$~115

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision : 25.11.2026***

\# **CNR No. DLHC010559462026**

\+ **CRL.M.C. 8638/2026, CRL.M.As. 36380/2026**

ARSALAN FEROZ AHENGAR .....Petitioner

Through: Mr. Siddharth Satija, Mr. Sowjhanya Shankaran, Mr. Akash Sachan, Mr. Sriharsh Raj, Ms. Akansha Bisht, Ms. Charu Sinha, Ms. Shashankaa Tewari, Advs.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. Anand Mishra (SPP) along with Ms. Ayushi Rajput, Mr. Devansh Pundir, Ms. Mahima Dubey, Advs. along with Mr. Soman Shah (Insp/NIA)

Mr. Rahul Tyagi (SC) along with Ms. Priya Rai, Mr. Aniket Kumar Singh, Mr. Rohit Kumar Jayant, Mr. Jagjeet Pahwa, Ms. Akansha Chaudhary, Advs. for Enforcement Directorate (ED)

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

CRL.M.A. 36381/2026 -EX(FILING CERTIFIED COPIES OF ANNX.)
CRL.M.A. 36382/2026 - SEEKING PERMISSION TO FILE LENGTHY LIST OF DATES AND SYNOPSIS

1. Allowed, subject to all just exceptions.

2. The applications stand disposed of.

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

CRL.M.C. 8638/2026

3. The present petition has been filed by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') read with Article 227 of the Constitution of India challenging the order dated 16.10.2026 passed by the learned Special Exclusive Court-01 (NIA Act, 2008), Rouse Avenue Courts Complex, New Delhi, in NIA Case No. 34/2026, whereby the application preferred by the petitioner/ accused no.4 under Section 231(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C'). seeking deferment of cross-examination of certain witnesses (LW-10, LW-18, LW-23, LW-24) was dismissed. The prayer canvassed in the application in the context of which the aforesaid order has been passed reads as under:-

> **a.** Pass an Order seeking deferral of cross examination of LW-10 Sahil Manzoor Sheikh, LW-18 Shaheed Majeed Bhat, LW-23 Syed Tanvir Hasan & LW-24 Muazin Mumtaz Bhat until the examination of all such witnesses is concluded i.e. LW-3 to LW-15, LW 17-27 as well as LW X-1 & LW X-2and

4. The factual conspectus is that R.C. No. 32/2021/ NIA/ DLI was registered on 18.11.2021 under Section 120B, 121A & 122 of the IPC, 1860 and Sections 13, 17, 18, 18B, 38 & 39 of the Unlawful Activities Prevention Act, 1967 ("UAPA"). It concerns the alleged radicalisation, motivation and recruitment of youth for Lashkar-e-Taiba (LeT)/ The Resistance Front (TRF). The petitioner was arrested on 30.12.2021 and has remained in custody since then. His application for bail was dismissed by the trial Court vide order dated 10.09.2024 and the appeal preferred against the same being CRL.A.1087/2024 was dismissed by a Division Bench of this Court on 07.07.2025.

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

5. The petitioner assailed the said judgment before the Supreme Court in SLP (Crl.) No. 7432/2026. On 18.05.2026, the following order came to be passed by the Supreme Court:-

> Pursuant to the order dated 20.04.2026, the learned ASG appearing on behalf of the respondent submitted that the charges have been framed. We also take note of the fact that number of witnesses are yet to be examined.
>
> In such view of the matter, we direct the Trial Court to expedite the trial. In the event of the trial not proceeding expeditiously, liberty is given to the petitioner to renew the prayer for bail and file a bail application after a period of one year, in which case, the earlier order will not stand in the way of the petitioner.
>
> The Special Leave Petition stands disposed of, accordingly.
>
> Pending application(s), if any, shall also stand disposed of.

6. In the meantime, the charges against the petitioner had been framed on 11.05.2026 under Section 120B of the IPC and Sections 13,18,18B,38 and 39 of the UAPA. The prosecution evidence began thereafter. By way of the application under Section 231(2) Cr.P.C., the petitioner has sought deferment of cross-examination of certain witnesses. The prayer in the said application has been reproduced hereinabove.

