IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.240 of 2022

Arising Out of PS. Case No.-2 Year-2021 Thana- VIGILANCE District- Patna

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RAJENDRA PRASAD @ DR. RAJENDRA PRASAD Son of Late Rammurti Yadav Resident of Village - Vice Chancellor House, Magadh University, Parmanand Path, Near D.M. Residence, Gaya Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna. Bihar
2. The Principal Secretary of the Honble Governor, Bihar, patna. Bihar
3. The State of Bihar through Additional Cheif Secretary , Home Police Deptt. Govt. of Bihar, Patna. Bihar
4. The Additional Chief Secretary, Vigilance Deptt., Govt. of Bihar. Bihar
5. The Director General of Police, Special Vigilance Unit , Daroga Prasad Rai Path, Patna, Bihar. Bihar
6. The Additional Director General of Police, Special Vigilance Unit Daroga parsad Rai Path, Road, Patna, Bihar
7. The Superintendent of Police, Special Vigilance Unit, Patna. Bihar
8. The Investigation officer Cum Dy. S.P.Special Vigilance Unit, Patna. Bihar

... ... Respondent/s

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with

CRIMINAL MISCELLANEOUS No. 8186 of 2022

Arising Out of PS. Case No.-2 Year-2021 Thana- VIGILANCE District- Patna

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RAJENDRA PRASAD @ DR. RAJENDRA PRASAD S/o Late Rammurti Yadav Resident of Vice Chancellor House, Magadh University, Parmanand Path, near D.M. Residence, Gaya, Bihar

... ... Petitioner/s

Versus

The Vigilance Investigation Bureau, Bihar, Patna Bihar

... ... Opposite Party/s

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Appearance :
(In Criminal Writ Jurisdiction Case No. 240 of 2022)
For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr. Ranjeet Kumar, Advocate
Mr. Jai Prakash Singh, Advocate
Mr. Yogesh Kumar, Advocate
Mr. Yash Singh, Advocate
Ms. Ranjeeta Singh, Advocate
Mr. Ayush Kumar, Advocate
Mr. Tej Pratap Singh, Advocate

For the SVU	:	Mr. Rana Vikram Singh, Advocate
(In CRIMINAL MISCELLANEOUS No. 8186 of 2022)		
For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate
		Mr. Ranjeet Kumar, Advocate
		Mr. Jai Prakash Singh, Advocate
		Mr. Yogesh Kumar, Advocate
		Mr. Yash Singh, Advocate
		Ms. Ranjeeta Singh, Advocate
		Mr. Ayush Kumar, Advocate
		Mr. Tej Pratap Singh, Advocate
For the State	:	Mr. Mohammad Sufyan
For the SVU	:	Mr. Rana Vikram Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 24-05-2022

Both the petitions *viz*. Cr. W.J.C. No. 240 of 2022, seeking quashing of the subject FIR bearing Special Vigilance Unit P.S. Case No. 02 of 2021 and Cr. Misc. No. 8186 of 2022, seeking anticipatory bail in the subject FIR have been heard together and are being disposed of by this common order.

2. Heard Mr. Jitendra Singh, learned Senior Advocate for the petitioner in both the petitions and Mr. Rana Vikram Singh, learned Advocate for the Special Vigilance Unit.

3. The subject FIR bearing Special Vigilance Unit P.S. Case No. 02 of 2021 is sought to be quashed on the sole ground that it is in derogation of the newly added Section 17A of the Prevention of Corruption Act, 1988 (herein after called “the Act”) which provides for a pre-requisite of sanction of the authority competent to remove the petitioner from his office, before inquiring or investigating into any offence alleged to have been committed by him in his capacity as Vice-Chancellor,

as the offences alleged are *prima facie* relatable to a decision taken by him in discharge of his official functions or duties.

4. A brief description of the accusation against the petitioner would be necessary for deciding the above noted applications. In case the petitioner succeeds in the former petition (Cr.W.J.C. No. 240 of 2022), there would be no requirement of pressing the anticipatory bail application (Cr. Misc. No. 8186 of 2022).

5. The subject FIR discloses that it was reliably learnt that the petitioner, while working as Vice-Chancellor, Magadh University, Bodh Gaya, had entered into a criminal conspiracy with his P.A. -cum- Assistant *viz*. Subodh Kumar and two of the private firms *viz*. M/s. XLICT Software Private Ltd., based in Lucknow and M/s. Poorva Graphics and Offset Printers as also the Finance Officer of Veer Kunwar Singh University as well as the Registrar of Patliputra University and some others and had thereby dishonestly cheated the Government ex-chequer to the extent of approximately Rs. 20 Crores during the check-period 2019-21 while making purchases of various items like e-books and OMR answer-sheets for use in University for conducting examination and otherwise.

6. The reasons for prosecuting the petitioner is that such

purchases worth several crores were made by adopting a procedure, which was arbitrary and with the sole purpose of getting undue advantage to himself. There was no requisition or tender and that the materials, in derogation of the financial rules, were not procured through GEM. No procedural formalities were complied with, despite the petitioner being apprised of such requirements.

7. The allegation, therefore, in sum and substance, is that ignoring the advice of the competent officers, the petitioner has caused payment to private firms of huge amount of money from Magadh University and Veer Kunwar Singh University, without assessing the requirement for such purchases and violating the tender procedure without any justification. There is a further allegation of the purchases having been made on inflated cost. The petitioner, according to the FIR, was also holding additional charge of Vice Chancellor Veer Kunwar Singh University.

8. The E-Books which were purchased for Veer Kunwar Singh University have not yet been put to any use for the reason that there was no sufficient infrastructure for storage of those E-Books and that such purchases were against the advice of the Head of the Departments of various subjects, whose sanction and recommendation were necessary for procurement of the

books.

9. The FIR further discloses that no records were preserved by the accused persons of the supply and notwithstanding the objection note put up by officers dealing in financial matters as well as the then Vice-Chancellor of Veer Kunwar Singh University, payments were made to the private firms. All this was done with the active support of the Finance Officer of Veer Kunwar Singh University and the Registrar of Patliputra University, both of whom have also been made accused in this case.

