

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

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

Friday, the 27th day of June, 2025 / 6th Ashada, 1947

Crl.M.P No. 82/2025

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 30/04/2025 and the Court on this day passed the following:-

ORDER

This is an application filed by the 9th accused u/s.148 r/w. Section 158 of BSA to pass on order to remove or expunge the list of witness Nos.10, 14, 15, 16, 17, 33, 69, 70, 133 to 206 from the prosecution list of witnesses' schedule.

2) Petition averments in brief may be noticed:- Petitioner is unjustly arraigned as 9th accused by the NIA while filing the charge sheet. On a perusal of the final report it reveals that the following statements of witnesses were

recorded u/s.161(3) Cr.P.C, LW 10, 14, 15, 16, 17, 33, 69, 70, 133 to 206.

3) It appears that none of the places alleged in the final report, the investigation officer has not given any explanation for the non-record of the statement of above witnesses under 161(3) of Cr.P.C. It is significant to mention that the statements which are all recorded by the Investigation Officer during the course of investigation is, used for what purposes.

4) Generally, the statements which are all recorded under 161(3) CR.P.C. can be used for the contradiction. Apart from that, such statement would not be used for any other purpose since it was statutorily barred u/s.162 of Cr.P.C. The object of recording the statement is one of the swords as to confront the witnesses during the course of cross examination. As stated earlier, 161(3) statements of the witnesses mentioned above were not recorded. At the same time, they were cited as prosecution witnesses and no reason is assigned for not recording their statements.

5) If those witnesses are allowed to mount the box to give evidence on the side of the prosecution that will adversely affect the defence as serious prejudice will be caused. Moreover, the prosecution may fill up the lacuna on their part by examining them even without recording their previous statements and hence that will adversely affect the defence. It is true that police are not

bound to make a record of the statement of witnesses u/s.161 as a matter of obligation, it is their duty to do so when the witness is a material witness in order to unfold prosecution story. So, the failure on the part of the Investigation Officer is objectionable as it will prejudice the valuable right of the accused. The valuable opportunity of testing the veracity of those witnesses with reference to their earlier statements is impossible in the given circumstances. Prosecution cannot take the accused by surprise by bringing a witness to the box even without previous statement. The petitioner will be handicapped as no useful purpose will be served by cross examination since their previous statements were not recorded. The credibility of the witness in a criminal proceedings is to be tested by way of successful cross examination for which previous statements is necessary. The indefeasible right of the accused is attempted to be taken away by the prosecution. Therefore, there may be an order to remove or expunge those witnesses from the prosecution list of witnesses' schedule so as to render justice.

6) Respondent filed objection raising following contentions:- Petition is not maintainable. The petitioner/accused No.9 is charge sheeted for the offence u/s.120B IPC r/w. section 125 of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act 1967, section 120B of IPC r/w. section 7 and 25(1AA) of Arms Act 1959, sections 8 (c) r/w. sections 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act

and sections 18, 20, 38, 39 & 40 of UA(P) Act 1967.

7) The brief fact of the case is that, on credible information, Indian Coast Guard intercepted and traced out one Sri Lankan fishing boat namely, 'Ravihansi', bearing Registration No. IMUL-A-0040-TLE on 18.03.2021 at Arabian Sea in which found with 300.323 Kgs. of Heroin along with five AK-56 rifles and 1000 numbers of 9 MM ammunitions illegally and without proper documents along with six Sri Lankan Nationals on board. 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 6 Sri Lankan Nationals namely L. Y. Nandana, H. K. G. B. Janaka Dassppriya, A. H. S. Mendis Gunasekara, S. A. Namesh Chullaka Senarath, Thilanka Madushan Ranasingha and Dadallage Nisanka, who were on board of the Sri Lankan fishing boat 'Ravihansi'.

8) The seized articles and the arrested six accused were produced before the Hon'ble JFCM Court, Neyyatinkara by NCB. Further, the case of NCB in OR No.2/2021 dated 27.03.2021 was transferred to the Hon'ble 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 the afore said six Sri Lankan Nationals for illegal possession of five AK-56 rifles and 1000 numbers of 9 MM ammunitions and FIR was submitted before the Hon'ble 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.

9) 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 Hon'ble Court. The investigation was taken over by the NIA from the Kerala Police on 12.05.2021.

10) Further, in exercise of the powers conferred under sub section 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 the seizure of 300.323 Kgs of heroin. Accordingly, the NCB case was taken over by NIA and the documents were handed over to NIA by NCB on 18.11.2021.

11) 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.