7. The petitioner's case was that despite being different individuals, the witnesses have deposed in their respective statements under Sections 161 and 164 to materials particulars which are substantially identical. The

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

submissions of the petitioner, as been recorded in the impugned order, are as under:-

> 12.It was further submitted that the necessity of examining the aforementioned three witnesses together is further reinforced by the respective statement of these witnesses recorded under Section 161 / 164 Cr.P.C. where they have stated identical narrative concerning the applicant/accused A-5. Therefore, the prosecution has assigned a common role to all these witnesses and are likely to depose on common and overlapping lines. Therefore, if applicant/accused A-5 is directed to cross examine PW-71 Zeeshan Ahmad Mir before PW-72 Rashid Ali and PW-73 Tajamul Nazir Dar are examined, then grave prejudice will be caused to applicant/accused A-5 as during the course of cross examination of PW-71, he would have to disclose his defence and prosecution, thereafter, will get a chance to fill up the lacunas in the evidence of remaining two witnesses i.e. PW-72 and PW-73. Accordingly, a prayer was made to defer the cross examination of PW-71 till such time the examination in chief of PW-72 and PW-73 is recorded. In support of his submission, Ld.counsel for applicant/accused A-5 has relied upon the judgment of the Hon'ble High Court of Delhi delivered in **Vijay Kumar' case (supra)** and the judgment of the Hon'ble Supreme Court of India delivered in **State of Kerala's case (supra).**

8. The learned Special Exclusive Court-01 (NIA Act, 2008), Rouse Avenue Courts Complex, New Delhi held that the 04 witnesses had come into contact with the petitioner individually and not collectively and were,

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

therefore, not witnesses to the same facts. It was held as under:-

> 28. In order to appreciate the contention of applicant/accused A-4 that all the aforementioned 24 witnesses are of similar facts, this court has gone through the statement of LW-10, LW-18, LW-23 and LW-24 and from their statements recorded under Section 161 Cr.P.C. it is apparent that individually, they have stated about knowing applicant/accused A-4, who was known to Mehran Yaseen Shalla, who was killed in an encounter and about applicant/accused A-4 sending them radical material with regard to LeT/TRF. However, all the aforementioned four witnesses have not collectively met applicant/accused A-4 at any point of time as per their statements. Therefore, although LW-10, LW-18, LW-23 and LW-24 are stating about some facts but there is no association between them and applicant/accused A-4 with regard to facts, which have been stated by them in their respective statements.
>
> 29. All the four witnesses have stated in their respective 161 Cr.P.C. statement regarding coming into contact with applicant/accused A-4 individually and in none of their statements, reference is made to other witnesses. Therefore, they are not the witness of the same facts. The witnesses of the same facts are those witnesses, who have collectively seen some offence taking place in front of them. In the facts before the Hon'ble High Court of Delhi in the matter of **Vijay Kumar's case (supra),** there were three eye witnesses to the offence of murder / attempt to murder and that is why the order of the Ld.Trial Court was set aside and matter was remanded back to the Ld.Trial Court for deciding afresh in the light of principles laid down for exercising of discretion under Section 231(2) Cr.P.C. However, in the present case, from the statement of LW-10, LW-18, LW-23 and LW-24, there is nothing in their respective statements to show that all of them together have come in contact with applicant/accused A-4 and have met him together or were being radicalized by applicant/accused A-4 together.
>
> 30. Witnesses to similar facts can be further explained by the following illustration:--
>
> If in a case, there are 50 witnesses, who have individually come into contact with an accused person and similar facts have taken place with each of 50 witnesses, then its but natural that all 50 witnesses will state about similar facts about the accused but that will not make them witness to the identical facts.

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

> 31. The witness to the identical facts are those witnesses, who have collectively seen some offence taking place before them. Therefore, LW-10, LW-18, LW-23 and LW-24, although may be witness of the same allegations against applicant/accused A-4, but they are not collectively witness to the same facts against applicant/accused A-4. Therefore, even if evidence is recorded separately of these witnesses, then no prejudice will be caused to applicant/accused A-4.

