

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1875 OF 2023

Sameer Sharad Kulkarni	]	
s/o. Sharad Ganesh Kulkarni, Age 51 years,	]	
Indian Adult having residence at	]	
Flat No.04, Runal Nets,	]	
Near Giriraj Ganesh Mandir,	]	
Bijali Nagar, Chinchwad,	]	
Pune – 411 033.	]	... Petitioner /
		(Accused No.5)

V/s.

The State of Maharashtra	]	
Through : National Investigation Agency,	]	
Mumbai.	]	... Respondent

Mr.Sameer Sharad Kulkarni, Petitioner in-person.
 Mrs.G.P. Mulekar, A.P.P. for Respondent-State.
 Mr.Sandesh D. Patil a/w. Ms.Anusha P. Amin for Respondent-N.I.A..

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

DATE : 28th June 2023.

P. C. :

1. Petitioner has impugned Order dated 20th April 2023 passed below Exh.8382 in N.I.A. Special Case No. 01 of 2016, by the learned Special Judge, City Civil and Sessions Court, Mumbai and to quash the criminal proceedings initiated on the basis of the sanction under Section 45(2) of U.A.P. Act by the Home Department (Special), Mantralaya, Government of Maharashtra dated 17th January 2009 and 20th April 2011.

2. Heard Mr.Kulkarni, petitioner in-person, Mrs.Mulekar, learned A.P.P for Respondent-State and Mr.Patil, learned Advocate for Respondent-N.I.A.. Perused record produced before us.

3. Exh.8382 was filed by Petitioner with a contention that, no ‘sanction’ as contemplated under Section 45(2) of The Unlawful Activities (Prevention) Act, 1967 [*for short, “U.A.P Act”*] was obtained by the prosecuting agency for initiation of prosecution of present case and therefore his case be transferred to regular Court having original jurisdiction to try case under Section 20 of The National Investigation Agency Act, 2008 [*for short, “N.I.A. Act.”*].

4. The Trial Court in its operative part of impugned Order dated 20th April 2023 has observed as under :

“(i) Accused persons are at liberty to raise their grievance with respect to the invalidity or illegality of the sanction, if any, at the time of final hearing

(ii) All the legal contentions of accused persons pertaining to sanction are kept open.”

5. Mr.Kulkarni submitted that, in the present case initially chargesheet was filed by the Anti-Terrorism Squad (A.T.S.) Mumbai on 20th January 2009 and the Special Court has taken cognizance of it on 22nd January 2009. It was observed by the Special Court that, the point of ‘sanction’ will be decided at the time of framing of ‘charge’ by the Special

Court. He drew our attention to the common Order passed by the Division Bench of this Court in Criminal Writ Petition No. 4926 of 2017 filed by Lt. Col. Prasad Purohit along with Criminal Application No. 529 of 2017 filed by him.

He submitted that, Lt. Col. Prasad Purohit had challenged the Order dated 18th December 2017 by way of Petition (s) for Special Leave to Appeal (Crl.) Nos. 611-613 of 2018 before the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that, the observations made by it in the Order deciding his bail application shall not be totally brushed aside but shall be considered during framing of charges and the trial and the High Court shall decide the same on its own merits without being influenced by observations in respect of sanctions in para 19 of the Order dated 21st August 2017 passed by it. He submitted that, in the impugned Order instead of deciding the point of sanction, the trial Court has only observed that it will decide it at the time of final hearing. He submitted that, the evidence on record clearly indicates that, the prosecution has not obtained sanction under Section 45(2) of U.A.P Act and therefore the charges under the U.A.P Act cannot be sustained. He therefore prayed that, not only the impugned Order be set-aside but the prosecution under the provisions of U.A.P Act against the Petitioner may also be dropped.

6. Per contra, Mr.Patil, learned Advocate for Respondent-N.I.A. vehemently opposed the Petition and submitted that, whatever has been

argued by the Petitioner has not been pleaded at all in the Petition and the pleadings in the Petition consists of only one paragraph and prayers. That, the annexures to the petition have not been pleaded on affirmation and those are simply annexed to it. He submitted that, as of today prosecution has examined 320 witnesses and approximately 02 more witnesses are remained to be examined. That, the prosecution has examined P.W. Nos.304 & 310 as Sanctioning Authorities. Their evidence at this stage cannot be appreciated in a petition under Article 226 of the Constitution of India, as the Trial Court has not yet dealt with it in the impugned Order. He on instructions submitted that, with a view to protract the trial, present petition is filed against an interlocutory Order. He submitted that, the Petition is totally misconceived and be dismissed.

7. At the outset, it is to be noted here that, the Order dated 18th December 2017 passed in Writ Petition No. 4926 of 2017 (by Lt. Col. Prasad Purohit) with Criminal Application No. 529 of 2017 (by the petitioner) was challenged before the Hon'ble Supreme Court by way of Special Leave to Appeal (Crl.) Nos. 611-613 of 2018 by Lt. Col. Prasad Purohit only and not by the petitioner. According to us, the petitioner has accepted the Order dated 18th December 2017 passed in Criminal Application No. 529 of 2017. The directions issued by the Hon'ble Supreme Court dated 20th April 2018 in the appeal of Lt. Col. Prasad Purohit are applicable to him. As per the record, Lt. Col. Prasad Purohit had thereafter adopted necessary legal measures

before this Court and/or the trial Court. The contention of the petitioner that, the benefit of the observations made by the Hon'ble Supreme Court be extended to him also, therefore cannot be accepted.

8. Be that as it may. By the impugned Order, the trial Court has observed as noted in para No.4 herein above. The trial Court has not decided the issue raised by the petitioner and has kept it for consideration at the time of final hearing. According to us, the impugned Order is purely an interlocutory Order and the trial Court is yet to decide the issue involved therein. Record indicates that, the prosecution has already examined PW-304 and PW-310 i.e. the Sanctioning Authorities. The trial Court is yet to consider the evidence of the said witnesses and as noted earlier, has kept the said issue open for consideration at the time of final hearing of the said Special Case. Testing veracity of the statements of the said two witnesses at this stage would amount to appreciation of evidence and *inter-alia* defence of the petitioner in a petition under Article 226 of the Constitution of India, which is not tenable in law.

9. In view of the above, we find no merits in the Petition and is accordingly dismissed.

[SHIVKUMAR DIGE, J.]

[A.S. GADKARI, J.]