

Ajay

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

**CRIMINAL WRIT PETITION NO. 4083 OF 2026**

Nikita Nimesh Shah

.. Petitioner

**Versus**

Directorate of Enforcement

Asst. Director Mumbai Zonal Office – I and Anr. .. Respondents

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- Mr. Bhavesh Thakur, Advocate for Petitioner.
- Ms. Manisha Jagtap, Advocate for Respondent No.1 – ED.
- Ms. Gauri Rao, APP for Respondent No.2 – State.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : AUGUST 31, 2026.**

**P.C.:**

**1.** Heard Mr. Thakur, learned Advocate for Petitioner; Ms. Jagtap, learned Advocate for Respondent No.1 - ED and Ms. Rao, learned APP for Respondent No.2 – State.

**2.** This Petition is filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) read with Article 227 of the Constitution of India to quash and set aside the order dated 14.02.2025 passed in PMLA Special Case No.313 of 2025, by virtue of which the Special Court at Greater Sessions, Mumbai has issued process against the Petitioner and 14 other co-accused persons.

**3.** Mr. Thakur, learned Advocate would argue that complaint is filed by the Directorate of Enforcement before the Special Court at

Mumbai on 10.02.2025. He would submit that on that date, the case was adjourned to 14.02.2025 for cognizance. However, on 14.02.2025, without issuing notice to the Petitioner as also to any other co-accused persons as mandated by the proviso of Section 223 of BNSS, the Special Court, *ex-parte* took cognizance and issued process against the Petitioner and 14 other co-accused persons.

**3.1.** He has taken me through the gist of the prosecution case as averred in paragraph No.3 of the Petition. For the sake of brevity, I do not deem it necessary to repeat and reiterate the same herein. He would submit that based on a written complaint dated 11.12.2020 filed by State Bank of India, First Information Report (FIR) was registered by CBI on 07.11.2022 for offences punishable under Section 120B read with 420 of Indian Penal Code (for short '**IPC**') and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 against M/s. Max Flex & Imaging Systems Private Limited, Hitesh Jobalia, Nimesh Shah, Ms. Dipti Jobalia and unknown public servants.

**3.2.** He would submit that Petitioner is the wife of Nimesh Shah. He would submit that based on the aforesaid FIR, Respondent No.1 registered ECIR case on 13.12.2022 and during investigation conducted search at Petitioner's house. He would submit that during that search, two mobile phones and two files of Petitioner's husband were seized and certain documents of one demat account of Petitioner

and another demat account of Petitioner's mother-in-law were seized and frozen by order dated 11.09.2023 on the ground of suspicion that the said demat accounts may have received proceeds of crime.

**3.3.** He would submit that show cause notice was thereafter issued to Nimesh Shah, husband of Petitioner in terms of Section 8 of the Prevention of Money Laundering Act, 2002 (for short 'PMLA, 2002'), but this show cause notice was never served upon the Petitioner, notwithstanding the fact that Petitioner's demat account was seized and frozen.

**3.4.** He would submit that pursuant to completion of investigation, Respondent No.1 - Enforcement Directorate filed complaint before the Special Court on 10.02.2025 and immediately on 14.02.2025 without even issuing notice to Petitioner and other co-accused persons under Section 223 of BNSS, the Special Court took *ex-parte* cognizance and issued process.

**3.5.** He would submit that no inquiry or investigation is done with the Petitioner. Neither the Petitioner has received any summons or notice from Respondent No.1 and most importantly Petitioner is not granted any opportunity to discharge the burden under Section 24 of PMLA, 2002.

**3.6.** In the above set of facts, Mr. Thakur would vehemently submit and invoke Section 223 of the BNSS corresponding to Section

200 of the Criminal Procedure Code, 1973 (for short 'Cr.PC'). He would submit that the factual position after filing of the complaint and issuance of the process is undisputed and admittedly no notice has been issued to the Petitioner by the Sessions Court.

**3.7.** He would submit that Section 223(1) incorporates right of hearing at a pre-cognizance stage and clearly mandates that no cognizance of an offence on the basis of a complaint shall be taken by the Magistrate without giving the accused an opportunity of being heard. He would submit that the said provision is there on the statute to provide an opportunity of hearing to the accused person at a pre-cognizance stage with a view to ensure that the accused is not made to suffer the ordeal of facing the prosecution by resorting to private complaint mechanism indiscriminately.