9. It was further held that even assuming that all 24 witnesses were witnesses of the same facts, "it is impossible for Ld. Counsel for the applicant/ accused A-4 to cross-examine all 24 witnesses on a single day." Therefore, the apprehension of the petitioner that the prosecution may fill up the lacunae and omissions in the subsequent cross-examination of the other witnesses would remain same. It was specifically observed as under:-

> 37. Even assuming that LW-10, LW-18, LW-23 and LW-24 and other witnesses i.e. all 24 witnesses are witnesses of the same facts, then also the application of applicant/accused A-4 seeking deferment of cross examination of all 24 witnesses, deserves to be dismissed.
>
> 38. The reason for the same is that it is impossible for the Ld.counsel for applicant/accused A-4 to cross examine all 24 witnesses on a single day. Therefore, the apprehension of Ld.counsel for applicant/accused A-4 that there exists a substantial possibility of prosecution filling up the lacunas and omissions in the subsequent cross examination of other witnesses, will always exist as it is not possible to cross examine all 24 witnesses on a single day.

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

10. It is also noticed that most of the witnesses are childhood friends, school friends or neighbours of the applicant/ accused A-4. It was observed as under:-

> 39. Further, the majority of prosecution witnesses, whose deferment has been sought, are as per their respective statements, childhood friends, school friends or neighbours of applicant/accused A-4. Therefore, there is high possibility that in case, deferment of all 24 witnesses is allowed, as sought by applicant/accused A-4, then witnesses getting influenced or being threatened, cannot be ruled out.

11. Learned counsel for the petitioner submits that the learned Special Exclusive Court-01 (NIA Act, 2008), Rouse Avenue Courts Complex, New Delhi wrongly confined Section 231(2) Cr.P.C. to witnesses who had collectively witnessed an event. It is submitted that the statements of the witnesses overlap as regards the alleged association of the petitioner with Mehran Yaseen Shalla and the circulation of radical material, and that cross-examining the four witnesses first would expose the defence. It is submitted that the limited sequencing sought would not delay the trial.

12. Learned counsel for the petitioner further submited that the allegations against the petitioner are two-fold viz. that he is a member of TRF and that he was associated with Mehran Yaseen Shalla who was killed in an encounter. It is submitted that numerous witnesses speak to the same fact of that association.

13. During the course of arguments, learned counsel for the petitioner seeks that the examination-in-chief of all of them be recorded first and then he be allowed to cross-examine them in quick succession. Learned counsel

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

for the petitioner referred to the comparative chart filed with the rejoinder before the learned Special Exclusive Court-01 (NIA Act, 2008) to show that all these witnesses speak to the incriminating facts relied upon in the charge.

14. On a specific query, learned counsel for the petitioner submits that the deferment was sought only for four witnesses because only they had been summoned. The same would, in effect, be sought for each of the others as and when they are summoned, until the examination-in-chief of all 18 is recorded.

15. Learned SPP for the NIA submits that the deferment is discretionary and the trial must be expedited in terms of the order of the Supreme Court. It is submitted that even the prayer in this petition does not identify the witnesses whose examination-in-chief is to precede the cross-examination. It is submitted that every prosecution witness will speak to some fact connected with the offence. It is urged that Section 231(2) Cr.P.C is attracted only where it is shown that the witnesses speak to the same fact. Here, the witnesses are connected with the petitioner in different ways and on different occasions. It is pointed out that the discretion under Section 231(2) Cr.P.C. vests with the trial court and a petition under Section 528 BNSS cannot be used to substitute the discretion of the trial Court.

16. I have given my thoughtful consideration to the matter and in my view the impugned order dated 16.10.2026 calls for no interference for the following reasons:-

i. The impugned order has been passed in the context of application under Section 231(2) Cr.P.C. which concerns the sequence in which the witnesses are to be examined. It does not decide the rights or

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

liability of any party and is an interlocutory order. In terms of the judgment of ***Madhu Limaye v. State of Maharashtra,*** (1977) 4 SCC 551a revision against such an order is barred under Section 397(2) Cr.P.C and that bar cannot be avoided by invoking Section 528 BNSS. The relevant observations of the Court in the aforesaid case are as follows:

> ***"10.*** *As pointed out in Amar Nath case the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court", But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then*

