

IN THE HON'BLE SUPREME COURT OF INDIA

SLP (CrI.) 5777 of 2017

IN THE MATTER OF:

Shafin Jahan ....

Petitioner

Versus

Asokan K.M. & Others....

Respondents

**APPLICATION FOR APPROPRIATE DIRECTIONS ON  
BEHALF OF RESPONDENT NO. 6 – NATIONAL  
INVESTIGATION AGENCY (NIA)**

**MOST RESPECTFULLY SHOWETH:**

1. It is, inter alia, submitted that the following facts, in brief, have been placed before this Hon'ble Court in the present SLP.
2. It is respectfully submitted that the origin of the present SLP before the Hon'ble Court is a missing case registered at Perinthalmanna vide Crime No 21/2016, Police Station, Malappuram District, Kerala under section 57 of the Kerala Police Act, 2011 on the complaint of Sh. Asokan K. M; S/o Mani, Karattu House, (Devi Kripa), T. V. Puram Post, Vaikom, Kottayam District, Kerala. The complainant mentioned in his complaint that his daughter Ms. Akhila was missing from his house since 07.01.2016. Thereafter, a Habeas Corpus WP No. 25/2016 was also filed in the Hon'ble High Court of Kerala in January, 2016 by the petitioner stating that his daughter Akhila had got

converted to Islam under the influence of certain individuals supported by Muslim organisations.

3. During investigation of the case by Kerala Police, it was revealed that Akhila Ashokan, aged 25, was studying at Shivaraj Homeopathy Medical College, Salem since 2010 and that she got attracted to Islam due to the influence of her friends Jaseena and Faseena, daughters of Aboobacker, Perayil House, Angadippuram, Perinthalmanna, Malappuram. Subsequently, sections 153A, 295A and 107 of the IPC were invoked in the case and Aboobacker was arrested by Kerala Police on 11.01.2016, after it was alleged that he had instigated Akhila to convert to Islam besides taking her to institutions in Kozhikode and Manjeri that facilitate religious conversion. However, the Writ Petition was disposed of on 25.01.2016 and the relief claimed for by the petitioner father had not stood granted.
4. On 16.08.2016, Sh. Asokan K. M. (father of the girl) had filed another petition WP (Crl.) No. 297 of 2016, before the Hon'ble High Court of Kerala in which the NIA represented by Superintendent of Police, NIA, Kochi was arraigned as respondent No. 5. The petitioner had claimed that his unmarried daughter may be taken away to Syria to join ISIS, by certain individuals assisted by Muslim organisations like Popular Front of India (PFI)/

Social Democratic Party of India (SDPI) and that they are also trying to take her out of the country for terrorist training.

5. At that stage, adequate information had not emerged on the record thereby enabling NIA to engage itself in the investigation process under the provisions of the above mentioned 2008 Act. As such, on behalf of NIA, it had been submitted before the Hon'ble Kerala High Court that in the event a scheduled offence emerges from the circumstances, it would then get enabled to undertake the investigation and not in the absence thereof.
6. It is submitted that Hon'ble Kerala High Court vide interim order dated 17.08.2016 directed Dy.SP, Perinthalmanna to keep Akhila under surveillance. On 22.08.2016, Akhila appeared before the Hon'ble High Court and she was sent to Santhibhavan Hostel, Ernakulam till 27.09.2016. Thereafter, Akhila was allowed by the Hon'ble High Court to stay along with Sainaba, Respondent No. 7 in the Writ Petition, who according to Sh. Asokan, had illegally detained Akhila.
7. The Hon'ble High Court had taken serious note of the subsequent developments in this case including the fact that the custody of the girl was initially handed over to Respondent No. 7. There was neither any occasion nor any permissibility for Respondent No. 7 to get the girl

married on 19.12.2016 to one Shafin Jahan, without informing the Hon'ble High Court and while the petition was still *sub judice* and was being taken up before the Hon'ble High Court on short intervals.

