



2026:DHC:6223



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 11th March, 2026
Pronounced on: 29th July, 2026

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CRL.M.C. 5129/2025, CRL.M.A. 22186/2025

BILAL MIR

S/o Ghulam Mohammad Mir
R/o Gulbagh Colony,
Parimpora,
Srinagar District,
Jammu & Kashmir

.....Petitioner

Through: Mr. Adit S. Pujari, Adv., Mr. Kartik
Venu, Adv., Mr. R Jude Rohit, Mr.
Arjan Ajai Singh Chonker, Mr.
Bhavesh Seth, Mr. Harshwardhan
Pushkin Sharma, Advocates.

versus

NATIONAL INVESTIGATION AGENCY

(Though Its Director)
P.S. NIA, New Delhi.

.....Respondent

Through: Mr. Gautam Narayan (SPP), Ms.
Asmita Singh, Mr. Shashank Jain, Mr.
Geet Dehariya, Advocates.

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CRL.M.C. 5130/2025, CRL.M.A. 22190/2025

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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Petitions have been decided together.

CRL.M.C. 5129/2025:

2. **Petition** under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) read with Article 227 of Constitution of India, 1950 has been filed by the Petitioner Bilal Mir to challenge the Orders dated **08.04.2022** and **20.03.2023**, wherein, the Application filed by the National Investigating Agency (*hereinafter referred to as "NIA"*) under Section 44 of the Unlawful Activities (Prevention) Act, 1967 (*hereinafter referred to as "UAPA"*) read with Section 17 of the National Investigation Agency Act, 2008 (*hereinafter referred to as "NIA*



Act”) for *Protection of Witnesses*, has been allowed by the learned Special Judge.

3. The **brief facts** are that the Petitioner was running a successful timber business under the name of *Faisal Timbers* and was also engaged in the profession of property dealing.

4. On **10.10.2021** RC-29/2021/NIA/DLI dated **10.10.2021** was registered by the NIA under Section 120B, 121A, 122 and 123 of the Indian Penal Code, 1860 (*hereinafter referred to as “IPC”*) & Sections 18/18A/18B/20/38/39 of the UAPA. As per the aforesaid RC, information was received that cadres of proscribed terrorist organizations including, Laskhar-e-Taiba (*LeT*), Hizb-ul-Mujahideen (*HM*), Al Badr and similar other outfits as well as their affiliates namely, The Resistance Front (*TRF*), People Against Fascist Forces (*PAFF*), Mujahideen Gazwatul Hind (*MGH*) were all active in Jammu & Kashmir, and are being orchestrated from Pakistan.

5. They in cohorts with their Pakistan based handlers and commanders along with the network of Over Ground Workers (*OGWs*), were indulging in radicalization of impressionable local youth for the purpose of recruiting and training them in handling of arms, ammunition and explosives. It was alleged that they had conspired to commit terrorist acts, recruited local youth to become members of terrorist organizations and procured arms/ammunition for terrorist purposes and that the members of the aforesaid proscribed terrorist organization had conspired to wage war against the Indian Government. *The Petitioner asserted that he was not named as an accused, in the aforesaid RC.*



6. Subsequently, the Petitioner was arrested on **12.10.2021** and has been in Judicial Custody, since then. Subsequently, upon completion of investigation, Chargesheet dated **08.04.2022** was filed by NIA under the aforesaid Sections. *Out of total 26 accused who were charge-sheeted*, the Petitioner was specifically accused of committing offences under Sections 120B and 121 A of the IPC read with Sections 18, 20, 38 & 39 of the UAPA.

7. On the same day, NIA filed an Application under Section 44 UAPA read with Section 17 of the NIA Act, seeking declaration of certain witnesses *as protected witnesses*. *Vide Order dated 08.04.2022*, the learned Special Judge allowed the Application filed by NIA and *declared 16 witnesses as Protected Witnesses*. In the aforesaid Order it was observed that there was no necessity to supply the copy of the Application to the defence counsel. The Order merely recorded that “*Having heard the learned Senior PP for the NIA and learned Defence Counsel, the Application is allowed and the Statements of the Protected Witnesses be supplied to them concealing their identities.*”

8. It is asserted that **firstly**, the Petitioner was not represented by any legal counsel, at that stage. **Secondly**, the copy of the aforesaid Application had not been supplied to him as he was produced through Video Conferencing, as in the opinion of the learned Special Judge there was no legal necessity to do so; thus impairing a fair opportunity of hearing. **Thirdly**, no reasons were recorded in the Order regarding the existence of any identifiable threat perception *qua* these witnesses sought to be protected from the Accused persons.



9. Cognizance of the offences was taken on **27.04.2022** by learned Special Judge. Thereafter, First Supplementary Charge-sheet dated **20.03.2023** was filed by NIA. On the same day, another Application was filed by NIA seeking *declaration of 8 additional witnesses as protected witnesses*. The learned Special Judge **vide Order dated 20.03.2023** allowed the subsequent Application filed by NIA and granted the status of Protected Witnesses to the aforesaid 8 witnesses.

10. Here also, **firstly**, the Application was heard ex-parte and no opportunity was given to the Accused. **Secondly**, no reasons have been recorded regarding the threat perception to these witnesses.

11. The **charges under Section 120B, 121A of the IPC as well as Section 18 & 18B of the UAPA were directed to be framed against the Petitioner vide Order dated 30.07.2024**. In view thereof, charges were accordingly framed against the Petitioner on **20.08.2024**.

12. Thereafter, two separate Applications were moved by **Accused No. 22 and Accused No. 24** on **15.10.2024** with the prayer that the un-redacted copy of the statement of Protected Witness X-1 be provided to the co-accused persons. **Their Applications, however, were dismissed in limine on the same day, vide Order dated 15.10.2024.**

13. Subsequently, a **second Application** was moved by **Accused No.24** seeking unredacted copy of the statement recorded of Protected Witness X-1. This Application was also dismissed in limine **vide Order dated 16.10.2024**. It was submitted that between **13.01.2025 till 30.04.2025**, testimony of other Protected Witnesses were recorded.



