

Argued by: Shri Keshavam Choudhary Advocate along with Shri Prashant Yadav Advocate counsel for applicant-accused Sikander Singh
Shri Atul Agarwal Special Public Prosecutor along with Shri Arun Choken Advocate, counsel on behalf of complainant-Directorate of Enforcement.

ORDER:

The applicant/accused No.1 Sikander Singh has moved an application with the prayer to take into consideration the documents annexed with the application.

2. It is submitted that the applicant/accused No.1 is a victim of grave persecution and harassment being meted out to him for wholly extraneous considerations. The record reveals that vide order dated 05.12.2024, the cognizance of the offence under PMLA was taken by learned Predecessor. The said order now has been set aside by the Hon'ble High Court vide order dated 29.07.2025 in CRM-M-29954-2025 directing the Special Judge to pass a fresh order after affording an opportunity of hearing to the petitioner in terms of first proviso to Section 223(1) BNSS. The said provision has been interpreted by the Hon'ble Supreme Court as well as the Hon'ble High Court and it is now well settled and no longer resintegra that opportunity of being heard cannot be an empty formality and the hearing in its ordinary parlance would entail an effective, purposeful and meaningful opportunity with the accused being afforded ample recourse to submit his case before taking cognizance. It is further submitted that proviso to Sub Section (1) of Section 223 puts an embargo on the power of the court to take cognizance by providing that no cognizance of an offence shall be

taken by the Magistrate without giving the accused an opportunity of being heard. The submissions made by the learned Additional Solicitor General before the Hon'ble Supreme Court in case of **Kushal Kumar Agarwal v. Enforcement Directorate** (2025 SCC OnLine SC 1221) would leave no manner of doubt that the question as to whether the hearing of the accused at pre-cognizance stage in terms of Proviso to Sub Section (1) of Section 223 BNSS, 20023 is to be confined to only the complaint and the documents produced along with the complaint, has to be considered by the court at the time of hearing. Therefore, it is expedient in the interest of justice to charter a course of action, which would befittingly impart justice to the expression opportunity of being heard' to the accused. It is further submitted that hearing of the case would entail due process, enable the court to gather appropriate information on specific issue and the court be fully informed about the questions of law in juxtaposition with the facts emanating from the record so that the decision making process is objective, fair and is based upon practical as well as pragmatic parameters. It is further submitted that guided by the aforementioned facts and liberty granted by the Hon'ble Supreme Court in *Kushal Kumar Aggarwal case*, keeping open the aspect as to whether opportunity of hearing is to be confined to the documents appended with the complaint or even the accused can introduce documents of sterling quality and unimpeachable character, it would be appropriate to refer to the peculiar facts of the present case and place the documents for consideration as mentioned in para no.13 of the application.

It is quintessential that the documents as mentioned in para no.13 of the application are seen, perused and examined by the court so as to take an informed, conscious and aware decision as to whether the cognisance ought to be taken or not.

3. It is further submitted that taking of cognizance is a judicial act which entails the application of the mind. Before taking cognizance, the court would be on its guard to see that its process is not used, misused or abused for any extraneous consideration or on inchoate, incomplete and inconclusive material. It is therefore prayed to allow the present application and to take into consideration the documents which are of sterling quality and unimpeachable character that includes exchange of correspondence with the ED itself and which form part of the pleadings before the Hon'ble Supreme Court of India in IA No. 260349/2025, IA No. 260372/2025, IA No. 260566/2025, IA No. 260377/2-25, IA No. 26-357/2025 and IA No. 260526/2025 in WPC 703 of 2025 and the other such documents which form part of the records even before the Hon'ble Court as the perusal of the same would be highly necessary for just and proper adjudication of the hearing at pre-cognizance stage as well as to give an effective and purposeful interpretation to the expression hearing in terms of proviso to Sub Section (1) of Section 223 of BNSS, 2023. Reliance has been placed upon the following case law :

Kushal Kumar Agarwal V. Enforcement Directorate
2025 SCC Online SC 1221.