8. It is respectfully submitted that on 21.12.2016, Akhila appeared before the Hon'ble High Court along with Shafin Jahan, who stated that he intended to take her abroad, where he was working. The Hon'ble High Court ordered the Police to conduct an investigation regarding Shafin Jahan while directing Akhila to be housed at SNV Sadanam, Ernakulam under Police surveillance.
9. On 06.01.2017, Dy SP Perinthalmanna submitted an interim report regarding the progress of investigation, mentioning therein that Shafin Jahan is a SDPI activist and that he was one among the 35-40 administrators of SDPI Keralam Facebook page, along with Manseed @ Mansi Buraq, arrested accused (A-1) in NIA Case RC-05/2016/NIA/KOC. It was also reported that Shafin Jahan is an accused in two cases, including case pertaining to political clashes, registered at Kilikkolloor Police Station, Kollam district, Kerala.
10. Later, on 07.01.2017, another report on the progress of investigation was submitted to the Hon'ble High Court, mentioning the roles of few more individuals who had

facilitated the conversion of Akhila into Islam and her marriage to Shafin Jahan.

11. The Hon'ble High Court, in paras 2 and 18 of the judgment dt. 24.05.17 has further been pleased to, inter alia, observe as under:-

“...2.....The petitioner alleges that, she was influenced and persuaded to embrace Islam forcibly by Sri. Aboobacker, father of Ms.Jaseena. It is further alleged that, the 6<sup>th</sup> respondent is an unauthorised Islamic conversion centre conducted by the Socialist Democratic Party of India (SDPI for short) or the Popular Front of India (PFI for short) formed by the leaders of SIMI, which is a radical organization that has been banned. According to the petitioner, Ms.Jaseena and Ms.Faseena are sisters and daughters of Sri.Aboobacker. The three of them had misguided, misled and forced the detenu to accept Islam.

18..... According to the learned Senior Government Pleader, Ms.Akhila, though born of Hindu parents and brought up as a Hindu, had been subjected to influences of various kinds at the instance of a number of people with the object of converting her and compelling her to accept the Islamic faith. The efforts started at the instance of her room mates Ms.Jaseena and Ms. Faseena and was continued by their father Sri.Aboobacker and later on by Sri.Shanib, his cousin Smt. Sherin Shahana and her husband Sri.Fasill Musthafa. It was thereafter that, the 6<sup>th</sup> and 7<sup>th</sup> respondents took over. According to the learned Senior Government Pleader, Ms.Akhila has been influenced by feeding her with graphic

details of hell and the torments that sinners are subjected to in their life after death. She has also been made to believe that in order to escape from the torments of hell, acceptance of the Islamic faith was the only way. According to the report dated 15.12.2016, it is stated that Ms.Akhila believed that Islam would help her to reach heaven after death. According to the learned Senior Government Pleader also, this is a case of forcible conversion to Islam. It is contended that, the alleged detenu Ms. Akhila is not capable of taking an informed decision on her own, having been influenced by respondents 6 and 7.”

12. It is respectfully submitted that on 24<sup>th</sup> May 2017, the Division bench of the Hon’ble High Court of Kerala comprising of Justice K. Surendra Mohan and Justice K. Abraham Mathew pronounced the judgement in WP (CrI.) No 297 of 2016.
13. The Hon’ble High Court has, inter alia, observed in para 32 and 33 of the judgment has been pleased to hold as under:-

“....32. In the present writ petition, in her affidavit dated 4.9.2016 as well as in her affidavit filed on subsequent dates, she describes herself as 'Akhila Asokan @ Hadiya'. There is no explanation forthcoming as to how her name has undergone a further change. If the statement of Smt. Sherin Shahana referred to earlier is to be believed, Ms.Akhila had chosen the name 'Aasiya' from a list of names suggested to her. If

she had chosen the name 'Aasiya;' as stated, why did she change her name? Is it to create a confusion regarding her identity as contended by the counsel for the petitioner as well as the learned Senior Government Pleader? Or has she been acting at the dictates of some others who have been orchestrating her actions for the past few months? Despite repeated directions to the Investigating Officer in this case, the Deputy Superintendent of Police, Perinthalmanna, no investigation worth the name has been conducted. The CD only contains the statements of a number of persons recorded and kept filed therein. No efforts to cross check the veracity of the statements or to unearth further materials by probing the leads that have come up is significantly absent. The Deputy Superintendent of Police, Perinthalmanna, the Investigating Officer, has done no investigation worth the name, in this matter. The investigation in this case was entrusted to him considering the seriousness of the issues involved, the widespread allegations of forcible conversion that were coming up and the national interest that is at stake. However, his conduct in the present case leaves a lot to be desired. Either he has been influenced and subjugated into a studied inaction or he lacks the alertness and competence that is expected of an Investigating Officer probing an issue of such seriousness. The fourth respondent shall therefore initiate and conduct a full-fledged enquiry into the lapses on the part of the Investigating Officer in investigating the complaint in this case and shall, if necessary, pursue departmental proceedings against the officer concerned. We do not want to say anything further on this aspect.

