

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

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

Monday the 23rd day of February, 2026 / 4th Phalguna 1947

CrI.M.P. 16/2026

in

SC.02/2023

(RC No.02/2022/NIA/KOC)

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

**Represented by Sri. Ajith Kumar.S
(Special Public Prosecutor, NIA) and
Sri. Sreenath.S (Public Prosecutor, NIA).**

**Respondent/
Accused No.50** : Shahul Hameed @ Hameed (A50) Age-54/2023, S/o. Muhammed, Mavara House, Kattalamadom, Nagalassery, Chalippuram, Vavannur South Post, Koottanadu, Palakkad District, Kerala.

**Represented by Adv.
M/s. Sri.Abdurahiman P.K, E.A.Harris,
Shaiq Rassal, Muhammed Jaufar. K.S
and Wakarulislam K.S.**

This petition is came up for hearing before me on 23.02.2026 in the presence of the counsel for the petitioner and respondent and Court on the same day passed the following:

ORDER

This is a report filed by the Public Prosecutor u/s 43D(2)(b) of UA(P) Act for extending the period of judicial custody of accused No.50 beyond 90 days, upto

180 days.

2. The case of the petitioner is that the 50th accused is an active member of the Popular Front of India (PFI) and he was a part of a larger conspiracy of PFI to enact their "India 2047" agenda of establishing Islamic rule in India. He became a member of a terrorist gang, harboured the 18th accused, after committing terrorist act of murder of Sreenivasan. He also committed acts prejudicial to the maintenance of communal harmony between different religious group and disturbed the public tranquillity in the State at large. He remained absconding since the commission of the offence and taken shelter abroad.

3. The application is filed seeking extension of remand of the accused beyond 90 days upto 180 days u/s.43D(2)(b) of the UA(P) Act. I have heard the counsel appearing for the respondent and the Public Prosecutor.

4. The learned Public Prosecutor submitted that the respondent was arrested in connection with this case on 27.11.2025 and produced before this court and remanded to judicial custody. According to him, after conducting investigation, final report was submitted against the respondent and he was arrayed as A50 in the case. The court had taken cognizance of the offence and NBW was issued to procure his presence before the court. He was arrested and produced before the court on the basis of the NBW issued by this court. According to the prosecutor the remand is u/s.167 of CrPC and as per section 167(2), if the custody period is not extended, he may be entitled to default bail. According to the learned Public Prosecutor unless the court issues an order

u/s.43D(2)(b), it may not be possible to extend his judicial custody beyond 90 days without filing a final report. He also submitted that as narrated in the report, there are sufficient grounds for extending the period of remand beyond 90 days.

5. The Public Prosecutor reported the progress of investigation and stated that during the custodial interrogation, the respondent disclosed his association with NDF, PFI, and SDPI, his contacts with co-accused, the conspiracy meeting held on 16.04.2022, details regarding harbouring of the 18th accused and his social media activities. Based on these disclosure, evidence was collected, and witnesses were examined who identified the accused. On identification of the bank account of the accused, his mobile number was obtained, and CDR analysis established his involvement in the conspiracy. Seized digital devices were forwarded to CFSL Hyderabad, and analysis is in progress.

6. It is reported that further detention of the accused is necessary to collect additional evidence, examine extracted forensic data, and confront him with any incriminating materials or documents seized, including PFI hit lists and related records during the investigation, as well as witness statements. Investigation also requires verification of his activities during the absconding period, his role in providing shelter to absconding accused, his use of digital devices for secret communications, and his connection with co-accused and other suspects, including those involved in other criminal cases. As the accused has not fully disclosed the involvement of himself and the co-accused in the

crime, custodial interrogation is essential to unearth his entire role in the offence.

7. The learned counsel for the respondent submitted that as final report is filed and the accused is remand in the Sessions Case, there is no question of application of section 43D(2)(b) of the Act. According to him, there is no sufficient reason for extending the remand period. It is submitted that the reasons stated are vague and the application is not maintainable.

8. As submitted by the learned Public Prosecutor, the final report in this case against the respondent was filed before the court on 17.03.2023 and the case was taken on file as SC No.02/2023. The respondent was shown as accused No.50 and it was reported that he absconded during the investigation. The court took cognizance against the accused named in the final report, including the respondent. As he was absconding, NBW was issued against him. Later, proclamation was issued against him u/s.82 and 83 of Cr.PC and as was absconding, the case against him was split up and refiled as LP 3/2023 as *per dated 18.10.2023 of the Special Judge*. Later, the respondent was arrested and produced before the court, the case against him was refiled as SC 4/2023 and the same was clubbed with the present case as per order dated 05.12.2025. His name was restored as A50 in the Sessions Case. He is in remand since the date of his arrest. A report for further investigation was filed against the present respondent and the same was allowed subsequently. The respondent was remanded to police custody. Now the present petition is for further extension of the remand u/s.43D(2)(b) of the UAPA.

9. The learned Public Prosecutor relying on the decision of the Hon'ble Supreme Court in **State through CBI v. Dawood Ibrahim Kaskar and Ors (1997 SCC Crimes 636)** submitted that remand u/s.309 is to be treated as one u/s.167 and further remand period is to be extended. In that decision the Hon'ble court held that :-

“There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above sub-section are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who come to be later arrested by the police in course of such investigation. If section 309(2) is to be interpreted - as has been interpreted by the Bombay High Court in Mansuri (supra) - to mean that after the Court takes cognizance of an offence it cannot exercises its power of detention in police custody under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it

can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are therefore of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfillment of the requirements and the limitation of Section 167."

10. A reading of the judgment of the Apex Court makes it clear that once cognizance is taken by the court on the basis of a final report, the accused who was in the custody of the court at the time of filing of final report or subsequently appeared or apprehended and produced before the court, are to be dealt with u/s.309(2) of CrPC. Section 309(2) states that "*If the court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the*

same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused in custody."

11. In the decision *Dawood Ibrahim's case* the Apex Court only held that even when an accused is apprehended or surrendered before the court after filing the final report and is remanded to judicial custody u/s.309(2) CrPC, he can be remanded to police custody by invoking the power u/s.167 of CrPC. It was made clear that such custody will be subject to fulfillment of the requirements and limitations of section 167. That doesn't mean that remand is u/s.167 of CrPC. The remand of the accused continues u/s.309(2) Cr.PC.

12. The Hon'ble High Court of Kerala considered a similar question in **Karayil Chadraseskharan and another v. Inspector of Police (2012 (3) KHC 259)**. Relying on the decision in *Dawood Ibrahim's case* and other cases, the Hon'ble Court held that after filing the final report and taking cognizance, even if the accused is apprehended or appeared before the court, the remand will be u/s.309(2) CrPC and the custody under sub section (2) can be either police custody or judicial custody. In this case, the accused has been in remand u/s.309(2) CrPC.

13. As final report is already filed against the respondent and cognizance taken on the basis of the same, the fact that further investigation is being held is not a ground to find that the remand is u/s.167 CrPC. The case is in the inquiry stage. As the remand is u/s.309(2) CrPC, Section 43D(2)(b) of UPPA is not applicable in this case. There is no necessity of extending the remand period as provided in that provision. The custody can be extended until

the conclusion of the trial, subject to other limitations and conditions prescribed by the Cr.PC and the UAPA, u/s.309(2) CrPC.

14. Hence, this petition is not maintainable and the same is only to be dismissed with that observation.

In the result, the petition is dismissed with the above observation.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 23rd 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.