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CRL OP Nos. 4906 & 4909 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.08.2026

Pronounced on : 07.09.2026

CORAM

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**CRL OP Nos. 4906 & 4909 of 2026
and
CRL MP Nos.3548 &3545 of 2026**

1. Abu @ Syed Abuthagir
S/o.Jafer Ali, KK Nagar,
Saibaba Colony,
Coimbatore-2.
2. Sadham @ Sadham Hussain
S/o.Barakathullah,
29, ArbuthamNagar,
AnbuNagarBack Side,
South Ukkadam, Coimbatore.
3. Subair
s/o.Sulaiman,
88, G.M.Nagar, Kottaipudur,
Ukkadam, Coimbatore.
4. Mohamed Rafiqul Hasan
S/o.Shajahan,
52, Kamaraj Street,
K.K.Pudur, Coimbatore.

..Petitioner(s) in both
Crl.O.P.s

Vs



Union of India represented by,
The Inspector of Police,
National Investigation Agency,
Delhi/Chennai.
(In RC No.03/2018/NIA/DLI)

..Respondent(s) in both
Crl.O.P.s

Prayer in Crl.O.P.No.4906 of 2026: Petition filed under Section 528 of BNSS, to call for the records relating to the Impugned order dated 17.12.2025 passed in Crl.M.P.No.322 of 2025 in Spl.S.C.No.17 of 2022 on the files of the Hon'ble Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee, Chennai and set aside the same as illegal and abuse of process of law.

Prayer in Crl.O.P.No.4909 of 2026: Petition filed under Section 528 of BNSS, to call for the records relating to the Impugned order dated 24.12.2025 passed in Crl.M.P.No.318 of 2025 in Spl.S.C.No.17 of 2022 on the files of the Hon'ble Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee, Chennai and set aside the same as illegal and abuse of process of law.

(In both Crl.O.P.s)

For Petitioner(s): Mr.I.Abdul Basith

For Respondent(s): Mr.AR.L.Sundaresan,
Additional Solicitor General
Assisted By Mr.R.Karthikeyan,
Special Public Prosecutor for NIA Cases

Mr.Sharath Chandran (Amicus Curiae)



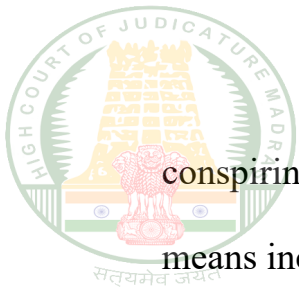
COMMON ORDER

**Per Dr.ANITA SUMANTH,J
and SUNDER MOHAN,J.**

In Crl.O.P.No.4906 of 2025, A1, A2, A3 and A5 in Crime No.735 of 2016 challenge order dated 17.12.2025 passed in Crl.M.P.No.322 of 2025 in Spl.S.C.No.17 of 2022, where the prayer was for recall P.Ws. 40, 52, 62, 63, 64 and 65 for the purpose of cross examination by the Special Court under the National Investigation Agency Act, 2008 (Special Court).

2. The challenge in Crl.O.P.No.4909 of 2026 is to order dated 24.12.2025, allowing Crl.M.P.No.318 of 2025 in Spl.S.C.No.17 of 2022, and granting protection to LWs.10, 11, 12 and 15 and treat documents connected with them, being D25, D26, D28, D50, D74, D89, D102, D119, D120, D121, D130, D131, D194 and D215 as protected documents along with threat assessment reports and enquiry statements.

3. The brief facts are this. On 22.09.2016 at about 23.15 hours, the then spokesperson of Hindu Munnani (Front), Coimbatore was attacked indiscriminately by a group of persons. As a result, he had sustained grievous injuries to which he later succumbed. Investigation in FIR No.735 of 2016 under Section 302 IPC was taken over by the Special Investigation Division of the CBCID, Coimbatore. It is alleged that the four petitioners along with other accused who were all members of the Popular Front of India (PFI) were



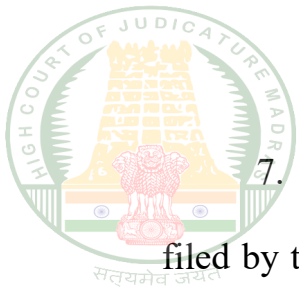
conspiring to strike terror within a section of people in the Country by various means including by brutally murdering the deceased.

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4. A1 was arrested on 22.03.2017, A2 on 01.08.2017, A3 on 11.10.2017 and A4 on 25.12.2017. A1 and A2 were enlarged on statutory bail on 19.06.2017 and 01.11.2017 respectively, and A4 and A3 were enlarged on bail on 19.09.2018 and 17.10.2018 respectively.

5. The investigation was entrusted to the National Investigation Agency under the applicable provisions of the National Investigation Agency Act, 2008 (in short 'NIA Act') and the original case was re-registered under Sections 120B, 153A and 302 of IPC along with Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 (in short 'UAPA') on 29.01.2018.

6. Charge sheet was filed as against A2 and A3 for the commission of offences under Sections 302 read with 120B, 302 read with 34 and 153A(1)(b) of IPC along with Sections 16(1)(a), 18 and 20 of the UAPA on 07.04.2018. Supplementary charge sheet has been filed as against A1 for the offence under Section 18 of the UAPA on 21.06.2018. Second supplementary charge sheet has been filed as against A5 for offences under Section 34, 120B, 153A(1)(b) and 302 IPC and Section 16(1)(a), 18 and 20 of the UAPA on 06.08.2021. Trial is on-going.



7. While so, a Miscellaneous Petition in Crl.M.P.No.154 of 2018 was filed by the NIA seeking to treat certain witnesses as protected. By order dated 26.04.2018, after recording satisfaction under Section 44 of the UAPA, the Court held as under:

'7.In the result, this petition is allowed and ordered as under:

(1)The petitioner/prosecuting agency is permitted to exclude the statements of witnesses, namely, L.Ws. 10 to 25 while furnishing copies under Section 207 of Cr.P.C.

(2)Any portion/portions of the Document Nos.25, 26, 28, 74, 89, 102, 119 to 121 which the prosecution may think to reveal the identity of the above said witnesses may be hided while furnishing copies under Section 207 of Cr.P.C.