33. As already noticed above, the attempt of Ms. Akhila as well as respondents 6 and 7 is to make this Court believe that the entire episode was perpetrated by Ms. Akhila herself who had developed an intense attraction to the teachings of Islam and wanted to embrace the said religion. However, there are too many incongruities that militate against the story that is put forward.....”

14. The Hon'ble Court has been pleased to pass orders granting custody of Akhila to her father Sh. Asokan K M. while directing the Superintendent of Police, Kottayam to provide protection to the father and family besides maintaining surveillance over them to ensure their continued safety. The marriage of Akhila alleged to have been conducted on 19.12.2016 with Shafin Jahan was declared to be null and void citing procedural anomalies.
15. The Division Bench of the Hon'ble High Court concluded that the Respondent No. 7, with whom the custody of Akhila was entrusted by the Court, had betrayed the trust of the Court and also concluded that the Respondent No. 7 and her husband were not competent to marry Akhila off to Shafin Jahan. The Hon'ble Court also directed the DGP, Kerala to take over the investigation of Crime 21/2016 of Perinthalmanna Police Station and to conduct a comprehensive investigation co-ordinating the investigation in Crime No. 510 of 2016 of Cherpulassery

Police Station, Palakkad district, which has been registered over the alleged forcible conversion of Ms. Athira Nambiar and is the subject matter of W.P. (Crl.) No. 235 of 2016 before Hon'ble High Court. The Court also directed DGP, Kerala to investigate the activities of organizations like PFI/ SDPI and certain institutions alleged to be involved in the case and referred to in the judgement.

16. In this regard, it is pertinent that a similar W.P. (Crl ) No. 235 of 2016, was earlier filed before the Hon'ble High Court of Kerala by Sh. Appunny Nambiar of Cherpulassery in Palakkad District, through Advocate C. K. Mohanan, alleging that his daughter Athira Nambiar was illegally detained by certain individuals, supported by organizations like PFI/ SDPI. The NIA was arraigned as respondent 5 in the *Habeus Corpus* petition and the Hon'ble High Court, on 27<sup>th</sup> July, 2016 directed the NIA to conduct an effective probe to unearth the activities, if any, that are being conducted by the players who have not shown themselves up before the Court. Accordingly, PE-01/2016/NIA/KOC was registered at NIA branch Kochi, and on completion of the enquiry, a report was submitted to the Hon'ble High Court in a sealed envelope, as directed by the Hon'ble Court. However, the report mentioned that no scheduled offence to the National

Investigation Agency Act, 2008 was revealed during the Preliminary Enquiry conducted by the NIA. After considering the report submitted by the NIA, the Division bench of the Hon'ble High Court comprising of Justice K. Surendra Mohan and Justice Mary Joseph, vide order dated 29<sup>th</sup> August, 2016, directed Kerala Police to continue with the investigation in Crime No. 510 of 2016 of Cherpulassery Police Station, Palakkad district.

17. Consequent to the directions of the Hon'ble High Court of Kerala on 24<sup>th</sup> May, 2017, in W. P. (Crl) No. 297/ 2016, the DGP, Kerala transferred the investigation of both Crime No. 21/ 2016 of Perinthalmanna Police Station, Malappuram district and Crime No. 510/ 2016 of Cherpulassery Police Station, Palakkad district to the Crime Branch-Crime Investigation Division (CB-CID). The probe has been entrusted to a Special Investigation Team (SIT) headed by Dr. A. Srinivas IPS, SP, CB-CID, Kannur and is being directly supervised by the IGP (Crime Branch) and ADGP (Crime Branch), Kerala.
18. Crime No. 21/ 2016 of Perinthalmanna Police Station, Malappuram district registered over the alleged forceful religious conversion of Akhila Ashokan is now being investigated by the SIT of CB-CID for offences under sections 153A, 295A and 107 of IPC, which are not scheduled offences to the NIA Act, 2008.

