



1 :-

2026:KER:9772

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2026 / 17TH MAGHA, 1947

CRL.MC NO. 10590 OF 2025

(CRIME NO.1/2022 OF NATIONAL INVESTIGATION AGENCY KOCHI,
Ernakulam

AGAINST THE ORDER DATED 03.09.2025 IN CRMP 115/2025 IN
RC NO.1 OF 2022 OF SPECIAL COURT FOR TRIAL OF NIA
CASES,ERNAKULAM)

PETITIONER/ACCUSED NOS. 6 AND 7:

- 1 R.RAGAVENDRAN,
AGED 36 YEARS
S/O.RAJAN, 7/8, PHASE-1, TNHB, SATHUVANCHERI,
VELLORE, TAMIL NADU, PIN - 632009
- 2 B.G.KRISHNAMURTHY,
AGED 50 YEARS
S/O. B.K.GOPAL RAO, NEMMAR ESTATE, NEAR BUKKABIDYLU,
SRINGERI TALUK, CHICKAMANGALUR DISTRICT, KARNATAKA,
PIN - 577139

BY ADVS.
SRI.THUSHAR NIRMAL SARATHY
SMT.P.A.SHYNA

RESPONDENT/COMPLAINANT:

UNION OF INDIA,
REPRESENTED BY NATIONAL INVESTIGATION AGENCY, HMT-
MEDICAL COLLEGE ROAD, KALAMASSERY, ERNAKULAM, PIN -
683503



2 :-

2026:KER:9772

BY ADV O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF
INDIA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
03.02.2026, ALONG WITH WA.58/2022, THE COURT ON 6.2.2026
PASSED THE FOLLOWING:



**SUSHRUT ARVIND DHARMADHIKARI,
&
P.V.BALAKRISHNAN,JJ.**

CR

Crl.M.C. No. 10590 of 2025

Dated this the 6th day of February 2026

O R D E R

P.V.BALAKRISHNAN,J

This Criminal Miscellaneous Case is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS', for short) challenging the orders dated 03.09.2025 passed in Crl.M.P No.115/2025 and in Crl.M.P.No.95/2025 in RC No. 01/2022/NIA/KOC by the Special Court for Trial of NIA Cases, Kerala, Ernakulam.

2. The petitioners are accused Nos. 6 and 7 in SC 2/2025/NIA pending before the Special Court for trial of NIA cases, Ernakulam. The offences alleged against the petitioners are under Sections 120B,121A,122 of IPC and Sections 18,18B,20,38 and 39 of Unlawful Activities (Prevention) Act,1967 (*hereinafter* referred to as 'the UAP Act' for short). The petitioners were arrested on 27.11.2024 and after completing investigation charge sheet was filed against them on 21.05.2025.

3. During the pendency of SC No.2/2025/NIA, the respondent



filed CrI.M.P.No.115/2025, under Section 44 of the UAP Act before the Special Court praying for an order to treat CWs 49 to 53, CW61, CW62 and CW79 as protected witnesses and also not to supply the contents of the Section 161 Cr.P.C. statements and connected documents listed in Annexure E list attached to Annexure IV charge sheet, which tends to disclose the identity of these witnesses. The Special Court allowed the CrI.M.P.No.115/2025 as per Annexure V order. Consequently, CrI.M.A.No.95/2025 filed by the respondent under Section 193(7) of BNSS was also allowed as per Annexure VI order and the court directed to issue only redacted part of the documents listed in the documents list attached to the charge sheet as Document Nos.30 to 36, 74 to 79, 86 and 87 to the accused. It is challenging Annexures V and VI orders, this CrI.M.C has been filed by accused Nos. 6 and 7.

4. Heard Adv.Thushar Nirmal Sarathy, the learned counsel appearing for the petitioners and Adv. O.M.Shalina, the learned DSGI appearing for the respondent.

5. The learned counsel for the petitioners submitted that the orders passed by the Special Court directing not to supply the contents of Section 161 statements of CW49 to 53, CW61, CW62 and CW79 and to treat these witnesses as protected, is illegal and



irregular and against the ends of justice. He, by relying on the decision of the Apex Court in **Mohammed Asarudeen v. Union of India (2025 KHC Online 6526)**, submitted that the identity of two witnesses ordered to be protected is already revealed by the respondent and if so, the very purpose of Section 44 (2) of UAP Act is lost and, therefore, the impugned orders in respect of these witnesses cannot be sustained. He further submitted that, there is no threat to the lives of these witnesses from the hands of the petitioners and the trial court has, without even satisfying itself that such a threat exists, passed the impugned orders. He argued that the Special Court is bound to record satisfaction *qua* individual witnesses and merely on the basis of some general/vague reasons, ought not to have allowed the applications. Lastly, he submitted that the impugned orders passed by the Special Court are non speaking orders, without application of mind and on this ground alone, are liable to be set aside.

