

**IN THE COURT OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,  
COIMBATORE.**

**Present: Tmt. G. VIJAYA, B.A., M.L., PGDCFS,  
PRINCIPAL DISTRICT & SESSIONS JUDGE, COIMBATORE**

**Tuesday, this the 21<sup>st</sup> day of April, 2026**

(திருவள்ளூர்வராண்டு, 2057, பராபவ ஆண்டு சித்திரைத் திங்கள் 8-ஆம் நாள் செவ்வாய்கிழமை)

**M.P.No.16/2026 in S.C.No.195/2017**

Jaffer Ali @ Jaffar (A-5)

... Petitioner / Accused

//vs//

Deputy Superintendent of Police,  
CBCID,  
Coimbatore.

... Respondent / Complainant

This petition is coming on 23-03-2026 and 10-40-2026 for final hearing before this Court in the presence of **Tvl. S. Xavier Felix, F.Camilus Selva, Shaikh M Muzzammil and A.Praveen Kumar**, Advocate for the Petitioner / Accused and **Thiru. T.A. Selvaraj, Special Public Prosecutor**, represented for Q Branch CID Act State, upon perusing the petition submitted and upon hearing both side arguments, this Court pronounced the following:-

**ORDER**

This petition has been filed by the petitioner / A-5, u/s.45 of the Unlawful Activities (Prevention) Act, 1967 r/w Sec.227 of Cr.P.C., praying to pass an order directing the prosecution to examine the **Sanctioning Authority** as the prosecution witness before examining any other witness even at this stage to

strictly prove the validity and legality of Sanction granted under section 45 of the Unlawful Activities (Prevention) Act, 1967.

2. **The averments contained in the petition are as follows:-**

(i) The petitioner is arrayed as Accused No.5 in the above Sessions Case. The prosecution has invoked offences under the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA") along with other allied penal provisions under IPC.

(ii) Under Section 45(1) of the Unlawful Activities (Prevention) Act, 1967, "no Court shall take cognizance of any offence punishable under Chapters IV and VI of the Act without the previous Sanction of the Central Government or, as the case may be, the State Government" and (2) Sanction for Prosecution under sub-section (1) shall be given within such time as may be prescribed.

(iii) The trial of offences under UAPA is governed by special statutory provisions relating to constitution and designation of Special Courts. Section 2(b) of the Unlawful Activities (Prevention) Act, 1967, court means a criminal court having jurisdiction under the court to try offences under this Act and includes a Special Court Constituted u/s.11 or under Sec.22 of National Investigation Agency Act.

(iv) Section 45(2) of the said Act further mandates that such Sanction shall be granted only after an independent review by an Authority appointed by the Government, which shall make its recommendation within the prescribed time

(v) The requirement of Sanction under Section 45 of UAPA is not an empty formality. It is a condition precedent and a jurisdictional fact, without which the Court lacks competence to proceed with the trial in respect of offences under UAPA.

(vi) In the present case, the prosecution claims to have obtained Sanction for prosecution. However, the alleged Sanction has not been duly and legally proved in accordance with law, before framing of the charges and at least to be examined as PW1 before examining the other witnesses for the prosecution.

(vii) It is settled principle that the Sanctioning Authority must be examined as a prosecution witness in order to establish:

- That the Authority was competent to grant Sanction;
- That all relevant materials were placed before the Authority;
- That there was proper and independent application of mind;
- That the mandatory independent review under Section 45(2) was duly conducted and considered.

(viii) The burden lies upon the prosecution to prove that the Sanction was accorded after due application of mind and upon consideration of the entire

materials collected during Investigation. Mere production of a Sanction order without examination of the competent Authority is insufficient compliance of the statutory mandate, hence better later than never even at this stage the witness for according Sanction shall be examined before proceeding to examine the other prosecution witnesses in the interest of justice and fair trial.

(ix) The validity of Sanction goes to the root of Jurisdiction. If the Sanction is defective, mechanical, or granted without independent review as contemplated under Section 45(2), the entire proceedings insofar as UAPA offences are concerned would be rendered vitiated. In the absence of proper proof of valid Sanction, continuation of the trial against the petitioner under the provisions of UAPA would amount to abuse of process of Court and would cause serious prejudice to the petitioner.