14. It was claimed by the Petitioner that on **05.07.2025**, it was confirmed by the Court staff that the ***Protected Witnesses X-5 and X-11*** have been served and are scheduled to appear before the learned Special Judge, on **12.07.2025**.

15. Thereafter, the Petitioner on **07.07.2025** moved an Application praying for directions to *furnish the complete unredacted and de-anonymized copy of the statements under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC")* dated **23.03.2022** of ***Protected Witness X-5 and un-redacted statements under Section 164 Cr.P.C dated 05.04.2022 of the Protected Witness X-11*** be provided, to give reasonable opportunity to counsel for Petitioner to prepare for the case in consultation with the Petitioner.

16. The Notice of the aforesaid Application filed by the Petitioner, was issued *vide* Order dated 07.07.2025. The Petitioner requested to list the Application before 12.07.2025, otherwise the same would become infructuous, however, the learned Special Judge declined the request of the Petitioner. This led to filing of **Crl.M.C. No.4467/2025** before this Court. The aforesaid Petition was disposed of *vide* Order dated **10.07.2025** with the directions that since identical Applications have been filed before the learned Special Judge, which is listed for 12.07.2025, the Application of the Petitioner be considered on the same date by the learned Special Judge.

17. However, the Application of the Petitioner was dismissed by the learned Special Judge *vide* Order dated **24.07.2025**.

18. The Orders dated 08.04.2022 and 20.03.2023 have been challenged on the grounds that ***firstly***, at the time of aforesaid Orders, the Petitioner was



not represented by any counsel. **Secondly**, the copy of the Application seeking declaration of witnesses as Protected Witnesses was not supplied to the Petitioner. **Thirdly**, the Order was non-speaking and did not contain any reasons for allowing the Application. **Fourthly**, the Order did not meet the requirements of law, as there was no recording of the satisfaction of the Court about the existence of any identifiable threat perception.

19. It was asserted that for implementation of any measure under Section 44 of the UAPA read with Section 17 of the NIA Act, *existence of an identifiable threat perception to each witness* are required to be established by NIA. No such facts are manifest in the Application filed by NIA.

20. Moreover, both the aforesaid Orders were vague, omnibus and non-speaking. Reliance was placed on Mohd. Asarudeen vs. Union of India, 2025 INSC 746. Therefore, the protection granted to the said witnesses, has not been made in accordance with law and the two Orders are not sustainable in law.

21. It was further submitted that the present case involves grave allegations and serious offences under UAPA, pertaining to the offences against the State. It is settled principal that graver the offence, stricter is the proof. In case of special enactment like UAPA, there are many relaxations provided to ordinary procedural safeguards and additional restrictions against an Accused, but the importance of the right to a free and fair trial, cannot be overstated.

22. By not providing disclosure of full particulars of a witness, impairs the ability of an Accused to cross-examine the witness effectively to the fullest extent and capacity. This measure and that too, in a trial involving



serious offences carrying grave allegations under UAPA, is doubly prejudicial and could result in miscarriage of justice.

23. The *right to impeach the credibility of a witness necessarily requires knowing their identity/antecedents*. Exposing the previous conduct and character of the witnesses, is an important aspect of cross-examination, which is statutorily recognized under Section 155 of the Indian Evidence Act, 1872. In such circumstances, an accused would be unable to effectively rebut the factual allegations made by a witness, unless and until the identity of a particular witness is disclosed. This is particularly so in the context of correspondence, meetings and communications; be it through in-person meetings, phone conversation, Whatsapp groups, involving multiple persons and/or in the conduct of common course of business.

24. Had the learned Special Judge allowed the supply of un-redacted statement at a reasonable time prior to examination of the witness, the interest of the Accused could sufficiently be protected by providing some time to prepare for cross-examination.

25. It was claimed that there was no delay or laches on the part of the Petitioner, in terms of the law laid down in Kartar Singh v. State of Punjab, (1994) 3 SCC 569 and People's Union for Civil Liberties & Anr. v. Union of India, (2004) 9 SCC 580.

26. The Petitioner further stated that the Application filed by the Petitioner to challenge the Orders dated 08.04.2022 and 20.03.2023, had been dismissed vide Order dated—by Ld. Special Judge, by observing that these two Orders had not been earlier challenged and thus, had attained



finality. The aforesaid Orders could not be reviewed/revised in view of the bar of Section 362 of the CrPC.

27. The Petitioner has been left with no alternative but to challenge the two Orders dated 08.04.2022 & 20.03.2023, by way of present Petition in order to avoid any objection to the Petition, given the paucity of time.

28. It was further submitted that the Order dated **15.05.2024** passed by the Supreme Court in the bail plea of the co-accused, has no bearing to the issue of delay and laches as the conduct of co-accused cannot estop the Petitioner.

29. The Supreme Court *vide* Order dated 15.05.2024 in **SLP (Crl.) No.83/2024** titled '*Suhail Ahmad Thokar vs. NIA*' had directed that the Special Court shall ensure that the Protected Witnesses, are examined first. However, the Petitioner was not a party in the aforesaid SLP. The Petitioner's main concern relates to his own defence and in cross-examination of those Protected Witnesses that make allegations against him. The actions or proceedings of co-accused, cannot be imputed to the Petitioner, nor can they be held against him.

30. The principle of estoppel has no application, in the given circumstances. Moreover, the Supreme Court itself intended its directions to be mandatory and time bound for the completion of the proceedings under Section 207 of the CrPC, while setting the timeline for pronouncement of Order on Charge.

