



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION***

***WRIT PETITION (ST) NO.9645 OF 2023***

Sameer Dyandev Wankhede  
Vs.

..... Petitioner

Union of India and Ors.

..... Respondents

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Rizwan Merchant i/b Kiran Jain for the Petitioner.

Mr. Kuldeep Patil for Respondent No.2-CBI.

Ms. Manisha Jagtap for Respondent No.3.

Ms. Sangeeta D. Shinde, Addl. P.P. for Respondent No.4.

Petitioner is present.

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***CORAM : SHARMILA U. DESHMUKH &  
ARIF S. DOCTOR, JJ.***

***DATE : 19 MAY 2023  
(VACATION COURT)***

**P. C.**

1. Not on board. Taken on board.
2. By this petition the petitioner seeks quashing of the FIR dated 11/5/2023 registered at CBI/AC-II/New Delhi registered against the petitioner and Ors under section 7 or 7A or 120B of the IPC.
3. The petition has been urgently circulated seeking ad-

interim relief not to take coercive action against the petitioner.

4. Heard.

5. Learned counsel appearing for the petitioner submits that the FIR has been registered on 11/5/2023 pursuant to the sanction which has been granted under section 17A of the Prevention of Corruption Act, 1988 (for short, "the Act") on 11/5/2023. He would submit that the second proviso to Section 17A of the Act creates a legal bar. He would further submit that the Apex Court in the case of *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 held that one of the conditions in which FIR ought to be quashed is where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act under which a criminal proceeding is instituted. He would submit that inquiry in the present case is relatable to the offence of the year 2021 and as such the prescribed period of 4 months under section 17A of the Act has already lapsed. He would further submit that even taking into consideration the report of the Special Inquiry Team dated 25/10/2021, bar under section 17A of the Act would still apply. He would further point out that on 14/5/2023 the notice has been issued under section 41A of Cr.P.C. and as such the arrest of the person is not required unless there is non compliance. He would further point out that the directions which are set out in the notice under section 41A of Cr.P.C. makes the petitioner vulnerable in as much as in event of non compliance of the directions the power under section 41A (3) (4) of Cr.P.C. still be

invoked.

6. *Per contra*, learned counsel for respondent No.2 and learned counsel for Respondent No.3 submits that the sanction has been granted on 11/5/2023 and as such the period of 4 months would commence after the order of sanction. He would further submit that the provisions of section 17A of the Act are contained in Chapter IV which deals with investigation into the case and investigation has commenced now. He would further request for time to place on record affidavit in reply and sanction which has been granted in the present case.

7. Considered the submissions. Today the petitioner is before us for a limited relief not to take any coercive action against the petitioner. Learned counsel appearing for the petitioner makes a statement on instructions of the petitioner, present in court, that the petitioner will co-operate with the investigation and attend the office of respondent No.2 at BKC, Mumbai tomorrow at 11.00 a.m. and as and when required.

8. Considering that the Petitioner undertakes to appear before the Investigating Agency -Respondent No.2 tomorrow, *prima facie*, the question of invoking Section 41A(3) and (4) of Cr.P.C. does not immediately arise. As the respondent No.2 seeks time to file affidavit in reply and as we have listed the matter for further hearing on 22/5/2023, in view of the above, in the meantime respondent not to take any coercive action till next date

i.e. 22/5/2023.

9. Let affidavit in reply on behalf of respondents be tendered in the Registry on 22/5/2023 with an advance copy to the learned counsel for the petitioner.

10. Stand over to 22/5/2023.

*ARIF S. DOCTOR, J.*

*SHARMILA U. DESHMUKH, J.*