2025:KER:30291

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 259 OF 2024

(CRIME NO.2/2023 OF NATIONAL INVESTIGATION AGENCY KOCHI, Ernakulam
AGAINST THE ORDER/JUDGMENT DATED 11.01.2024 IN CRMP 8/2024 IN RC NO.2 OF 2023 OF SPECIAL COURT FOR TRIAL OF NIA CASES,ERNAKULAM)

APPELLANT/1ST ACCUSED:

ASHIF
AGED 35 YEARS
S/O KHADEEJA, MATHILAKATH HOUSE, KETTUNGAL,
VENKIDANGU, THRISSUR, PIN - 680510

BY ADVS.
M.A.AHAMMAD SAHEER
E.A.HARIS
MUHAMMED YASIL

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RESPONDENT/COMPLAINANT:

UNION OF INDIA
REPRESENTED BY INSPECTOR OF POLICE, NATIONAL INVESTIGATION AGENCY, KOCHI, PIN - 682020
ASGI FOR NIA ADV. A.R.L.SUNDARESEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, ALONG WITH CRL.A.259/2024, 275/2024 AND CONNECTED CASES, THE COURT ON 8/4/2025 DELIVERED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 275 OF 2024

(CRIME NO.2/2023 OF NATIONAL INVESTIGATION AGENCY KOCHI, Ernakulam
AGAINST THE ORDER/JUDGMENT DATED 19.01.2024 IN CRMP NO.34/2024 IN SC NO.1 OF 2024 OF SPECIAL COURT FOR TRIAL OF NIA CASES,ERNAKULAM)

APPELLANT/PETITIONER/1ST ACCUSED:

ASHIF
AGED 35 YEARS
S/O KHADEEJA, MATHILAKATH HOUSE, KETTUNGAL, VENKIDANGU, THRISSUR., PIN - 680510

BY ADVS.
M.A.AHAMMAD SAHEER
E.A.HARIS
MUHAMMED YASIL

2025:KER:30291

RESPONDENT/S:

UNION OF INDIA
REPRESENTED BY INSPECTOR OF POLICE, NATIONAL INVESTIGATION AGENCY, KOCHI, PIN - 682020
ASGI FOR NIA ADV. A.R.L.SUNDARESEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, ALONG WITH CRL.A.259/2024 AND CONNECTED CASES, THE COURT ON 8/4/2025 DELIVERED THE FOLLOWING:

2025:KER:30291

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 2271 OF 2024

(CRIME NO.2/2023 OF NATIONAL INVESTIGATION AGENCY KOCHI, Ernakulam
AGAINST THE ORDER/JUDGMENT DATED 20.09.2024 IN CRMP NO.219/2024 IN SC NO.1 OF 2024 OF SPECIAL COURT FOR TRIAL OF NIA CASES,ERNAKULAM)

APPELLANT/PETITIONER/ACCUSED NO.1:

ASHIF
AGED 35 YEARS
S/O KHADEEJA, MATHILAKATH HOUSE, KETTUNGAL, VENKIDANGU, THRISSUR, PIN - 680510

BY ADVS.
E.A.HARIS
M.A.AHAMMAD SAHEER
MUHAMMED YASIL
FATHIMA SHERIN

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RESPONDENT/RESPONDENT/COMPLAINT:

UNION OF INDIA
REPRESENTED BY INSPECTOR OF POLICE, NATIONAL INVESTIGATION AGENCY, KOCHI, PIN - 682020
ASGI FOR NIA ADV. A.R.L.SUNDARESEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, ALONG WITH CRL.A.259/2024 AND CONNECTED CASES, THE COURT ON 8/4/2025 DELIVERED THE FOLLOWING:

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RAJA VIJAYARAGHAVAN V,
&
P.V.BALAKRISHNAN,JJ.
----------.
Crl.A. Nos.259,275 & 2271 of 2024

Dated this the 8th day of April 2025

COMMON JUDGMENT

P.V.BALAKRISHNAN,J

All these appeals have been filed by the first accused in SC No.1/2024 (arising out of RC No.2/2023/NIA/KOC) on the files of the Special Court for the trial of NIA cases, Ernakulam.

