

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

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

Tuesday the 17th day of February, 2026 /28th Magha, 1947.

Crl.M.P. 02/2026

In

SC No. 01/2020/NIA

Complainant

: Union of India represented by National Investigation Agency, Kochi.

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

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 petition is came up for hearing before me on 09.02.2026 in the presence of the counsel for the petitioner and respondent and Court on 17.02.2026 passed the following:

ORDER

This petition is filed by the Public Prosecutor regarding examination of protected witnesses.

2. According to the petitioner, after investigation a final report in this case was filed on 27.04.2020 against the three accused alleging offences punishable u/s 120B IPC and section 13, 38 and 39 of the UAP Act. Along with that the investigating officer had filed CrI.M.P. No.38/2020 seeking protection of 6 witnesses cited as protected witness Nos. A to F. As both sides agreed that the petition need to be considered only at the time of framing charge, petition was kept pending. A supplementary final report was filed on 19.07.2021 and another petition as CrI.M.P. No. 80/2021 was filed on 19.07.2021 for protecting the identity of 6 witnesses. That petition was also kept pending.

3. During the course of the trial, the fact that these petitions are pending was not realised by the parties and trial was continued after complying section 207 CrPC by providing redacted copies of statements of the protected witnesses. Thereafter, an application was filed for examination

of the protected witnesses and to fix the modalities for examination of the witnesses. Modalities were fixed by the court and witnesses were examined. Now, it came to notice that the petitions were not allowed and were kept pending. The examination of protected witnesses was conducted in-camera from a remote point, masking their face and giving a different voice digitally. As the applications for treating the witnesses as protected witnesses were not disposed, the Prosecutor seeks further direction in the matter and if necessary, the parties may be provided with opportunity to further examine the witnesses.

4. The learned counsel for the 3rd accused filed objection opposing the petition contending that no notice regarding the CrI.M.P. No. 38/2020 or 80/2021 was given to the 3rd accused. An objection was filed by the 3rd respondent in CrI.M.P. 38/2025 for examination of the protected witnesses in-camera. The full statements of CW4, 5, 18, 19, 57 and 58 were not served on the respondent and he was denied a fair chance of entering into his defence. Prejudice has been caused to the 3rd accused. The application is only to be dismissed.

5. I have heard the learned counsel appearing for the both sides and perused the records.

6. A perusal of the records shows that CrI.M.P.38/2020 was filed on 27.04.2020 along with the final report u/s. 44 of the UAPA r/w.s.17 of NIA Act

and Section 173(6) of CrPC to treat CW4, CW5, CW18, CW19, CW57 and CW58 as protected witnesses and not to supply the entire statements of the witnesses and the documents produced as D74 and 75 to the accused to protect the identity of the witnesses. A perusal of the petition shows that when it came-up for consideration before the Special Judge on 24.03.2021, both sides agreed that the petition need to be considered only at the time of framing charge and the petition was posted to 03.05.2021 recording the submission. On that day, the petition was posted to 20.05.2021. Thereafter the petition was not placed for consideration before the Special Judge.

7. CrI.M.P. No. 80/2021 was filed on 19.07.2021 with the same relief. CrI. M.P. No.81/2021 was filed for considering two documents as protected documents. When these petitions came up for consideration before the Special Judge on 16.09.2021, they were posted to 08.10.2021 for objection and hearing. Thereafter, the same was not taken up for consideration.

8. The fact that these two petitions were pending was not brought to the notice of the Special Judge by any of the parties. When CrI.M.P.38/2020 was filed, the 3rd accused was absconding. Adv. Thushar Nirmal Sarathy, who is now appearing for the 3rd accused had filed an objection on behalf of the second accused on 25.05.2020 and Adv.Issac Sanjay, appearing for the first accused had filed an objection on 29.07.2020. So the counsel for the accused were aware of the petition and at the consent of the parties, the same was

kept pending. In CrI.M.P. 80/2021 was considered in open court in the presence of the counsel for both parties and the same was also did not came-up for consideration of the court on 08.10.2021.

9. Charge was framed in this case after hearing both sides on 07.03.2023 in the presence of the counsel for both sides. But, the fact that this petitions are pending was not brought to the notice of the court at that stage also. While the trial was in progress, CrI.M.P.38/2025 was filed by the Prosecutor on 31.01.2025 for examination of protected witnesses through in-camera proceedings. In that application it was stated that applications were filed for treating these witnesses as protected witnesses and to keep the secrecy of the statement of the witnesses. When this petition was came up for consideration, both parties as well as the court was under the impression that the application for treating the witnesses as protected witnesses were allowed and that the witnesses are to be considered as protected witnesses. Adv. Thushar Nirmal Sarathy, appearing for the 3rd accused filed an objection. It was stated in that *"As this Hon'ble Court already declared CW4, CW5, CW18, CW19, CW57 and CW58 as protected witnesses respondent is not in the way of keeping their identity secret. But the protection may not be at the cost of fair trial which is a constitutional right of the respondent."* So even the counsel for the 3rd accused was under the impression that the applications were allowed. This court after hearing both sides, allowed CrI.M.P.

No.38/2025 as per the order dated 21.02.2025 by which the modalities for examination of the witnesses were fixed. As per the directions in that order, the protected witnesses were examined as PW124 to 128 and they were cross examined by the defence counsel. So, all the parties were under the impression that CrI.M.P.38/2020 and CrI.M.P. 80/2021 were allowed at that point of time itself. But the applications were actually pending.

10. When this petition came up for hearing, the learned Public Prosecutor submitted that the witnesses can be recalled, if necessary, in order to ensure that no prejudice is caused to the accused. The learned counsel for the 3rd accused submitted that as copies of full statements of the witnesses were not furnished to the accused and the witnesses are already examined, prejudice is caused to the accused.

11. As stated above, both sides as well as the court proceeded with the case on a mistaken impression that the applications were allowed by the court. As the petitions were kept pending and copies of the statements were not furnished to the accused, I am of the view that in order to ensure that no prejudice is caused, the witnesses can be recalled and statement of the witnesses as well as copies of the protected documents can be furnished to the accused. The applications CrI.M.P. No.38/2020, CrI.M.P. No. 80/20201 and CrI.M.P. No.81/2021 can be considered as dismissed by an order of this

day and opportunity can be given to the accused to further cross examine the witnesses.

12. Hence the petition is allowed with the following directions;

1. The investigating officer shall furnish copies of the full statements of PW124 to 128 and copies of the protected documents to the accused within one week from today.
2. The counsel for the accused may file application for recalling any witness examined so far in this case, if they consider that further examination of such witnesses is necessary in the light of the statement of the witnesses and documents now furnished to them. They may exercise this option within 7 days of furnishing of the copies.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 17th day of February, 2026.

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.