12) After the investigation, the final report was filed against A-1, A-2, A-4, A-5 and A-6 for having committed offences punishable under section 120B of IPC r/w section 125 of IPC, 120B of IPC, sections 18, 20, 38, 39 & 40 of UA (P) Act 1967, section 7 r/w 25(1AA) of Arms Act 1959, sections 8 (c) r/w sections 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act. The final report against the accused Suresh Raj (A-7), was filed for having committed offences punishable u/s 120B of IPC r/w section 125 of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act 1967, section 120B of IPC r/w section 7 and 25(1AA) of Arms Act 1959, sections 8 (c) r/w sections 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS

Act, section 120B, 465 and 471 of IPC. Similarly, final report was filed against accused LY Nishantha (A-9) u/s 120B of IPC, sections 18 and 20 of UA(P) Act 1967, section 120B of IPC r/w section 7 and 25(1AA) of Arms Act 1959, sections 8 (c) r/w section 21 (c), 23 (c), 24, 25, 27A, 28 and 29 of NDPS Act, against Ramesh A (A-10) u/s 120B of IPC r/w section 125 of IPC, section 120B of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act 1967, section 120B of IPC r/w section 7 and 25(1AA) of Arms Act 1959, sections 8 (c) r/w sections 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act, section 125 of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act 1967, against Satkunam (A-15), the petitioner herein u/s 120B of IPC r/w section 125 of IPC, section 120B of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act, 1967., section 120B of IPC r/w section 7 and 25(1AA) of Arms Act 1959, sections 8 (c) r/w sections 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act, section 125 of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act 1967 is also filed on 15.12.2021, before this Court.

13) After filing of the charge sheet, this Court took cognizance of the case as SC. 04/2021 and the position of the accused changed as follows: L. Y. Nandana (A-1), H. K. G. B. Janaka Dasappriya (A-2), S. A. Namesh Chullaka Senarath (A-3), Thilanka Madushan Ranasingha (A-4), Dadallage Nisanka (A-5), Suresh Raj (A-6), L. Y. Nishantha (A-7), Ramesh A (A-8), and Satkunam @

Sabesan (A-9).

14) The petitioner Satkunam @ Sabesan (A-9), 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 A-9 with intention to further the activities of the LTTE in India and Sri Lanka and for raising funds for LTTE, associated with Suresh Raj A-6, Soundarajan (A-8 in RC 01/2021), Ramesh A-8 and others who were also active supporters of LTTE, since 2018. A-9 Satkunam also associated with Sri Lankan natives Anju (A-11), Deepa Ranjan @ Ranga (A-12), and a Pakistan native Haji Salim (A-13) through Suresh Raj (A-6) and Soundarajan (A-8) 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.

15) The petitioner has been charged under Section 120B IPC r/w

Section 125 IPC; Section 120B IPC; Sections 18, 20, 38, 39, and 40 of the Unlawful Activities (Prevention) Act, 1967; Section 120B 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, 1985, and not under the sections incorrectly mentioned in the petition. Certain sections referred to in the petition are not charged against the petitioner.

16) The petitioner, Satkunam @ Sabesan (A-9), has been rightly arraigned as an accused based on the material evidence collected during investigation. It is submitted that the petitioner has committed offences punishable under various sections of Chapters IV and VI of the Unlawful Activities (Prevention) Act, 1967, and relevant sections of the NDPS Act, for which a charge sheet has been duly filed on 15.12.2021. The petitioner, a Sri Lankan refugee residing in Chennai, was an armed cadre of the proscribed terrorist organization Liberation Tigers of Tamil Eelam (LTTE) from 1987 to 2004 and, after illegally entering India he continued to associate with illegal activities, including narcotics trafficking and hawala operations. Further, being a core cadre of LTTE, the petitioner, with the intention of furthering the organization's activities and raising funds, closely associated with co-accused Suresh Raj (A-6), Soundarajan (Approver), Ramesh (A-8), and others since

2018. Hence, the petitioner's claim of unjust arraignment is baseless and devoid of merit.

17) The allegations made by the petitioner regarding the non-recording of statements of certain witnesses are misconceived and untenable. The witnesses referred to by the petitioner, CW-10, 14, 15, 16, 17, 33, 69, 70, and 133 to 206, are not material witnesses for proving the core facts of the case. Their role is limited to specific tasks such as production of documents, witnessing court proceedings, or assisting the Investigating Officer in certain procedural aspects. Their involvement and respective roles have been clearly mentioned alongside their names in the next column of Annexure A (Witness List) filed with the final report. Furthermore, the petitioner's contention that statements recorded under Section 161(3) CrPC are used only for contradiction purposes under Section 145 of the Evidence Act, and otherwise barred under Section 162 CrPC, is duly acknowledged; however, in the present case, no material part of the prosecution relies solely on their statements. Thus, there is no prejudice caused to the petitioner, and the contention raised is without merit.

18) The following are the witnesses and their respective roles in respect of whom the petitioner has claimed non-recording of statements.