6. Per contra, the learned counsel for the respondent supported the impugned orders and contended that there are no grounds to interfere with the same. She argued that the petitioners are involved in serious offences relating to terrorist activities and if the identity of the material witnesses are disclosed, the lives of those



witnesses will be in danger. She submitted that the prosecution has filed the application with specific averments in relation to every witnesses, pointing out the danger to their life and that the trial court, after considering the materials on record, has rightly passed the impugned orders.

7. On an anxious consideration of the rival submissions and the materials on record, we are of the view that there is considerable force in the submissions made by the learned counsel for the petitioners. Annexure V order in CrI.M.P.No.115/2025 has been passed on the basis of an application made by the prosecution under Section 44 of the UAP Act read with Section 17 of NIA Act. Section 44 of the UAP Act reads as follows:

44. Protection of witnesses.—(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.

(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.

(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—

- (a) the holding of the proceedings at a place to be decided by the court;
- (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;
- (c) the issuing of any directions for securing that the identity and



address of the witness are not disclosed;

(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.

(4) Any person who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

8. The provisions of Section 44 of the UAP Act as well as Section 17 of the NIA Act are *pari materia*. An application for protection of witnesses under Section 44 (2) of the UAP Act can be filed either by a witness or by the Public Prosecutor. The trial court can also on its own motion, if the conditions mentioned in Section 44 (2) are made out, take appropriate measures as it deems it for keeping the identity and address of the witness secret. Section 44(2) shows that the first condition precedent for the exercise of the power is the recording of the satisfaction by the Special Court that the life of a witness is in danger. It is after recording the said satisfaction, the 2nd stage comes into operation, leading the court to pass such orders for keeping the identity and the address of the witness secret. It is to be taken note that Section 44 (2) also mandates that while deciding what kind of measures should be adopted, the court must record its reasons.

9. The Hon'ble Apex Court in the decision in **Mohammed Asarudeen** (*cited supra*), while considering the scope and ambit of



Section 44(2) of UAP Act and Section 17 of NIA Act, has categorically held that, the recording of satisfaction by the Special Court that the life of the concerned witness is in danger, must be based on the materials available before the court. It was also held that the extent and the nature of the material required to record such satisfaction, will depend upon the facts and circumstances of each case and that the recording of clear satisfaction, based on materials is mandatory. The Apex Court further held that after recording satisfaction, the court has to apply its mind on the materials on record and decide as to what kind of measures should be adopted for keeping the identity and address of such witness secret and for that, the court must record brief reasons. It was further held that the Special Court must apply its mind and has to consider the case of each witnesses separately, regarding the possible dangers to their lives.

10. In the instant case, it is true that the prosecution has made an application with respect to a number of witnesses and that there are specific averments in relation to every witnesses. But a perusal of the impugned orders would go to show that the special court has not recorded a clear satisfaction that the life of the witnesses are in danger, based on materials. It is also to be seen



that the impugned orders does not reflect consideration of the materials on record, before deciding the measures to be taken for keeping the identity of the witnesses secret. No reasons, at least in brief, is also not stated for allowing the application and the order merely says that "the reasons stated in the petition are convincing". That apart, the Special Court has also not considered the case of each witnesses separately, regarding the possible dangers to their lives based on the materials on record and has merely allowed the application by finding that no prejudice is caused to the accused. At this juncture, we will also take note of the fact that even though the petitioners have specifically contended that the identity of two of the witnesses have already been revealed by the prosecution and that the very purpose of Section 44 (2) of UAP Act is defeated, the same has also not been considered by the Special Court.

11. The result of the forgoing discussions is that the impugned orders passed by the Special Court cannot be sustained and are liable to be set aside. In such circumstances, the Special Court is directed to reconsider CrI.M.P.No.115/2025 and CrI.M.P.No.95/2025, afresh in the light of the observations made afore, as per law.

In the result, CrI.M.C.No.10590/2025 is allowed as follows:

- i) The order dated 03.09.2025 in CrI.M.P.No.115/2025 in R.C.No.01/2022/NIA/KOC passed by the Special Court



for trial of NIA Cases, Kerala, Ernakulam is set aside.

ii) The order dated 3.9.2025 in Crl.M.P.No.95/2025 in RC No.01/2022/NIA/KOC passed by the Special Court for trial of NIA Cases, Kerala, Ernakulam is also set aside.

iii) Crl.M.P.No.115/2025 and Crl.M.P.No.95/2025 are remitted back to the Special Court for fresh consideration and disposal as per law, in the light of the observations made in this order.

iv) The Special Court shall make every endeavour to dispose of these applications as expeditiously as possible.

Sd/-

SUSHRUT ARVIND DHARMADHIKARI
Judge

Sd/-

P.V.BALAKRISHNAN
Judge

dpk