**3.8.** In support of his above submission, he has drawn my attention to the decision of the Supreme Court in the case of *Kushal Kumar Agarwal Vs. Directorate of Enforcement*,<sup>1</sup> wherein the question of applicability of the first proviso to Section 223(1) of the BNSS, 2023 regarding warranting an opportunity of hearing to the accused person in a PMLA prosecution complaint came up before the Supreme Court. He would submit that in paragraph Nos.5 to 7 of the said decision, the Supreme Court answered the aforesaid question as follows:-

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<sup>1</sup> 2025 SCC OnLine SC 1221

“5. This Court has taken a consistent view that a complaint filed by the Enforcement Directorate under Section 44(1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. This view has been taken by this Court in the cases of *Yash Tuteja v/s Union of India* and *Tarsem Lal v/s Enforcement Directorate*. Therefore, the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint.

6. The 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.

7. In this case, admittedly, an opportunity of being heard was not given by the learned Special Judge to the appellant before taking cognizance of the offence on the complaint. Only on that ground, the impugned order dated 20th April, 2024, will have to be set aside.”

**3.9.** He would submit that in a very recent decision of the Supreme Court in the case of *Parvinder Singh Vs. Directorate of Enforcement*<sup>2</sup>, the Supreme Court once again considered the applicability of the first proviso to Section 223(1) of the BNSS to a prosecution complaint under PMLA, 2002 and held that the said provision confers a substantive right upon the accused person to be heard before taking cognizance which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India.

**3.10.** The Supreme Court stressed upon the word "shall" occurring in the first proviso to be construed to be mandatory in nature, enuring to the benefit of an accused person and held that cognizance of an

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2 (2026) SCC OnLine SC 903

offence taken by a Court without due compliance of the aforesaid proviso would be *void ab initio*.

**3.11.** He would argue that the Supreme Court concluded that Sections 200 to 205 of the Cr.PC and now Sections 223 to 228 of BNSS would be applicable to proceedings under the PMLA 2002 and non-compliance with the first proviso to Section 223(1) of the BNSS vitiates the order taking cognizance and such an order cannot be sustained in the eyes of law.

**3.12.** Hence, he would persuade the Court to allow the Petition in terms of prayer clause (b) and set aside the impugned order dated 14.02.2025.

**3.13.** In support of his case, he has referred to and relied upon the decisions of this Court in the following cases (i) *Neville Tuli Vs. Securities And Exchange Board of India and Ors.*<sup>3</sup> (ii) *Mr. Sunil J. Anandpara and Anr. Vs. Directorate of Enforcement and Anr.*<sup>4</sup>.

**4.** Ms. Jagtap, learned Advocate appearing on behalf of Respondent No.1 – Enforcement Directorate, in support of the case of Respondent No.1 and the impugned order has persuaded me to consider a recent judgment of the Supreme Court in the case of *Parvinder Singh Vs. Directorate of Enforcement* passed in Criminal Appeal (*supra*)

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<sup>3</sup> Writ Petition No.5242 of 2025 – Decided on 15.07.2026

<sup>4</sup> Cri. Writ Petition No.3159 of 2025 – Decided on 22.07.2026

**5.** After going through the aforesaid submissions, it is *prima facie* seen that the learned Special Counsel appearing for Respondent No.1 – Directorate of Enforcement does not dispute the legal position nor he disputes the fact that Petitioner was not heard by the Special Court before it took cognizance. The fair-mindedness with which the learned Counsel for Respondent No.1 – Directorate of Enforcement has argued the present matter is appreciated by the Court.

**6.** In view of the above, the impugned order dated 14.02.2025 cannot be sustained on the ground that the Petitioner was not given an opportunity of hearing before taking cognizance. Accordingly, the said impugned order dated 14.02.2025 passed in PMLA Special Case No.313 of 2025 is quashed and set aside. As a consequence of setting aside the order dated 14.02.2025, the proceedings arising out of ECIR bearing No.ECIR/MBZO-I/73/2022 are restored to the file of the Special Court at the stage of cognizance.

**7.** Petitioner shall appear on the next date of hearing before the Special Court and the Special Court shall give an opportunity of hearing to the Petitioner in accordance with the extant legal position.

**8.** Issuance of any further notice to the Petitioner is dispensed with. Petitioner is directed to appear on the next date before the Special Court. The Advocate for the Petitioner shall convey the same to the Petitioner. No further notice shall be required to be issued to the

Petitioner. Petitioner shall however be informed by Respondent No.1 – Directorate of Enforcement well in advance about the date of listing of the aforesaid case before the Special Court.

**9.** In view of the above, Petition is accordingly allowed in terms of prayer clause 'b'.

**10.** Parties are directed to cooperate with the Special Court.

**11.** Parties are directed to act on a certified or server copy of this order downloaded from the website of the High Court of Bombay.

**12.** Writ Petition is allowed and disposed.

[ MILIND N. JADHAV, J. ]

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