2. Criminal Appeal No.259/2024 is filed challenging the order dated 11/1/2024 in Crl.M.P.No.8/2024, Criminal Appeal 275/2024 is filed challenging the order dated 19/1/2024 in Crl.M.P.No.34/2024 and Criminal Appeal No.2271/2024 is filed challenging the order dated 20/9/2024 in Crl.M.P.No.219/2024 passed by the Special Court for the trial of NIA cases, Ernakulam.

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3. Criminal M.P.No.8/2024 is an application filed by the prosecution seeking permission for providing digital copies of documents instead of paper copies along with the charge sheet. The said application was allowed by the trial court as per order dated 11/1/2024.

4. Crl.M.P.No.34/2024 is an application filed by the first accused seeking default bail. The said application was dismissed by the trial court on 19/1/2024.

5. Crl.M.P.No.219/2024 is an application filed by the first accused seeking regular bail. The same was also dismissed by the trial court on 20/9/2024.

6. The prosecution case is that the first accused, being an active arms and physically trained cadre of PFI and having involved in the murder of a prominent RSS/BJP leader in 2008, got acquainted with the second accused who is associated with India Fraternity Forum while in Qatar during 2012. Thereafter,

he willingly subscribed to violent jihadi ideologies and conspired with the second accused to join ISIS. When it did not materialise, they conspired to return to India and establish an ISIS module in Kerala and recruit gullible youths to the module. After returning to India in 2017, the first accused established the module and recruited the third accused and attempted to recruit the 4th accused to the module. The first and second accused also conspired and committed crimes to raise funds for pro-ISIS activities along with the third accused and conducted recce of Hindu Temples and prominent persons of other communities for targeting, as well as looting them. They also propagated ISIS ideology through social media and other platforms. Hence, the prosecution alleges that the first accused has committed the offences punishable under Section 120B of IPC and Sections 20,38 & 39 of The Unlawful Activities (Prevention) Act,1967(hereinafter referred to as 'the UAPA' for short).

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7. The learned Counsel for the appellant/first accused Adv.E.A.Haris contended that Crl.M.P.No.8/2024 was filed by the prosecution on 5/1/2024 and the same was allowed by the trial court on 11/1/2024, without hearing the appellant. He submitted that the appellant, being in jail, cannot be expected to defend his case effectively without having been served a physical copy of the final report and other relevant documents, as contemplated under Section 207 of Cr.P.C. He submitted that even though as per the order of the trial court the accused was handed over a soft copy of these documents in a pen drive on 22/1/2024, without any authentication, no purpose has been served since the appellant, who is in jail, has not been provided with computers or other gadgets to open the pen drive and go through the documents. He argued that the afore order passed by the trial court permitting the prosecution to serve the documents in electronic form, has caused considerable prejudice to the appellant resulting in denial of fair trial. He further

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contended that the appellant has filed Crl.M.P.No.34/2024 on 15/1/2024 and the final report was filed on 12/1/2024 in physical form, without sufficient copies of the same for serving them to the accused. He argued that the final report thus filed was defective and the trial court erred in not complying with Rules 19 and Rule 68 of the Criminal Rules of Practice. Hence, he submitted that as on 19/1/2024, when his application for default bail was considered, there was no valid charge sheet in terms of Section 173 of Cr.P.C. and, therefore, the trial court ought to have allowed his application. He also relied on the decision in **Achpal @ Ramswaroop and Another v. State of Rajasthan [2018 (4) KLT 664]** to support his afore contention. He submitted that, even if it is otherwise so, this is a fit case to grant regular bail to the appellant and the trial court has failed to take note of the relevant factors while considering such an application. He also submitted that the appellant is in custody from 18/7/2023 and he has been

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charged for committing the offences punishable under Sections 20, 38 & 39 of UAPA and there is no allegation that the appellant has perpetrated any crime. It is only alleged that the appellant has conspired and attempted to commit terrorist act and has accumulated money for the activities, by committing robbery. He, by relying on the decisions in **Pankaj Bansal v. Union of India [2023 KHC 6887]**, **Prabir Purkayastha v. State(NCT of Delhi) [2024 KHC 6286]** and **Vihaan Kumar v. State of Haryana [2025 KHC OnLine 6116]** further contended that, since the appellant has been kept in custody from 18/7/2023 onwards, even without informing him about the grounds of arrest in writing, the arrest itself is illegal as it violates Article 22(1) of the Constitution. He would also argue that further investigation in this case is in progress even today, and there is no likelihood of the trial commencing in near future. He contended that, as of now, the prosecution has arrayed 145 witnesses from its side and in such circumstances, in all