10. The last of the allegations in the FIR is that the petitioner has acquired huge movable and immovable property at different places from such proceeds of crime.

11. Thus, the source information disclosed commission of offences under Sections 120B and 420B of the Indian Penal Code read with Sections 12 read with Sections 13(ii) read with Sections 13(i)(b) of the Act.

12. The learned Senior Advocate for the petitioner has also drawn the attention of this Court to a letter dated 25.01.2022, issued by the Principal Secretary to the Hon’ble Governor of Bihar, addressed to the Chief Secretary of the State of Bihar stating that the Hon’ble Governor-cum-Chancellor of

the Universities has come to know that FIR has been instituted against the petitioner, who is a Vice-Chancellor of one of the Universities, in teeth of the provisions contained in Section 17(A) of the Act, which is improper and against the rules in that regard. The letter points out that prior sanction of the Chancellor would be necessary before embarking on any investigation for the offences under the Prevention of Corruption Act and the Chancellor is the authority to grant such sanction. It has also been highlighted in the aforesaid letter that because of lodging of the subject FIR without the sanction of the Chancellor, an atmosphere of fear has gripped the University and the employees of the University are under great mental stress, which is having a negative effect on their quality of work and is also adversely affecting the educational environment of the University. It was thus suggested in the letter that if at all any action is required to be taken or investigation to be commenced, the rules of procedure as provided under Section 17(A) of the Act is required to be followed.

13. The justification or otherwise of this letter/communication shall be dealt with later.

14. It further appears from the records that Section 409 of the Indian Penal Code has been added in the list of charges *vide*

order dated 03.02.2022 of the learned Special Judge, Vigilance.

15. It would further be relevant to notice certain facts which have been brought on record.

16. On a simultaneous search of the residence of the petitioner at Bodh Gaya and Gorakhpur in the State of Bihar and Uttar Pradesh respectively, there has been a recovery of several incriminating materials, making out a *prima facie* case of offences under various Sections of the Indian Penal Code and Prevention of Corruption Act, 1988. An amount of Rs. 1,82,75000/- (One Crore and Eighty Two Lakhs Seventy Five Thousand) has been recovered in cash from the almirah kept in the room of the petitioner in his Gorakhpur residence, the key of which was informed to be lying with the petitioner at Bodh Gaya. Documents evincing investment of approximately Rs. 48,52,000/- in landed properties and pass-books in the name of the petitioner and his wife, revealing stashing of an amount of Rs. 99,87,193/- were recovered. Apart from gold jewelry worth Rs. 42,84,247/- and silver jewelry woth Rs. 1,93,620/-, foreign currency was also recovered from the Gorakhpur residence of the petitioner without any valid paper. From the Bodh Gaya official accommodation of the petitioner, a total of Rs. 1,57,000/- in cash and documents related to confidential work of

examination department and payment to the two companies who have been named in the FIR, were recovered.

17. Preliminary investigations revealed active involvement and connivance of the petitioner in the preparation of forged agreement with the firms; fraudulent payments in respect of OMR question booklets; E-Books and other materials to the extent of Rs. 17 Crores (Rs. 15.55 Crores+ Rs. 1.45 Crores). It has also came to light that even when the degrees to be given to the recipients had already been printed, a decision was taken to print another set of degrees on exorbitant cost.

18. Mr. Jitendra Singh, learned Senior Advocate for the petitioner has strenuously argued that the interdict of launching any prosecution against the petitioner, without prior sanction of the Chancellor, has been completely disregarded and FIR has been lodged pursuant to which investigations are continuing. He has further submitted that all the offences, which are alleged to have been committed by the petitioner, are acts which are relatable to the official functions and duties of a Vice-Chancellor and even if it is found that such action was negligent and without following the rules in that regard, that shall not take away the protection granted to him under Section 17A of the Act.

19. He has further argued that purchase of OMR question booklets, to be used in University examination and E-Books for University library comes within the domain of the functions of a Vice-Chancellor of a University. This being the case, before investigating into the alleged offences, the mandate of law required obtaining of prior sanction of the Chancellor to launch any investigation.

20. The lodging of the subject FIR, without obtaining prior sanction of the Chancellor, has been defended by the Special Vigilance Unit by contending that in matters of financial irregularities, when the act discloses *prima facie* offence under the Act, and other Sections of the Indian Penal Code, there is no requirement of any sanction, as what is protected is the decision taken by a public servant in discharge of his official function or duties and not any action *erga omnes* by the accused. It is no part of the official duty of the Vice-Chancellor to fudge records; purchase materials bypassing the rules; and ignoring the objection of the finance department; and pressurizing the other officials of the University working under him, to execute such illegal action.

21. The source information to the Vigilance has disclosed that the payment for purchase of OMR answer sheets and E-

Books have been credited in the account of a private person, whose identity could not be traced. This is, it has been urged, is one of the most stark illustrations of a person holding such a high office of Vice-Chancellor of an University in belying the trust reposed in him to maintain high academic standards and excellence in the University.

22. The refrain of the petitioner, however, is that whatever materials have been brought to the notice of this Court, some part of which have been enumerated in the subject FIR, have has been collected in the subsequent investigation, which is prohibited under the law without appropriate sanction from the concerned authority.

23. Thus, the sum and substance of the contention of the petitioner is that the provisions contained in Section 17(A) of the Act ought not to be rendered nugatory and since the subject FIR and the ensuing investigation are in teeth of Section 17(A) of the Act, the subject FIR be quashed and the pending investigation be stopped.

24. In order to appreciate the contention of the parties, it would be necessary to examine the provisions contained in Section 17(A) of the Act which was introduced by Act No. 16 of 2018 with effect from 26.07.2018.

25. Section 17(A) of the Act reads as follows:

> ***[17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties. -*** *No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -*
>
> *(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;*
>
> *(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;*
>
> *(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:*
>
> *Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or*

attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.]

