

P.C.

The petitioner in WP No.4926/17 and the applicant in Cr.Appln.529/17 are accused in C.R.No.130/2008 registered under Sections 302,307,326,324,427, 153-A (1)(b), 120-B of IPC r/w 3,4,5 of Explosive Substance Act, 1908. They pray for directions and order, quashing the cognizance of offence registered under sections 15,16,17,18,20,23 of the Unlawful Activities (Prevention), 1967 (as amended in 2004 and 2008) (hereinafter referred to as Act of 1967, for short) for want of valid sanction.

2. The learned Counsel appearing for the petitioner in Writ Petition No.4926/2017 submits that an application for discharge is filed by both the accused namely Lt. Col Prasad Purohit and Sameer Sharad Kulkarni before Special NIA Court, Greater Mumbai. It is submitted by the learned Counsel appearing for the petitioner and party-in-person Mr.Sameer Sharad Kulkarni that both the applications are closed for orders. The Special Court has listed these

applications for orders on 21st December, 2017. The applicants alongwith others had preferred appeal praying for bail in the subject case. The petitioner Mr. Purohit filed an appeal bearing No.664/2016 against the judgment and order of cancellation of bail. The Division Bench of this Court (R.V.More and Dr. Shalini Phansalkar Joshi, JJ) vide judgment and order dated 25th April, 2017 dismissed the appeal. The petitioner Mr. Purohit preferred Criminal Appeal no. 1448/2017. The Apex Court enlarged the petitioner Purohit on bail subject to conditions vide judgment and order dated 21st August, 2017. The Counsel appearing for the petitioner submits that during the hearing of discharge application, the petitioner had preferred an application under Section 91 of the Criminal Procedure Code for production of certain documents. The Court issued summons vide order dated 19th August, 2017 addressed to Home Department. Consequent to the issuance of summons Mr. Vijay Patil, Dy. Secretary, Home Department, State of Maharashtra submitted an application dated 6th September, 2017 by producing certain documents. The Gazette

Notification of appointment of authority under Section 45(2) of Act of 1967 between 31/12/2008 to 28/5/2010 was sought for. The Home Department produced gazette notification dated 28th May, 2010 in response to documents referred as above.

3. The Counsel appearing for the petitioner submits that gazette notification clearly indicates that there was no sanction granted on 17th January, 2009 as the gazette notification was issued on 28th May, 2010.

4. Similarly, the party-in-person Mr. Kulkarni raised the same issue and prayed for identical reliefs. The party-in-person submitted that since last 9 years he is facing proceedings without there being any final word on the allegations made against him. Mr. Kulkarni was not a party to the earlier proceedings of appeal decided by this Court and the further proceedings of criminal appeal decided by the Apex Court. He, therefore, submits that though the application filed for discharge is closed for orders, the issue of sanction can be

independently decided by this Court on its own merits.

5. On behalf of NIA, an affidavit of Vikram Khalate, Superintendent of Police, NIA came to be filed.

6. Learned Counsel appearing for the respondent -NIA referred to the judgment of the High Court and the Apex Court in the case of petitioner Purohit. We may quote the relevant paragraphs of the judgment delivered by the Apex Court. Paragraphs 19 and 25 read as under:

“19. Further, with regard to the contention of learned senior Counsel as to the non-applicability of Section 43-D(5) of the UAP Act or want of valid sanction for the prosecution, it was rightly suggested by the learned ASG that it can be considered at the time of trial and not at this stage.

25. It is further made clear that the grant of bail to the appellant herein shall be no consideration for grant of bail to the other Accused persons in the case and the

prayer for bail by other accused persons (not before us) shall be considered on its own merits. We also make it clear that the Special Court shall decide the bail applications, if filed by the other Accused persons, uninfluenced by any observation made by this Court. Further, any observations made by us in this order shall not come in the way of deciding the trial on merits.”

7. The Counsel Mr. Patil submits that in the facts and in view of the judgment and orders passed by the High Court and the Apex Court, it would not be proper, legal and valid for the petitioner Purohit to raise issue of sanction in the present writ petition. It is further submitted that both the accused filed an application for discharge which is heard on merits and Special Court has closed it for orders. According to instructions of the Counsel, issue of sanction is raised during the course of hearing before the Special Court, NIA. Therefore, there is no propriety now for the parties to invite orders of this Court on the issue of 'sanction'.

8. Perused the record placed before us and the judgment of the Supreme Court and High Court. While dealing with the case filed by the petitioner Mr. Purohit, the High Court had observed in Paragraph 89 that whether sanctioning authority has considered such report or not can be decided only after the sanctioning authority is given an opportunity to state so, at the time of trial. The Apex Court accepted the suggestion made by the learned ASG that the said issue can be considered at the time of trial not at that stage.

9. The Apex Court and the High Court had clarified that observations made in the judgment shall not influence trial Court in any way while deciding the trial on merits.

10. In view of the aforesaid facts and circumstances we find that it would not be appropriate at this stage to deal with the issue of 'sanction'. The discharge applications are already closed for orders by the Special Court. We do not express any opinion on the merits of the

application filed by the accused before the Special Court. The Writ Petition and Criminal Application, are dismissed.

(NITIN W. SAMBRE, J)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.