

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

Present:- Shri. N. Seshadrinathan, Judge, Special Court for NIA Cases.

Monday, the 10th day of March, 2025 / 19th Phalguna, 1946

CrI.M.P No. 14/2025

in

S.C No. 04/2021/NIA

Petitioner / Accused No. 9 :-

Satkunam @ Sabesan, S/o. Sachithanandam,
Aged 49, F/No. 33, Murali Krishna Nagar,
Main Road, Valsaravakkam,
Chennai, Tamil Nadu .

By Advs. Sri. Rajarajan A., & Sri. Sampathkumar. C

Respondent / Complainant :-

Union of India,
represented by National Investigation Agency, Kochi

By Smt. Sindhu Ravishankar, Special Public Prosecutor, NIA.

This petition having been heard on 01/03/2025 and the Court on this day passed the following:-

ORDER

This is an application filed by the 9th accused under Section 230 of BNSS to give direction to the NIA to furnish the 161(3) statements that is showed as protected witnesses which is from CW79 to CW82 in Annexure-E and prosecution Exhibit No.85, 90, 201 to 207 and 294, 297 to 299, 301 to 353, 357,

358, 365, 371, 372 and 401 showed as protected documents in Annexure-F to the petitioner.

2) The petition averments in brief may be noticed:- The petitioner was falsely implicated and charged under Sections 120B r/w. Section 125, 465 and 471 of the IPC, Section 120B IPC, Sections 18, 20, 38, 39, and 40 of the Unlawful Activities (Prevention) Act, 1967, Section 120B of IPC r/w. Sections 7 and 25(1AA) of the Arms Act, 1959, and Section 8(c) r/w. Sections 21(c), 23(c), 24, 27A, 28, and 29 of the NDPS Act, Section 125 of IPC and Section 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967. The petitioner is currently facing trial before this court, and has been in judicial custody since 05.10.2021.

3) After the completion of the investigation, the respondent filed a charge sheet under Section 173(2) of the Criminal Procedure Code on December 15, 2021, before this Court. In the charge sheet, they have listed 206 witnesses, 446 documents, and 89 material objects that the prosecution intends to rely upon to prove their case.

4) After receiving the entire charge sheet, upon review, the petitioner discovered that the prosecution has concealed the entire statement 161(3) Cr.P.C. statements of CW79 to CW82, which are listed as protected witnesses in

Annexure-E. Additionally, the documents in list of the documents in No-85, 90, 201 to 207, and 294, 297 to 299, 301, 353, 357, 358, 365, 371, 372, and 401, listed as protected documents in Annexure-F, were also concealed. Despite being produced before this court, these statements have not been provided to the petitioner, thereby hindering the effective trial and the ability to establish a proper defence.

5) The alleged offense charged against the accused carries the eminent punishment of the death penalty, and therefore, a fair opportunity should be given to the accused for an effective and fair trial. It is significant to note that the concealed statements of the listed witnesses, prosecution documents, and collected material objects would curtail the right of the accused to defend themselves and prove their innocence, rendering the trial irrational. The right to a fair trial is guaranteed by our Constitution under Article 21, in which natural justice is an integral part of a fair trial as ruled by the Hon'ble Supreme Court in a series of judgments.

6) The accused has only one chance to disprove the prosecution case by impeaching the credibility of the witnesses through contradictions, omissions, and improvements, as guaranteed under Sections 145 and 155 of the Indian Evidence Act (now Sections 148 and 158 of the Bharatiya Sakshya

Adhiniyam, 2023). Therefore, unless the former statements are furnished to the accused, the opportunity to create contradictions, omissions, and improvements to evaluate the credibility of the witnesses through effective cross-examination is curtailed, rendering the cross-examination meaningless in the eye of the law.

7) As per Sec. 193(7) of BNSS, reads as under:

"(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request."

8) However, prosecution agency neither filed a petition seeking the permission of on the aforementioned provisions, the this Hon'ble Court to designate the said witnesses as protected witnesses nor to classify the said documents as protected documents. Moreover, the petitioner was not given an opportunity to defend against such a petition. The said provisions mandate that the designation of witnesses and documents as protected must be based on the essentiality of an expedient public interest. In this case, the concealed statements and documents are in no way related to public interest but are critically necessary to render justice to the petitioner/A9 for defending his case on merits.