SL. No.	CW- No.	Name and address of the witnesses	Role of the witnesses
1.	10.	Shri. Pranav Diwate, IT Forensic Professional, NCB.	He assisted Shaiju Varghese, Intelligence officer, NCB, Sub Zone, Kochi for seizure of Thuraya handset and other digital devices on 25 th & 26 th March 2021.
2.	14.	Shri. Sajeev TS, Head Clerk, CBI/NIA Court-II, Ernakulam	Witnessed the preparation of inventory of Arms and ammunitions
3.	15.	Shri. Satheesan C, Bench Clerk, Grade I, CBI/NIA Court-II, Ernakulam	Witnessed the preparation of inventory of Arms and ammunitions
4.	16.	Shri. Dipin Nandu, Jail Warden, Central Prison, Poojappura, Thiruvananthapuram.	Witnessed the arrest of A-1 to A-6
5.	17.	Shri. Aneesh A, Jail warden, Central Prison, Poojappura, Thiruvananthapuram.	Witnessed the arrest of A-1 to A-6
6.	33.	Shri. Rajesh K, Flipkart Internet Pvt. Ltd. Embassy Tech Village, 8th Floor, Block- B, Devara beesana Halli, Varthur, Bengaluru.	He produced the details of order placed to Flipkart through mobile number 9629721463.
7.	69.	Shri. Renil A.V, Branch Service Manager, Samsung Electronics, Kochi Branch, Kochi.	He produced the Certificate to prove the two IMEI of Samsung guru mobile.
8.	70.	Shri. Priyank Nag, Vice President of IT Department, Paytm Payment Bank Ltd. VJ Towers, A-6 Sector, 125 Noida, U.P	He speaks about transaction details of Paytm account no. 7871983819.
9.	133.	Regional Transport Officer, Sriperumbudur Kanchipuram, Tamilnadu	He produced RC particulars of vehicle Registration No. TN-87-6738 (Hyundai Creta).
10.	134.	M Murugeswari, Assistant Registering Authority, RTO, Chennai South West, Chennai.	Produced RC particulars of vehicle Registration No TN 10 BT 0006
11.	135.	Assistant Registering Authority, RTO, Chennai West-78	He produced RC particulars of vehicle Registration No. TN-9-CW-7747 Renault Duster car.
12.	136.	Shri. N. Anbu Assistant registering Authority, RTO, Kundrathur, Chennai	He produced RC particulars of vehicle Registration No. TN-85-E-6090 Motor Cycle.

13.	137.	Assistant Registering Authority, RTO, Meenambakkam at Alandur, Chennai	He produced RC particulars of vehicle Registration No. TN 22 DR 7447
14.	138.	Assistant Registering Authority, RTO, Poonamallee, Chennai.	He produced RC particulars of vehicle Registration No. TN-12-AK-0006 Volvo XC 40 car
15.	139.	Shri Vidhya Shanmugam, Branch Manager, ICICI Bank, Ramapuram Branch, Chennai	He produced bank account details of account No. 269705500265
16.	140.	Shri M Hemachander, Desk officer, Indian Bank, Pallavaram Branch, Chennai	He produced the document related to bank account No. 50216021322 and 50298490150 in the name of Suresh Raj
17.	141.	Branch Manager, ICICI Bank, Kovilambakkam Branch, Chennai	He produced the document related to bank account No 270205500200 in the name of Satkunam S, and account No. 270201501662 in the name of Soundaran
18.	142.	Branch Manager, ICICI Bank, Jawahar Nagar, Perambur Branch, Chennai	He produced the document related to bank account No.097005500319, 097005500320, 097001512256, 097001511637, 097001511633 in the name of Suresh Raj, M/S Akshaya Cars and others
19.	143.	S Venkatramani, Branch Manager Suryoday Small Finance Bank, Valasaravakkam Branch, Chennai	Produced details of FD account No. 213090016359 and statement of SB account No. 211010086857 in the name of Soundarajan.
20.	144.	Mukila Selvi R, Deputy Branch Manager, ICICI Bank, Annanagar East Branch, Chennai	He produced the document related to bank account No.602701226922 in the name of Sudarshini.
21.	145.	Shri Sridhar Suresh Kumar, Manager, Indian Bank, Valasaravakkam Branch Chennai	He produced the document related to bank account old number 10136 and CBS No. 481956513 in the name of Shankar Ganesh
22.	146.	Shri Vinoth S, Senior Manager/ Operation Head, Axis Bank Ltd. Virugambakkam, Chennai	He produced the document related to account No. 913010022902418 in the name of Thiruvaskam
23.	147.	Branch Manager, Union Bank, Chromper-2 Branch, Chennai	He produced the document related to account No. 239011100002449 in the name of Akshaya Travel and Tours.
24.	148.	Shri Satya Chintalapudi Branch Manager, Kotak Bank, Valasaravakkam	He produced the document related to account No. 9812498074 in the name of Satkunam S