(3)The prosecution is also permitted to hide the relevant portions, if any, in the Charge Sheet and its Annexures A and B, namely, list of witnesses and list of documents while furnishing copies under Section 207 of Cr.P.C.

(4)The prosecution is directed to submit a complete set of those hided copy of documents, charge sheet and its Annexures A and B to this Court to keep with the records of the case on or before 09.05.2018. Upon such submission, the office of this Court is directed to keep the original of the above said documents, the statements of the above said witnesses and the charge sheet and its Annexures A and B each in a sealed cover under safe custody of this Court.

(5)The original statements and documents will be opened from the sealed cover on the date of examination of the concerned witnesses and after examination-in-chief is over, a copy of the said original statement and a copy of the concerned original document, if any marked on that day, shall be supplied to the accused immediately.'



8. Crl.M.P.No.283 of 2021 had been filed by the Respondents seeking to declare the witnesses listed in Schedule – 1 as protected witnesses and to direct not to supply copies of statement recorded in respect of the protected witnesses.

The Petition was ordered on 19.08.2021 in the following terms:

8.In the result,

(i) This petition is allowed;

(ii) The prosecution is permitted to exclude the statements of the witnesses LWs 10 to 25 and LWs 222 to 225 recorded u/s 161 of Cr.P.C. as well as the documents D.Nos.25, 26, 28, 74, 89, 102, 119 to 121, 130, 131, 194 and 215 and material objects Nos.77 and 80, while furnishing the copies to the accused u/s 207 of Cr.P.C and to hide the name, address and any other identity of those witnesses in the list of witnesses, list of documents and list of material objects (Annexures-A, B and C to the charge sheet).

(iii) The prosecution is directed to submit a set of hided copy of such list of witnesses, list of documents and list of material objects to this Court within 15 days from today along with a complete set of copies of statements and documents separately for furnishing to the accused u/s 207 of Cr.P.C.

(iv) Upon receipt of such hided copies, the original of the Document Nos.194 and 215 and the list of witnesses, list of documents and list of material objects (Annexure-A, B and C to the supplementary charge sheet) along with the material objects Nos.77 and 80 (pen drives) are directed to be kept in sealed cover separately under safe custody by keeping the hided copy of those documents, list of witnesses and list of documents along with the case records for perusal. The sealed cover received on 28.07.2021 which is stated to contain the statements of L.Ws 10, 11, 12, 15 and 19 (mentioned as Protected Witnesses A, B, C, F and J) shall also be kept as it is in the said sealed cover under safe custody.



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(v) *After the concerned witnesses, namely, LWs 10 to 25 and LWs 222 to 225 are examined in-chief, the corresponding original statements and list of witnesses are to be taken out from the sealed cover and a copy of such original statement shall be furnished to the accused persons to enable them to do their cross examination. Similarly, on the day on which the above mentioned excluded documents and material objects are intended to be marked by the prosecution, the concerned original document or material object shall be taken out from the sealed cover and the same may be marked after furnishing a copy of the same to the accused.'*

9. On 25.06.2025 Crl.M.P.No.233 of 2025 was filed by the petitioners inspired by the judgment of the Supreme Court in the case of *Mohammed Asarudeen v. Union of India & Ors*¹ objecting to the protection accorded and pointing out that the respondent must satisfy the Court with the reasons set out as per section 44(2) of the UAPA for the grant of protection. That Miscellaneous Petition was allowed on 21.08.2025 on an endorsement made by the Special Public Prosecutor.

10. The Union then approached the Special Court once again in Crl.M.P.No.318 of 2025 seeking to treat LWs 10 to 25, 222 to 225 as protected witnesses and all documents connected to those witnesses as protected documents. The petitioners, arrayed as respondents before the Special Court, filed a counter objecting to the protection accorded to the witnesses and insisting on their right of cross examination as being a fundamental component

¹ SLP (Crl.)No.18155 of 2024 dated 06.05.2024



of free trial, relying on the judgment in *Kartar Singh V. State of Punjab*² rendered in the context of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (TADA) and *Chandrasekhar Patel V. Suresh & Ors.*³.

11. On 24.12.2025, the Special Court allowed the petition in part, holding LWs.10, 11, 12 and 15 as protected witnesses and the documents connected with them, being D25, D26, D28, D50, D74, D89, D102, D119, D120, D121, D130, D131, D194 and D215 as protected documents along with the threat assessment reports and enquiry statements.

12. The protection was made effective for the life of the witnesses. It is as against this order that Crl.O.P.No.4909 of 2026 has been instituted. Both parties would concur on the position that despite orders dated 26.04.2018 and 19.08.2021, there was really no secrecy maintained in the identity of the witnesses in the course of trial.

13. That apart, Crl.M.P.No.322 of 2025 was filed by the four petitioners seeking the following prayers:

- i) P.W.40 and P.W.52 had inadvertently not been cross examined;
- ii) P.Ws. 62 to 65 are to be cross examined based upon the deposition of P.Ws.73 to 75 and

²(1994) 3 SCC 569

³2023 Supreme (SC) 1261



iii) To recall the witnesses P.Ws.40, 52, 62, 63, 64 and 65 for the purpose of cross examination.

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14. That Miscellaneous Petition came to be substantially dismissed on 17.12.2025 and their request to recall the witnesses, save P.W.40, rejected. The Court notes that as far as P.Ws.52 and 62 to 65 were concerned, they had already been cross examined by the defence counsel in extenso. As far as P.W.52 is concerned, he had been examined in chief on 31.05.2024 and was present on 12.08.2024 for cross examination when the counsel for the accused had declined cross examination.

15. All exhibits marked through P.W.52 had been furnished to the accused on the date of chief examination and it was only after perusal of those documents, that the defence had chosen not to cross examine him. The learned Judge thus proceeds to reject the request for cross examination of all witnesses, save P.W.40, who had not been cross examined earlier. It is as against order dated 17.12.2025 that Crl.O.P.No.4906 of 2026 has been filed.