31. There was, however, no timeline for completion of prosecution evidence or of Protected Witnesses. Moreover, the Supreme Court in its latest Order dated **16.07.2025** had itself enquired as to whether PW-271 and PW-272, both of whom were not protected witnesses and related to the



Petitioner therein be examined, which is a marked departure from the earlier Order dated 15.05.2024. It is further stated that from the aforesaid Orders of the Supreme Court, it is evident that it is not seized of the issue concerning the validity or correctness of the Protected Witness Orders, which are under challenge by way of the present Petition.

32. It was further submitted that there are over 359 witnesses cited in the case, out of which 23 have been designated as protected witnesses. The trial has not been classified as time bound or expedited matter either by this Court or by the Supreme Court. Moreover, the learned Special Judge has not adhered to any particular sequence or chronology in summoning the Protected Witness. In the absence of any clarity regarding the sequence or timing of witness examination, the Petitioner could not have approached this Court at an earlier stage.

33. It was, therefore, submitted that the impugned Orders dated 08.04.2022 and 20.03.2023 granting protected status to the witnesses stated therein may be set aside.

CRL.M.C. 5130/2025:

34. **Petition** under Section 528 of the BNSS read with Article 227 of Constitution of India, 1950 has been filed by the Petitioner challenging the Order dated 24.07.2025, wherein the **Application of the Petitioner to provide the complete un-redacted and de-anonymized copies of the Statements of Protected Witnesses X-5 and X-11 recorded under Section 164 of the CrPC, has been dismissed.**



35. The Petitioner submitted that the short issue in the present Petition is: *whether the learned Special Judge in the trial proceedings has justifiably exercised its jurisdiction in consonance with the right of the Accused to a free and fair trial, in refusing to disclose the full identity particulars of the Protected Witnesses, before cross-examination by the Petitioner.*

36. Despite judicial safe-guards under UAPA permitting concealment of identity for witness protection, such powers are narrowly circumscribed. Under Section 44(2) of the UAPA, secrecy may be granted only where there is a clear, identifiable threat, and thus, must be supported by material evidence and judicial reasoning. The Supreme Court in the case of Mohd. Asarudeen v. Union of India(supra) has reiterated that Section 44 of the UAPA is not an unregulated tool, and blanket or omnibus orders cannot be passed by the learned Special Judge.

37. Even in Kartar Singh v. State of Punjab(supra) and People's Union for Civil Liberties & Anr. v. Union of India(supra) the Supreme Court had held that the exceptions to the right of cross-examination, must be based on compelling and recorded reasons, balancing security concerns with due process and natural justice. Courts must assess each case individually and adopt minimal, calibrated restrictions.

38. It was submitted that the present case involves serious charges under the UAPA and the IPC, carrying potential sentence of life imprisonment or death. Given the extraordinary nature of the UAPA, denial of full particulars of witnesses prior to cross-examination materially impairs the Petitioner's ability to mount an effective defence. The right to impeach the credibility of a witness necessarily requires knowledge of their identity and antecedents, a



principle codified under Section 155 of the Indian Evidence Act, 1872. Without such information, especially in cases involving complex communications, meetings, or group conduct, the accused is effectively denied the opportunity to rebut key allegations.

39. It was further submitted that even otherwise, the Orders dated 08.04.2022 and 20.03.2023 granting blanket protection without disclosing any reasons for granting protection, was against the mandate of Mohd. Asarudeen v. Union of India(supra). The Application filed by the Petitioner for provided un-redacted statements with identity, has been erroneously rejected by observing by the learned Special Judge that the earlier two Orders dated 08.04.2022 and 20.03.2023 granting the protection had not been challenged and have attained finality and that there can be no review under Section 362 of the CrPC.

40. It was submitted that, without prejudice to the challenge to the previous Orders dated 08.04.2022 and 20.03.2023, those Orders do not preclude disclosure of witness statements at a later stage, especially to safeguard the right of an accused to a fair trial. This has been affirmed in the case of Kartar Singh v. State of Punjab(supra).

41. The approach and interpretation of law on this aspect, had been demonstrated earlier by dismissing similar Applications filed by the co-accused *vide* Orders dated 15.10.2024 and 16.10.2024. The reasoning employed in the impugned Order dated 24.07.2025, is patently perverse. The impugned Order unfairly attributes the conduct and circumstances of the co-accused, against the Petitioner. Moreover, it is unconceivable how the



Petitioner could have challenged the Orders made in respect of the other co-accused persons.

42. The NIA had submitted its **Written Submissions** in both the aforesaid Petitions, wherein, it was submitted that there is no constitutional or statutory requirement to disclose the complete identity of a Protected Witnesses prior to cross-examination, in order to protect the life and safety of the witnesses and to enable them to depose freely.

43. On the contrary, such non-disclosure has been permitted under various statutes and has been upheld by Supreme Court in the case of Gurbachan Singh vs. State of Bombay & Anr. (1952) 1 SCC 683, wherein it upheld the proceedings under Section 27 of Bombay Police Act, 1902 which permitted externment of a person, on the basis of evidence which had not been supplied to the accused persons. It was held that the provision was meant to secure the life and safety of persons who may otherwise not be able to depose against anti-social elements living in the area and disclosure of the identity of such persons, would defeat the purpose of legislative scheme.

44. Similarly, in Kartar Singh vs. State of Punjab(supra), the constitutional validity of Sections 16(2) and (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (*hereinafter referred to as "TADA"*), which were identical to Section 44(2) and (3) of the UAPA, had been upheld by the Supreme Court.

45. Likewise, in People's Union for Civil Liberties & Anr. Vs. Union of India(supra), the Supreme Court had upheld the constitutional validity of Section 30 of the Prevention of Terrorism Act, 2002 (*hereinafter referred to*



as “POTA”) and had refused to lay down the procedure to be adopted by the Special Court, to keep the identity of the witness secret.