		Branch, Chennai	
25.	149.	J Jansi Prathiba Branch Operation Manager, Kotak Bank, Chennai-Porur Branch, Chennai	Produced the document related to account No. 5313638391 in the name of John Paul
26.	150.	Shri V Poonkudalai, System Cum Branch Head, Indian Bank, Senneerkuppam, Branch, Avadi Road, Chennai	He produced the document related to account No. 6661951586 in the name of John Paul.
27.	151.	Shri Shivaraman A.R, Manager, Karur Vysya Bank, P.H Road Branch, Chennai.	He produced the document related to account No. 1248155000161047 in the name of John Paul.
28.	152.	Branch Manager, Indian Bank Kundrathur Branch, Chennai	He produced the document related to account No. 6432064039 in the name of Akshaya Caterings service.
29.	153.	Shri S Narasimhan, Branch Manager, Equitas Small Finance Bank, Annanagar Branch, Chennai	He produced the document related to account No. 100012007269 in the name of Soundarajan.
30.	154.	Shri Babu V, Deputy Branch Manager, ICICI Bank, Annanagar Branch, Chennai	He produced the document related to account No. 777701377977 in the name of Soundarajan J.
31.	155.	Manager, Karur Vysya Bank, Maduravayal Branch, Chennai.	He produced the document related to account No. 1770155000033070 in the name of Soundarajan J.
32.	156.	Shri Senthil Kumar S, Branch Manager, HDFC Bank, Valasaravakkam Branch	He produced the document related to account No. 50100158957018 in the name of Thatheeswaran R, documents related to Suresh Raj, Amudha J, Soundarajan J, Saravanakumar.
33.	157.	Shri Krishna Moorthy, Manager, Karur Vysya Bank, Nanmangalam Branch, Chennai.	He produced the document related to account No. 1789155000016081 in the name of Stakunam
34.	158.	Shri Purushottaman D, Branch Operation Manager, Jana Small Finance Bank Ltd. Annanagar Branch Chennai	He produced the document related to account No. 4780010002692621 in the name of Soundarajan and account No. 4780010015330398 in the name of Amutha.
35.	159.	Assistant General Manager, Indian Overseas Bank, Mogapper Branch, Chennai.	He produced the document related to account No. 169501000019489 in the name of Ramesh A.
36.	160.	Assistant General Manager, Bank of Baroda PBB Annanagar Branch, Chennai	He produced the document related to account No. 26440100015393 in the name of Ramesh A.

37.	161.	Smt. Durga Devi, Manager, Indian Bank Pallavaram Branch, Chennai.	She produced the document related to account No. 6431190600 in the name of Ramesh A.
38.	162.	Smt. T K Jayashree, Deputy Branch Manager, ICICI Bank, Chennai Main Branch, Chennai	She produced the document related to account No. 097005500320 and 270201001062.
39.	163.	Branch Manager, HDFC Bank, Mahalingapuram Branch, Chennai	Produced the document related to account No. 50100139567072.
40.	164.	Shri Jenith Cyril J, Branch Manager, CSB, Pallavaram, Chennai	She produced the document related to account No. 024407082 410190001 of Sarvanakumar
41.	165.	Alternative Nodal officer, LEA, BSNL, Panampally Nagar, Ernakulam	He produced ILD records of Mobile number 94711477317 and 971564493113.
42.	166.	Surya Surendran, Circle Nodal Officer, Vodafone Idea Ltd, Vytilla Ernakulam	Produced CAF and Call Data Records of the Mobile number 9884274905, ILD CDR of the Mobile numbers 94711477317,94762836169, 94764967804,94773831794, 94774775913,94777401709, 94778555279, 971561950661 & 9715644933113. Also produced CDR of ILD number 94777594258 and 971556054471, KYC Application form and CDR of Mobile Number 9344437799, 9962407914, 8939404740, 9962353654, CDR and CAF of Mobile number 9597988997,9787660458, 9962498328, 8012420257, 8012420256, 9884047678, 7871983819, 8608405553, 8939159951, 9926407931, 9841440449, 8939226802, 9962407931.
43.	167.	Shri Aji Shankar, State Nodal officer, Reliance Jio Infocomm Ltd, Palarivattom, Kochi	He produced ILD details of Mobile number 971556054471, CDR and CAF of mobile NO. 8667870335, 7603903276,6369699531, 8072342757, 6382805447, 6381532750, 9080256569, 9344912192, 8124819561, 9342423823 and ILD details of No. 94711319430, 94752176300, 94762836169, 94771177611, 94773125016,