(x) Before proceeding further in the trial, the prosecution must examine the Sanctioning Authority and strictly prove compliance of Section 45(1) and 45(2) of UAPA at least before examining other witnesses. Unless such Sanction is duly proved in accordance with law, the trial for offences under UAPA cannot proceed against the petitioner and hence, the petitioner has filed the present petition, praying to pass an order directing the prosecution side to examine the Sanctioning Authority before examining any other witnesses.

3. **The averments contained in the counter filed by the prosecution side are as follows:-**

(a) The present petition filed by the petitioner / Accused No.5 under Section 45 of the Unlawful Activities (Prevention) Act, 1967 (UAPA) read with section 227 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking a direction to the prosecution to examine the Sanctioning Authority as the first prosecution witness before proceeding with other witnesses, is misconceived, without merit, and untenable in law.

(b) The petition has been filed under Section 227 Cr.P.C., which relates only to discharge and does not contemplate any direction regarding examination of witnesses. Such petition obviously filed to frustrate the prosecution and Court as well.

(c) Despite nearly nine years since the incident, only seven out of 122 witnesses have been examined, reflecting significant delays in the trial process. Granting this petition would exacerbate these delays, contrary to the mandate for expeditious trials under UAPA. As held by the Supreme Court in *FULESHWAR GOPE V. UNION OF INDIA* (2024 INSC 718), Sanction validity must ordinarily be challenged at the earliest opportunity to avoid undue delays in trial. (The Accused No. 3 Mr. Samsudeen A-3 has already filed and challenged the Sanction validity of the subject case in CrI.M.P.No.643 of 2021

Dated:15-02-2021 in which such petition was duly heard and order of dismissal was passed on 10-02-2022.)

(d) The petitioner is arrayed as A-5 in S.C.No.195/2017, who was involved in the brutal murder of H.Farooq on 16-03-2017, by A-1 to A-6, with the intent to instil terror and disrupt public order. Charges include Sections 120(B), 147, 148, 302 r/w 149 & 34 IPC; Sections 15(1)(a)(i), 16, 18, 20 UAPA, and Section 153(A) IPC. Sanction under UAPA was duly obtained vide Government Order dated 11-09-2017 after adhering the statutory compliances.

(e) The Final Report was filed on 12-09-2017, and this Court took cognizance thereafter trial began on 22-09-2024, with seven witnesses examined to date. The petitioner's contention that UAPA has been invoked along with IPC provisions is admitted, but the Sanction's validity stands unchallenged until this late stage, rendering the plea an attempt to further stall proceedings, which have already been protracted over nine years with negligible progress.

(f) The requirement under Section 45(1) UAPA for prior Sanction before cognizance of offences under Chapters IV and VI is acknowledged. However, once cognizance is validly taken as occurred here in 2017 itself, the focus shifts to trial evidence. The Petitioner's reference to special statutory provisions for trial is correct, but this Court, designated as a Sessions Court, has jurisdiction under Section 2(1)(d) UAPA read with Sections 11 and 22 of the National

Investigation Agency Act, 2008. No jurisdictional defect exists, and the petition fails to demonstrate any non-compliance warranting interruption of the ongoing trial, which has already suffered inordinate delays.

(g) The prosecution has obtained and produced the valid Sanction, which was considered before cognizance and charge-framing. The Petitioner's claim that it has not been "duly and legally proved" is unsubstantiated, as validity can be assessed from records. Therefore, procedural compliance suffices, and challenges deferred to trial is patent illegality.

(h) There is no "settled principle" mandating examination of the Sanctioning Authority as a prosecution witness in every case. The Supreme Court in *STATE OF PUNJAB V. MOHAMMED IQBAL BHATTI* (2009) 17 SCC 92 clarified that, in analogous Sanction contexts, examination is unnecessary unless the accused raises specific factual challenges, such as non-placement of materials or absence of review. Here, no such factual dispute is pleaded, the Sanction order recites consideration of materials, Competence, Independent review, and Application of mind.

(i) It is pertinent to mention that the conclusion of order in Crl.M.P.No.643 of 2021 Dated:10-02-2022, passed by this Court, (in para 12-9<sup>th</sup> line) "whether the said Sanction was accorded by following the procedures stated in the rules or not, is a question can be decided only during the trail. As of now, there is no

material on record to say that the Sanction is defective and invalid. Hence, this court is of the considered view that there are sufficient materials available on record to proceed against the accused under the provisions of Indian Penal Code as well as the provisions of the Unlawful Activities (Prevention) Act, 1967. Hence, this petition deserves to be dismissed.” As on moment, this order is unchallenged by any quarters. Hence, the subject matter stands as a pillar rock for the prosecution.