Therefore, this court has the responsibility to protect the interests of justice for the petitioner/A9 and ensure a fair trial. The availability of these statements alone would enable the accused to conduct an effective cross-examination and provide a valuable defense to ensure a fair trial.

9) Sec. 193(7) of BNSS has to be read with Sec. 193(6)(a), wherein such report in respect of the case U/s. 190 of BNSS applies until the police officer shall forward the same to the magistrate along with the report:

"(a) all documents or relevant extracts thereof on which the prosecution propose to rely other than already sent to the Magistrate during the investigation,

(b) the statements recorded under section 180 of BNSS (161 of Cr.P.C) of all the person whom the prosecution propose to examine as its witness."

10) Hence, the above provision explicitly reflects the legislature's approach that any statements, documents, or material objects the prosecution intends to rely upon must be provided to the accused. It is a settled principle, as ruled by the Hon'ble Supreme Court in several judgments, that the prosecution can make an endorsement or undertaking before the concerned Court, by way of an affidavit, stating that the said concealed witnesses and documents will not be relied upon by the prosecution during the trial.

11) The Hon'ble Apex Court, in a similar NIA case, opined in its recent judgment dated February 25, 2022, in Waheed-Ur-Rehman Parra vs. Union of India, that the identity of the protected witnesses can be redacted, but the content of the statements should be revealed to the accused to enable them to cross-examine the witnesses effectively and ensure a fair trial. This is because, under Section 17 of the NIA Act and Section 44 of the Unlawful Activities (Prevention) Act (UAPA), it is stated that only the identification of witnesses can be redacted, whereas the entire statement and content of the documents should not be concealed from the accused.

12) Article 21 of the Constitution guarantees the right to a fair trial for both the complainant and the accused and forms the backbone of the criminal justice system in India. The principle of a fair and impartial trial entails complete disclosure of every piece of evidence that the prosecution seeks to use to establish the guilt of the accused.

13) The disclosure of evidence gives the accused a fair chance to defend themselves by cross-examining witnesses or disproving material evidence. The Code of Criminal Procedure reiterates the right of the accused through several provisions, including Section 230 of the BNSS. A series of judgments has

mandated compliance with Section 207 Cr.P.C, now Section 230 of the BNSS. A cursory perusal of this provision indicates that it is unambiguous. It is well-established in law that the court must adopt the plain and natural meaning when interpreting such provisions, irrespective of the consequences it may lead to.

14) The Hon'ble Apex Court in *Siddhartha Vashisht @ Manu Sharma versus State (NCT of Delhi)* cited in (2010) 6 SCC 1, observed that the accused has a right to receive all documents and statements as well as to move an application for production of any record or witness in support of the case and stated as follows:

15) "These constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in Court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused."

16) That the above decision explicitly emphasised the term "fair disclosure" which includes the furnishing of a document that the prosecution relies upon, whether or not it is filed in the court, terming it "the very foundation

of a fair investigation and trial".

17) The Hon'ble Supreme Court in P. Gopalkrishnan @ Dileep versus The State of Kerala cited in (2020)9 SCC 161, mandated that all documents, including electronic records that are produced for the inspection of the court along with the police report and those that the prosecution seeks to rely upon, must be furnished to the accused under Section 207 of the CrPC and observed as under:

18) "It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India."

19) The Hon'ble High Court of Karnataka at Bengaluru, in the case of Chirag R. Mehta versus State of Karnataka observed that refusal to supply the accused, copies of all material adduced in the chargesheet is contrary to the principle of fairness and amounts to an unfair trial.

20) The Hon'ble High Court of Delhi in Ashutosh Verma versus CBI cited in (2014), derived the Importance of Sec. 207 of CrPC and held that an

accused person would be prevented from properly defending himself until all the evidence collected during the course of the investigation is given to the accused. Also Sec. 230 of BNSS retains the essence of Section 207 CrPC, although with the addition of a proviso, as follows: "*Provided also that supply of documents in electronic form shall be considered as duly furnished.*" Hence, the provisions mandates supplying of certain documents relied upon by the prosecution, without delay and free of cost.

21) Further the Hon'ble Delhi High affirmed in *Devangana Kalita Vs. Delhi Police*, (Delhi riots conspiracy case) that the accused is not barred from even filing successive applications for compliance under Section 207 of the CrPC.

