

**IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM**

**Present: Sri. P.K. Mohandas, Judge for NIA Cases**

Thursday the 23<sup>rd</sup> day of January, 2025/3<sup>rd</sup> Magha, 1946

**Crl.M.P. No. 15/2025**

**in**

**SC.01/2020/NIA**

**Complainant/Petitioner**

Union of India represented by National Investigation Agency, Kochi.

**By Sri. Arjun Ambalappatta  
(Senior Public Prosecutor, NIA) and  
Sri. Sreenath.S (Public Prosecutor, NIA).**

**Respondent/ Accused No. 1 to 4**

1. Allan Shuaib @ Mamu @ Mammu (A1), age 20 years, S/o. Mohammed Shuaib, Manipoori House, Palattu Nagar, Thiruvannur, Kozhikode.
2. Thwaha Fasal (A2), age 24 years, S/o. Abubacker, Kottummal House, Moorkanad, Pantheerankavu, Kozhikode.
3. M. Usman (A3), Aged 42 years, S/o Aboobacker, Melethil House, Odampatta, Chembrassery, Pandikkad, Malappuram.( Now remanded at High Security Prison ,Viyur.
4. Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A4), aged 27 years, S/o. Vijayan V.K., Chaithram House, Puzhamudi Post, Kalpetta, Wayanad District, Kerala.

**A1 by Adv. Sri. Isaac Sanjay. A2 by  
Adv. Sri. John S.Ralf, A3 and A4 by  
Adv. Sri. Thushar Nirmal Sarathy**

This Criminal M.P coming on for hearing before me on 23.01.2025 and the Court on the same day passed the following:-

**ORDER**

This petition is filed by the Sr. Public Prosecutor, under section 311 and 91 CrPC to issue summons to witness to appear and give evidence.

2. The case of the petitioner is that the trial of the case is in progress. So far, 120 witnesses have been examined out of the 184 witnesses and around 20 witnesses are yet to be examined in this case from the main witness list which includes the investigating officers and protected witnesses besides recalling a few witnesses who have already been examined.

3. It was Mr. Vinod Kumar, Programmer, NIA Kochi, who copied the email extraction proceedings of A-1 dated 26.01.2020 onto a DVD and issued a certificate under Section 65B of the Indian Evidence Act. The hard copy was previously submitted with the final report. During the examination of witness Bijith (PW65), the hard copy was found illegible, a soft copy that was available with the NIA was produced as copied by Mr. Vinod Kumar, Programmer, NIA Kochi. A copy has been given to the defence. To prove the copied contents of the email of A-1, Mr. Vinod Kumar, Programmer, NIA Kochi needs to be summoned and examined.

4. Mr. K.M. Devassia, Inspector of Police at Pandikkad PS, Malappuram, who registered FIR No. 471/2016 (Crime No. 34/2020 of ATS Kerala) and conducted a search on 17.07.2016 and filed an accused arraigning

report on 30.01.2019. It was during this case that A-3 Usman was arrested by Mr. Vikraman (PW109). These documents were submitted with the final report as D-171. However his name was omitted while preparing the witness list although the documents pertaining to his activities were made available before this Court. Thus, Mr. K.M.Devassia, Inspector of Police, Pandikkad PS, Malappuram needs to be summoned and examined before this court.

5. The prosecution has a case that A-4 Vijith Vijayan has used a phone number 9526675415 during the period he was involved in this crime and later, when he stopped using this number, this number was churned and given by Vodafone-Idea to one Ms. Niya Noufal K, C/o. Noufal K, Karuvadana, Vattappadam, Palangara PO, Karulai, Malappuram. While extracting the social media details of A-4, the investigation team had to contact this Niya Noufal and collect the OTP. This matter has also come into evidence. However, for finding the truth on this aspect, the said Ms. Niva Noufal K, C/o. Noufal K, Karuvadana, Vattappadam, Palangara PO, Karulai, Malappuram needs to be summoned and examined from the side of prosecution.

6. The voice of A-2 was available in the DVD provided by the ACP Kozhikode (CW90) which was recorded while search was conducted at the house of A-2 and A-2 had raised slogans. The DVD containing the voice of A-2 along with the sample voice collected as per the direction of the Court were forwarded to the CFSL, Chandigarh for comparison. One Mr. Babu K, Sub Inspector, NIA, was the person who collected the same from the Court and

delivered it to the CPSL, Chandigarh. To prove the chain of custody, the said Mr. Babu K, Sub Inspector, NIA, needs to be summoned and examined before this Court.

7. Evidence in the form of material object (paint like material), collected from the house of A-2 through PW90 Ishaq was submitted to the Court and later, the same was sent to the RFSL, Kochi for analysis and comparison with the banners seized from the house of A-2. It was one Mr. Divyesh VG, Constable, NIA who collected the same from the Court and deposited the sealed cover at RFSL, Kochi as per the letter D.No 222/2021 dated 17.06.2021 of the Court. Hence, in order to prove the chain of custody, the said Mr. Divyesh VG, Constable, NIA needs to be summoned and examined before the Court.

8. The sample voice of the 2<sup>nd</sup> accused was collected by Mr. Bejoy Dickson, Senior Technical Assistant, CDAC, Thiruvananthapuram on 09.09.2020 as per the order of the Court in CMP 33/2020 dated 05.08.2020 and he had submitted the voice recorder along with a covering letter to the Court. Hence, Mr. Bejoy Dickson, Senior Technical Assistant, CDAC, Thiruvananthapuram needs to be summoned and examined before the Court to prove the said fact.

9. The first accused was not suffering from any mental illness while he was committing this crime. The defence has taken a stand that he was undergoing some mental trouble. The prosecution is duty bound to prove

before the Court the true facts pertaining to this issue. Dr. Varsha Vidhyadharan, W/o. Dr. Venugopal S, 33/6008-B, Rohini Vilas, Iringandanpalli Road P. O, Chevayoor seems to have examined A-1 and her prescription was submitted by the A-1 to the Court during his bail application initially. Hence, to prove this fact, Dr. Varsha Vidhyadharan, W/o Dr. Vinugopal S, 33/6008-B, Rohini Vilas, Iringandanpalli Road P. O, Chevayoor 673017 needs to be summoned and examined before the Court.

10. The petitioner prays for issuance of summons to the said witnesses for the just decision of the case.

11. I have heard the Public Prosecutor and the defence counsel and perused the records of the case. No objection is filed by the defence counsel.

12. The above petition is for examination of 7 additional witnesses who were not initially questioned by the investigating officer. There shall be sufficient grounds which necessitates examination of each of these witnesses. It is well established principle that the power given under S.311 is to be used judiciously in exceptional circumstances to uphold justice and it should not be to permit the prosecution to act against the principles of fair trial and in violation of the due course of law.

13. In this case, the trial of the case is in progress. The proposed witnesses are cited either to clarify certain points or to show that the first accused was mentally fit at the time of commission of the alleged offence or to explain the proper custody of the materials produced before the court. On going

through the petition and hearing the counsel for both sides, I am satisfied that it is necessary to examine the additional witnesses for a just and proper decision in the case. There is no chance for any prejudice to the accused. Hence the petition is only to be allowed.

Hence the petition is allowed.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 23<sup>rd</sup> day of January, 2024.

Sd/-  
P. K. Mohandas  
Judge, Special Court for NIA Cases

**Appendix: Nil**

Id/-  
Judge, Special Court for NIA Cases  
(By Order)

//True Copy//

Sd/-  
Sheristadar.