46. It was submitted that the long-held concern of the Supreme Court, regarding witness protection, has been repeatedly emphasized particularly in cases of organized crime such as terrorism, so as to assist the justice system without any fear.

47. Reliance is also placed on Zahira Habibulla H Sheikh & Anr. v State of Gujarat & Ors., (2004) 4 SCC 158; Ramesh & Ors. v State of Haryana, (2017) 1 SCC 529; Mahender Chawla & Ors. v Union of India & Ors., (2019) 14 SCC 615; Phireram v State of Uttar Pradesh, 2025 SCC OnLine SC 1915; Tehseen S Poonawalla v Union of India & Ors.

48. Section 44 of the UAPA read with Section 17 of the NIA Act, are in furtherance of the aforesaid objective and constitute a statutory scheme of witness protection. The Orders dated 08.04.2022 and 20.03.2023, confirm these requirements laid down by the Supreme Court, when it passed the Order of protection of 23 witnesses as Protected Witnesses in the present case. Non-disclosure of the identity of such witnesses, is based on an objective threat perception *qua* such witnesses.

49. The Supreme Court in Md. Asarudeen vs. Union of India & Anr(supra) had held that the Order of the Special Court was not sustainable on two grounds; viz. (i) *The impugned orders of the Special Court did not disclose the satisfaction that there was a threat to the witnesses by the Special Court and (ii) It failed to apply its mind to the measures required to be taken for protection of each witness.* It was submitted that, the aforesaid Judgment was distinguishable, on the facts of the present case.



50. Furthermore, the Petitioner has been engaged in extortion for and at the behest of handlers for the terrorist organization, providing shelter to terrorists; facilitating movement of weaponry and motivating youth to join the armed struggle.

51. It was, therefore, submitted that the Impugned Orders of the learned Special Judge do not merit any interference and *the present Petition deserves to be dismissed.*

Submissions heard and record perused.

52. The aforesaid two Petitions raise a question of seminal importance of the grant of a status of Protected Witness to certain witnesses during the trial, while balancing the right of the accused to a fair trial in claiming un-redacted copies of the statements of such protected witnesses.

53. The brief background is that NIA filed ***the Charge-Sheet filed on 08.04.2022***, in the RC-29/2021/NIA/DLI dated 10.10.2021 under Sections 18, 18A, 18B, 20, 38 and 39 of the UAPA read with Sections 120B, 121A, 122 and 123 of the IPC. The Petitioner, Bilal Mir was named as Accused No. 3, in the Charge-Sheet.

54. On the same day, the Application was filed by NIA under Sections 44(2)/44(3)(b) and 44(c) of the UAPA read with Sections 17(2)/17(3)(b) and 17(c) of the NIA Act, seeking declaration of 15 witnesses as Protected Witnesses and that their identity may be concealed, was allowed by the learned Special Judge *vide* Order dated 08.04.2022. ***Both the prosecution witnesses X-5 and X-11, whose un-redacted statements are being sought by the Petitioner, were directed to be protected vide this Order.***



55. Thereafter, a similar Order ***dated 20.03.2023*** was passed by the learned Special Judge in ***respect of 8 additional witnesses, who were also declared the protected witnesses***. NIA was directed to supply the statements of these witnesses, after redacting the details of their identity as per Section 207 of the CrPC.

56. The Petitioner, thereafter, at the stage of the recording of the evidence of the aforesaid ***Protected Witnesses X-5 and X-11***, moved an Application seeking the un-redacted statements of these witnesses, for the purpose of cross-examination, ***which was dismissed vide Order dated 24.07.2025***. The learned Special Judge observed that the Application was in fact, review of the First Order dated 08.04.2022 by virtue of which, these two witnesses were declared as Protected Witnesses and there was no power with the Special Judge, to review its own Orders.

57. The aforesaid Petitions raise two questions, which are as under: -

- (i) ***What is the procedure for declaring a person as a protected person;***
- (ii) ***Whether for the purpose of fair trial, the accused is entitled to disclosure of the identity and his address to facilitate proper cross-examination of such protected witnesses.***

I. CRL.M.C. 5129/2025: Whether the Declaration of witnesses as protected witness, was according to the procedure as envisaged by Law:



58. The rule of law and the mandate of a fair trial to an Accused is fundamental, but cannot be treated as absolute.

59. *Law Commission of India in its 198th Report on Witness Identity Protection given in August, 2006* observed that at the trial, when the trial commences and the Witnesses are to be examined, there may be following three situations:

- (i) there may be cases in which the victims/witnesses **identity is known to the Accused and vice versa;**
- (ii) *the victim* is not known to the Accused in which cases the victim/witness seek anonymity and need identity protection; or
- (iii) the *witness* is not known to the Accused in which cases the witness seek anonymity and need identity protection.

60. While in cases where victim is known to the Accused as in the cases of sexual offences, facing the Accused at the time of testimony may result in immense trauma to the victim/witness wherein the screening vulnerable recording of evidence in Vulnerable Witness Room, where there is no direct interface between the victim and the Accused or the screening of the accused or the camera proceedings, may be sufficient steps for protection of the trauma to the witness.

61. However, where the witness and the victim are not known to the Accused and there is danger to their life, **such protective steps may not be effective and it may become necessary to grant them anonymity in regard to their identity.**

62. Section 44 of UAPA and Section 17 of NIA Act, 2008 which are *para-materia*, contain a special provision for Protection of Witness.



63. Section 44 of the UAPA deals with protection of witnesses. It reads as under: -

“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, if 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.”*

64. Likewise, Section 17 of NIA Act, which also provides for protection of witnesses, is *para materia* to Section 44 UAPA.