26. A plain reading of the Section 17(A) of the Act makes it obvious that the protection granted to a public servant is limited to any action taken by him which is relatable to any recommendation made by him or a decision taken by him in discharge of his official functions or duties.

(emphasis provided)

27. The first proviso to the Section further clarifies that no such approval/sanction would be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

28. The second proviso is in the nature of a duty of such authority vested with the power of granting sanction, to take a decision within a period of three months, which could be extended by a further period of one month but only for reasons to be recorded in writing by such authority, for such extension

of time.

29. The expression "undue advantage" has been defined in Section 2(d) of the Act as;

> *"2(d) "undue advantage" means any gratification whatever, other than legal remuneration."*

30. It would therefore be absolutely necessary to know as to what constitutes an act which can be said to be relatable to any recommendation made or decision taken in discharge of the official functions or duties of a public servant for it to come within the protective umbrella of Section 17 (A) of the Act as also the purpose for such protection.

31. The primary law that regulates corruption related offences by public servants is the Prevention of Corruption Act, 1988, which was hitherto not found to be strong enough to tackle the growing menace of corruption.

32. Over the years, expert bodies such as 2nd ARC and Law Communication of India examined the 1988 Act and suggested changes to it. This included changes in the definitiion of bribe and procedure for attachment of property of public servants, accused of corruption. Subsequently, in 2008, a bill to amend 1988 Act was introduced in the Parliament. The bill sought to extend the requirement of prior sanction under Section

19 of the Act. Section 17A was also introduced requiring prior sanction for investigating public servants and provide for attachment of property. However it lapsed with the dissolution of 14th Lok Sabha.

33. By 2011, India had already ratified the United Nations Convention against Corruption (UNCAC), 2005 and had agreed to bring its domestic laws in line with the UNCAC, 2005. In consequence thereof, in August, 2013 again, P.C. (Amendment) Bill, 2013 was placed in Parliament. The statement of objects and reasons declared that it was for bringing the Act in line with UNCAC. The rationale for requiring prior sanction was to protect public servants from harassment.

34. Prior sanction for prosecution was already existing in the Act. However requiring prior sanction for investigation too engendered discussion as to whether this protection was necessary at two stages *viz.* at the stage of investigation and later, at the stage of prosecution. The 2nd ARC but had only recommended for a limited sanction even at the stage of prosecution.

35. The requirement of prior sanction before investigation in the past, had not been approved in ***H.N. Rishbud and Inder Singh Vs. State of Delhi; AIR 1955 SC 196***. The only law

which contained similar provision of prior sanction of investigation with respect to Joint Secretary and above level of officers was Section 6A of Delhi Special Police Establishment Act, 1946, which had been struck down by the Supreme Court on grounds of impermissible classification as being capable of impeding the pace of investigation.

36. Nonetheless, changes were introduced by expanding the definition of bribe and clarifying the acts which would be “criminal misconduct” by a public servant. Any fraudulent, misappropriation of property entrusted to a public servant and any intentional enrichment by illicit means during the period of office which would include amassing of resources disproportionate to one’s known source of income would be instances of criminal misconduct. The requirement of prior sanction of the competent authority before the stage of investigation was also introduced by inserting Section 17A of the Act.

37. Thus the purpose behind the enactment of Section 17(A) of the Act was to give protection to public servants from the threat and ignominy of malicious and vexatious inquiry/investigation and the likelihood of them being put to trouble for taking honest decisions. Such public servants who

have the responsibility to take major decisions must act fairly, fearlessly and impartially. Only to prevent any vexatious criminal action against them, without there being any foundational fact for the same, is what is sought to be prohibited by providing this protective insulation under Section 17(A), in the form of a pre-requisite of prior sanction before launching any investigation or lodging the FIR.

38. The Legislature and the Judiciary have all along been the grappling with the menace of corruption which has grown diametrically and which is having a continuous deleterious effect on the entire economy of the nation and confidence of general public about the Government being run within the constitutional framework.

39. To understand the background of 17A of the Act, it would be necessary travel somewhat more in history.

40. In ***Vineet Narayan and Ors. vs. Union of India & Anr.*** **(1998) 1 SCC 226**, the Supreme Court, on finding that lack of probity in public life had adversely impacted the society, had issued certain directions for the proper functioning of the CBI and giving to the Central Vigilance Commission a statutory status. The sole purpose was to prevent honest officers investigating high functionaries from being prevented from

investigating the case properly. The occasion for the Supreme Court, in that case, to deal with the structure of the Central Investigating Agency like CBI and making Central Vigilance Commission more functional, arose when nothing concrete was being done against the wrong doers who were mainly high ranking politicians and bureaucrats whose names had surfaced in the two diaries and two note books, which were seized by the CBI from the premises of one Surendra Kumar Jain and his brothers and relatives. The seized documents contained detailed accounts of vast payments made to them but their names were coded by initials which corresponded to the initials of men in power. The Supreme Court therefore found the necessity of evolving a desirable procedure to ensure that such investigation is properly conducted.

41. The holders of public office are entrusted with certain powers to be exercised in public interest alone. They hold the office in trust of the people. Any breach of trust, the Supreme Court declared, ought to be severely dealt with instead of being pushed under the carpet. Any conduct amounting to an offence was required to be promptly investigated and the offender expeditiously prosecuted, which only would uphold the majesty of law and vindicate the rule of law.

42. The Government of India had earlier issued a Single Directive to the CBI, which was a consolidated set of instructions by various ministries/departments which was first issued in 1969 and thereafter was amended on many occasions, which laid down the modalities for initiating any inquiry or registering a case against certain categories of civil servants. Directive No. 4.7(3) prohibited any inquiry against a decision making level officer (Joint Secretary or equivalent or above) in the Central Government or any officer on deputation to a public sector undertaking or of RBI or Executive Directors of SEBI and Chairman and Managing Director and Executive Directors of Banks, without prior sanction of the Secretary of the Department concerned.