22) Section 232 of the BNSS envisages that unless Section 230 is complied with, the committal proceedings under Section 232 will not proceed. It is a settled proposition that the committal court has the responsibility and accountability to supply all copies to the accused before committal, to ensure an effective fair trial. Hence, this present petition is filed by the petitioner/A9 before this Hon'ble Court to prevail justice, hence unless this Hon'ble Court directs the respondent to produce above said statements and documents showed

as protected witnesses and protected documents to this petitioner, he will be put irreparable loss and hardship. Hence this petition.

23) Respondent filed objection raising the following contentions:-
Petition is not maintainable and is liable to be dismissed. The brief fact of the case is that, on credible information, Indian Coast Guard intercepted and traced out one Sri Lankan fishing boat Ravihansi, bearing Registration No. IMUL-A-0040-TLE on 18.03.2021 at Arabian Sea which was found with 300.323 Kgs of Heroin along with five AK-47 rifles and 1000 numbers of 9 MM ammunitions illegally and without proper documents besides on board six Sri Lankan Nationals. The said Sri Lankan boat Ravihansi along with contraband articles, arms and ammunitions were seized by Narcotics Control Bureau (NCB), Sub-Zone, Kochi on 25th and 26th March 2021 on their arrival at Vizhinjam Port at Thiruvananthapuram, Kerala. Accordingly, a case was registered by Narcotics Control Bureau (NCB), Sub-Zone Kochi, against the six Sri Lankan Nationals, who were on board Sri Lankan fishing boat 'Ravihansi'.

24) The seized articles and the arrested six accused were produced before the JFCM Court, Neyyatinkara by NCB. Further, the case of NCB in OR No.2/2021 dated 27.03.2021 was transferred to Sessions Court, Vanchiyoor,

Thiruvananthapuram. On 05.04.2021, based on the report submitted by NCB, a case was registered at Vizhinjam Police Station as Crime No. 498/2021 dated 05.04.2021 u/s.27 of Arms Act and Section 34 of IPC, against aforesaid six Sri Lankan Nationals for illegal possession of five AK-47 rifles and 1000 numbers of 9 MM ammunitions and FIR was submitted before Temporary Judicial First-Class Magistrate Court, Neyyatinkara, Thiruvananthapuram. During the investigation, Vizhinjam Police altered the sections of Crime No. 498/2021 as Section 7 r/w.25 (1AA) of Arms Act, 1959.

25) Considering the nature and gravity of the offence, the Government of India, Ministry of Home Affairs, CTCR Division issued an order vide No. 11011/29/2021/NIA dated 27th April, 2021, directing the NIA to take over the investigation of Crime No.498/2021 of Vizhinjam Police Station, Thiruvananthapuram, Kerala. Accordingly, the case was re-registered as RC-01/2021/NIA/KOC at NIA Police Station, Kochi on 01.05.2021 under Section 7 r/w. 25(1AA) of Arms Act, 1959 and the FIR was submitted before this court. The investigation was taken over by the NIA from the Kerala Police on 12.05.2021.

26) Further, in exercise of the powers conferred under Subsection 5 of

Section 6 r/w. Section 8 of NIA Act, 2008, the Government of India, Ministry of Home Affairs, CTCR Division issued an order vide No.11011/29/2021/NIA dated 5th October 2021, directing the NIA to take up investigation of the NCB's Occurrence report No. 02/21/NCB/SZ/COK dated 27.3.2021, related to seizure of 300.323 Kgs of heroine. Accordingly, the NCB case was taken over by NIA and the documents were handed over to NIA by NCB on 18.11.2021.

27) Since the investigation revealed the role of LTTE in this case and the affiliation of accused with the banned terrorist organization for furthering its activities, Section 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967, has been invoked in the case and a report has been submitted before this court on 31.08.2021.

28) After the Investigation final report was filed. Accused No.9, the petitioner herein, has committed the offences punishable under various section of chapter IV and VI of UA (P) Act accordingly, they were charged under various sections of chapter IV and VI of UA (P) Act and various sections of NDPS Act and charge sheet has been filed on 15.12.2021.