65. These Sections recognizes that in such like cases to which the Act is applicable, the necessity may require special Protection of the Witnesses. It envisages ***firstly, that*** the Special Court in writing may direct the holding of the proceedings in camera; ***secondly***, on an Application filed by a witness or the Prosecutor or on its own motion, if the Court is satisfied that the **life of such witness is in danger**, *it may for reasons to record in writing*, take such measures as it deems fit for keeping *the identity and the address of such witness secret*.

66. In such cases, the Court must make an independent assessment and consider the aforesaid parameters while granting anonymity to a witness or a victim. The procedure of fair trial necessitates not only a speaking Order giving reasons must be passed by the Special Court, but an opportunity may also be given separately to the Accused to address his concerns, while the anonymity is granted to any witness. Such grant of protection of anonymity must not be prompted merely on an Application filed by the Prosecution, but it requires application of mind by the Special Court, who must give the reasons in writing.

67. The measures that may be taken, are stipulated in Clause 3 of S.44 UAP Act, are:

- i. *the proceedings may be held at a place to be decided by the Special Court;*
- ii. *avoid mentioning of names and addresses of the witnesses in the Orders, Judgment or any other records; and*



iii. *directions be issued for securing the identity and the address of the witnesses to be not disclosed and that the proceedings of the Court shall not be published in any manner.*

68. Therefore, ***these two Sections itself envisage non-disclosure of the identity of such witnesses, to whom there is danger to life.***

69. The Constitution Bench of the Supreme Court in A.K. Roy v. Union of India, (1982) 1 SCC 271 held as follows:

Under Section 16(2) of the 1987 Act, the Designated Court is given only a discretionary authority to keep the identity and address of any witness secret on the following three contingencies:

- (1) On an application made by a witness in any proceedings before it;*
- Or*
- (2) on an application made by the Public Prosecutor in relation to such witness; or*
- (3) on its own motion.*

*Sub-section (3) classifies only the measures to be taken by the Designated Court while exercising its discretion under sub-section (2). If neither the witness nor the Public Prosecutor has made an application in that behalf nor the court has taken any decision of its own then the identity and addresses of the witnesses have to be furnished to the accused. **The measures are to be taken by the Designated Court under any one of the above contingencies so that a witness or witnesses may not be subjected to any harassment for having spoken against the accused.***

70. ***Law Commission in its 198th Report on Witness Identity Protection and Witness Protection Programmes***, defined the factors for considering



whether a witness should be provided police protection. It was stated that the competent authority shall take into account the following factors:

1. *The nature of risk to the security of the witness, which may emanate from the accused and his associates;*
2. *The nature of the investigation in the criminal case;*
3. *The importance of the witness in the matter and value of the information or evidence given or agreed to be given by the witness and*
4. *The cost of providing police protection to the witness.*

71. The aforesaid are the circumstances and factors that may be weighed, while declaring the witness as a protected witness.

72. Once Charge Sheet is filed in the Court, the question which arises is ***the manner and the procedure, to be adopted by the learned Special Court, for declaring a witness as the protected witness.***

73. This aspect was considered in detail by the Apex Court in the case of Mohammed Asarudeen vs. Union of India & Ors., (2025) INSC 746, wherein a similar omnibus Order on an Application of the Special Public Prosecutor, for the grant of protection of witnesses under Section 44(2) of the UAPA, to number of witnesses, was considered.

74. The Apex Court observed that Section 44(2) of the UAPA and Section 17 of the NIA Act, has to be strictly complied, as such power may affect the right of the accused to defend himself. It was also observed *that* whenever any Application is filed *seeking protection of the prosecution witnesses*, specific averments in relation to every witness, must be made in the Application. *A blanket Order in respect that the identity of all the*



witnesses shall be hidden, is not due satisfaction as prescribed under Section 44(2) of the UAPA and 17(2) of the NIA Act. It must also decide what measures should be taken to protect the witness as regards to his identity, address, name, etc. and record brief reasons for taking such measures.

75. Therefore, in every case, where satisfaction under Section 44(2) is recorded, *the Court cannot pass a blanket Order*. The learned Special Court must be conscious that Section 44(2) of the UAPA, is an exception to the normal rule. ***Therefore, the satisfaction as required under Section 44(2), has to be recorded qua an individual witness.***

76. Thus, in Mohammed Asarudeen (supra), the procedure of making such omnibus Order made in respect of multiple witnesses and declaring them as Protected Witnesses under 44(2) of the UAPA read with Section 17(2) of the NIA Act, was deprecated. It was held ***that such Order*** was without application of mind and was set-aside.

77. From the aforesaid Judgment, it emerges the Special Judge is required to *independently apply his mind to each witness and record some finding of the reasons* for which each witness is declared as a Protected Witness. The threshold for granting the status of Protected Witness is that there must be existence of danger to the life or the property of such witnesses.

78. While it may not be possible to always give a finding of there being an imminent danger present, but it has to be assessed on the probability of the danger that a witness may face, if the anonymity is not granted.

79. The Petitioner, by way of **CRL.M.C. 5129/2025**, has challenged the Orders dated 08.04.2022 and 20.03.2023 declaring the witnesses as



protected. In view of the law as propounded in Mohammed Asarudeen (supra), it is quite evident that these impugned Orders of declaring the number of witnesses as protected, without considering individual witnesses, and without considering the measures that were warranted for protection of the Witnesses and also giving cogent reasons at the commencement of trial, may be not in consonance with the procedure detailed by the Apex Court.

80. However, it is significant to observe that the learned Special Judge noted that the aforesaid Orders, were never challenged. So much so, the trial is being monitored by the Supreme Court and the prosecution have from time to time, summoned the specific Protected Witnesses for recording their evidence, before the learned Special Judge. At no point of time, did the Petitioner raise any grievance in regard to declaring X-5 and X-11 as Protected Witness, whether before the learned Special Court or before this Court or the Apex Court.