43. In ***Vineet Narayan*** (supra), the aforesaid Single Directive was quashed.

44. The view of the Supreme Court was that law does not classify offenders differently for treatment thereunder, including investigation and prosecution for offences according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. For the accusation of corruption which is more often than not based on

direct evidence, there would be no rationale for classifying them differently. The investigation of such offences would not be dependent on any inference by the departmental head as to whether investigation should be undertaken.

45. Apart from this, what is really relevant to notice in the aforesaid judgment is that the Supreme Court, while issuing directions to implement the rule of law by keeping in mind the concept of equality enshrined in Article 14 of the Constitution, took note of the report of Lord Nolan of England on "Standards in Public Life" and listed seven principles of public life, which include;

> *(I) Holders of public office should take decisions solely in public interest and not in order to gain financial or other material benefits for themselves or their family (selflessness);*
> *(II) Holders of public office should maintain highest level of integrity;*
> *(III) They should make choices in carrying out public business, making public appointments, awarding contracts, only on merits;*
> *(IV) All holders of public office would be accountable for the decision and action to the public and therefore they must submit themselves to whatever scrutiny is appropriate to their office;*
> *(V) They must give reasons for their decision and restrict information only when wider public interest clearly demands (openness);*

> *(VI) They have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest (honesty);*
> *(VII) And lastly, the holders of public office must promote and support these principles by leadership and example.*

46. The Supreme Court clearly defined the role of such holders of public office. Any deviation from the path of rectitude by such holders of public office would amount to breach of trust and that it must be severely dealt with.

47. In that background, it would be relevant to refer to Section 6(A) of Delhi Police Establishment Act, 1946 which has now been struck down as unconstitutional in ***Subramaniam Swami vs. Director CBI; 2014 (8) SCC 682***.

48. The reason for referring to the aforesaid provision is that perhaps Section 6(A) of the Delhi Police Establishment Act is/was exactly similar in import to Section 17(A) of the Prevention of Corruption Act, as has been noted above.

49. After the decision in ***Vineet Narayan*** (supra), an ordinance was passed by the Government so as to comply with the directions of the Supreme Court in ***Vineet Narayan***. Later, a Central Vigilance Commission Bill, 1998 was introduced in Lok Sabha, which was referred to the Parliamentary Standing Committee on Home Affairs, whose report was presented before

the Parliament. The Lok Sabha passed the Central Vigilance Commission Bill, 1998 by adopting the amendments but before it could be considered and passed by the Rajya Sabha, 12th Lok Sabha was dissolved on 26.04.1999 and as a result, the Central Vigilance Commission Bill of 1998/1999 lapsed. The Central Vigilance Commission Bill was re-introduced with the title Central Vigilance Commission Bill, 2003, which was passed by both the houses of Parliament and received the assent of the President on 11.09.2003.

50. In the aforesaid Bill of 2003, there was a provision for carrying out an amendment in the Delhi Police Establishment Act pursuant to which Section 6(A) was inserted in the Act.

51. Section 6(A) of the Delhi Special Police Establishment Act, 1946 as it stood in the statute read as hereunder:

> *[6A. Approval of Central Government to conduct inquiry or investigation.—*
> *(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to—*
> > *(a) the employees of the Central Government of the Level of Joint Secretary and above; and*

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988 (49 of 1988).]

52. Challenging the insertion of the aforesaid Section in Delhi Special Police Establishment Act, 1946, several writ petitions were filed before the Supreme Court under Article 32 of the Constitution of India and the matter was referred to a Bench of five Judges [***Dr. Subramanian Swamy vs Director, CBI & Anr.; (2014) 8 SCC 682***]. The constitutionality and the validity of Section 6(A) was questioned on the touchstone of the Article 14 of the Constitution of India.

53. The provision was alleged to be subversive of independent investigation of holders of public office, which struck at the core of the rule of law *viz*. independent, unhampered, unbiased and efficient investigation. It was called irrational and arbitrary and an attempt of the legislature to

resurrect the single directive 4.7(3) which was quashed in ***Vineet Narayan*** (supra).

54. The Supreme Court found the classification in Section 6(A) on the basis of status in Government service, to be impermissible under Article 14 as it defeated the very purpose of finding *prima facie* truth into the allegation of graft which amounts to an offence under the Prevention of Corruption Act, 1988. The words of Hon'ble Justice Mathew in ***State of Gujarat vs. Sri Ambika Mills Limited (1974) 4 SCC 656*** was quoted by the Supreme Court which declared that the equal protection of laws is a pledge of the protection of equal laws. A reasonable classification is one "*which includes all those who are similarly situated and none who are not*".

55. While holding Section 6(A) of the Delhi Police Establishment Act, 1946 to be unconstitutional, the Bench explained that the *"essence of police investigation is skillful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The previous approval of the Government would result in indirectly putting to notice the officers to be investigated before the commencement of the investigation"*.

56. It was very pithily put by the Supreme Court that

Section 6(A) offended the signature tune in ***Vineet Narayan*** (supra) *viz*. "*however high you may be, the law is above you*".

57. It was also observed that an office of public power cannot be the workshop of personal gain.

58. In this factual background, the requirement under Section 17A of the Act has to understood.

59. The Prevention of Corruption Act, 1988 is a special statute and the very preamble of the Act declares that it has been enacted to consolidate and amend the law relating to Prevention of Corruption and for the matters connected therewith.

60. With the amendment of the Prevention of Corruption Act, 1988 and insertion of Section 17(A), which is in *pari materia* as noted above similar to the now invalid Section 6(A) of the Delhi Police Establishment Act, 1946, what has been protected is the action of a public servant which is relatable to any recommendation made by him or decision taken by such public servant in discharge of his official duties and not every action which *prima facie* is criminal in nature.