			93773831794, 94774775913 and 971564493113.
44.	168.	Circle Nodal Officer, Bharti Airtel Ltd, Kerala Circle, Kundannur Junction, Ernakulam.	He produced CAF and CDR of 41 Mobile numbers on 16.11.2021, ILDCDR of 06 Mobile numbers 18.8.2021, ILDCDR of 23 Numbers 15.11.2021, CDR of 06 Numbers 15.11.2021, ILDCDR of 03 Numbers 20.11.2021, CAF and CDR of one mobile number on 15.11.2021, produced CDR and CAF of 17 mobile numbers on 19.8.2021,
45.	169.	Shri D Mani, District Registrar (Inspection), O/O the Inspector General of Registration, No. 100, Santhome High Road, Chennai-28	Produced the encumbrance certificates.
46.	170.	Shri Arshad Khan A.R Ld. JFCM-III, Ernakulam	Recorded the statement of A-3, A-8 and A-14 u/s 164 of CrPC.
47.	171	Dr Unmesh A.K, MD, DNB, Addl Professor and Police Surgeon, Department of Forensic Medicine, Govt. Medical College, Ernakulam	He conducted the Physical medical examination of A-15 and submitted report.
48.	172.	Shri Raj Kishor, Assistant Chemical Examiner, Custom House Laboratory, Custom House -60, Rajaji Salai, Chennai.	He produced the chemical analysis report and opinion on the seized narcotic drug.
49.	173	Shri Gogula Krishnan, Junior Scientific Officer, (Ballistic) CFSL, Hyderabad	He produced the examination report and opinion on seized arms and ammunitions.
50.	174.	Examiner, CDAC Thiruvananthapuram	He speaks about the digital forensic examination of MOs conducted by CDAC and the report.
51.	175.	Ms. A. Manime Kalai, Women Police Sub Inspector, Valsaravakkom, Chennai.	Witnessed the production cum Seizure memo prepared for the seizure of mobile phone from Smt. Rekha on 11.8.2021
52.	176.	Shri Basavarajaiah M, Head Constable, NIA, Chennai.	Witnessed the seizure of mobile phone produced by Smt. Rekha on 11.8.2021
53.	177.	Shri M. Udayakumar, PC-2324, O/o DGP, Chennai.	He witnessed the seizure of five rental agreements produced by Smt Shobha w/o John Paul on 27.8.2021.
54.	178.	Smt. M Vasanthi Inspector of Police Q-Branch Kanchipuram	He speaks about FIR in Q- Branch case, arrest of A-7 and A-8 and also about the seizures made and FSL report.
55.	179.	Shri Aneesh K Das, Sub-Inspector of	He speaks about the FIR in

		Police, Nadumbassery, Ernakulam	Nedumbassery case, arrest of A-10 and also about the seizures made and FSL report.
56.	180.	Shri Kshitish Kumar, Under Secretary to Government of India, MHA, New Delhi	He speaks about the MHA order to take up the investigation of Vizhinjam PS crime No. 498/2021 by NIA and also speaks about the order issued by MHA for taking up the investigation of NCB OR No. 02/2021/NCB/SZ/COK dated 27.3.2021, by NIA.
57.	181.	Shri Satya Prakash Chaudhary, Under Secretary to Government of India, MHA, New Delhi	He speaks about the sanction for prosecution accorded by Central Government.
58.	182.	Shri Rahul VM, LDC, NIA, Kochi	He also witnessed the extraction proceedings of Gmail and Dashlane password manager accounts of A-8 on 10.8.2021
59.	183.	Shri Renjith J, CT, NIA Kochi	He assisted for investigation of the case.
60.	184.	Shri Sujith C, CT IT wing, NIA Kochi	He assisted for investigation of the case.
61.	185.	Shri Rajesh P.S, CT IT wing, NIA Kochi	He assisted for investigation of the case.
62.	186.	Shri Rajeevan, HC, NIA Kochi	He assisted for investigation of the case.
63.	187.	Shri Aravindakshan, Head Constable, NIA, Kochi.	He assisted for investigation of the case.
64.	188.	Shri Chandran, ASI, NIA Kochi	He assisted for investigation of the case.
65.	189.	Shri Santosh PR, ASI, NIA Kochi	He assisted for investigation of the case.
66.	190.	Shri Vimod P.M, SI, NIA Kochi	He assisted for investigation of the case.
67.	191.	Shri Umesh Rai K SI, NIA Kochi	He assisted for investigation of the case.
68.	192.	Shri Babu K, SI, NIA Kochi	He assisted for investigation of the case.
69.	193.	Shri Shibin K.A SI, NIA Kochi	He assisted for investigation of the case.
70.	194.	Shri A. Siva Kumar. Inspector, NIA, Chennai	He assisted for investigation of the case.
71.	195.	Shri I. Rosario Arockiaraj, Inspector,	He seized one mobile phone produced

