incriminating articles in notified areas and are booked under Section 5 of TADA.

35. The apex Court in *Shaheen Welfare Association* (supra) had classified the accused on the basis of the gravity of the overt act committed by them. We can't fail to note the fact that no overt acts are attributed to the appellants. At the sake of repetition it has to be stated that they have been arrayed as accused on the ground of harboring and providing treatment of the 1<sup>st</sup> accused and also under the general charge of Criminal Conspiracy. Under the IPC , the acts committed by the appellants will only attract S 212 and under Section 201 and Section 202 which are bailable.

36. It will also be apposite at this juncture to refer to the directions issued in **Devender Gupta Vs National Investigating Agency ( 2014 (2) ALD Cri. 251)** wherein a Division Bench of the High Court of Andhra Pradesh strove to strike a balance between the mandate under Section 43D on one hand and the rights of the accused on the other. It was held as follows :

The following instances or circumstances, in our view, would provide adequate guidance for the Court to form an opinion, as to whether the accusation in such cases is “prima facie true”:

- 1) Whether the accused is/are associated with any organization, which is prohibited through an order passed under the provisions of the act;
- 2) Whether the accused was convicted of the offenses involving such crimes, or terrorist activities, or though acquitted on technical grounds; was held to be associated with terrorist activities;
- 3) Whether any explosive material, of the category used in the commission of the crime, which gave rise to the prosecution; was recovered from, or at the instance of the accused;
- 4) Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or around the scene of occurrence; and
- 5). Whether the accused was/were arrested, soon after the occurrence, on the basis of the information, or clues available with the enforcement or investigating agencies.

37. According to us, *Shaheen Welfare Association* (supra), *Ranjithsingh Brahmajith singh Sharma* (supra ),

*Shamil Saquib Nachan* (supra) , and Devender Gupta ( supra ) contains guiding principles that can be taken into consideration while evaluating the restrictions when faced with the mandate of S 43 D(5) of the UA ( P ) Act.

38. In **Dr.Raneef V State of Kerala** ( BA No. 5360 of 2010) a learned single judge of this Court had granted bail to Dr. Raneef who was roped in by the prosecution with the main part of the occurrence by alleging that he was a member of the criminal conspiracy to either assassinate or maim Professor T.J.Joseph of Newman College. That was a case registered among other offenses under the UA(P) Act as well. Apex Court while dismissing the appeal filed by the State against the order granting bail to Dr. Raneef in the decision reported as **State of Kerala V Raneef ( 2011 (1) SCC 784)** had held as follows :-

[12]. At this stage we are not expressing any opinion as to whether the allegations in the versions of the prosecution or defense

are correct or not, as evidence has yet to be led. However, we would like to make certain observations:

i) We are presently only considering the bail matter and are not deciding whether the Respondent is guilty or not. Evidence has yet to be led and the trial yet to commence. Hence the prosecution is yet to establish by proof beyond reasonable doubt that the Respondent was part of a conspiracy which led to the attack on Prof. Jacob.

ii) The case against the respondent is very different from that against the alleged assailants. There is no allegation that the Respondent was one of the assailants.

We are of the opinion that at this stage there is no prima-facie proof that the Respondent was involved in the crime. Hence the proviso to Section 43D(5) has not been violated.

.....

Prima facie we are of the opinion that the only offence that can be leveled against the Respondent is that under Section 202 I.P.C., that is, of omitting to give information of the crime to the police, and this offense has also to be proved beyond reasonable doubt. Section 202 is a bailable offense.

39. As regards the factors that are to be borne in mind at the time of consideration of bail, the Apex Court, in **Sanjay Chandra V CBI ( AIR 2012 SC 830 )**, had observed as follows :-

In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un - convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un - convicted

person for the purpose of giving him a taste of imprisonment as a lesson.

40. Further in **Kalyan Chandra Sarkar v. Rajesh Ranjan [ (2005) 2 SCC 42]**, the Apex court has observed as follows:-

“Under the criminal laws of this country, a person accused of offenses which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so.”

41. In the light of the above discussion, we hold, for the limited purpose of consideration of these bail applications, that there are no reasonable grounds to form an opinion, at this stage, that the accusations

against the appellants under S.19 of the UA(P) Act are prima-facie true. As far as the charge of criminal conspiracy is concerned, we are of the opinion that before the examination of the prosecution witnesses, which are yet to begin, and before the conspiracy part is proved conclusively, it will be difficult for us to form an opinion that the accusations are prima-facie true. As has been held by the Apex Court in *Ranjeetsing* (supra), the duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. The findings recorded by us undoubtedly would be tentative in nature and will not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

42. We also take note of the fact that the appellant in Criminal Appeal No. 383 of 2015 was arrested on 15.9.2014 and has been undergoing detention for more

than 207 days. The appellant in Criminal Appeal No. 347 of 2015 was arrested on 06.02.15 and the appellant in Criminal Appeal No. 346 of 2015 was arrested on 07.01.2015 and they had been undergoing detention for the period of 124 days and 154 days respectively as on 10.06. 2014. We are satisfied that in the fact situation of the case continued detention is not warranted and the appellants can be released subject to stringent safeguards .

43. In the result, we set aside the order dated 11.02.2015 in Crl.M.C.No.1 of 2015, order dated 04.03.2015 in Crl.M.C.No.293 of 2015 & order dated 04.03.2015 in Crl.M.C.No.279 of 2015 of the learned Sessions Judge Thalasssery, and allow the Appeals. We hold that the continued detention of the appellants are unwarranted and they can be enlarged on bail on adequate conditions safeguarding the interests of the prosecution as well.

44. It is made clear that the observations and findings made in this Judgment are limited to the consideration of the bail application and the trial court shall proceed with the matter untrammelled with the observations contained in this Judgment.

45. Accordingly, the appellants are directed to be released on bail on each of them executing bonds for Rs. 3,00,000/- (Rupees Three Lakhs only) each with two solvent sureties each for the like amount to the satisfaction of the Sessions Court, Thalasserry, and subject to the following conditions:-

(i). The appellants shall report before the Dy. Supdt. of Police, ACB, CBI, SPE, Cochin, who is the investigating officer in charge of the case as and when required without fail.

(ii). The appellants shall not influence or intimidate the

prosecution witnesses nor shall they attempt to tamper with the evidence for the prosecution.

(iii). The appellants shall not enter the limits of Kannur District except for appearing before the Sessions Court, Thalassery. However, the Sessions Court, Thalassery, can modify the above condition after hearing the prosecution and the accused, in case such an order is warranted on merits.

(iv). The appellants shall surrender their passport, if any, before the Sessions Court, Thalassery, at the time of executing bail bond. In case they are not holding any passport, they shall file an affidavit to that effect before the Sessions Judge, Thalassery, while executing the bail bond.

(v). The appellants shall not commit

any offense nor shall they involve themselves in any prejudicial activity while on bail.

(vi). In case the appellants commits breach of any of the above conditions, the bail granted to them shall be liable to be canceled.

The Appeals are accordingly, allowed as above.

Sd/-

**V.K.MOHANAN**  
**Judge**

Sd/-

**RAJA VIJAYARAGHAVAN.V.**  
**Judge**

Mrcs

True Copy

P.S. To Judge