(emphasis provided)

61. In order to appreciate what actually would constitute an act by a public servant in discharge of his official functions or duties, it would be profitable to refer to the provision of

Section 197 of the Code of Criminal Procedure, which contemplates of prior sanction for prosecution and treats it as *sine qua non* for prosecuting an offender who is a public servant under the Indian Penal Code, if the offence alleged has been committed by him while acting or purporting to act in the discharge of his official duty, even though, Section 197(1) of the Cr.P.C. and 17A of the P.C. Act, 1988 operate in two different fields and in different situations.

62. Section 197(1) of the Code of Criminal Procedure, 1973 reads as follows:

> *"197. Prosecution of Judges and public servants.*
> *(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of <u>any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction</u>-*
>
> *(emphasis provided)*
>
> *(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*
> *(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the*

> *affairs of a State, of the State Government: [1] Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.*

63. Similar provision was there in Government of India Act, 1935.

64. In ***Dr. Hori Ram Singh vs. the Emperor; AIR 1939 FC 43*** the judges of the Federal Court had an occasion to look into Section 270 of the Government of India Act, 1935, which is, as noted above, is exactly similar to Section 197 of the Code of Criminal Procedure.

65. While interpreting the said Section, Sulaiman J. had observed that the Section does not mean that the very act which is the gravamen of the charge and constitutes the offence should be the official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words used in the Section are not " *in respect of any official duty*" but "*in respect of any act done or purporting to be done in the execution of his duty*". The two expressions are obviously not identical.

66. The test, according to the Federal Court, is "*not that*

the offence is capable of being committed only by a public servant and not be anyone else, but that it is committed by a public servant in an act done or purporting to be done in execution of his duty. An act cannot be purported to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, an impression that his is so acting".

67. However, it was clarified that "*such protection did not apply to acts done purely in a private capacity by a public servant. An example was given to substantiate the aforesaid proposition that if a public servant accepts a reward/bribe while actually engaged in some official work, he does not accept it in his official capacity, much less in the execution of any official capacity even though it is quite certain that he could never have been able to take the bribe unless he were the official in-charge of some official work. In this case he merely uses his official position to obtain the illegal gratification*".

68. The aforesaid opinion of Sulaiman, J. was concurred by Vardhacharya, J. that "*the aforesaid question is substantially one of fact, to be determined with reference to the act complained of and the attended circumstances and it would not be desirable to lay down any hard and fast test*".

69. In ***HHB Gill Vs. The King; AIR 1948 PC 128,*** the Judicial Committee of the Privy Council, while referring to the explanation in Dr. Hori Ram Singh, explained Section 197 of the Cr.P.C. by saying that "*a public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty*". It has been further explained that a *judge neither acts or purports to act as a judge in receiving a bribe, though the judgment he delivers may be such an act; nor does a government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test therefore was whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office"*.

70. Justice Vivian Bose, J. in his inimitable style in ***Shreekantiah Ramayya Munipalli vs The State of Bombay; AIR 1955 287*** sounded a note of caution that "*if the provisions of 197 Cr.P.C. is construed too narrowly, it can never be applied, for of-course it is no part of an official duty to commit an offence and never can be. But it is not the duty one has to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in*

dereliction of it".

71. Not every offence committed by a public servant that requires sanction under 197(1) of the Cr.P.C. nor every act done by him while he is actually engaged in the performance of his official duties, so that, if questioned, it could be claimed to have been done by virtue of the office. It is only when the act complained of is directly connected with the official duties that sanction is necessary. (***Amrik Singh Vs. State of Pepsu; AIR 1955 309***).

72. A challenge was thrown against Section 197 Cr.P.C. as discriminatory and violative of Article 14 of the Constitution in ***Matajog Dobey Vs. H.C. Bhari; AIR 1956 SC 44***.

73. While upholding the constitutionality and the validity of Section 197(1) Cr.P.C., the Constitution Bench of the Hon'ble Supreme Court declared that *"no question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty"*.

74. It is required to be found out whether the act complained against and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in

the performance of official duty, though possibly in excess of needs and requirements of the situation.

75. It was also held that the requirement of such sanction would have to be determined from stage to stage of the case.

76. Even with the explanation of Section 197(1) Cr.P.C. with such felicity of expression by the outstanding judges of this country, there remained a real difficulty in applying the test to factual situations.

77. Recently, in ***Rakesh Kumar Mishra Vs. State of Bihar; AIR 2006 SC 820,*** it has been held that before Section 197 can be invoked, it must be shown that the official concerned is accused of an offence for an act which has been committed in connection with the discharge of official duty or is merely a cloak of officialdom for doing the objectionable act. Whether there is a reasonable connection between the act and the performance of official duty can be tested by putting a question to him whether he is answerable for a charge of dereliction of his official duty and if the answer is in the affirmative, it could be said that the act was in discharge of his official duty and that there was connection between the act complained and the official duty.

78. The primal object therefore is to protect public

officers who have honestly discharged their duties in the purported exercise of their powers.

79. If the act complained has no nexus or reasonable connection or relevance to the official act or duty and the act is otherwise illegal, unlawful or in the nature of an offence, the shelter of 197 Cr.P.C. is not available, which protection is qualified and conditional. [***Shankaran Moitra Vs. Sadhana Das & Anr.; (2006) 4 SCC 584***]

80. With the aforesaid background facts *viz.* declaration of Section 6(a) of the DSPE Act, 1946 to be unconstitutional and the conditions under which protection could be granted under Section 197(1) Cr.P.C., if Section 17(A) of the PC Act is analyzed, it would become very clear that it is only for the purposes of protecting public servants from baseless prosecution.

81. The protective shield is for an honest public servant and not for a corrupt one.

82. There is a clear division between those acts which constitute an offence and those acts, though done while discharging the official duties of the public servant, but which do not constitute an act done in exercise of official duties or functions.

83. The expressions used in Section 17(A) clearly reflect the legislative intent that there is no blanket protection or else it would not satisfy the test of constitutionality. The use of the words "*relatable to any recommendation made or decision taken by a public servant in discharge of his official function or duties*" tells it all.