16. Mr.Basith, learned counsel, appears for the petitioners in both matters. He would submit that there is no justification in treating certain witnesses as protected witnesses. Moreover, the learned Judge ought to have permitted recall of the protected witnesses as the petitioners had been denied the right to cross examine them at the first instance.



17. Taking us through various judgments of the Supreme Court, he would submit that the selection of witnesses as protected witnesses had been arbitrary and without any application of mind, and such protection greatly prejudiced the accused as they were unable to put forth a proper case to defend themselves.

18. Section 44(1) of the UAPA states that notwithstanding anything contained in the Code, proceedings under UAPA may be held in-camera if the Court records reasons in writing. Section 44(2) states that if an application is made by a witness or by the Public Prosecutor apprehending danger or threat to the life of witnesses, the Court may impose such measures as are appropriate for keeping the identity and address of the witness secret after recording reasons in writing.

19. Section 44(3) mentions some of the measures that the Court may resort to, such as holding of proceedings at a particular place, effacing the name and address of the witness in Court records, issuance of directions for securing the identity and other details of the witnesses or direction not to publish the proceedings of the Court in public interest. Mr.Basith submits that Courts rarely, if at all, apply their mind to an application filed under Section 17 of the NIA Act seeking protection of witnesses, and the applications are allowed for the mere asking. According to learned counsel, this is one such instance.

20. Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for Mr.Karthikeyan, learned Special Public Prosecutor for NIA cases, would

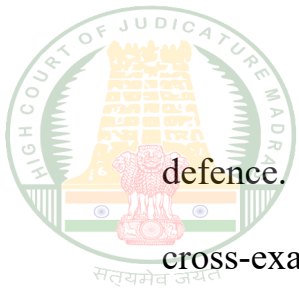


submit that it is necessary in such cases to accord protection to a witness based on the threat perception and the other materials produced before the learned

Judge. The Special Court bestows attention to the request for protection of witnesses and, based on the gravity of the case, orders such pleas. The present matter is no exception, and no case has been made out to intervene in the impugned order.

21. Heard both learned counsel. As far as CrI.O.P.No.4906 of 2026 is concerned, the challenge is to the order of the learned Judge permitting recall only in the case of P.W.40, and rejecting the plea for recall of other witnesses on the ground that sufficient opportunity has been granted to the defence to cross-examine them. The defence had either availed the opportunity given or, in one case, chosen not to. In the case of one witness where no opportunity had been granted at the first instance, the petitioners have been granted the right now.

22. Charge sheets in this matter have been filed on 07.04.2018 as against A2 and A3, on 21.06.2018 as against A1 and on 06.08.2021 as against A5 and trial is proceeding from that date onwards. We are given to understand that the authorities had approached the Supreme Court and the Supreme Court is monitoring the trial to ensure that there are no further delays in the matter. Thus, as far as Cr.O.P.No.4906 of 2026 is concerned, we agree that sufficient opportunity had been granted at the initial stage and had been availed by the



defence. The learned Judge has found one instance where the defence had not cross-examined the witness, and has put the record straight, by granting such opportunity.

23. As far as Crl.O.P.No.4909 of 2026 is concerned, while the petition prays for protection of 20 witnesses, the Special Court has treated four witnesses, viz., L.W.10, 11, 12 and 15 as protected witnesses and connected documents, threat assessment reports and enquiry statements, as protected documents. This is hence not a case where the officer has, en masse, proceeded to accept the case of the Prosecution.

24. Learned Judge has sifted through the contentions of both parties, the compelling requirement for a fair trial including the opportunity to cross examine and discussed applicable case law, proceeding to declare four individuals as protected witnesses and connected documents as protected documents. The protection has been extended for their lifetime as, in her view, the threat analysis report reveals that the threat as against their life was extreme.

25. To a specific question put by us as to how the chief examination of the protected witnesses was conducted, Mr.Sundaresan, on instructions, states that the chief examination was recorded in the presence of the accused and even redacted portions were elicited in the presence of the accused. Having acceded so, he would argue that cross examination in any event was not mandatory,



relying on the judgments in *Gurbachan Singh v. State of Bombay and another*⁴, *Hira Nath Mishra and others v. The Principal, Rajendra Medical College, Ranchi and another*⁵ and *Mahender Chawla and ors. v. Union of India and ors*⁶.

26. As could be seen from the impugned order, the learned counsel for the defence, had in fact opposed the prayer for protection stating that the documents relatable to the witnesses that were supplied to the accused revealed the identity of the witnesses. Before us, the appellant does not dispute this factual position. Therefore, in this case, we do not see any reason to interfere in the impugned order, since the right of cross-examination has not been abridged or curtailed because of the order of the learned Judge declaring the witnesses as protected.

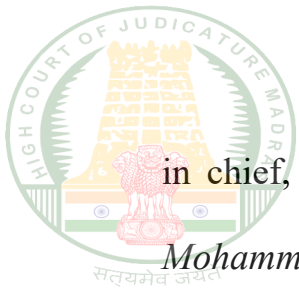
27. The challenge seems more cosmetic rather than substantive, as no prejudice has been caused to the Appellant. For the aforesaid reasons, we see no justification in intervening with the impugned orders dated 17.12.2025 and 24.12.2025. Accordingly, CrI.O.P.Nos.4906 and 4909 of 2026 and the connected Miscellaneous Petitions are dismissed.

28. However, we have to necessarily record our displeasure as regards the manner in which orders have been passed by the trial Court. In spite of an earlier order dated 19.08.2021 to furnish the redacted statements after the examination

⁴1952 AIR SC 221

⁵1973 AIR (SC) 1260

⁶(2019) 14 SCC 615



in chief, copies were not furnished, citing the order passed by this Court in *Mohammed Asarudeen's*⁷ case, which ultimately was reversed by the Hon'ble Supreme Court. Often, we find that the Special Court grants protection of witness for the mere asking and there is little clarity in respect of the manner by which the protection is to be extended, period of protection, and reasons for such decision.