81. The record reveals that the challenge to the Orders dated 08.04.2022 and 20.03.2023, has been made in the light of observations of the learned Special Judge in the subsequent Order dated 24.07.2025, whereby while dismissing the Application filed by the Petitioner to supply him with the un-redacted copies of the statement of these protected witnesses, observed that such a request would *in fact, tantamount to review of the earlier Orders dated 08.04.2022 and 20.03.2023, which was beyond the jurisdiction of the Court.*

82. These remarks may have prompted the Petitioner, to question the procedure of declaring X-5 and X-11 as Protected Witnesses, *vide* Orders dated 08.04.2022 and 20.03.2023, but the fact remains that there is no



genuine concern raised about the status of Protected Witnesses being given to these two witnesses. *The Petitioner is essentially not aggrieved by such protected status awarded to X-5 and X-11.*

83. While the learned Special Judge is required to consider each witness independently, whether such witness needs to be declared as a Protected Witness, but it cannot be overlooked that though the learned Special Judge may not have considered each case individually, but on consideration of the entire Charge Sheet and the statement of the witnesses, the Court found sufficient material disclosed for declaring these witnesses as Protected Witnesses. Moreover, the Petitioner never made any grievance about it at any stage.

84. Therefore, once the Petitioner himself had not questioned the status of these witnesses, there cannot be a challenge to the Orders dated 08.04.2022 and 20.03.2023, at a highly belated stage of recording of prosecution evidence, by way of the present Petition filed on 28.07.2025.

85. The circumstances in the present case, do not justify any interference with the Orders dated 08.04.2022 and 20.03.2023. In view of aforesaid discussion, **CRL.M.C. 5129/2025** is **dismissed** along with Pending Application(s), if any.

II. CRL.M.C. 5130/2025: Whether the Petitioner at the stage of examination of the protected witnesses, entitled to unredacted copy of their statements recorded under Section 161 CrPC, in order to ensure a fair trial.



86. In this regard, it would be pertinent to mention that there are two stages in a criminal trial. The first stage is filing of the Charge-Sheet and supplying the copies of the statements and documents to the accused in compliance of Section 207 of the CrPC, which was duly complied in the present case and the copies of the documents and the statements of witnesses, were supplied to the Petitioner, *vide* Order dated **20.03.2024**. The stage of Section 207 of the CrPC, is for the purpose of providing the material relied upon by the prosecution, in support of the charges against the Petitioner.

87. At the time of filing the Charge-Sheet, the Prosecution had moved the Application twice for declaration of certain witnesses as protected witnesses, which was done, *vide* the Orders dated 08.04.2022 and 20.03.2023, the validity of which has already been considered and held that they are the protected witnesses, as declared by the Court.

88. However, ***there is a second stage in a criminal trial***, which is of *examination of witnesses, after the Charges are framed*. Even at this stage, it has to be an Order in writing of the Court, giving the reasons for not granting the unre-dacted statements of the protected witnesses.

89. *The seminal question which has arisen is: whether the redacted statements made available to the Accused, would impact effective cross-examination of the witnesses, and thereby the right of fair trial of the accused.*

90. The right of Fair trial is the cornerstone of our Constitution, ensured to every litigant who approaches the Court. The Punjab and Haryana High



Court in the case of Bimal Kumar Khalsa v. Union of India & Ors., 1988 P&H 95, ***emphasized the importance of open and fair trial***. It was observed that as a general principle of Criminal Law, *open public trial is not only necessary in the interest of justice to the accused, but is also essential in the interest of the community and serves an important social purpose*. For not only the accused is entitled to receive justice, but the community at large is interested that an innocent person is so pronounced within the public gaze, so that he reasonably succeeds in washing off the stigma of guilt and join back the main stream of the community as a respectable citizen; alternatively if guilty person is publicly tried and so pronounced, then he is left with no *alibi* or excuse, which he could justifiably spin out if the trial is held in a hush-hush manner in camera, away from the public gaze.

91. Reference was made to the case of Richmond Newspapers Inc v. Commonwealth of Virginia, 1980-65 L.Ed.-II Series (1973) wherein the ***nexus between openness of trial, fairness and perception of fairness***, was recorded in the following words:

“When a shocking crime occurs, a community reaction of outrage and public protest often follows.....Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Without an awareness that society’s responses to criminal conduct are underway, natural human reaction of outrage and protest are frustrate and may manifest themselves in some form of vengeful “self-help”, as indeed they did regularly in the activities of vigilante “committees” on our frontiers. “The accusation and conviction or acquittal, as much perhaps as the execution of punishment, operate to restore the imbalance which was created by the offence



or public charge, to reaffirm the temporarily lost feeling of security and, perhaps, to satisfy that that lament “urge to punish.”

*Civilized societies withdraw both from the victim and the vigilante the enforcement of criminal laws, but they cannot erase from people’s consciousness the fundamental natural yearning to see justice done or even the urge for retribution. The crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is “**done in a corner, or in any covert manner.**”It is not enough to say that results alone will satiate the natural community desire for “satisfaction”. A result considered untoward may undermine public confidence, and where the trial has been concealed from public view an unexpected out-come can cause a reaction that the system at best has failed and at worst has been corrupted. **To work effectively, it is important that society’s criminal process “satisfy the appearance of justice....and the appearance of justice can best be provided by allowing people to observe it.” ...***

*“People in an open society do not demand infallibility from their institution, but it is difficult for them to accept what they are prohibited from observing. **When a criminal trial is conducted in the open, there is at least an opportunity both for understanding the system in general and its workings in a particular case:.....**”*

92. In A.K.Roy v. Union of India, AIR 1982 S.C. 710, it was held that the **constitutionally guaranteed right to public trial**, cannot be minimized and the same cannot be avoided, unless it is likely to result in miscarriage of justice.