(j) Whereas, Section 230 Cr.P.C. vests discretion in the prosecution and prerogative of the Prosecutor to determine the order of witness examination. This discretion should not be interfered with casually, especially in a protracted trial like this subject Case. The Petition’s call for belated examination (“better late than never”) ignores prosecutorial discretion under Section 230 Cr.P.C. in witness order. Therefore, the prosecution’s discretion under Section 230 Cr.P.C. to produce witnesses in an appropriate order must be respected to ensure efficient progress.

(k) The Sanctioning Authority will be examined during the course of trial as part of the prosecution evidence. Upon such examination, the Petitioner/Accused No.5 will have full opportunity to cross-examine the said witness in accordance with law. Therefore, no prejudice whatsoever would be caused to the Petitioner/Accused, and the present application seeking directions

at this stage is unnecessary, unwarranted and only for the purpose of delaying the Trial proceedings.

(l) Continuation of trial does not amount to abuse of process or prejudice, as the Sanction's validity can be tested during evidence without halting proceedings. The belated challenges like this, with 115 witnesses pending and the trial already delayed since 2017, undermine expeditious trial under UAPA. Granting this would delay justice further, prejudice the prosecution, and harm the victim's family, especially in a case pending since 2017 with minimal witness examination completed.

(m) There is no legal requirement that the Sanctioning Authority must necessarily be examined earlier before any other witness is examined. The petition is therefore premature and liable to be dismissed.

4. **Point for consideration in this petition is** whether, the Sanctioning Authority has to be examined as the prosecution witness before examining any other witness even at this stage, or not?

**POINT:-**

5. Heard both sides and documents perused. The petitioner / A-5 in S.C.No.195/2017 has filed the present petition, praying to pass an order directing the prosecution side to examine the Sanctioning Authority as the prosecution witness before examining any other witness even at this stage.

6. The learned counsel for the petitioner / A-5 argued that, as per Section 45(2) of UAPA Act, Sanction shall be granted only after an independent review by an Authority appointed by the Government and that the Sanction order itself is improper and the same has been passed by the Sanctioning Authority mechanically and that the alleged Sanction has not been duly and legally proved in accordance with law, before framing of the charges and at least to be examined as P.W.1 before examining the other witnesses for the prosecution. The learned counsel for the petitioner has further argued that, mere production of a Sanction order without examination of the competent Authority is not sufficient compliance of the statutory mandate, hence, better later than never even at this stage the witness for according Sanction shall be examined before proceeding to examine the other prosecution witness for fair trial. The learned counsel for the petitioner has further argued that, if the Sanction is defective, mechanical or granted without independent review as contemplated u/s.45(2) of the Act, the entire proceedings insofar as UAPA offences are concerned would be rendered vitiated and unless the Sanction is duly proved in accordance with law, the trial for offence under UAPA cannot be proceed against the petitioner A-5 and hence, prays to allow the petition.

7. The learned Special Public Prosecutor vehemently raised objection to the petition and contended that, the petitioner / A-5 has filed the present petition u/s.227 of Cr.P.C. which relates only to discharge and does not contemplate any

direction regarding the examination of witnesses. Further, the subject matter is already adjudicated in the discharge petition filed by the co-accused namely Samsudeen (A-3) in C.M.P.No.643/2021, dated 10-02-2022. The said order has not been challenged by the said accused. The learned Special Public Prosecutor has further contended that, the prosecution has obtained and produced the valid Sanction, which was considered before cognizance and charge framing. The learned Special Public Prosecutor has further contended that, Sec.230 of Cr.P.C. vests discretion in the prosecution and prerogative of the prosecutor to determine the order of witness examination. Further the Sanctioning Authority will be examined during the course of trial as part of the prosecution evidence and the petitioner / accused is having every opportunity to cross examine the said witness in accordance with law. The present petition is nothing but delaying the trial proceedings and prays to dismiss the petition.

