

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

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

**Friday the 21<sup>st</sup> day of February, 2025 /2<sup>nd</sup> Phalguna, 1946.**

**Crl.M.P. No. 38/2025 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 ,Viyyur.
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 13.2.2025 and the Court on 21.2.2025 passed the following:-

## **ORDER**

This is an application filed by the Public Prosecutor for the examination of protected witnesses through in-camera proceedings

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 cited and around 20 witnesses are yet to be examined, which include the investigating officers and protected witnesses.

3. On 27.04.2020, the Senior Public Prosecutor had filed Crl.M.P. No. 38/2020 to maintain the secrecy of witness statements (CW-4, CW-5, CW-18, CW-19, CW-57 & CW-58) and documents (D-74 & D-75), listed as protected witnesses (A to F of Annexure-E - list of protected witnesses) and protected documents (A & B of Annexure-F) in the final report. On the same day, the DySP/Chief Investigating Officer, also filed a similar application under Section 173(6) CrPC. Later, while submitting the supplementary final report on 19.07.2021, the Sr. Public Prosecutor and Inspector/CIO, filed another application for keeping secrecy of the same witnesses and documents.

4. According to the petitioner, the accused are members of the proscribed terrorist organization, CPI (Maoist), which is infamous for conducting murders, terrorist acts and kidnappings for pursuing their cause. If the identity of the above mentioned witnesses are revealed to the accused during their examination, there is a looming danger posed against their lives.

5. It is stated that in order to ensure the safety and protection of the witnesses, it is essential to conduct examination of these witnesses in-camera, keeping their identities and addresses confidential. If they are required to appear in open in court, the accused and their associates may identify, track or threaten them with death or kidnap their loved ones to coerce them not to speak the truth before the court. There is also a risk that these witnesses may be unwilling to speak truth before the court. Hence, the petitioner seeks in-camera proceedings for trial.

6. The learned counsel for the 3<sup>rd</sup> accused filed objection stating that the allegation of threat to the protected witnesses is vague and intended to mislead the court. So far 122 witnesses have been examined in open court without any complaint. The alleged threat to the protected witnesses is only imaginary and intended to suit the false case by the NIA. The court has already declared CW-4, CW-5, CW-18, CW-19, CW-57 & CW-58 as protected witnesses. Their protection should not compromise the respondent's constitutional right to a fair trial. Allowing remote examination would be prejudicial to the defence, as the witnesses would remain under NIA custody, increasing the risk of influence. The usual procedure in NIA cases involves producing witnesses in court with masks and screens and no valid reason has been provided for deviating from this practice. The application is only to be dismissed.

7. When the matter came-up for consideration I have heard the

Senior Public Prosecutor appearing for the petitioner and the learned counsel for the respondents/accused.

8. The present application is filed for examination of certain witnesses who are found to be protected witnesses, in-camera. CW-4, CW-5, CW-18, CW-19, CW-57 and CW-58 shown in the final report are listed as protected witnesses in Annexure - E of the final report. The prosecution wants to examine these witnesses from a remote location unknown to the public and the accused.

9. Before going to the contentions of the parties, it is necessary to go through the relevant provision of law. Section 17 of the National Investigation Agency Act, 2008 reads:

**Section 17: Protection of witnesses :** (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires.

(2) On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special

Court may take under that sub-section may include-

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees.”

10. Section 44 of the Unlawful Activities (Prevention) Act, 1967 is in pari materia with Section 17 of the NIA Act. These provisions make it clear that when the court is satisfied that the life of a witness is in danger, it has the power to take such measures necessary for keeping the identity and address of the witness in secret. The court can act upon either suo motu or on an application filed by the witness or the Public Prosecutor.

11. The learned Public Prosecutor submitted that this court has already found that the identity of these witnesses are to be kept in secret. According to him, if the witnesses are examined in open court and their identity is revealed in any manner, their life will be in danger. According to him, if the witnesses are not examined in-camera, there is likelihood of threatening them and they may not speak the real truth before the court. He submits that the witnesses may be examined through video conference from a remote point as per the Electronic Video Linkage Rules for Courts (Kerala), 2021.

12. The learned counsel for the accused submitted that he has no objection in examining the witnesses in-camera from the court, keeping their identity in secrecy, by providing masks or screen in the witness box. According to him, the power under this provision can be exercised only when the court is satisfied that life of the witnesses is in danger. According to him, there is nothing on record to suggest that there is any threat to the life of the witnesses. He submits that so far 122 witnesses are examined in the case and there was no complaint of threat to any witness till date. According to him, the vague allegations in the petition are made only to prejudice the mind of the court. It is submitted that there is no reason to examine the witnesses from a remote point.