93. In Naveen v. State of M.P. 58 (2023) 17 SCC 381, the Apex Court reiterated the content and scope of the constitutional guarantee of a fair trial.



It was emphasised that the concept of a fair trial cannot be confined to a rigid or technical formulation but must be understood as requiring a real, meaningful and impartial opportunity to defend. Fairness in a criminal trial protects not only the rights of the accused but also the interests of the victim and society, and that a trial which is reduced to a mere formality or a stage-managed exercise cannot command the confidence of the justice delivery system.

94. The relevant observations from the said judgment are reproduced herein below:

*“20. It was further observed that there can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor, and the atmosphere of judicial calm. **Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.** It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence.....*

It is thus settled that a hasty trial in which proper and sufficient opportunity has not been provided to the accused to defend himself/herself would vitiate the trial as being meaningless and stage managed. It is in violation of the principle of judicial calm.

21. The principle of “judicial calm” in the context of a fair trial needs to be elaborated for its observance in letter and spirit. In



*our view, in the hallowed halls of justice, the essence of a fair and impartial trial lies in the steadfast embrace of judicial calm. It is incumbent upon a Judge to exude an aura of tranquillity, offering a sanctuary of reason and measured deliberation. In the halls of justice, the gavel strikes not in haste, but in a deliberate cadence ensuring every voice, every piece of evidence, is accorded its due weight. The expanse of judicial calm serves not only as a pillar of constitutional integrity, but as the very bedrock upon which trust in a legal system is forged. **It is a beacon that illuminates the path towards a verdict untainted by haste or prejudice, thus upholding the sanctity of justice for all.***

95. These observations have been endorsed and quoted with approval by the Apex Court in the recent judgement of *Dr. Abdul Hameed v State Of Rajasthan* 2026 INSC 734.

96. In the case of *Zahira Habibulla H Sheikh & Anr. vs. State of Gujarat & Ors.*, (2004) 4 SCC 158, **the need for fair trial and the significance and importance of the witness protection, was emphasized.** It was observed that witnesses are the eyes and ears of justice. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed and it no longer constitutes a fair trial. The incapacitation may be due to several factors, like a witness being not in a position to speak the truth or due to negligence or ignorance or some corrupt collusion. The numerous experiences faced by Courts, on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations and innumerable other corrupt practices ingeniously adopted **to smother and stifle truth and realities, must be acknowledged and the**



definite role of the State in protection of witnesses, can never be overemphasized.

97. Therefore, while having an open trial of an accused, is to provide fairness of trial not only to the accused but also to the community, however, the exigency of the nature of the trials in certain terror crimes, requires extraordinary provisions for protection of witnesses, *which is envisaged under Section 44 of the UAPA and Section 17 of the NIA Act*, wherein, it is specifically provided that *such trial* may be conducted *in camera*, so as to ensure that the prosecution is able to establish its case with the aid of witnesses, who can speak the truth, without any fear of injury to any person or to themselves or to their near and dear ones. The only requirement being that the accused must get due opportunity to effectively defend himself against the charge. ***Indeed, the witness anonymity and protection, is another facet of fair trial, to ensure that truth and justice is not scuttled only because the witness is not forthcoming due to fear for his life and harm to his family.***

98. While declaring witnesses as protected may be a part of ensuring a fair trial, to encourage such witnesses to come forth and depose and to bring the actual evidence on record, but the corresponding question that arises, ***is of the right of accused to a fair cross-examination of the witnesses, includes disclosure of the identity of the witness.***

99. In the case of Bimal Kumar Khalsa (*supra*) the question arose about ***disclosing the name and address of prosecution witnesses for the purpose of cross-examination by the accused.*** While considering the significance



and relevance of cross-examination, the High Court of Punjab and Haryana, observed as under:-

*“The main accuser of an accused being the witness who is deposing against him and accusing him of the commission of the crime within the witnesses, presence or hearing, the accused has to be afforded full opportunity of cross-examining the witness to show that what he had stated was not a fact as he had neither seen nor heard anything, he being not present at the scene of the occurrence or the witness was not a truthful witness, in that he had been so pronounced by the court at earlier occasions when he had appeared as a witness or that the witness was inimical to the accused or his family and, therefore, his testimony be taken with a pinch of salt and be not accepted at its face value. **If the accused would not be disclosed the address and identity of the prosecution witness, then how would he be able to instruct his counsel to effectively cross-examine such a witness and bring out the truth in court and thereby defend himself against the false accusation.**”*

100. While endorsing the observations made in the case of A.K. Roy (supra), it was observed that initially, it is within the discretion of the Court, to declare witness as protected and also to define the measures for ensuring the protection of witness, however, the big question was whether disclosure of identity of a Protected Witness at the time of examination of the witness, is required to ensure proper cross-examination by the accused. It was held that for granting an effective right of cross-examination to the accused, the name, address and identity of the witness, must be disclosed to him before the start of the trial. **However, it is subject to an exception that the Court may for weighty reasons, in its wisdom, may decide not to disclose the**



identity and address of the witnesses especially of potential witnesses, whose life may be in danger.

101. This question was again considered in the case of Kartar Singh v. State of Punjab, (1994) 3 SCC 569. A reference was made to Section 137 of the Indian Evidence Act, 1872 which defines what is the meaning of cross-examination and Section 139 and 145, which speak of the mode of cross-examination with reference to oral evidence, as well as, the documentary evidence. It was observed that, “*it is the jurisprudence of law that **cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:***

- (1) *to destroy or weaken the evidentiary value of the witness of his adversary;*
- (2) *to elicit facts in favour of the cross-examining lawyer’s client from the mouth of the witness of the adversary party;*
- (3) *to show that the witness is unworthy of belief by impeaching the credit of the said witness;*

And the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character.”