29. The larger question that was brought to light in this matter, related to the manner in which witnesses were accorded protection under Section 44 of the UAPA Act. In many of the orders that we have seen, the learned Special Judge has proceeded to pass orders mechanically either at the instance of the witness or prosecution, holding the witnesses to be protected. There was also no clarity or reasoning in regard to the extent of protection, the duration thereof, and the manner by which the protection was to be given.

30. We thus sought the assistance of Mr. Sharath Chandran on the aspect of the matter relating to witness protection, and have heard learned Amicus Curiae in detail. We record our deep appreciation for the efforts of learned Amicus to assist us in the matter, and draw from his oral and written arguments in tracing the background to Section 44 as we know it today, and our understanding as to how the provision must be understood and applied.

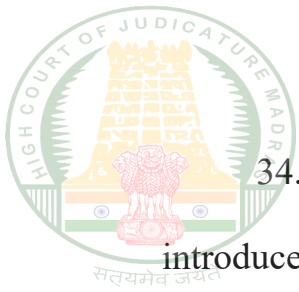
⁷Foot Note Supra (1)



31. Protection of witnesses is provided for under Section 17 of the National Investigation Agency Act, 2008 (NIA) which states that, notwithstanding anything contained in the Code, proceedings conducted in regard to the NIA Act may be held in-camera, if the Special Court if so desires, carving out an exception from Section 327 of the Code which requires Court hearings to be open in nature.

32. Section 17(2) says that such protection may be accorded either on an application made by the witness in a proceeding or by the Public Prosecutor in relation to a witness or suo motu by the Court, if the Special Court is satisfied that the life of the witness was in danger. The measures to be adopted for grant of such protection by keeping the identity of such witness secret are left to the discretion of the Court with suggestions made in Section 17(3), being (a) holding of proceedings in a location alternate to the regular Court hall, (b) avoiding of the names and addresses of the witnesses in orders/judgments/case records, (c) issuing of directions that the identity and witness of the witness not be disclosed and (d) directions that the proceedings before the Court not be published in any manner.

33. In a case where the Special Judge passes orders under Section 17(1)/(2)/(3), any contravention was held to be punishable with imprisonment that may extend to three years and fine. This is provided for under Section 17 (4). Section 44 of the UAPA mirrors Section 17 of the NIA Act.



34. The Terrorist Affected Areas (Special Courts) Ordinance was introduced on 15.07.1984 to provide for speedy trial of matters in terrorist affected areas by setting up Special Courts. The ordinance was replaced by the Terrorist Affected Areas (Special Courts) Act, 1984, with effect from 31.08.1984, that dealt with protection of witnesses under Section 12 thereof.

35. Section 12 reads as follows:-

12. Protection of witnesses – (1) Notwithstanding anything contained in the Code, all proceedings before a Special Court shall be conducted in camera:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(2) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

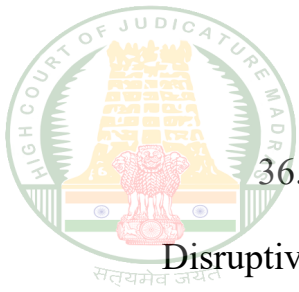
(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include –

(a) the holding of the proceeding at a protected place;

(b) the avoiding of the mention of the names and addresses 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 addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under sub-section (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

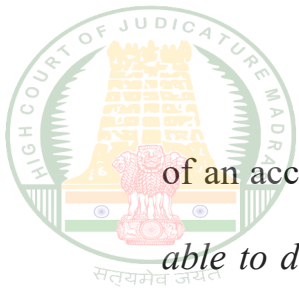


36. Section 12 as above, was mirrored in Section 13 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA), application of which was extended from time to time till it lapsed on 23.05.1995. Section 13 in the 1985 TADA Act was carried forward as Section 16 in the subsequent editions of the TADA Act and the difference between Section 12 of the 1984 TADA Act and Section 16 of the 1987 TADA Act was that Section 16(3)(a) of the latter empowered the Special Court to hold proceedings at '*a place*', as against '*a protected place*', to be decided by the Special Court. The second difference was that Section 16(3) contained Clause (d) empowering the Court to order in public interest, that the proceedings not be published in any manner.

37. The 1985 and 1987 editions of the TADA were challenged before the Punjab and Haryana High Court and in *Bimal Kaur Khalsa v. Union of India*⁸, the Full Bench was of the view that Section 16(1) of TADA, 1987 made serious inroads into the principle of open justice, as in-camera trials were declared to be the norm rather than the exception. Since the Full Bench also expressed the view that the decision as to whether open trial was to be conducted was at the discretion of the Public Prosecutor, Section 16 came to be substituted in 1993, clarifying that the decision for an in-camera hearing was to be by the Court.

38. Coming to the protection of witnesses, the Bench held that there has to be a fair balance between protection of the witness and the right of fair trial

⁸AIR 1988 P&H 95



of an accused. To put it in their words, the Court must *'ensure that a witness is able to depose (before) the Court free from all mental constraint and fear'* on the one hand and *'at the same time ensure that the accused is put in a position to effectively cross examine the witness'*.

39. Bearing in mind the necessity and importance of the right of cross examination, the Full Bench stated that where the trial was held in an open Court, the identity of the witness shall be left open, to be viewed by the accused, his counsel and the Court. Hence, the balance in Section 16 was sought to be achieved by stating that the name, identity and the address of the witness should be disclosed well before the start of the trial to ensure effective cross examination.

40. The constitutional validity of the Terrorist Affected Areas (Special Courts) Act, 1984 and the Terrorists and Disruptive Activities (Prevention) Act of 1985 and 1987, were challenged before the Supreme Court in *Kartar Singh*⁹, and while upholding the validity of Section 16(2) and 16 (3) of the TADA, the Supreme Court held that there was no imposition of constitutional or statutory constraint against keeping the identity and address of a witness's secret, if warranted by *'extraordinary circumstances or imperative situations'*.