13. As submitted by the learned defence counsel, the power under Section 17(2) can be invoked only when the Court is satisfied that the life of witness is in danger. It is also true that 122 witnesses were examined in this case so far and there was no complaint of threat against any of the witness.

But, that alone is not sufficient to come to a conclusion that the power u/s.17(2) need not be exercised in the case. The accused in this case are allegedly members and activists of the proscribed terrorist organisation, CPI (Maoist). The first and second accused are on bail and 3<sup>rd</sup> and 4<sup>th</sup> accused are in remand. The prosecution alleges that they have committed the offences punishable u/s.120B IPC and Sections 13, 20, 38 and 39 of the UAPA. A perusal of the redacted copy of the statements of the witnesses sought to be examined in-camera shows that as far as the prosecution is concerned, their evidence is very material in the case. Some of them are associated with the accused and likely to give evidence regarding their involvement in the alleged offence. Unless they are assured of keeping their identity in secrecy, they may be not even ready to appear before the court and give evidence. If their identity is disclosed during or after their examination in the case, as apprehended by the Public Prosecutor, there may be chances of threat to their lives. When a witness appears and give evidence in the case, it is the duty of the court to ensure his safety and protection. Once the identity is disclosed, it may not be practical to give physical protection for a long time. I am unable to accept the contention of the defence counsel that at present there is no material to show that there is any threat and hence the witnesses are to be examined before the court. The threat for the lives of the witnesses may come at any time, even after their examination before the Court. It may not be possible to set right the things after something bad is happened to the witness. It is often said that prevention is better than cure. So, it is for the court to take adequate precautions permitted

by law to keep the identity of the witnesses in secrecy.

14. In exercise of the powers conferred under Art. 225 and 227 of the Constitution of India, the Hon'ble High Court of Kerala has notified the Electronic Video Linkage Rules for Courts (Kerala), 2021 as per notification No.DI-1/43497/2005(2) dated 25-08-2021 and the Rules came into force on the same day. Rule 3 reads:

**(3) Principles :** (1) Electronic Video Linkage facilities may be used at all stages of judicial proceedings or under any other special law for the time being in force, and also to such other proceedings which are conducted by the Court.

(2) All proceedings conducted in a Court by way of Electronic Video Linkage shall be deemed to be judicial proceedings and all the courtesies and protocols applicable to a Court shall apply to these virtual proceedings. The protocol provided in Schedule I of these Rules shall be adhered to, for the conduct of the proceedings under these Rules.

(3) All relevant statutory provisions applicable to judicial proceedings including the provisions of the Code of Civil Procedure, 1908 (Act 5 of 1908), Code of Criminal Procedure, 1973 (Act 2 of 1974), Indian Evidence Act, 1872 (Act 1 of 1872), Information Technology Act, 2000 (Act 21 of 2000), Criminal Rules of Practice, Kerala, Civil Rules of Practice,

Kerala and Rules of the High Court of Kerala, 1971 shall apply to the proceedings conducted through Electronic Video Linkage.”

15. Rule 6(8) reads:

(8) If any Subordinate Court wants to examine a Required Person who is within another District in Kerala, then the details thereof shall be forwarded by or through the District Judge concerned to the District Judge within whose jurisdiction the Required Person is situated. The District Judge within whose jurisdiction the Required Person is situated shall make necessary arrangements for Electronic Video Linkage facility.”

16. As per Rule 2(o) “*Required person*” includes the person who to be examined before the court. So, a witness is a ‘*required person*’ as per the rules and he can be permitted to appear before the court for examination as per the provisions of the Video Linkage Rules.

17. Rule 5 deals with preparatory arrangements for appearance/examination through video linkage. R.5(1) states that a Co-ordinator is required at the remote point when a witness or an accused is to be examined. Sub-rules (4) states who are all may be the co-ordinator at the remote point. It states that if the required person is asked to attend at the “*Kerala State Legal Services Authority or High Court Legal Services Committee or Mediation Centre or office of the District Legal Services Authority (including*

*Taluk Legal Services Authority), the co-ordinator at the remote point shall be "All authorised persons nominated by the Member-Secretary, Kerala State Legal Services Authority or Secretary, High Court Legal Services Committee or Chairperson or Secretary of the concerned District Legal Services Authority."*

18. The Hon'ble High Court as per Official Memorandum No.DI-1/107950/2023 dated 09-04-2024 issued certain directions for the effective implementation of the Video Linkage Rules. Regarding appointment of co-ordinators it was directed that :

"a) The District System Administrator / Senior System Officer will act as the Co-ordinator at the Court Point and the Remote Point, unless the District Judge concerned appoints any other person. However, for the purpose of effective communication between the applicant and the officials, the District System Administrator / Senior System Officer will be deemed to be the Co-ordinator at the Court Point and the Remote Point."