		NIA, Chennai	by Smt Rekha on 11.8.2021.
72.	196.	Shri V Arun Magesh, Inspector, NIA, Chennai	He conducted search in the house of A-15 on 14.8.2021
73.	197.	Shri Sameesh P.H, Inspector, NIA Kochi	He assisted for investigation of the case.
74.	198.	Shri Abhilash M.J Inspector, NIA Kochi	He assisted for investigation of the case.
75.	199.	Shri R.S Sreekanth Inspector, NIA Kochi	He assisted for investigation of the case.
76.	200.	Shri Hareesh P.S, Inspector, NIA Kochi	He assisted for investigation of the case.
77.	201.	Smt R. Amneeswari Inspector, NIA Kochi	She assisted for investigation of the case.
78.	202.	Shri Shahul Hameed, DySP, NIA Kochi	He assisted for investigation of the case.
79.	203.	Shri C Radhakrishna Pillai, DySP, NIA Kochi	He assisted for investigation of the case.
80.	204.	Shri Rahul S; IPS SP, NIA Kochia	He registered RC.01/2021/NIA/ KOC on 01.05.2021 at NIA Kochi
81.	205.	Shri Benoy Dickson Senior Technical Assistant, CDAC, Thiruvananthapuram	He had prepared proceedings for obtaining sample voice of A-7, A-8 and A-15 dated 8.12.2021.
82.	206.	Shri Ebison Franco, Inspector, NIA Kochi	He is the Chief Investigating Officer of the case, conducted investigation.

19) The witnesses referred to by the petitioner, whose statements are allegedly not recorded under Section 161(3) of the Code of Criminal Procedure, do not pertain to the material facts or foundation of the case. Their roles, as clearly indicated in the respective columns against their names in the Witness List (Annexure A), are limited to specific procedural aspects such as production of documents, witnessing the arrest, or assisting the Investigation Officer in the conduct of the investigation. It is pertinent to note that even the Investigation

Officer's serial number has been mischievously and erroneously included by the petitioner in the list of witnesses whose statements are claimed to be unrecorded. The witnesses mentioned by the petitioner have no bearing on the substantive facts or core issues of the case, and as such, their limited and procedural roles are already placed before the Hon'ble Court. Therefore, there is no question of the prosecution taking the accused by surprise, nor any scope for misuse to address alleged gaps at a later stage, as claimed by the petitioner. The limited and defined role of these witnesses precludes any prejudice to the petitioner's right to a fair trial, and the credibility of the investigation remains intact. Accordingly, the submissions made by the petitioner are untenable and liable to be rejected.

20) Petition is devoid of merits and it is liable to be dismissed. The very attempt of the petitioner is to delay the commencement of the trial and nothing else. So the petition is to be dismissed.

21) The point for consideration is, whether the petition is allowable?

22) For the purpose of adjudication of this petition, both sides were heard.

23) **The Point**:- In the very first blush, it appears that the petitioner has filed this petition with much anxiety that the course adopted by the Investigating

Officer during the course of trial by citing large number of witnesses without recording their previous statements will adversely affect the defence and that will certainly prejudice the petitioner. The learned counsel for the petitioner vehemently argued that it is the prerogative of Investigation Officer to adopt the manner of investigation to be conducted and neither this court nor the defence can dictate terms to the Investigation Officer to adopt such and such mode of investigation or to give direction to examine such and such witnesses or to give direction not to take the statements of such and such witnesses. The learned counsel, at the same time argued that if the prosecution wants to examine a material witness on the side of the prosecution they are obliged to record their previous statements and only in such an event, the defence can test the veracity of the witness cited by the prosecution by way of fruitful examination. According to the learned counsel, if the investigation officer has adopted an irrespective attitude by citing large number of material witness even without recording their previous statements, defence will be in the dark to know the very purpose and purport for which those witnesses are to be examined and they will be deprived of the opportunity to cross examine the witness on the basis of their previous statements and hence they will be put to serious prejudice. Therefore, the learned counsel argued that the petitioner is justified in filing this application

and there may be an order to expunge those witnesses from the list of witnesses produced by the prosecution.

24) In answer to this, the learned prosecutor vociferously argued that the petition is not maintainable and it is to be dismissed in limine. Along with the counter filed in answer to this petition, a chart showing the rank of the witnesses, name and address of the witnesses and their role is given in a tabular form and on a perusal of the same all the witnesses cannot be treated as a normal or a immaterial witness having only negligible role. In fact, most of the witnesses have allegedly played decisive role at the time of investigation as is evident from description/narrative given against the column "role of the witnesses". At the same time, several witnesses have merely produced one or more document before the Investigation Officer and in the given facts and circumstances of the case, there is no need or necessity or special need or necessity to record their previous statements for the reason that they merely produced a document pertaining to the vehicles involved in the accident, namely, RC particulars, bank account details, call data records, ILD details of few mobile numbers, CAF, CDR of few mobiles numbers etc. At the same time, several witnesses have allegedly assisted the Investigating Officer during the course of investigation and what exactly is their roles are not discernible either

from the final report or from other records made available and hence that may cause prejudice to the defence. The learned prosecutor place reliance upon a decision rendered by the Hon'ble Apex Court (Petition for Special Leave to Appeal (Criminal No.18155/2024 dated 06.05.2025)).