8. This Court has considered the submissions of both sides. The petitioner is arrayed as A-5 in Crime No.3/2017 of CBCID CBE, for the alleged offence u/s.302, 364, 147, 148, 294b, 120B of IPC @ 302 of IPC @ 364, 147, 148, 341, 294b, 302 r/w 120B of IPC @ 120B, 147, 148, 302 r/w Sec.149 & 34 of IPC and Sec.15(1)(a)(i), 16, 18, 20 & 22 of UAPA Act r/w 153A of IPC. Admittedly, in this case, 7 witnesses out of 122 witnesses have been examined. At this stage, the petitioner / A-5 has filed the present petition, praying to pass an order directing the prosecution side to examine the Sanctioning Authority as

the prosecution witness before examining any other witness even at this stage, alleging that, in this case, the alleged Sanction is improper and the Sanctioning Authority has issued Sanction mechanically and if the Sanction is defective, mechanical or granted without independent review as contemplated u/s.45(2) of the Act, the entire proceedings insofar as UAPA offences are concerned would be rendered vitiated and unless the Sanction is duly proved in accordance with law, the trial for offence under UAPA cannot be proceed against the petitioner.

9. Whereas, it is the contention of the learned Special Public Prosecutor that, the subject matter is already adjudicated in the discharge petition filed by the co-accused namely Samsudeen (A-3) in C.M.P.No.643/2021, dated 10-02-2022 and no appeal has been filed against the said order. Further, the prosecution has obtained and produced the valid Sanction, and the Sanctioning Authority has been listed as **LW 115** in the list of witnesses and it is on the part of the prosecution to fix who has to be examined in the first instance as per Sec.230 of Cr.P.C.

10. Further the learned Special Public Prosecutor would also contend that the validity of the Sanction should be challenged at the earliest instance available before this Court. However, without challenging the Sanction by the present petitioner, charges were framed and trial was commenced and as of now, 7 witnesses were examined and after 9 years from the murder of one Farooq, trial

was commenced and at this stage of the case, the present petition is filed by the petitioner / A-5 in order to stall or delay the proceedings in this case. In support of his case, the learned Special Public Prosecutor also relied on the judgment rendered by the Hon'ble Apex Court reported in the case between **Fuleswar Gope Vs Union of India and others** reported in **2024 INSC 718**, appeal arising out of the SLP (Crl.) No.4866/2023.

11. On a careful perusal of the judgment relied on by the learned Special Public Prosecutor, there is great force in the arguments of the learned Special Public Prosecutor. On a careful perusal of the discussion and dictum of the Hon'ble Apex Court, it reveals that in ordinary circumstance, challenge to Sanction under UAPA Act should be raised at the earliest possible opportunity so as to enable the trial Court to determine the question for its competence to proceed further. Admittedly in this case, the present petitioner has not filed any application questioning the Sanction rather allowed to take cognizance of the offence and based on which, trial was commenced and 7 witnesses were so far examined and when the matter was posted for further examination of LWs, the present petition was filed by the petitioner / A-5, questioning the Sanction order.

12. Further admittedly, in this case, it is not the case of the petitioner that no Sanction order was granted rather it is the main contention of the petitioner is that, without applying his mind, the Sanctioning Authority granted Sanction

order and hence, the petitioner wanted the prosecution to examine the Sanctioning Authority first even before the examination of other LWs. As rightly pointed out by the learned Special Public Prosecutor, as per Sec.230 of Cr.P.C., order of examination of prosecution witnesses is the prerogative of the prosecution and no direction can be given to the prosecution in the order of examination of prosecution witnesses and further in the prayer of the main petition is to examine the Sanctioning Authority even before the examination of other LWs and hence, in view of the Sec.230 of Cr.P.C., this Court cannot pass a direction to the prosecution to examine the Sanctioning Authority even before examination of other LWs. Though the petitioner is entitled to question the Sanctioning Authority at this stage, however, no reason much less plausible reason was assigned for bringing the same at the very belated stage.

13. Admittedly, in this case, as discussed above, before taking cognizance of the offence, the present petitioner has not raised any objection in respect of the Sanction and in this petition also, he has not assigned any reason as to why he has not questioned the same at the earliest point of time. Hence, taking into consideration of above, this Court is of the considered view that as the petitioner has enough opportunity to question the Sanctioning Authority by way of cross examination of the particular witness, the present petition is devoid of merits and hence the same is liable to be dismissed.

**In the result, this petition is dismissed.**

This order is dictated to steno-typist directly, typed by her in computer, corrected and pronounced by me, the order in open Court, on this the 21<sup>st</sup> day of April, 2026.

PRINCIPAL DISTRICT & SESSIONS JUDGE,  
COIMBATORE.

//True copy//

**Draft Order** in  
M.P.No.16/2026 in  
S.C.No.195/2017  
Dated:21-04-2026.