Sohan Singh V.Hans Raj 1959 SCC Online Punj 128
Arnab Manoranjan Goswami V. State of Maharashtra
(2020) 14 SCC 12

4. Ld. SPP appearing on behalf of ED submitted that he does not want to file any formal reply to said application and argued that the application is misconceived and is only an attempt to delay the proceedings.

Learned SPP placed reliance on case titled as *Rahul Surana Vs. The Assistant Director, Directorate of Enforcement, CRL RC No. 1541 of 2025 decided on 19.11.2025 and State of Gujarat Versus Dilipsinh Kishorsinh Rao Criminal Appeal No. 2504 of 2023.*

5. I have heard learned counsel for the Applicant, SPP on behalf of the ED and have perused the record carefully. Arguments have been advanced in terms of the averments made in the application.

6. The present application has been moved by applicant/accused No.1 seeking permission to place on record and for consideration certain documents at the stage of pre-cognizance hearing under the proviso to Section 223(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The applicant has contended that in view of the judgment of the Hon'ble High Court remanding the matter and the interpretation of the proviso to Section 223(1) BNSS by the Hon'ble Supreme Court, he is entitled to place documents of alleged sterling and unimpeachable character for consideration of this Court.

7. **Per contra**, learned Special Public Prosecutor for the Enforcement Directorate has opposed the application, contending that the

same is misconceived and is a device to delay the proceedings. Reliance has also been placed on various pronouncements to submit that the accused has no right to introduce defence material at this stage. The scope of the proviso to Section 223(1) of BNSS is to afford an opportunity of being heard to the accused before taking cognizance. The said opportunity, however, cannot be interpreted to mean a right to lead defence evidence or to convert the pre-cognizance stage into a mini-trial. The hearing contemplated under the statute is essentially a legal hearing and not an evidentiary adjudication. The Hon'ble Supreme Court in **State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568** held that defence material cannot ordinarily be seen at the stage of framing of charge, except in rare cases, where documents are of "unimpeachable character" which are of sterling and incontrovertible quality and which clearly demolish the prosecution case, may be looked into. Thus it clearly held that the accused cannot ordinarily be permitted to produce defence material at the stage of cognizance or framing of charge.

8. Similar caution has been sounded in **State of Gujarat v. Dilipsinh Kishorsinh Rao** Criminal Appeal no. 2504 of 2023 decided on 9.10.2023, against fragmenting criminal proceedings by entertaining repeated interlocutory applications. If such applications are routinely allowed, the same would result in unwarranted delays, multiplicity of proceedings and would defeat the object of expeditious trial, especially in cases arising under special statutes like the PMLA.

9. Section 223 BNSS apparently gives a **right of hearing**, not a right to **lead defence material**. The hearing, to my mind is to be **oral and legal**, not evidentiary. If such applications are to be allowed routinely, it will result in endless filings and delay in specialized statutes like PMLA, thereby defeating the very purpose of the special statute.

10. Therefore, this Court is of the considered opinion that the present application is misconceived and beyond the permissible scope of a pre-cognizance hearing. The same deserves to be dismissed. However since the ED has not commented upon the unimpeachable quality of the documents placed on record and has preferred not to file a formal reply, this Court, if deemed necessary, may examine such material for its own satisfaction, though no right accrues to the applicant by virtue of this order/observation, to insist upon taking the documents on record at this stage. It is, however, clarified that the dismissal of the present application shall not prejudice the right of the applicant to rely upon any permissible material at the appropriate stage of the proceedings in accordance with law.

Application stands disposed of accordingly.

Date of order: 09.12.2025
(mamta)

(Vani Gopal Sharma)
Special Judge, Under PMLA cum
Sessions Judge, Gurugram.
UID No.HR0073

(Vani Gopal Sharma)
Sessions Judge-cum-Special Judge
U/PMLA/ Gurugram.