29) The petitioner/9th accused Satkunam @ Sabesan, a Sri Lankan

refugee residing in Chennai was an armed cadre of proscribed terrorist organization Liberation Tigers of Tamil Eelam (LTTE), in Sri Lanka since 1987 to 2004. He migrated to India and took asylum in India at Chennai during 2004. Since then he associated himself with illegal activities such as illegal trafficking of narcotic drugs besides hawala dealings in India and abroad. Being the core cadre of proscribed terrorist organization LTTE, the petitioner/9th accused with intention to further the activities of the LTTE in India and Sri Lanka and for raising funds for LTTE, associated with 6th accused Suresh Raj, Soundarajan (A8 in RC 01/2021), Ramesh, A8 and others who were also active supporters of LTTE, since 2018. A9 Satkunam also associated with Sri Lankan Natives Anju (A11 in RC 01/2021), Deepa Ranjan @ Ranga (A12 in RC 01/2021), and a Pakistan native Haji Salim (A13 in RC 01/2021) through A6 Suresh Raj and Soundarajan (A8 in RC 01/2021) since last two years for illegal trafficking of huge quantity of narcotic drugs (heroin) besides fire arms and ammunition, to raise fund for LTTE and also to collect the fire arms and ammunitions for furthering the activities of LTTE in India and Sri Lanka with an intention to revive his parent organization LTTE.

30) During investigation, it had been revealed that there were

impending threats to the life of the witnesses CW79 to CW82 in the List of witnesses (Annexure-A) of Charge sheet. The accused herein are members of proscribed terrorist organization LTTE. If the identity of the abovementioned witnesses is revealed to the accused persons, there is a looming danger posed against their lives. Therefore, it is highly essential to keep the identity and address of aforesaid witnesses in secret to ensure the fair trial and also to ensure the protection of those witnesses. In fact, there is seizure of videos in this case wherein it is clearly seen that people are being killed for having informed against the LTTE and their henchmen, retrieved from the devices of the accused herein.

31) On perusal of records, it can be seen that, the statement of those protected witnesses recorded u/s. 161 of CrPC listed as CW79 to CW82 in the "List of witness" (Annexure-A) of charge sheet would certainly give away their identity which may endanger their lives. The documents listed as document No. D85, D-0, D201 to D207, D294, D297 to D299, D301, D353, D357, D-58, D365, D371, D372 and D401 in the List of Documents (Annexure-B) of Charge sheet, some portion of section 161 CrPC statements of the witnesses CW65, CW66, CW73, CW75, CW78, CW84, CW86, CW117 to CW120 and CW125 also reveals the identity of the aforesaid witnesses. Thus, the section 161 CrPC statements of the witnesses CW79 to CW82, the documents produced as D85,

D90, D201 to D207, D294, D297 to D299, D301, D353, D357, D358, D365, D371, D372 and D401 as well as their names and addresses in the itness List and document list and some portion of section 161 CrPC statements of the witnesses CW65, CW66, CW73, CW75, CW78, CW84, CW86, CW117 to CW120 and CW125 are need to be kept secret from the accused and the general public for their safety. Therefore, a petition was filed u/s. 44 of the Unlawful Activities (Prevention) Act, 1967 r/w Sec. 17 of the National Investigation Agency Act, 2008 and CIO has appended a note u/s. Section 173 (6) of CrPC before this court vide CrI.M.P 262/2021 & 261/2021 and after hearing both sides the court allowed the same vide order dated 05.03.2022. The court vide Para 13 ordered that:

- 32) *The witnesses mentioned as CW-79 to CW-82 are proclaimed protected. The redacted portion of section 161 statements of the witnesses CW-79 to CW-82, redacted part of documents produced as document No 85,90,201 to 207,294,297 to 299, 301, 353, 357, 358, 365, 371, 372 and 401, redacted part of Annexure E and F of the charge sheet, redacted portion of section 161 statement of the witnesses CW65, CW 66, CW 73, CW75, CW 78, CW 84, CW 86, CW 117 to CW120 and CW 125 be not supplied to the accused persons for the time being.*
- 33) *There shall be direction to serve the copies of statements of Protected Witnesses, including their statements under section 164 CrPC after*

effacing all the portions of the statements by way of blackening/whitening/darkening of all such portions revealing the identity of the Protected Witnesses or suggesting any facts leading to the identity of the Protected Witnesses.

34) *In the service of copies of the charge sheet as well as other records also, all such facts leading to the revealing of identity of the witnesses shall be effaced in like manner.*

35) *The NIA is permitted to file such effaced copies of the above records, which they have already done in this case.*

36) *This order shall be operative until the Protected Witnesses are examined before the court. Necessary orders pertaining to the manner in which the Protected Witnesses are examined shall be determined and issued at the time of trial.*

37) *It is also ordered that there shall not be any mention about the name and address of the witnesses in any of the orders or judgments or in any record of the case accessible to the public.*

38) *The proceedings pertaining to these witnesses, in the public interest, are ordered not to be published in any manner for the time being.*

39) *This order shall be subject to such further directions as court deems fit in changed circumstances.*

40) Section 44 of UA (P) Act, (Protection of witnesses)

41)(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 court so desires.