25) At the same time, the learned counsel for the defence harp upon **MANU/KA/0222/2021 = 2021(1) KCCR610 (Chemansab v. State of Karnataka)**. The learned counsel relied upon various observations made by the Hon'ble High Court of Karnataka from paragraph 29 onwards in its judgment to drive home the point that,

non-recording of statement under Section 161(3) of the Code or delayed recording of statement under Section 161(3) of the Code or improper recording of statement under Section 161(3) of the Code is a serious irregularity which is incurable. This irregularity gives rise to infer that prosecution has procured such statement to suit their case and therefore, such statement loses its credibility. When delay in recording statement under Section 161 of the Code itself casts cloud of suspicion on the case of the prosecution, non-recording of such statement or recording of such statement without mentioning the date, totally discredits the evidence of these witnesses. The High Court further observed that "By not recording statement under Section 161(3) of the Code, prosecution takes the accused by surprise and his right to contradict this witness is virtually lost. Material

contradictions and material omissions are fatal to the case of the prosecution. Accused will be handicapped to this extent when a witness is cross-examined by him whose statement under Section 161(3) of the Code is not recorded. A witness, who contradicts his earlier statement and makes improvement in his subsequent statement or when there are omissions in his statement, such witness loses credibility.”

26) In the immediate paragraph it was observed that,
“The credibility of a witness in criminal proceedings is tested before the court vis-a-vis the statement made by him under Section 161(3) of the Code. Statement under Section 161(3) of the Code is a vital document in criminal prosecution and the court after scrutinizing the same can even discharge the accused. Section 162(1) of the Code contemplates that statement under Section 161 of the Code should not be signed nor the statement could be used for any inquiry or trial, except for the purpose as provided under the said section. Therefore, the accused has an indefeasible right to use the statement under Section 161(3) of the Code to shake the credibility of the witness.”

27) Again, it was observed that,
“The statement of a witness, who is not examined under Section 161(3) of the Code, is likely to seriously prejudice and affect the case of the accused and evidence of such witness in the absence of valid reasons by the Investigating Officer for not

recording his statement must be viewed with suspicion, otherwise it would result in miscarriage of justice. In the case on hand, statement of PW-1 under Section 161(3) of the Code is not at all recorded. In the complaint lodged by him, the particulars of the credible information, raid, compliance of Section 42, procedure followed during search and seizure, etc., are not found. Under the circumstances, the evidence of this witness loses its credibility and unless it is corroborated by an independent witness, the same cannot be based for holding the accused guilty of the alleged offences."

28) Therefore, the learned counsel for the defence vehemently argued that non-recording of statement of large number of witnesses (83 witnesses cited by the prosecution) u/s. 163 of the Code is fatal to the case of the prosecution. The ruling relied upon by the counsel for the defence was a case under NDPS Act wherein an accused was found guilty and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1 lakh with default sentence and the said judgment and order of conviction and sentence were challenged before the High Court wherein the Hon'ble High Court observed that,

“ For an offence punishable under the provisions of the NDPS Act, compliance of the requirement of law has to be scrutinised in a higher pedestal because the penalties imposed under this statute are very severe.

The manner in which the investigation has been conducted in this case vitiates the entire investigation and resultantly it also affects the trial of the case. The order of conviction, therefore, cannot be recorded on the basis of evidence adduced by these witnesses. The investigation in the case appears to be totally tainted and unreliable.”

29) In order to prove an offence under NDPS Act, prosecution has to satisfy the court that statutory legal formalities are strictly adhered or complied and there is no deviation therefrom. As observed by the Hon'ble High Court, the degree of proof or compliance of requirement of law has to be scrutinised in a higher pedestal since the punishment to be imposed under this statute are very severe in nature when punishment proscribed by the statute is on the higher side. The degree of proof or compliance of the requirement of the provisions of law under the statute is to be complied scrupulously and that is the test to be passed by the prosecution.