41. In order to maintain the balance, the Supreme Court concluded stating that, while normally the identity and other details of the witnesses may be

⁹ Foot Note Supra (2)



disclosed before trial commences, the Court has the discretion, for ‘weighty reasons’ that must be recorded, not to disclose the identity and details of the

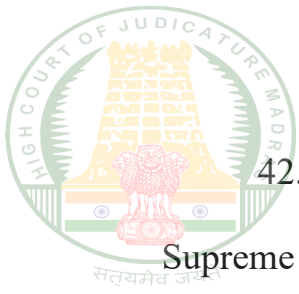
witnesses in order to protect their lives. The relevant observations of the

Supreme Court are as follows:

‘289. In this context, reference may be made to Section 228-A of the Indian Penal Code as per which the disclosure of the identity of the victims of certain offences, as contemplated under sub-section (1) of that section is punishable but subject to sub-section (2). However, when the witnesses are examined in the presence of the accused then the accused may have the chances of knowing the identity of the witnesses if they are already known to the defence. But if the witnesses are unknown to the defence then there is no possibility of knowing the identity of the witnesses even after they enter into the witness box. During a trial after examination of the witnesses in chief the accused have got a right of deferring the cross-examination and calling the witnesses for cross-examination on some other day. If the witnesses are known to the accused they could collect the material to cross-examine at the time of cross-examination in such circumstances. Whatever may be the reasons for non- disclosure of the witnesses, the fact remains that the accused persons to be put up for trial under this Act which provides severe punishments, will be put to disadvantage to effective cross-examining and exposing the previous conduct and character of the witnesses.

290. Therefore, in order to ensure the purpose and object of the cross-examination, we feel that as suggested by the Full Bench of the Punjab and Haryana High Court in Bimal Kaur (Bimal Kaur Khalsa v. Union of India and Others, AIR 1988 Punjab and Haryana 91), the identity, names and addresses of the witnesses may be disclosed before the trial commences; but we would like to qualify it observing that it should be subject to an exception that the court for weighty reasons in its wisdom may decide not to disclose the identity and addresses of the witnesses especially of the potential witnesses whose life may be in danger.

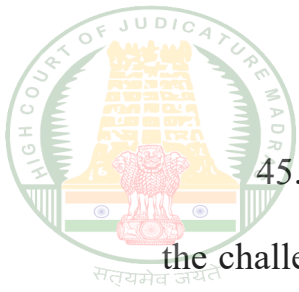
emphasis supplied



42. This judgment was rendered by the three Hon'ble Judges of the Supreme Court. The TADA lapsed on 23.05.1995 and the successor, Prevention of Terrorism Bill, 2000 came to be considered by the Law Commission in its 173rd Report. The discussion on achieving a fine balance between a fair trial and witness protection continued, with the Law Commission expressing the view that, on recording of the reasons of the Court that the life of a witness was in danger, it may take such measures as necessary to balance the right of cross examination and the protection of the witness.

43. In their words, '*we are also of the opinion that the power of the court to take appropriate measures to permit cross-examination even while protecting the identity of the witness must be deemed to be implicit in sub-cl. (2) and (3) as they are found in the Bill*'

44. It was in this backdrop that the Prevention of Terrorism Act, 2002 (POTA) was enacted, where Section 30 provided for witness protection. Section 30 emphasized that the Court has to record satisfaction and the reasons indicating the basis of satisfaction that the life of a witness was in danger, prior to resorting to the measures set out in Section 16(3) for protecting the witness's life.



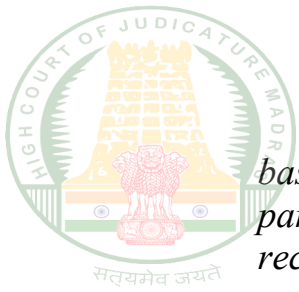
45. In *PUCL v. Union of India*¹⁰, Section 16 came to be challenged and the challenge was repelled in the following terms, and we extract the following observations for better understanding:-

56.....Anonymity of witness is not general rule under Section 30. Identity will be withheld only in exceptional circumstance when the Special Court is satisfied that the life of witness is in jeopardy.....

58.....The present position is that Section 30(2) requires the court to be satisfied that the life of a witness is in danger to invoke a provision of this nature. Furthermore, reasons for keeping the identity and address of a witness secret are required to be recorded in writing and such reasons should be weighty. In order to safeguard the right of an accused to a fair trial and basic requirements of the due process a mechanism can be evolved whereby the special court is obligated to satisfy itself about the truthfulness and reliability of the statement or disposition of the witness whose identity is sought to be protected.

59. Our attention has been drawn to legal position in USA, Canada, New Zealand, Australia and UK as well as the view expressed in the European Court of Human Rights in various decisions. However, it is not necessary to refer any of them because the legal position has been fully set out and explained in *Kartar Singh* and provision of POTA in Section 30 clause (2) has been modelled on the guidelines set out therein. We may further notice that the effort of the court has been to balance the right of the witness as to his life and liberty and the right of community in effective prosecution of heinous criminal offences with the right of the accused to a fair trial. This is done by devising a mechanism or arrangement to preserve anonymity of the witness when there is an identifiable threat to the life or physical safety of the witness or others whereby the court satisfies itself about the weight to be attached to the evidence of the witness. In some jurisdictions an independent counsel has been appointed for the purpose to act as *amicus curie* and after going through the deposition evidence assist the court in forming an opinion about the weight of the evidence in a given case or in appropriate cases to be cross-examined on the

¹⁰ (2004) 9 SCC 580



basis of the questions formulated and given to him by either of the parties. Useful reference may be made in this context to the recommendations of the Law Commission of New Zealand.

60. The necessity to protect the identity of the witness is not a factor that can be determined by a general principle. It is dependent on several factors and circumstances arising in a case and, therefore, the Act has left the determination of such question to an appropriate case.

61. Keeping secret the identity of witness, though in the larger interest of public, is a deviation from the usual mode of trial. In extraordinary circumstances we are bound to take this path, which is less travelled. Here the Special Courts will have to exercise utmost care and caution to ensure fair trial. The reason for keeping identity of the witness has to be well substantiated. It is not feasible for us to suggest the procedure that has to be adopted by the Special Courts for keeping the identity of witness secret. It shall be appropriate for the concerned Courts to take into account all the factual circumstances of individual cases and to forge appropriate methods to ensure the safety of individual witness. With these observations we uphold the validity of Section 30.'