102. It was further observed that ***the identity of a witness is necessary in the course of a normal trial, in order to achieve the above objects and the right of confrontation is one of the fundamental guarantees so that the accused could guard himself from being victimized by any false or invented evidence, that may be tendered by the adversary party.*** Under Section 44 of the UAPA and Section 17 of the NIA Act, the right of cross-



examination is not taken away, ***but the identity and addresses of the witnesses are permitted to be withheld.***

103. The Supreme Court in the case of Kartar Singh (*supra*) while explaining the permissible restrictions upon the right of the accused to cross-examine the prosecution witnesses, observed as follows: -

“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, 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 witness-in-chief, the accused have 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 punishment, will be put to disadvantage to effective cross-examining and exposing the previous conduct and character of the witnesses.”

104. The Supreme Court, therefore, held that the provision of sub-Sections (2) and (3) of Section 16 of the TADA, 1987 (*para materia* to Section 44 of the UAPA and Section 17 of the NIA Act), *treating a right of the accused to cross-examine the prosecution witnesses is not absolute, but is subject to exceptions in the case of trials of such offenders.*

105. It would also be pertinent to refer to the Judgment of People’s Union for Civil Liberties and Anr. v. Union of India, (2004) 9 SCC 580, wherein,



the Judgment of Kartar Singh (*supra*) was also considered in the context of Section 30 of POTA, which also provided for the protected witnesses. It was observed that *“in our view, a fair balance between the rights and interest of the witness, rights of the accused and larger public interest has been maintained, under Section 30. It is also aimed to assist the State in justice, administration and encourage others to do the same under the given circumstances. **Anonymity of witness is not a general rule under Section 30. Identity will be withheld only in exceptional circumstances when the Special Court is satisfied that the life of the witness is in jeopardy.**”*

106. It was further observed that the existence and exercise of power to grant protection to a witness and preserve his anonymity in a criminal trial, has been universally recognized. *The provisions of such nature to protect the life and liberty of a person, has been enacted in various enactments so as to enable a person to willingly give evidence in support of the prosecution in grave criminal cases.*

107. A provision of this nature should not be looked at merely from the angle of protection of witness whose life may be in danger if his identity is disclosed, but also in the interest of the community to ensure that heinous offences like terrorism, are effectively prosecuted and punished. *If witnesses are not given appropriate protection, they would never come forward to give evidence and there would be no effective prosecution of terror offences.*

108. In the case of People’s Union for Civil Liberties and Anr. (*supra*) the Supreme Court, observed that the protected status to a witness may be granted by the Court on being satisfying that the life of a witness is in danger. In order to safeguard the right of an accused to fair trial and basic



requirements of 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 deposition of the witness whose identity is sought to be protected.* It was held that it was not feasible to suggest a procedure to be adopted by Special Courts for keeping the identity of witness a secret. ***It shall be appropriate for the concerned Court, to take into account all the factual circumstances of the individual case and to forge appropriate methods to ensure the safety of individual witness.*** A balance is required to be struck between the right of the witness as to his life and liberty and the right of the community in effective prosecution of the person guilty of the heinous crime, on one hand and the right of the accused to a fair trial, on the other hand.

109. *The main concern of the Accused is the right of his cross-examination being taken away.* However, as has been explained in the case of R vs. Atkins 2000 (2) NZ LR 46 by the Court of Appeal New Zealand that the Courts must be mindful that the matters deposed about have not been tested by cross-examination and that there was no opportunity to present contradictory evidence in respect of undisclosed assertions.

110. In such like matters, the Court would necessarily consider untested evidence and evaluate it accordingly, keeping in mind that there was no cross-examination and also filter the evidence which may be in the realm of hear se. *The weight to be given to such evidence would depend upon many different facts including source, reliability and the existence or absence of supporting material.* Such care must be taken by the Court in making the



evaluation and in arriving at the just conclusions. Unless the evidence is sufficient to warrant prosecution, it should not be accepted.

111. In the light of the aforesaid discussion, it emerges that while the accused has a right to a fair trial and must be granted an effective and meaningful opportunity for cross-examination of the Protected Witnesses, and the anonymity of a witness, may have some impact on the extent of cross-examination, but as laid down in Kartar Singh (*supra*) and upheld in People's Union for Civil Liberties and Anr. (*supra*), it is for the learned Special Judge to consider at this stage of recording evidence, the case of each *Protected Witness* and may refer to the statement of the witness, its significance and the relevance in the entire prosecution case, in the context of the entire prosecution case, and the aspects sought to be proved and the potential threat to his life, *to ascertain whether the address, name and the identity of the witness, can be reasonably disclosed, for which the appropriate measures may be defined in the reasoned Order, by the learned Special Judge. If found otherwise, the identity of the accused may be withheld, but again give the reason why the name and identity, cannot be disclosed.*

112. The extraordinary situation of threat to the witness would only require an extra caution by the Special Court, while assessing the evidence of such Protected Witness and due caution and trepidation must be exercised, while reading such evidence. However, if the circumstances so demand, the identity of witness be withheld, to ensure that he comes forward to depose.

**Conclusion:**

113. In view of the aforesaid, **CRL.M.C. 5130/2025** is **allowed** and the impugned Order dated 24.07.2025, is hereby, set-aside. The matter is remanded back to the learned Special Judge, to specifically consider before the recording of their respective testimony, whether the disclosure of name, address and identity of Protected Witnesses, X-5 and X-11, would be life threatening to the said witnesses, who may then refuse to depose or whether these details can be disclosed by ensuring appropriate measures to ensure their safety and security. The details as sought by the Petitioner, may accordingly, be protected or disclosed by recording due reasons.

114. The parties are directed to appear before the learned Special Judge, on **10.08.2026**.

115. **CRL.M.C. 5129/2025** for challenging the Orders dated 08.04.2022 and 20.03.2023 declaring the witnesses as protected, is **dismissed**. Pending Application(s), if any are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 29, 2026/va/RS