probabilities, there will be considerable delay in completing the trial. He relied on the decisions in **Ankur Chaudhary v. State of Madhya Pradesh[2024 SCC OnLine SC 2730]**, **Mohd Muslim @ Hussain v. State(Nct of Delhi) [AIR 2023 SC 1648]**, **Javed Gulam Nabi Shaikh v. State of Maharashtra (2024 SCC OnLine SC 1693)**, **Union of India v. K.A.Najeeb [(2021) 3 SCC 713]** and **Athar Parwez v. Union of India (2024 KHC 6719)** to contend that undue delay in trial is a valid ground for granting bail even in cases involving UAPA since Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of NDPS Act. He also, by relying on Section 6 of National Investigation Agency Act,2008 (hereinafter referred to as 'the NIA Act' for short) and especially clause (5) argued that the Agency does not have the power to register an FIR directly except in cases mentioned in clause (8) and hence, the entire prosecution against the appellant has to fail. He would also submit that the 5th accused, who stands on the very same



footing as that of the appellant, has been granted bail by the Apex Court after considering his long incarceration for a period of 11 months.

8. Per contra, the learned Assistant Solicitor General of India Adv.Sundaresan would contend that the serving of the final report and the documents to the first accused in the form of soft copies was only for the purpose of convenience, since the charge sheet and the documents produced are voluminous in nature. He contended that the appellant has no right to be heard at the time of considering Crl.M.P.No.8/2024 by the trial court, since cognizance has not been taken at that time and since, the work done by the trial court is only administrative in nature. He further submitted that filing of charge sheet is one thing and serving the copies to the accused, which is the duty of the court, is another thing. The time prescribed by the statute is only for the purpose of completing the investigation and laying

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charge, and has nothing to do with tendering copies. He, by relying on the decisions in **P. Gopalkrishnan @ Dileep v. State of Kerala & Anr [(2020) 9 SCC 161]**, **CBI v. Kapil Wadhawan [(2024) 3 SCC 734]** and **Serious Fraud Investigation Office v. Rahul Modi & Ors.[(2023) 15 SCC 311]** contended that the Magistrate's duty under Section 207 is in the nature of administrative work only and the right to default bail gets extinguished on filing of the charge sheet within the prescribed time. According to the learned Counsel, non supplying of sufficient copies of the final report cannot lead to a finding that there is no sufficient compliance of Section 167(2) Cr.P.C. He also argued that the decision in Pankaj Bansal's case (cited supra) has only prospective effect, as clarified in the decision in **Ram Kishor Arora v. Directorate of Enforcement (2023 SCC OnLine SC 1682**) and, therefore, in the present case the arrest being made on 18/7/2023, much prior to the decision in Pankaj Bansal's case, the principles enunciated

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therein will not be applicable. Regarding the application of the first accused seeking regular bail, he submitted that the rigours of Section 43-D(5) of the UAPA gets attracted and there are materials to show that the accusation against the first accused is prima facie true. He relied on the decisions in **Gurwinder Singh v. State of Punjab & Anr [(2024) 5 SCC 403]**, **Mazhar Khan v. NIA [(2024) 6 SCC 627]** and **NIA v. Zahoor Ahmad Shah Watali [(2019) 5 SCC 1]** and contended that as per the provisions of Section 43 -D(5) of the UAPA, for granting bail, the court must be satisfied that there are reasonable grounds for believing that the accusations against the accused are prima facie are not true. He would submit that in the light of the charge sheet filed and the evidence on record, there are no grounds to release the appellant on bail. As regards the contention regarding the competency of NIA to register FIR suo motu and investigate, the learned Counsel relied on the decision in **Ali K @ Ragam Ali v.**



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Union of India (2023 KHC 816) and contended that Section 6(5) confers powers on the Central Government to direct the NIA to investigate the scheduled offence, which is brought to its notice even if the offence in respect of which no case has been registered. Hence, he prayed that these appeals may be dismissed.