46. The repeal of the POTA by the Prevention of Terrorist (Repeal) Act, 2004, with effect from 21.09.2004 saw, on the same day, the promulgation of the Unlawful Activities (Prevention) Ordinance. Many provisions of the POTA were telescoped under the UAPA, which has been in existence since 1967 and Section 30 of the POTA assumed the avatar of Section 44(1) to Section 44(4) of the UAPA Act, 1967.

47. The ingredients of Section 44 are as follows:

- (i) Holding of in-camera trials on recording of reasons by the Court under Section 44(1).
- (ii) The Court, suo motu on an application by the Public Prosecutor or witness may, if satisfied that the life of a witness is in danger,



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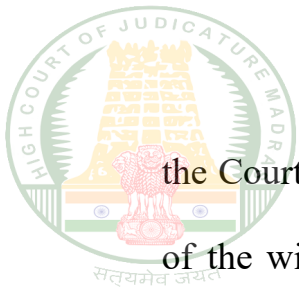


record the reasons therefor, and initiate such measures in its discretion as are necessary for keeping the identity and address of that witness secret. To be noted, that such application cannot be filed by a police officer who may, at best, seek exclusion of a part of a statement made by a witness, in public interest and for sufficient reasons to be set out.

- (iii) The Court has wide discretion to initiate protective measures qua an endangered witness including the measures stipulated under Clauses (a) to (d) of Section 44(3).

48. This provision has not been challenged. Similar provisions have been tested by the Supreme Court and held to be valid on certain conditions. Therefore, we intend to reiterate the said principles so as to balance the right of the accused and the protection that is required to be given to the witnesses. For this purpose, the Court must exercise discretion on an application filed by either witness or Public Prosecutor to decide whether the plea for protection is warranted or justified as it would certainly make some inroads into the rights of an accused.

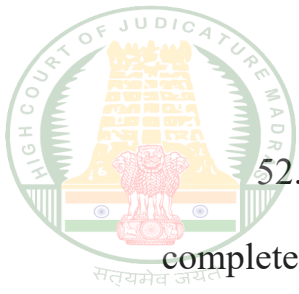
49. We observe that this provision is meant to be a protection / shield to the witnesses from threats and not a sword in the hands of the prosecution to curtail or abridge the valuable right of cross-examination. Therefore, whenever an application is made by the prosecution, or by any witness seeking protection,



the Court would have to first examine the gravity of the threat, whether the life of the witness was in danger or whether the threat to the witness would only continue till he deposes before the Court. The measures to be taken would have to be commensurate to the decision in regard to the aforesaid parameters, in terms of the paragraphs to follow.

50. As and when the Court decides to keep the identity and address of witness secret, it is for the Court to decide as to which portion of the statement has to be redacted and it shall not be left to the discretion of the prosecution to decide that aspect. We find that in many cases, the Court accepts the redactions made by the investigating officer without examination. This is not only contrary to the purport and object of Section 44 of the UAPA Act, 1967, but would also pave way for affording undue advantage to the prosecution in the adversarial system that we follow.

51. The second grey area relates to the tenure of protection given to a protected witness. The measures taken for protection would normally relate to redaction of the name, address and other particulars in the statement that would point to the personal/identifying details of the deponent. If the right of the accused to cross examination is to be achieved, it is normally required for the Court to direct disclosure of the details, prior to cross examination. Such a right would depend on the subjective satisfaction of the Court as to the extent of protection to be afforded, having regard also, to the object of the UAPA.



52. We have noted that in some cases the Court directs furnishing of complete unredacted statements prior to commencement of trial, in order that the accused may equip himself in full for the trial. In some other cases, the unredacted version of the statements are supplied to the accused prior to cross examination and we have also seen in some cases the Court directing protection to be maintained for the lifetime of the witness, being of the view that the threat perception is so grave.

53. All three approaches would be perfectly within the domain of the Court as it is presumed that the decision is taken after assessing the plea for protection, the justification for the same and threat perception. It is only when the third option is exercised by the Court, that the right of cross-examination of the accused is abridged to a great extent and we must therefore, strike a balance.

54. Witness protection in India assumes a different form and substance than what it does in other Countries. While one might commonly understand witness protection as meaning protection of a witness for life by giving the witness a new identity and life in an altogether different place, in India, the concept of witness protection is restricted to the canvas of that particular trial alone.

55. In fact, a Witness Protection Scheme was prepared in 2018 providing for a comprehensive decision for deciding on protection of witnesses, the scope of the competent authorities in Districts to decide the extent of protection to be given, the means by which the decision of the competent authority should be



taken and a review by the defence or police authorities of the decisions of the competent authority.

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56. However the authority for consideration of the review has not been stipulated. It is also unclear as to whether at all, the Scheme has been notified and hence, it appears to us that the Scheme has been abandoned without Notification. Importantly, the aim and object of the Scheme indicates only protection of the witness sans balancing the rights of the defence. Moreover, a review has been provided only to the witness or police authority.

57. This indicates that the Scheme is solely witness centric and does not strike the necessary balance that we are urging now, by taking into account the interests of the defence, particularly in the context of cross examination.

58. While it may seem that stipulating measures for protection up to a particular stage only, might not serve the purpose of protection in the fullness of the term, we have noted that it is open to the Court to extend the protection for the life of the witness as well in deserving cases, if at the discretion of the Court, the threat perception qua that witness were to be so severe or grave.

59. It thus becomes all the more important that the decision in regard to measures for witness protection take into account the particular facts and circumstances of the case, its peculiarities, the perception of threat and all other available material, before the Special Court Judge addresses the question of witness protection and the extent of the same. There is thus no one size fits all



formula as far as witness protection is concerned and the only rule that reigns is the one relating to application of mind by the Court on this aspect of the matter.

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60. In *Union of India v. Mohammed Asarudeen*¹¹, a Division Bench of this Court had taken the view that the protection accorded was for the lifetime of the witness and Section 161 statements could not be handed over to the defence at any time during the trial. The Division Bench had held that if a statement of a protected witness were to be handed over to an accused that would render the protection an empty formality.