19. It is respectfully submitted that emergence of a case falling within the schedule to the 2008 Act enables the NIA to exercise its jurisdiction for conducting investigation and proceeding further in accordance with law. It appears that having the perception of absence of any scheduled offence, the Hon'ble High Court had required the DGP of Kerala Police to take over the investigation and in the impugned judgment, the Hon'ble High Court had not required the NIA to conduct the investigation in relation to Crime No. 21/2016.
20. That in this regard, the attention of this Hon'ble Court is invited to the relevant provisions of the National Investigation Agency Act, 2008 including Section 6 and the Schedule of the said Act, reproduced as under:-

“6. Investigation of Scheduled Offences —

(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer -in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or

not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer -in-charge of the police station to continue the investigation.”

## THE SCHEDULE

[See section 2(1)(f)]

1. The Atomic Energy Act, 1962 (33 of 1962);
2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
3. The Anti-Hijacking Act, 1982 (65 of 1982);
4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);

5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
8. Offences under—
  - (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
  - (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860).”

Copy of the NIA Act, 2008 is annexed as **ANNEX. R-6/1**.

21. It is submitted that the SLP record reveals that the Kerala Police had registered Crime No. 21/2016 u/s Section 57 of the Kerala Police Act, Sections 153A, 295A and 107 of Indian Penal Code. The Kerala Police had filed Status Reports before the Hon'ble High Court. Some of these reports, which are placed alongwith the SLP have also been taken note of by the Hon'ble High Court in its various orders including the judgment challenged in the present case.
22. It is most respectfully submitted that in the light of the above-mentioned statutory position, the NIA can proceed to conduct investigation u/s 6 of the Act, with reference to the offences which are enumerated in the Schedule to

this Act. Besides and in addition to its jurisdiction under the above-mentioned Act of 2008, the NIA also undertakes investigations as and when directed by Hon'ble High Courts or by this Hon'ble Court in the exercise of its constitutional jurisdiction under Article 226 and Article 32 of the Constitution of India respectively.

23. That for placing on record, the relevant material / documents by the Respondent No. 6 – NIA before this Hon'ble Court, it would deserve to get enabled to undertake an investigation, forthwith in this matter with the orders, which may be passed by this Hon'ble Court thereby enabling it to do so. It is submitted that through the said process, NIA would become obliged to take all necessary steps for undertaking the required investigation in this matter and place the outcome thereof before this Hon'ble Court. The appropriate order enabling the NIA to undertake the investigation would be required and necessary and would also meet the ends of justice.

24. In view of the facts stated and submissions made hereinabove, it is most respectfully and humbly prayed that this Hon'ble Court may be pleased to pass appropriate orders:-

(a) Requiring / directing Respondent No. 6 – NIA to undertake a thorough investigation in the allegations involved and the circumstances surrounding the

incidents in the present case and place the outcome of the investigation undertaken by it, before this Hon'ble Court for its kind consideration and for any further appropriate orders.

(b) Pass any other order that this Hon'ble Court may deem fit and proper in the interest of justice.

DRAWN BY:  
Col. R. BALASUBRAMANIAN,  
ADVOCATE

FILED BY:  
B.V. B LARAM DAS  
ADVOCATE-ON-RECORD

IN THE HON'BLE SUPREME COURT OF INDIA

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Shafin Jahan ....

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Asokan K.M. & Others....

Respondents

AFFIDAVIT

I, Mukesh Singh, presently working as IG (Legal) in the National Investigation Agency, do hereby solemnly affirm and state on oath as under:-

1. That I am presently working as IG (Legal) in the Respondent No. 6 - National Investigation Agency, and as such in my official capacity, I am conversant with the facts of the present case and am competent to file the present affidavit on behalf of Respondent No. 6.
2. That I have gone through the contents of the accompanying application and I state that the contents thereof are true and correct to the best of my knowledge and belief, based on the official records of Respondent No. 6.
3. That the annexures placed alongwith the accompanying application are true copies of their respective originals.

DEPONENT

VERIFICATION

Verified at this \_\_\_\_\_ day of August 2017 that the contents of the present affidavit true to the best of my knowledge and belief, based on the official records. No part of it is false and nothing material has been concealed therefrom.

DEPONENT