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

> *nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.*

Therefore, this Court will interfere only if the discretion under Section 231(2) Cr.P.C. has been exercised arbitrarily or perversely, or in disregard of the settled principles. In the opinion of the Court, that is not the situation in the present case.

ii. The petitioner asked the learned Special Exclusive Court-01 (NIA Act, 2008) to defer the cross-examination of four witnesses until the examination of all 24 witnesses, was concluded. That request was rightly refused. Paragraph 24 of the impugned order takes note of the judgment relied upon by the petitioner in ***Vijay Kumar v. State (Govt. of NCT of Delhi)***, 2017 SCC OnLine Del 9012. Paragraph 42(X) of the same, *inter alia*, observed as under:-

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

> ***"42.*** *Against the above backdrop, in the opinion of this court, the exercise of judicial discretion by a criminal court in terms of Section 231(2), or Section 242(3) CrPC, may be properly exercised by bearing in mind the following principles:*
>
> *..... (x). If there are more than two witnesses pertaining to the same fact or event, it is not necessary that the court would use its discretion to have all of them examined-in-chief first and thereafter call them one by one for their respective cross-examinations. It would suffice, given the facts and circumstances of the particular case, if the request is granted vis-à-vis two of such multiple witnesses."*

17. Holding back the cross-examination of four witnesses until the remaining 20 witnesses have been examined would stall the conduct of the trial. It is also noticed that the request made in Court during the course of hearing today is different from the one made before the Special Exclusive Court-01 (NIA Act, 2008). The application there sought deferral of the cross-examination of four witnesses until conclusion of examination of all such witnesses i.e. LW-3 to LW-15, LW 17 to 27 as well as LW X-1 & LW X-2. The impugned order cannot be faulted for deciding the prayer in the manner in which it was framed.

18. In any event, the request now made does not cure the difficulty. As clarified in Court, the petitioner still seeks that the examination-in-chief of all the remaining 18 witnesses be recorded before any of them is cross-examined. This is the kind of wholesale deferment that Vijay Kumar (supra) does not contemplate.

19. The fear that the cross-examination of the witnesses will reveal the defence does not justify the deferment. Some disclosure of this kind is unavoidable wherever several witnesses speak to the same allegations. The petitioner himself accepts, that each witness speaks of his own separate

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

dealings with the petitioner.

20. Given that each witness speaks of his own separate dealings with the petitioner, learned counsel for the respondent rightly points out that almost every prosecution witness will speak to some fact connected with the charge. If that alone were to justify deferment, the cross-examination of virtually every witness would have to await the examination in chief of all others. This would be untenable and inexpedient.

21. The impugned order also notes that most of the witnesses are the petitioner's childhood friends, school friends or neighbours, and that if deferment of all 24 witnesses is allowed, the possibility of the witnesses being influenced or threatened cannot be ruled out (paragraph 39 of the impugned order, extracted hereinabove). Deferring the cross-examination of these witnesses until the examination-in-chief of all the remaining witnesses is concluded would necessarily result in a long gap between their examination-in-chief and cross-examination, and the risk of their being influenced would only increase with such delay. The possibility of undue influence on, or threats to, the witnesses is a relevant consideration. In this regard, in ***State of Kerala v. Rasheed*** , 2018 SCC OnLine SC 2251 the Supreme Court has observed as under:-

> ***"23.*** *While deciding an application under Section 231(2) CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:*
>
> *(i) possibility of undue influence on witness(es);*
>
> *(ii) possibility of threats to witness(es);*

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10

(iii) possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;

(iv) possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;

*(v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) CrPC ["**309. Power to postpone or adjourn proceedings**.—(1) In every inquiry or trial the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:"See also Vinod Kumar v. State of Punjab, (2015) 3 SCC 220 : (2015) 2 SCC (Cri) 226 : (2015) 1 SCC (L&S) 712; and S.J. Chaudhary v. State (UT of Delhi), (1984) 1 SCC 722 : 1984 SCC (Cri) 163.] .*

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) CrPC".

22. In the totality of the facts and circumstances, no merit is found in the present petition. The same is accordingly, dismissed.

SACHIN DATTA, J

NOVEMBER 25, 2026/*uk*

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:28.11.2026
17:42:10