9. Considering the rival contentions and the issues to be decided, we are of the view that it would be apt to first consider the Crl.Appeal No. 2271/2024,which arises from the dismissal of a petition seeking regular bail. The main contention raised by the learned counsel for the appellant, by relying on the decision in Pankaj Bansal's case (cited supra), is that since the grounds of arrest of the appellant have not been furnished to him in writing, the same is violative of Article 22(1) of the Constitution of India, vitiating his arrest. In the present case, it is an admitted fact that the grounds of arrest have not been

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intimated to the appellant in writing. It is true that the Hon'ble Apex Court in Pankaj Bansal's case(cited supra) has held that unless the grounds of arrest are intimated to the accused in writing, it will vitiate the arrest itself. But, the Hon'ble Apex Court has also held that it would only be necessary 'henceforth' meaning thereby that the compliance is required only in future cases. The afore view has also been clarified by the Apex Court in Ram Kishor Arora's case (cited supra) wherein, it specifically held that the dictum in Pankaj Bansal's case(cited supra) will only have a prospective effect. It is not in dispute that the appellant has been arrested in this case on 18/7/2023. The dictum in Pankaj Bansal's case has been pronounced by the Apex Court only on 3/10/2023. If so, we have no hesitation to find that the appellant is not entitled to the benefit of the judgment in Pankaj Bansal's case (cited supra). The decisions relied on by the appellant in Prabir's case (cited supra) and Vihaan Kumar's case (cited supra) also will not help since in

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those cases, the date of arrest of the accused is much after the date of pronouncing the judgment in Pankaj Bansal's case.

10. Coming to the next contention of the appellant, by relying on the decisions in Najeeb's case, Javed Gulam's case and Athar Parvez's case (all cited supra), that since he has undergone incarceration for a significant period of time and there is no possibility of trial being conducted in near future, he is entitled to be released on bail, we are of the view that there is some merit in it. It is an admitted fact that the appellant has been arrested as early as on 18/7/2023 and is in custody therefrom. It is also an admitted fact that as of today, charge has not been framed against him and further investigation is still going on in this case. It is true that initially, the final report was filed in this case on 12/1/2024. But, the records show that an order for further investigation is seen issued by the Trial Court on 27/3/2024 based on an application filed by the prosecution

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as Crl.M.P.No.76/2024. Even as per the charge sheet initially filed, the prosecution has cited 147 witnesses, and 161 documents and 55 material objects have been produced to substantiate the charge against the accused. In the afore circumstances, we have no hesitation in our mind that the trial in this case is not likely to commence and end in near future. In the decision in Najeeb's case, the Hon'ble Apex Court, while considering the bail application of an accused involved in a case charged inter alia under Sections 16,18,19 & 20 of UAPA Act and who has undergone a long period of incarceration, held as follows:

> "17.It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the

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> courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial".

While holding so, the court also observed and considered the fact that Section 43-D(5) of UAPA is comparatively less stringent than Section 37 of the NDPS Act.

11. Subsequently, in another decision in **Shoma Kanti Sen v. State of Maharashtra (2024 KHC 6182**), the Apex Court, by relying on the decision in Najeeb's case and rejecting the contentions of the prosecution that unless the conditions specified in Section 43-D(5) of UAPA are fulfilled the accused is not liable to be enlarged on bail, held thus:

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"38. Relying on this judgement, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfill the conditions specified in S.43D(5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Art.21 of the Constitution of India. This was in the case of Najeeb(supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bail -restricting provision of S.43D(5) of the 1967 Act. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post - chargesheet stage has the sanction of law broadly on these reasonings. But any



> form of deprival of liberty results in breach of Art.21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre - trial detention, both at investigation and post - chargesheet stage".

The same principle was also followed by the Apex Court in Javed Gulam Nabi Shaikh's case and Athar Parwez' case (all cited supra). In the decision in Athar Parwez's case, the Apex Court after discussing Najeeb's case, went on to observe as follows:

> "At the initial stage, the legislative policy needs to be appreciated and followed by the Courts. Keeping the statutory provisions in mind but with the passage of time the effect of that statutory provision would in fact have to be diluted giving way to the mandate of Part III of the Constitution where the accused as of now is not a convict and is facing the charges. Constitutional right of speedy trial in such circumstances will have precedence over the



> bar/strict provisions of the statute and cannot be made the sole reason for denial of bail. Therefore, the period of incarceration of an accused could also be a relevant factor to be considered by the constitutional courts not to be merely governed by the statutory provisions."