19. The High Court as per Official Memorandum No.DI-1-107950/2023 dated 09-04-2024 issued certain further directions relaxing the rules for its effective implementation. Clause 2 of the OM reads:

(2) Dedicated space in the District Centre and major sub centres as Remote Point -

As per Rule 6(8) of the Rules, if the Trial Court wants to

examine a witness located in a different District within the State, he has to forward the details of the witness through the District Judge to the District Judge of the district where the witness is located. The High Court has directed the Principal District Judges to identify and set up a small space in the District Centre and major sub centres as the Remote Point and to provide necessary facility for video conference.

Now, in relaxation of Rule 6(8) of the Rules, it is hereby directed that, the Courts are permitted to order examination through video linkage of a witness situated in any district in the State; and the space so identified in the district centres and the major sub centres will be deemed to be the Remote Point, unless the trial Court otherwise directs in the order.”

20. It is brought to notice that dedicated spaces are set-up in almost all the District Centres as required in the OM dated 09-04-2024 and there are facilities at such centres to use the same as Remote Points. The District System Administrators at the District Centres are acting as co-ordinators at the remote points. So, the protected witnesses in this case also can be examined as provided in the Video Linkage Rules from a remote point.

21. In the light of the above discussion, I am of the view that the

petition can be allowed and CW-4, CW-5, CW-18, CW-19, CW-57 & CW-58 who are the protected witnesses in this case can be examined from a remote point through video linkage.

22. As the identity of the witnesses and the documents to be proved through them is to be kept in secrecy, I am of the view that special procedures are to be adopted in this case and suitable additional instructions are to be given to the co-ordinator at the remote point.

Hence the petition is allowed and the following procedure shall be adopted for examination of the protected witnesses and proving protected documents in this case.

1. The protected witnesses shall be examined from a remote point at a district centre in the State on the date and time that may be fixed by the court.
2. In order to keep the identity of the witnesses in secrecy, the centre of examination shall be kept secret.
3. A confidential communication shall be sent to the District Judge at the remote point requesting to make necessary arrangements for examination of the witnesses through video linkage.
4. The witnesses will be summoned to appear before the co-ordinator at the remote point at least 30 minutes in advance of the scheduled time of examination of that witness.

5. The summons shall be handed over to the investigating officer in sealed cover and he shall ensure the presence of the witness at the remote point on time.
6. The co-ordinator at the remote point shall verify the identity of the witness and make arrangements for examination of such witness.
7. The co-ordinator at the remote point shall make sure that no other person, including police officers, is available in the vicinity and no one is prompting or giving instruction to the witness while giving evidence before the court.
8. The co-ordinator shall ensure that the face or other identifying features of the witness are not visible through the video linkage at the court end or to the other persons participating in the trial. He may provide a mask covering the face of the witness and shall display only the blurred/masked video of the witness. The background of the video also shall be distorted.
9. The co-ordinator shall arrange another laptop or other video conference facility and connect the same to the laptop of the judge at the court centre through a separate video link provided to him. The judge shall have the facility to see and identify the witness and note his demeanor while being examined before the court.
10. As there is chance of identifying the witnesses from their sound, as

far as possible the co-ordinator at the remote point shall use a voice modulator software or equipment to modulate/change the voice of the witnesses while being examined through video linkage.

11. Redacted copy of the protected documents to be proved through such witnesses shall be sent to the co-ordinator at the remote point in advance by email and he shall take print out of the same and hand it over to the witness as and when required by the court. A redacted copy of the same shall be scanned and shown to the witness through the document viewer of the video conference machine provided in the court. The original of the protected document shall be placed before the judge to verify and ensure that the document shown to the witness is the redacted copy of the same.
12. Examination in chief of the witnesses shall be taken first and the deposition in PDF format electronically signed by the judge (as far as possible password protected), shall be forwarded to the co-ordinator. He shall take print out of the same and get the signature of the witness and forward a scanned copy by email (as far as possible password protected), to the co-ordinator at the court point. The hard copy of the deposition and documents, if any, proved through the witness, shall be sent in sealed cover to the court within 3 days. The password of the files shall be communicated among the

co-ordinators at both ends by personal communication.

13. Redacted copy of the deposition of the witness examined in chief shall be supplied to the Prosecutor and the defence counsel and thereafter a date for cross examination of the witness shall be decided.
14. Cross examination of the witnesses shall also be done in the same manner in which the examination in chief is conducted. The defence counsel shall avoid questions tend to disclose the identity of the witnesses.
15. The name, address and other identifying details of the protected witnesses and protected documents shall not be mentioned in the judgment or other documents made available to the public or the accused.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 21<sup>st</sup> day of February, 2025.

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

Appendix:- Nil.

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

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Sd/-  
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