42)(2) A court, if 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, 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.

43)(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include-

44) (a) the holding of the proceedings at a place to be decided by the court;

45) (b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public:

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

47) (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.

48) In light of the fact that the accused are members of a proscribed terrorist organization, providing non-redacted copies of statements or documents poses a significant threat to the safety and security of the protected witnesses.

Any document or statement that could reveal the identity of these witnesses must be redacted to prevent their exposure, as such disclosure could endanger their lives.

49) Only such portions of the statements have been redacted as per the orders of this court and in case the defence had any reason to agitate the same, they ought to have approached the higher forum and not come before this court again. The order made by this court on this subject was on 05.03.2022, much after the period for an appeal is over, as provided under the section 21 of the NIA Act. The present application is only to prolong the proceedings and this is nothing but an abuse of process of this court. So the petition is to be dismissed.

50) The only point that arise for consideration is,

51) Whether the petitioner is entitled to get statements of protected witnesses and protected documents as sought in the petition?

52) 33. For the purpose of disposal of this petition, both sides were heard.

53) 34. **The Point**:- The relief sought is to give direction to the respondent Investigating Agency to furnish the 161(3) Cr.P.C. statements (now u/s.180 of BNSS) who are showed as protected witnesses which were ranked as

CW79 to CW82 in Annexure-E and prosecution Exhibit No.85, 90, 201 to 207 and 294, 297 to 299, 301 to 353, 357, 358, 365, 371, 372 and 401 which are described as protected documents in Annexure - F, to the petitioner/9th accused.

54) 35. The learned counsel for the petitioner/9th accused vehemently argued that the prosecution is bound to furnish not only the relied statements and documents but also unrelayed documents and statements and it is an indefeasible right of the accused, who has to set up a defence, for which, these data are inevitable. Therefore, the learned counsel argued that the Investigating Agency cannot keep away few statements and documents under the shield of protected witnesses/protected documents and that will result in serious prejudice which ultimately lead to miscarriage of justice. According to the learned counsel, the petitioner is justified in seeking the direction sought for and the Investigating Agency cannot withhold the documents or statements under the cover of protected witnesses/protected documents.

55) 36. In response thereto, the learned prosecutor vehemently argued that the law is settled on the point and it is the duty of the prosecution and also that of the court to provide adequate shelter to such protected witnesses as disclosing their identity may result in danger to their life and limb.

56) 37. The duty of the prosecution witnesses is to aid the court so as

to unearth the actual truth enabling the court to arrive at a safe conclusion in a pending case before it and hence the witnesses are entitled to get adequate protection from any odd and it is the reciprocal duty of the court to extend its helping hand to those witnesses who apprehend danger from society. When the prosecution itself informed the court that such and such witnesses are to be considered as protected witnesses, it is the duty of the court to treat them as protected witnesses and the court has to ensure that their identity is not disclosed. At the same time, the office is directed to furnish the copy of the 161(3) statements of the protected witnesses and protected documents after hiding the identity of the protected witnesses. (Redacted copies of statements and documents). The argument advanced by the learned counsel that the accused wants to set up a defence for which the statements and documents are inevitable, cannot be accepted for the simple reason that the defence get adequate time to cross examine the protected witnesses as the redacted portions of statements and documents are being furnished. At the same time, the previous statements of the protected witnesses cannot be furnished to the defence as such, for the simple reason that, that will disclose their identity and in such an event, miscarriage of justice will happen. Therefore, it is the duty of the court to consider the protected witnesses as protected witnesses throughout before trial, after trial and

even after disposal of the case and the State is bound to give protection to such witnesses as long as threat subsists. The same is the position with regard to the protected documents. Therefore, this court is not inclined to allow the petition as prayed for. But, redacted copies of statements/documents can be furnished as stated above.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 10th day of March, 2025.

Sd/-
N. Seshadrinathan
Judge for NIA Cases

APPENDIX : NIL

Sd/-
Judge for NIA Cases

// True copy //

(By Order)

Sd/-
Sheristadar

Typed by: akr
Comp.by: jcs

Order in
Crl.M.P No. 14/2025
in
S.C No. 04/2021/NIA
Dated: 10/03/2025