30) The Hon'ble High Court of Karnataka while setting aside the conviction passed by the District Court it is held that there is breach of mandatory provisions of Section 42(1) and Section 42(2) and further Section 43 which was relied by the Special Judge for holding that there was no necessity to comply Section 42 is not applicable. The Hon'ble High Court further observed that the breach of Section 42, namely, the first part is that there is difference

between the secret information recorded in Ext.P14 and Ext.P21 and the information sent to the Circle Officer by virtue of Ext.P15. So, the statutory formalities to be complied were given a go by in the said case which forms the basis or foundation to hold that the conviction and sentence passed by the Special Judge cannot be approved. Of course, non-recording of statement u/s.161(3) of the Code is a serious irregularity and the same is incurable and it depends upon the facts and circumstances of each given case. It is true that the prosecution takes the accused by surprise and their right to contradict these witnesses whose statement u/s.161(3) is not recorded is virtually lost and material contradictions and material omissions are fatal to the case of the prosecution and it has to be held that the accused will be handicapped to that much extent when a witness is cross examined by the accused whose statement u/s.161(3) of the Code is not recorded. Here also, I reiterate that this court cannot jump to a conclusion that the relief sought in the petition is justified and the petitioner/accused is entitled to get an order as prayed for. At the same time, the said question is left open for consideration to the stage of trial and this court will take appropriate decision at the relevant time. It is made clear that the prosecution is not supposed to make out a case from thin air that too, to the disadvantage of the accused by causing serious prejudice. The right to contradict

a witness cannot be deprived and virtually non-recording of previous statement resulted in such deprivation. But this court cannot hold that the non-recording of all the witnesses by itself would result in such an adverse result.

31) It is made clear that prosecution is not bound to record the previous statement of all the witnesses they wish to examine on their side and such examination is necessary only if such a course is necessary. Many witnesses would be producing one or two documents before the Investigating Officer on request and previous statement of such witnesses is not necessary always. At the same time, Investigating Officer cannot throw up his arms in despair by saying that I am not supposed to record the previous statements of the witnesses cited by the prosecution and they need be examined for the first time at the time of trial. Therefore, the balance must be maintained and hence the court has to apply its mind in the case of each witnesses to arrive at a conclusion whether the non-recording of the previous statement of each such witness had adversely affected the indefeasible right of the defence by applying the relevant laws in the given facts and circumstances of the case.

32) On going through the prosecution records, CWs 33, 69, 133 to 169, 172 and 173 have merely produced few documents before the Investigating Officer at the time of trial which was received by him and their statements are

not recorded u/s.161(3) Cr.P.C. As far as these witnesses are concerned their previous statements need not be recorded and such a course will no way affect the right of the defence nor will cause prejudice to the defence.

33) CWs 16, 17 and 178 were cited by the prosecution only to prove the arrest of some of the accused and CWs 182 to 203 were also cited by the prosecution for the reason that they assisted the Investigating Officer and what exactly is their role is not discernible from the list of witness supplied by the prosecution. Since the Investigating Officer himself will mount the box, recording of their previous statement will also no way cause prejudice to the defence. CWs 175 to 177 were mere witnesses to seizure mahazar/memo and CW171 is the doctor who conducted medical examination and their statements are also not recorded. When these witnesses are brought to the box and let in evidence, this court can very well look into the same while appreciating their evidence, especially in the absence of their previous statements to arrive at a conclusion whether action or inaction on the part of the Investigating Officer has caused prejudice to the defence and hence the said question is left open for consideration.

34) CW170 had recorded the statement the accused u/s.164 and CWs 14 and 15 witnessed the preparation of inventory of arms and ammunitions.

Their previous statement is also necessary in the given facts and circumstances of the case.

35) CW174 speaks about the digital forensic examination of the material objects conducted by C-DAC and about the report. CW178 speaks about the FIR in Q Branch case and as to the arrest of A7 and A8 and also about the seizures made and FSL report. Their previous statement need not be recorded mandatorily as those witnesses will speak on to the reports filed by them.

36) CW179 speaks about the FIR in Nedumbassery case and as to the arrest of the 10th accused and about the seizure made and FSL report and the above mentioned principles pertaining to CW174 and 178 would apply to this witness as well. CW180 speaks about MHA order to take up the investigation of Vizhinjam Police Station by NIA etc. and CW181 was cited to prove the sanction of prosecution whereas CW182 witnessed extraction of proceedings of g mail and dash line password manager accounts of A8 dated 10.08.2021. As stated earlier this court cannot jump to a conclusion at this stage to see the non-recording of the witnesses had adversely affected for caused prejudice to the defence with respect to all the 83 witnesses, especially when they will give evidence at the time of trial alone. That be so, these questions are left open to

be considered in an exhaustive manner at the time of trial.

37) The evidence to be let in by those witnesses is to be considered while appreciating the evidence after trial. Therefore, it is made clear in so many words that the question whether the evidence tendered by the witnesses whose statements u/s.161(3) of the Code is not recorded is a matter to be decided at the time of trial. With these observations, this court is constrained to dismiss the petition.

In the result, petition is dismissed.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 27th day of June, 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. 82/2025 in
S.C No. 04/2021/NIA
Dated: 27/06/2025