61. Setting aside the order of the High Court, the Supreme Court, in *Mohammed Asarudeen*¹² expressly held that it is not in every case that the protection must be ad infinitum or over the lifetime of the accused. It is for the Court to apply its mind as to what the measures must be and record its reasons for directing those measures.

62. Thus, in substance, it is the subjective satisfaction of the Court in imposing directions that is relevant, and more importantly, the reasons for the formation of that subjective satisfaction, that must be reflected in the order itself. The words of the Supreme Court are as follows:

10. It is not that in every case that after such satisfaction is recorded, the Court can pass an order prohibiting the prosecution from providing a copy of the entire statement of the prosecution witnesses till the conclusion of the trial. The Court has to apply its mind considering the material on record, what kind of measures should be adopted for keeping the identity and address of such a

¹¹CrI.O.P.No.2872 of 2024 dated 21.10.2024

¹²Foot Note Supra (1)



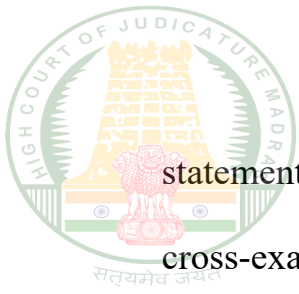
witness, secret. While deciding what kind of measures should be adopted, the Court must record brief reasons.

11. On plain reading of sub-section 2 of Section 44 of the UAPA, the Court has to apply its mind in relation to danger to a particular witness. An omnibus application cannot be made by the Special Public Prosecutor for the grant of protection under sub-section 2 of Section 44 for all witnesses or a number of witnesses. Even if an application is made in respect of more than one witness, specific averments in relation to every witness must be made in the application. In our view, sub-section 2 of Section 44 of the UAPA (sub-section 2 of Section 17 of NIA) must be strictly complied with, as the exercise of the power may affect the right of the accused to defend.

14. This observation of the High Court completely ignores the second part of sub-section 2 of Section 44 of the UAPA. Even assuming that a satisfaction was recorded that there was a danger to the life of a witness, the Court was required to apply its mind to decide what measures should be taken to protect the witness as regards his identity, address and name, etc. The Court must apply its mind to decide what measures should be taken and record brief reasons for taking such measures. Therefore, in every case where the first part of satisfaction under sub-section 2 of Section 44 is recorded, the Court cannot pass a blanket order as suggested by the High Court in paragraph 21. The Special Court must be conscious of the fact that subsection 2 of Section 44 of UAPA is an exception to the normal rule. Therefore, we disapprove the findings recorded by the Special Court and the High Court to that extent.

63. From Section 44 of the UAPA and the observations made by the Supreme Court while upholding the constitutional validity of similar provisions, we summarise, at the risk of repetition, that the Court has three available approaches before it, if it comes to the conclusion that the protection of the witnesses is required.

64. If the Court exercises the first two options i.e., providing unredacted statements prior to the commencement of the trial or furnishing unredacted



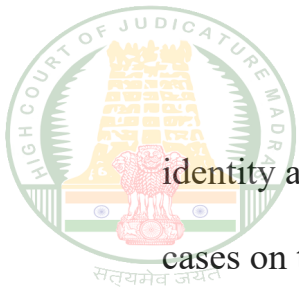
statements after the chief examination of the witnesses is complete and prior to cross-examination, the right of the accused to cross-examine the witness is neither abridged nor curtailed. These two options can be exercised by the Court if there is a reasonable apprehension of threat to the witness.

65. It is only in cases where the Court is of the view that the protection to the witness is for lifetime and the unredacted statements of witnesses, which purports to conceal the identity of the witnesses, are never furnished to the accused, that the right of cross-examination is abridged. This option cannot be exercised on mere asking and it should be exercised only in extraordinary or exceptional circumstances.

66. Needless to say, one of the important facets of cross-examination is to discover who the witness is and what is his position in life. It shall also be lawful in cross-examination to ask any question which tends to shake the credibility of the witness by injuring his character. Therefore, this important right of the defence would be denied if the anonymity of the witness is maintained.

67. That is exactly the reason why the Supreme Court in *Kartar Singh*¹³ held that only in exceptional cases shall the anonymity of the witness continue for lifetime of the witness, mandating the trial Court to give weighty reasons if and when such a course is adopted. Mr. Sharath has also elaborated on what might constitute the residual category of cases where, for weighty reasons, the

¹³ Foot Note Supra (2)



identity and other details of the witness may be withheld, referring to very many cases on that aspect, and making the following suggestions:

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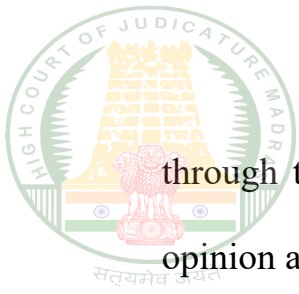
'It is submitted that as observed by the Supreme Court in the PUCL case, where anonymity orders are passed the Court must be satisfied about the weight to be attached to the evidence of such witness. As the accused is deprived of the identity of the witness, he is undoubtedly deprived of the benefit of cross examining him to shake his credibility. This problem could become particularly severe in cases of stock witnesses where the issue of credibility is the core. Hence, to ensure that convictions are not obtained through the use of stock witnesses, the investigation officer should be directed to file an affidavit which must disclose the antecedents, if any of the witness, and if he has deposed as a witness in any other case, and if so, the details thereof. This would enable the trial judge to appropriately consider his antecedents and assign appropriate weight to his testimony.

In other cases, the trial Court must ordinarily look for some corroborative material before acting on the anonymous evidence. As the Supreme Court in PUCL, has held the Court must necessarily satisfy "itself about the weight to be attached to the evidence of the witness", which would include corroboration.'

68. The last question would be in regard to the probative value of the evidence of such an anonymous witness, who could not be subject to full cross-examination. In *PUCL*¹⁴, the Supreme Court had occasion to consider this aspect as well, observing that in order to safeguard the right of the accused, the Special Court is obligated to satisfy itself about the truthfulness or reliability of the statement or deposition of the witness, whose identity is sought to be protected.

