



NR 02 HR 1000 (4 Pgs)

**POLICE DEPARTMENT
KERALA**

No.D1-178563/2019/PHQ
POLICE HEADQUARTERS
Kerala, Thiruvananthapuram

Dated 01.12.2019

CIRCULAR No.35/2019

**Sub:-Sanction for Prosecution under UA(P)A and other Acts -
Regarding.**

While investigating cases of terrorism and extremism, we invoke various provisions of UA(P)A and other Acts namely IPC, Arms Act, Explosive Substance Act, etc.

02. U/s.45 of the UA(P)A, Sanction for Prosecution is required to be obtained from the Competent Authority to prosecute any person who has committed offences as enumerated in the UA(P)A. We have issued clear directions in this regard which interalia include to send the Investigation Report along with the relied upon documents to the Recommending Authority which is mandated to go through the evidence collected and decide whether Prosecution Sanction can be recommended to the Competent Authority or not. In our State, the Competent Authority for according Sanction for Prosecution u/s.45 of the UA(P)A, u/s.188 Cr.PC. and under various provisions of IPC where such sanctions are required (viz., u/s.121, 121A, 124, etc.), u/s.196 Cr.PC is one and the same, i.e., the State represented by the Additional Chief Secretary/Principal Secretary to Government (Home), Government of Kerala. So, our Investigation Report and the covering letter must mention about our requirement to accord sanction u/s.45 of the UA(P)A or u/s.196 Cr.PC or u/s.188 (Cr.PC involving Foreign Investigation), etc. A template for such request is attached.

03. Some instances have come to our notice in certain cases wherein sanction u/s.45 of the UA(P)A are sent to the Recommending Authority and sanction for other Acts like IPC, Explosive Substances Act, Passport Act, etc. are not obtained from the Competent Authority.

04. It is also to be kept in mind that "Recommending Authority" u/s.45 of the UA(P)A is supposed to recommend only for sanction relating to the UA(P)A. They have no mandate to recommend to get Prosecution Sanction under various offences

like Sec.121, 124, 124A, Arms Act, Explosive Substances Act, etc. However, the Investigation Report should contain all the facts relating to UA(P)A and other offences. The principles are given below:

i) Only for obtaining Sanction for Prosecution u/s.45 for UA(P)A Offences, the Investigation Report should be sent to the Recommending Authority clearly mentioning the requirement.

ii) If other offences are added like IPC offences, etc., the Sanction for Prosecution should be obtained from the Competent Authority which is the same as that of UA(P)A. The Investigation Report should also contain the details of evidences collected to prove these offences along with evidences for UA(P)A offences and should be sent with a covering letter. In case of offences where the Competent Authority is not the Home Department, the Investigation Report should be prepared in the same format and sent to the concerned authority like District Collector for Arms Act and only after getting that sanction, the request is to be sent to the Recommending Authority. It must be remembered that the Recommending Authority has to give recommendation in a time bound manner, i.e., 7 days of the receipt of request from the Home Department.

05. It may be noted that sometimes Sanction may be refused by the Competent Authority relating to the offences under IPC and other Special Laws (not the UA[P]A). In that situation also there is no legal bar to send to the Recommending Authority, **the Investigation Report** requesting for according Prosecution Sanction for UA(P)A offences.

06. By a single order of the State Government sanction under Sec.45 of the UA(P)A, 188 Cr.PC and 196 Cr.PC can be granted for maximum number of offences. In some offences, the sanctioning authority may be different; for example in respect of offences under Explosives Substances Act, the sanctioning authority is the District Collector; for Arms Act, it is also the District Collector. In those situations, those sanctions must be obtained first and then only request should be made to the Recommending Authority through the Home Department to accord sanction u/s.45 of the UA(P)A.

07. In short, it must be ensured that in addition to obtaining of Prosecution Sanction u/s.45 of the UA(P)A, sanction u/s.196 Cr.PC and sanction under various provisions of other Acts shall be obtained in all those Cases where offences punishable under such IPC and other offences have been invoked. As there is a time

limit prescribed for getting sanction u/s.45 of the UA(P)A, i.e., the Recommending Authority shall recommend within 7 days of receiving the request and the sanctioning authority shall give the sanction within 7 days of the receipt of recommendation, it is appropriate that sanction for offences other than UA(P)A should be obtained first when the Competent Authority is different and then only Sanction for Prosecution u/s.45 of the UA(P)A for UA(P)A offences should be obtained. This should not be vice-versa.

08. In the event, offences have taken place abroad and sanction u/s.188 Cr.PC is required from the Competent Authority, that also shall be obtained by adopting the same procedure. But, it must be understood that Sanction relating to the UA(P)A shall be sent to the Recommending Authority at the last so that time limits as per Rules are kept.


(Loknath Behera IPS)
Director General of Police &
State Police Chief

To
List 'D' Officers

Copy to – All Officers in PHQ/CA to SPC
The Junior Superintendents of T and U Branches, PHQ

ANNEXURE**TEMPLATE OF THE LETTER TO BE SENT TO THE GOVERNMENT**

From

ADGP CB/DPC

To

The Special Secretary to Government (Home)

(Through DGP/SPC – Kind Attention)

Sir,

Sub:-According of Sanction for Prosecution under various provisions of UA(P)A and other offences by the Competent Authority in Case No..... of Police Station u/s..... – Regarding.

Enclosed please find an Investigation Report prepared by the Investigating Officer of the above mentioned Case. He has requested for according Sanction for Prosecution for the UA(P)A offences u/s.45 of the Unlawful Activities (Prevention) Act and Sanction for Prosecution under various offences (offences u/s....., u/s.....).

02. So far as offences other than UA(P)A are concerned, the State Government represented by the Additional Chief Secretary to Government (Home), Government of Kerala, is the Competent Authority. He may be recommended to accord the sanction at the earliest. So far as the UA(P)A is concerned, the Sanction for Prosecution u/s.45 has to be accorded by the Government represented by the Additional Chief Secretary to Government after the Recommending Authority recommends to accord such sanction within 7 days of the recommendation.

03. Considering the time limit being prescribed for UA(P)A offences, it is requested that the matter may be expedited and sanction u/s.45 of the UA(P)A and under other Sections may be issued together by the Competent Authority.

04. The Investigating Officer and the Supervisory Officer are ready to produce the Case Diary with connected documents before the Recommending Authority as and when it is required.

Yours faithfully,

(Name & Rank of I.O.)

NB:-(Not a part of this template. If sanction for say Arms Act, Explosive Substances Act, etc. has already been obtained say from the District Collector that also has to be mentioned in Par 04 – “Sanction for Prosecution for offences punishable u/s..... has been obtained from and copies attached to the Investigation Report”.)

T.M. 1900/01.12-19