84. It cannot be gainsaid that a public servant can not act fearlessly if he is not insulated from frivolous and unnecessary complaints. Every decision made by him ought not to be looked at with suspicion or else no honest official would take any lead in taking any decision which might raise eyebrows of some section of the society. Many a times, a decision taken under public law can be less advantageous or harmful for some persons, specially when a policy decision is taken at a higher level. In order to provide a protective, safe and congenial atmosphere for a public servant to undertake such decisions, a measure like Section 17(A) has been enacted.

85. One cannot also loose sight of the fact that Section 6(A) of the DSPE Act, 1946 was held to be unconstitutional because it made a classification with respect to status of the offender and did not leave it at protecting any officer or holder of a public office who could have taken a decision against which

allegation could be raised that it was for the purposes of achieving personal gain or for gain to his near and dear ones as also because requiring any sanction before investigation may breach the secrecy of the investigation and impede its pace.

86. As has been explained in the judgments referred to above, classification is permissible, provided it meets the twin test of being reasonable and having a proximate connection with the object sought to be achieved by such classification.

87. Section 17(A) of the PC Act therefore may not be straightaway dubbed as a resurrection of single directive 4.7.3 of the Central Government or Section 6(A) of the DPSE Act, 1946 which has been held to be unconstitutional. A classification has been made but it has an object *viz.* to insulate an action of a holder of public office, if it is in relation to any recommendation made by him or a decision taken in discharge of his official function or duties.

88. However, such classificatory protection, which is a shield against unnecessary prosecution of honest officers, cannot be used as a sword to stifle prosecution for *per-se* criminal offences which can never be in discharge of official duty or in connection with any recommendation made by a high position holder of public office. The protective cover is in the

nature of a permitted exception to the equality provision of the constitution.

89. Any unnecessary and broad interpretation of the section would defeat the very purpose of such protective discrimination in favour of honest and dutiful officers. Had such not been the intention of the legislature, there would have been no necessity of introduction of the phrase "*relatable to any recommendation made or decision taken by public servant in discharge of his official function or duties"* in the Act and the protection would have been given to any public servant accused of any offence under the PC Act.

90. It cannot be forgotten that in ***Subramanyam Swami Vs. Manmohan Singh and another, 2012 (3) SCC 64***, Justice A. K. Ganguli while supplementing and concurring with the views of Hon'ble Justice G.S. Singhvi, J. has very aptly observed as hereunder:-

> ***"68****. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end.*
>
> *Corruption devalues human rights, chokes*

development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it"

(emphasis provided)

91. Similar views have been expressed in two of the judgments of Kerala High Court *viz*. ***Shankar Bhatt Vs. State of Kerala; [2021(5) KHC 248]*** and ***T.O. Suraj Vs. State of Kerala; 2021 SCC online 2896***. and one of Delhi High Court in ***Devendra Kumar Singh & Ors. Vs. CBI & Ors.; 2019 (1) Crimes 726***.

92. In ***Anil Vasantrao Deshmukh Vs. State of Maharashtra, 2021 SCC Online Bombay 1192***, the former Minister of State of Maharashtra had preferred a petition under Article 226 of the Constitution of India and Section 482 of the Cr.P.C. for quashing the F.I.R. registered by C.B.I. and the consequent proceedings initiated against him on the ground of protection under Section 17(A) of the PC Act, 1988.

93. The Bench, noting that the history of prevention of corruption laws reflected a constant tension between the two

objectives of eradication of corruption on one hand and protection of innocent public servants on the other, held that in view of the nature and the gravity of the allegation, which could not have been said to be in discharge of official duty, the protection of 17(A) of the Act was not available.

94. It was also observed that the power to quash the FIR is required to be exercised sparingly and in exceptional cases. Such powers are not to be exercised to stifle a legitimate prosecution.

95. It is in this context that the letter written by the Principal Secretary to the Hon'ble Chancellor to the Chief Secretary, which has been referred to in one of the petitions, appears to be unnecessary. This Court leaves it at that; for any discussion on the justification of the letter would necessarily require the view-point of the sender of the letter to be scrutinized, which, in the opinion of this Court, may be unnecessary at this stage.

96. Mr. Jitendra Singh, learned senior Advocate has very strongly relied on the judgment of the Hon'ble Supreme Court in ***Yashwant Sinha & Ors. Vs. Central Bureau Of Investigation Its Director & Anr.; 2020(2) SCC 338,*** to contend that the interdict in 17(A) of the Act is mandatory.

97. In the aforesaid case, a review was sought of a judgment of the Supreme Court in ***Manohar Lal Sharma Vs. Narendra Damodar Das Modi & Ors.; (2019) 3 SCC 25***, in which the decision of the Central Government of procurement of 36 Rafale Fighter Jets for the Indian Air Force was questioned and a request was made for a direction for registration of FIR under the relevant provisions of IPC and a court monitored investigation as illegality and non-transparency in the procurement process was alleged. The petitioners had also sought investigation into the reasons for cancellation of an earlier deal, alteration in the pricing, and selection of a "novice" company viz. Reliance Defence as the offset partner to the exclusion of HAL, a known company.

98. Sri Yashwant Sinha, Sri Arun Shourie and Sri Prashant Bhushan had also joined hands with the other petitioners, who were aggrieved by the non-registration of FIR by CBI, pursuant to a complaint made by them, disclosing a *prima facie* offence of commission of a cognizable offence under PC Act, 1988.

99. Keeping in mind the necessity of upgrading the defence of the nation, the Bench had proceeded to set the parameters and contours of judicial scrutiny of government

decisions in matters of defence, which according to the Bench was narrower than the jurisprudence of judicial scrutiny of award of tenders and contracts. Referring to its earlier decisions in ***Jagdish Mandal Vs. State of Orissa; (2007) 14 SCC 517; Tata Cellular Vs. Union of India; (1994) 6 SCC 651; Siemens Public Communication Networks Pvt. Ltd. and another Vs. Union of India & Ors; (2008) 16 SCC 215; Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India & Ors.; (2006) 10 SCC 1***, the Supreme Court had held that the extent of permissible judicial review is not the same for every procurement/tender etc. and a different/narrower test is to be applied for any procurement for national security.