In the light of the above settled principles of law laid down by the Apex Court and considering the facts and circumstances of this case as narrated afore, we are of the view that this is a fit case where the appellant, who is undergoing incarceration since 18/7/2023, can be released on bail. At this juncture, we will also take note of the fact that the 5th accused in this case, who was charged under Section 19 of UAPA and Section 212 of IPC, has already been granted bail by the Apex Court, after a period of 11 months' incarceration, by taking into consideration the fact that the trial is not likely to commence in near future.

12. Next we will consider the question raised in Crl.Appeal No.259/2024. It is not in dispute that the appellant has not

been served with physical copies of the final report and documents, and was only served with digital copies of the same on 22/1/2024. It is to be kept in mind that the appellant is not a free bird and is one who is behind bars, from 18/7/2023 onwards. It is also not in dispute that the appellant has not been provided with any computers or gadgets for the purpose of deciphering the contents of the electronic records. There is no case for anyone that such a facility is being provided by the jail authorities to the appellant. If so, it can, without any doubt, be stated that no purpose will be served in serving the charge sheet and relevant documents to the appellant in digital form. This means that the accused will be totally disabled not only from understanding the contents of the charge levelled against him and the materials relied on, but also from advicing his lawyer in a proper perspective and effectively defending himself. It is a settled law that furnishing of the documents to the accused under Section 207 Cr.P.C is a facet of the right of the

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accused to fair trial enshrined in Article 21 of the Constitution. The Constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution to make a fair disclosure of the documents relied on by it **{**See **Manu Sharma v. State(NCT of Delhi) [**(**2010**) **6 SCC 1]** & **Gopalkrishnan's case** (cited supra)**}**. If the furnishing of documents to the accused, who is behind bars, is in the manner as narrated afore it cannot be stated that there is a fair disclosure from the part of the prosecution. As stated earlier, the accused, who is behind bars, will not be able to gather the details of the documents so supplied and defend himself, resulting in his right to fair trial being fettered. Hence, we find that the appellant is entitled to get a physical copy of the final report and the relevant documents, under Section 207 Cr.P.C.

13. In the light of our findings in Crl.Appeal No.2271/2024, the question to be considered in Crl.Appeal No.275/2024 fades

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into oblivion.

In the result:

1). Crl.Appeal No.2271/2024 is allowed as follows:

i) The appellant in Crl.A. No.2271/2024 shall be released on bail on executing a bond for a sum of Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the Special Court for the trial of NIA cases, Ernakulam. It shall be open to the Special Court to impose such additional conditions as it may deem fit and necessary in the interest of justice. However, the conditions shall mandatorily include the following:

a). If the appellant intends to leave the State of Kerala, he shall obtain prior permission from the Special Court.

b). If the appellant is in possession of any passport, he shall surrender the same before



the Special Court forthwith.

c). The appellant shall furnish to the Investigating Officer of the NIA his complete and current residential address, including any changes thereto, and shall ensure that the same remains updated at all times.

d).The appellant shall use only one mobile number during the period of bail and shall communicate the said number to the Investigating Officer of the NIA. He shall remain accessible on the said number throughout the duration of bail and shall not, under any circumstances, switch off or discard the device associated with it without prior intimation.

e). The appellant shall report before the Station House Officer of the Police Station having jurisdiction over his place of residence on every second and fourth Saturdays, without fail.



f). The appellant shall not tamper with evidence or attempt to influence or threaten any witnesses in any manner.

g). The appellant shall not engage in or associate with any activity that is similar to the offence alleged against him or commit any offence while on bail.

ii) In the event of any breach of the aforesaid conditions or of any other condition that may be imposed by the Special Court in addition to the above, it shall be open to the prosecution to move for cancellation of the bail granted to the appellant before the Special Court, notwithstanding the fact that the bail was granted by this Court. Upon such application being made, the Special Court shall consider the same on its own merits and pass appropriate orders in accordance with law.

2). Crl.Appeal No.259/2024 is allowed in part as follows:

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i). The order dated 11/1/2024 in Crl.M.P.No.8/2024 in R.C.No.2/2023/NIA/KOC passed by the Special Court for trial of NIA cases, Ernakulam is set aside.

ii). The Trial Court is directed to supply the appellant/first accused with a physical copy of the final report and relevant documents as contemplated under Section 207 Cr.P.C.,forthwith.

3). Crl.Appeal No. 275/2024 will stand dismissed.

Sd/-
RAJA VIJAYARAGHAVAN V
Judge

Sd/-
P.V.BALAKRISHNAN
Judge

dpk