69. In fact, the Court had also observed that some jurisdictions also provide appointment of independent counsels to act as amicus curiae for going

¹⁴ Foot Note Supra (10)



through the depositions of such witnesses and assist the Court in forming an opinion about the weight of the evidence of such witnesses.

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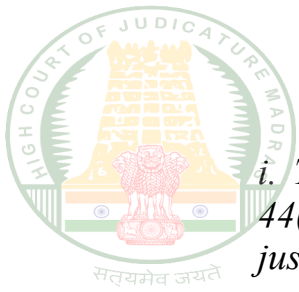
70. In a recent decision, *Bilal Mir v. National Investigation Agency*¹⁵, a learned Single Judge of the Delhi High Court was pleased to consider the very same question and observed that while considering the evidence of such witnesses the Court must bear in mind that cross-examination was abridged and should appreciate the evidence with due caution and trepidation.

71. It is trite that any version untested by cross-examination would normally have no value. In the case of an anonymous witness, the cross-examination is abridged and therefore, his version is not fully tested. Hence, the probative value of such witness, would not be the same as that of the other witnesses, whose versions have been subjected to complete cross-examination, and the Court therefore, has to look for corroboration of such testimony.

72. The value to be attached to uncorroborated testimony of such witness would depend on the facts and circumstances of each case, the nature of evidence adduced through that witness and its relevance to the facts of the case.

73. Mr. Sharath has distilled the principles from the backgrounder to Section 44 and put forth several instructive suggestions. Endorsing the same, we issue the following directions:

¹⁵ CrI.M.C.No.5129 of 2025 in CrI.M.A.No.22186 of 2026 dated 29.07.2026



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i. The Court is empowered and has the discretion under Section 44(1) to hold an in camera trial if the circumstances of the case so justify.

ii. After the completion of investigation, the investigation officer may append a note with the final report and the statements collected during the course of investigation seeking redaction of a portion of the statement. Section 173(6) Cr.P.C./ Section 193(7) BNSS does not authorize withholding of the entire statement recorded under Section 161(3), but only a part thereof and that too only on the ground that “essential in the interests of justice and is inexpedient in the public interest”. The police officer is also required to adduce brief reasons as to why redaction is sought¹⁶.

iii. Though redaction is with respect to “identity” and “address” these expressions take within their fold any other relevant aspect like his native place, his profession or any other special feature which may tend to pinpoint the witness to the accused¹⁷.

iv. Though the Public Prosecutor may suggest the material to be redacted the final decision must rest with the Court since it is the Court which must ultimately be satisfied under Section 16(2) on the suitability of the measures taken.

v. An omnibus application cannot be made by the prosecution. There must be specific averments with respect to every witness and the Court must bestow its attention to assess the presence of danger / fear in relation to a particular witness¹⁸.

vi. An accused has a right of hearing when the application under Section 44(2) comes up for consideration but is not entitled to know the identity of such witnesses in respect of whom the application(s) are made till such time an order is passed on the application, and subject to the same.

vii. The principle of open justice is the rule. Witness anonymity orders are an exception to this rule¹⁹ and must be strictly construed. Identity will be withheld only in exceptional circumstances when the Special Court is satisfied that the life of the witness is in jeopardy²⁰.

¹⁶ Arvind Kejriwal v Enforcement Directorate, (2025) 2 SCC 248

¹⁷ Subair T.P v Union of India, 2020 Cr LJ 3057

¹⁸ Mohammad Asarudeen v NIA, 2025 SCC OnLine SC 1219

¹⁹ PUCL v Union of India (2004) 9 SCC 580, para 56

²⁰ Ibid at para 56



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ix. *Within this exception, the Court must first examine, in the circumstances before him, the stage till which identity, names and addresses of the witnesses are to be protected, and whether the protected information may be disclosed before trial commences or before cross-examination²¹.*

viii. *The aforesaid is subject to a further qualification that for 'weighty reasons' the Court may withhold the identity and addresses of the witnesses especially of the potential witnesses whose life may be in danger (the residual category)²².*

74. We would conclude reminding ourselves that an order under Section 44 is not final in any respects, but is subject to revision by the Court, either suo motu or at the instance of the witness/Public Prosecutor based on the fluctuations in circumstances and in the gravity of threat and other parameters. It is interlocutory in character and maybe revisited any number of times.

75. Since we are given to understand that there is no specific procedure that is followed by the Court in deciding applications for witness protection, we request Mr.Sharath Chandran, learned Amicus to circulate an SOP in this regard.

76. List on 21.09.2026 to receive SOP.

(A.S.M.,J.) (S.M.,J.)
07.09.2026

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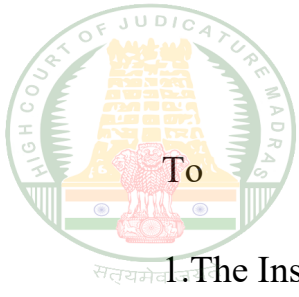
Speaking/Non-speaking order

Neutral Citation: Yes/No

Note: Registry is directed to return the files received from the Special Court in a sealed cover forthwith.

²¹Kartar Singh v State of Punjab (1994) 3 SCC 569, at para 290

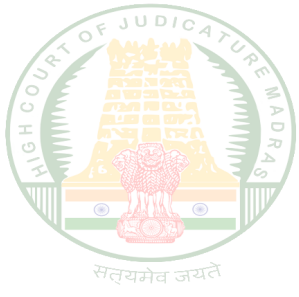
²² Ibid, at para 290



To

1. The Inspector of Police
National Investigation Agency,
Delhi/Chennai.
(In RC No.03/2018/NIA/DLI)

2. The Public Prosecutor, High Court of Madras.



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CRL OP Nos. 4906 & 4909 of 2



DR.ANITA SUMANTH J.

AND

SUNDER MOHAN J.

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**CRL OP No. 4906 of 2026
AND
CRL OP NO. 4909 OF 2026,CRL MP NO. 3548 OF 2026,CRL MP NO.
3545 OF 2026**

07.09.2026