100. The Supreme Court, thus concluded that controversy raised regarding decision making process, difference in pricing and the choice of the aircraft was not required to be gone into as it would neither be appropriate nor be within the experience of the Court to step into that arena. The perceptions of individuals cannot be the basis of a fishing and roving enquiry, specially in such matters. However such views were primarily from the standpoint of exercise of jurisdiction under Article 32 of the Constitution of India.

101. While rejecting the review of such judgment,

Hon'ble Justice K. M. Joseph in ***Yashwant Sinha*** (supra) while concurring with Hon'ble Justice Sanjay Kaul had observed that in view of the Constitutional Bench judgments in ***Lalita Kumari Vs. State of U.P.; 2014 (2) SCC 1*** and ***P. Serajuddin Vs. State of Madras; 1970 (1) SCC 595***, the writ petitioners were not justified in seeking relief of registration of F.I.R. and investigation against the government servants without any preliminary enquiry in the offence of corruption. In that context, it was observed by Hon'ble Joseph, J. that in view of the insertion of a new section namely 17(A) in the PC Act in the year 2018, which has not yet been challenged, the appropriate procedure for the writ petitioners would be to file a complaint in accordance with law but subject to the respondent obtaining previous approval and sanction under Section 17(A) of the Prevention of Corruption Act.

102. Such an observation in *Yashwant Sinha (supra)*, cannot be read as an omnibus protective cover to any public servant accused of committing a criminal act under the garb of performing official duty. Moreover, the Apex Court, in that instance, had not opined that the protection under Section 17A of the Act was an omnibus protection, without following the test of the alleged offence being in the nature of recommendation or

the decision taken being in discharge of official duty. Thus, the observation is only a passing reference in the nature of a side-wind, which does not sweep away the established parameters under the Act, which has been explained by the Apex Court for claiming protection under Section 17(A) of the Act.

103. If seen in this background, the act of the petitioner does not at all appear to be in discharge of his official duty or in connection with any recommendation made, entitling protection under Section 17(A) of the Act.

104. There could be no parallel with the facts in ***Manohar*** and ***Yashwant Sinha*** (supra) to the acts alleged against the petitioner. In the former, there was a policy decision and consequent recommendation in furtherance of national security, whereas in the latter, an attempt has been made by the petitioner to enrich himself illegally.

105. There cannot be two opinions regarding the official duties of a Vice Chancellor who has to take all policy decisions with respect to running of the University and ensuring that timely examination is held and the sessions are completed within the timeline. Nonetheless, making purchases worth several crores from out-station companies; blatantly violating the rules in that regard and ignoring the objection of the

concerned officials of the finance section and procuring e-books without assessing the need for the same and against the advice of the departmental heads of subjects and pressurizing junior officials of the University to sign the vouchers and the bills and ensure payment to the companies through the account of an unknown and untraceable person, is no discharge of official duty.

106. The petitioner in his capacity as Vice Chancellor, has not recommended that the rules of procedure be put on hold because of some supervening circumstance/urgency of the situation, but has stealthily procured items at high cost from private firms against specific advice.

107. The petitioner was made known that such procedure in financial matters cannot be ignored but despite that, he went for such purchases from unknown firms and the payment was made in the account of a person who is untraceable till today. This, even at the risk of repetition, cannot be part of official duty or relatable to any recommendation made with respect to any policy decision.

108. A very disquieting set of facts have been brought to the notice of this Court.

109. The very next day of the registration of the F.I.R. on

16.11.2021 and of simultaneous raids at three locations of the petitioner namely V.C's Office at the University, his official residence at Bodh Gaya and his native house at Gorakhpur (U.P.), in which huge amount of cash and other incriminating materials were recovered, he in his capacity as Vice Chancellor had issued a letter on 18.11.2021 addressed to the Pro-Vice Chancellor, the Registrar, the Financial Adviser, Finance Officer and Controller of Examination, Magadh University, directing them not to transfer or handover any official files or document of the University to the Agency without the written request of the agency and without prior executive order of the Vice Chancellor or the permission of the Hon'ble Chancellor.

110. The Controller of the Examination namely one Mr. Bhrigunath has alleged that he was pressurized and compelled by the petitioner and his associates not to disclose any information to SVU or else he would be removed from his post. Similarly, other officials and staff of the University were also threatened of being transferred and removed in case they did not help the petitioner and his cronies to provide a cover up for the illegal deeds. This Court has also been informed that the son of the petitioner, who has been twice summoned under Section 160 Cr.P.C., has failed to appear before the investigating agency on

flimsy grounds.

111. In response to the aforesaid accusation against the petitioner, Mr. Singh, learned senior advocate has submitted that the Purchase Committee of Magadh University under the Chairmanship of the erstwhile Vice Chancellor, Prof. Devi Prasad Tiwary had resolved to purchase 30 lakh answer books through GEM for which NIT was floated which was responded by eight tenderers and out of them one Bindia Enterprises of Gujarat was declared as the lowest bidder. 15 lakh answer books were supplied and the process for payment was initiated which was subsequently paid. It is the contention of Sri Singh that Professor Tiwary, the erstwhile Vice Chancellor, Magadh University had also been holding the charge of Veer Kunwar Singh University where he had purchased OMR question booklets without floating tender through GEM on the plea of maintaining secrecy and prevention of any leakage of question paper and question booklets.

112. The petitioner had joined as Vice Chancellor of Magadh University, Gaya on 27.09.2019. During his tenure, the Controller of Examination had requested the Bindiya Enterprises to supply another 15 lakh copy/answer booklets which were supplied and payments were also made on the same

rate as before. Thereafter, there was a total lock-down because of Covid-19 pandemic. The U.G.C., considering the disastrous effects of Covid-19 pandemic, had issued a set of guidelines for the Universities to conduct all the examination and adopting alternative and simplified mode and methods for completing the process in a short period. The Universities were directed to adopt innovative and efficient modes of examination by reducing the time period of examination from three hours to two hours. The examination could have been conducted in offline/online mode by observing the guidelines of social distancing. Pursuant to the aforesaid guidelines, a meeting of the Academic Calendar Committee was held where it was resolved to conduct OMR based examination with multiple choice type questions, compatible with U.G.C. recommendation. The aforesaid decision of the Committee had the approval of the Hon'ble Chancellor.

113. It has thus been contended that printing of question papers is required to be done in utmost confidence and secrecy. For maintaining such secrecy, none of the Universities in Bihar have ever obtained question papers through GEM/open tender.

114. The allegation of choosing fly- by-night firms is also vehemently denied by the petitioner. He submits that quotations

were invited against which M/s XLICT Software Pvt. Ltd. and Purva Enterprises offered their tenders, who agreed to supply the OMR based question papers urgently. It has further been argued that some of the employees of the University, for their acts of omission and commission, who were punished at the instance of the petitioner have made disparaging statements before the SVU in retaliation to the action taken against them.

115. With respect to the recovery of cash and documents of title from the native house of the petitioner, it has been urged that it belongs to a Trust namely Pyari Devi Memorial Welfare Trust which is a registered Trust. Under the aforesaid Trust, a school affiliated to the CBSE is also being run. A request has been made before the learned Special Judge, Vigilance in the subject F.I.R. for release of the cash and documents which is said to be the proceeds of crime/tainted property, which is pending adjudication.

116. The learned counsel for the Special Vigilance Unit however has taken this Court to various entries in the investigation papers, which may even bring the case under the 1st proviso to Section 17(A) which forbids any such approval/sanction as contemplated in the first part of Section 17(A) as the offences *prima facie* might require the arrest of the

petitioner for attempting to accept undue advantage for himself while committing such acts during the tenure of his service.

117. Those facts pointed out by the Special Vigilance Unit are not being referred to and discussed in the order as any deliberation on such materials might prejudice the case of the petitioner in future. Even otherwise, at the stage of grant of bail, the court is not required to enter into any detailed analysis of the evidence of the case. Such an exercise is only to be taken at the stage of trial.

118. However, from the attendant facts, it clearly emerges that the petitioner has shown scant regard in the "Standards of Public Life" as listed by Lord Nolan of England and acknowledged by the Apex Court in ***Vineet Narayan*** (supra) in all its aspects, *viz.* selflessness, integrity, honesty and openness.

119. Now, to the issue of anticipatory bail to the petitioner:

120. By a series of decisions of the Supreme Court and of this Court and all the High Courts, the principles to be followed while granting bail has been explained.

121. In ***Prashant Kumar Sarkar Vs. Ashish Chaterjee; 2010 (14) SCC,*** the factors which are to be borne in mind while considering an application for bail have been listed as

hereunder; (i) whether there is any *prima facie* or reasonable ground to believe that the accused has committed the offence, (ii) nature and gravity of accusation, (iii) severity of punishment in the event of conviction (iv) dangers of the accused absconding or fleeing, if released on bail (v) likelihood of the offence being repeated (vi) reasonable apprehension of the witnesses being influenced and (vii) danger of justice being thwarted in case of grant of bail.

122. In ***P. Chidambaram Vs. Directorate of Enforcement; (2020) 13 SCC 791*** it has been held that basic jurisprudence relating to bail remains the same in as much as the grant of bail is the rule and refusal an exception so as to ensure that the accused has opportunity of securing fair trial.

123. However, while considering the same, the gravity of the offence is an aspect which is required to be kept in mind by the court.

124. Gravity, for the said purpose, will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequence that might befall on society in cases of financial irregularities, it has been held that even economic offences would fall under the category of grave offences and in such circumstances, while considering the

application for bail in such matters, the courts are required to deal with the same, being sensitive to the nature of allegation made against the accused.

125. Regard being had to the overt act of the petitioner in causing huge financial losses to the state exchequer, the possibility of the petitioner tampering with the witnesses and the evidence and the magnitude of dishonesty by a person holding an office as high as that of a Vice Chancellor of the University which is considered to be a temple of learning, this Court is not persuaded to admit the petitioner to anticipatory bail.

126. To tie the strings together, the accusation against the petitioner of committing *ex facie* criminal act of dishonestly causing losses to the state revenue by blatantly flouting the financial regulation in running the University; of making attempts at tampering with the evidence and influencing the witnesses and not cooperating with the investigation/preliminary enquiry, the petitioner does not deserve the privilege of anticipatory bail; more so, when he professes to be a man of learning with immense experience in different fields specially in military/defence strategy.

127. Thus, this Court finds that the *prima facie* the offences alleged against the petitioner do not come within the

protective cover of Section 17(A) of the PC Act, 1988, requiring prior sanction for lodging the F.I.R. and continuing with the investigation as such acts do not come within the category of recommendation made or act done in exercise of official duty/function.

128. For the aforenoted reasons, the prayer made on behalf of the petitioner in Cr. W.J.C. No. 240 of 2022 for quashing the subject F.I.R. as being in teeth of Section 17(A) of the PC Act, 1988, is rejected.

129. For the reason of the gravity of offence committed by the petitioner while holding high office of Vice Chancellor, his making attempts at influencing the witnesses and tampering with the evidence and not cooperating with the investigation, the respondent SVU has made out a case for custodial interrogation of the petitioner.

130. The prayer for anticipatory bail of the petitioner in Cr. Misc. No. 8186 of 2022 is thus rejected with the observation that in case the petitioner surrenders before the special court and prays for bail, his application shall be considered on its own merits without being prejudiced by any observation or comment made in the order which is only for the purposes of deciding the quashing and the anticipatory bail applications on behalf of the

petitioner and an order shall be passed with reasons.

131. Both the petitions are thus rejected.

(Ashutosh Kumar, J)

krishna/Rishi

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