IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 1300 of 2021

Sudhanshu Ranjan @ Chhotu Singh, aged about 30 years, s/o Ram Narayan Singh, resident of Village-Hankar Khap, PO and PS Simariya, District -Chatra ….. Petitioner

-- Versus --

The Union of India, through National Investigation Agency, New Delhi ……. Opposite Party

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Ajit Kumar, Sr. Advocate
Mr. Vishal Kumar Trivedi, Advocate
For the N.I.A :- Mr. Vikramjit Banerjee, A.S.G.I
Mr. Amit Kumar Das, Advocate
Ms. Zeenat Mallick, P.P., N.I.A.
Mr. Saurav Kumar, Advocate
For the Intervenor :- Mr. Indrajit Sinha, Advocate

Order No.15

C.A.V. on 25.03.2022 **Pronounced On 22/04/2022**

Heard.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. In this case an office note was there to the effect that since the case is arising out of National Investigation Agency, Act, 2008, as the matter will lie before the Division Bench and by order dated 18.08.2021 considering the submission of learned counsel appearing for the parties as well as the judgment relied by the petitioner, this Court held that prima facie this matter is maintainable under section 482 Cr.P.C., thereafter the matter was adjourned from time to time for cross-examining the petitioner by the counsels of co-accused persons.

4. In the present case, the petitioner has prayed for granting his release on bail as he has been tendered pardon(turned approver) under section 306 Cr.P.C. in connection with RC-06/2018/NIA/DLI dated 16.02.2018 corresponding to Special (NIA) Case No.03/2018 registered

under sections 414/384/386/387/120B of the IPC, 25(1-b)a/26/35 of the Arms Act, Section 17(1)(2) of the CLA Act and sections 16/17/20/23 of the UA(P) Act and the case is pending in the court of learned Special Judge, NIA-cum-Additional Judicial Commissioner-XVI, Ranchi.

5. The FIR was registered alleging therein that-

a) That an FIR was registered as Tandwa P.S.Case No.02/2016 dated 11.01.2016 u/s 414/ 384/ 386/ 387/ 120B of the IPC, 25(1-b)a/26/35 of the Arms Act, section 17(1)(2) of the CLA Act in which during investigation sections of UA(P) Act were added and vide order dated 13.02.2018 the case has been transferred to NIA and NIA has re-registered the FIR bearing RC-06/2018/NIA/DLI on 16.02.2018;

b) That it has been alleged in the FIR so registered in Tandwa P.S.02/2016 that credible information received by SP, Chatra that some locals have formed an operating committee in the coal region of Amrapali/Magadh Projects under P.S.Tandwa;

c) That it has further been alleged that the operating committee has relation with banned unlawful association Tritiya Prastuti Committee (in short TPC). Some people of the operating committee were threatening the contractors, transporters, DO holders and coal businessman for extorting /collecting levy in the name of the operatives of banned organization namely Gopal Singh Bhokta @ Brijesh Ganjhu, Mukesh Ganjhu, Kohram Ji, Akrman Ji @ Ravindra Ganjhu, Anishchay Ganjhu, Bhikhan Ganjhu, Deepu Singh @ Bhikan and Bindu Ganjhu;

d) That on the of SP, Chatra, a team headed by Shri Akhilesh B.Variyar, SDPO, Tandwa along with SHO Tandwa and QRT Team raided at about 09.10 PM on 11.02.2016 in the house of Binod Kumar Ganjhu who was the president of Magadh Operating Committee and in presence of independent witnesses namely Raj Kumar Bhagat Rs.91,75,890/- (Rs.Ninety One Lakh Seventy Five Thousand and Eight Hundred Ninety) was seized and two mobile phones were also seized;

e) That two suspected persons namely Birbal Ganjhu and Munesh Ganjhu were also present in the house of Binod Kumar Ganjhu. In the personal search of Birbal Ganjhu one loaded mouser pistol and one mobile was recovered and from possession of Munesh Ganjhu one local made pistol along with two live cartridges were also recovered and seized;

f) That above mentioned three apprehended accused persons admitted their association with banned organization TPC;

g) That at the instance of arrested Binod Kumar Ganjhu, police raided the house of Pradeep Ram and in presence of independent witness namely Sushil Kumar Yadav search was made and Rs.57,57,710/- (Rs.Fifty Seven Lakh Fifty Seven Thousand and Seven Hundred Ten) and four mobiles were seized and he was also arrested by the police.

6. On the point of maintainability of the petition under section 482 Cr.P.C., Mr. Ajit Kumar, the learned Senior counsel appearing for the petitioner submitted that since there is no order under challenge in this petition of the court below, section 21 of the National Investigation Agency Act, 2008 is not attracted. He submitted that the petitioner was apprehended by the police on 12.11.2018 and he was sent to judicial custody in light of the supplementary charge sheet in which the present petitioner has been made accused no.8. The petitioner filed a petition under section 306 Cr.P.C on 30.11.2019 for grant of pardon before the learned court of Special Judge, NIA cum Judicial Commissioner, Ranchi. The additional petition was filed on 3.1.2020 by the petitioner to adduce his statement seeking to disclose all the facts and circumstances truly within his knowledge related to the offence before the court of learned Special Judge (NIA) cum Judicial Commissioner, Ranchi. The N.I.A filed the reply to the petition under section 306 Cr.P.C. The statement of the petitioner under section 306 Cr.P.C has been recorded on 10.07.2020 and the NIA has also filed the reply before the learned court below stating

therein that the competent authority has assented to the prayer made by the petitioner and the learned Special Judge (NIA) has tendered pardon to the present petitioner under section 306 Cr.P.C vide order dated 18.08.2020. He submitted that since the petitioner has been made approver and since an approver is not accused person of an offence, section 437 and 439 of the Code of Criminal Procedure cannot be pressed into service by an approver for his enlargement on bail and as such the petitioner has approached to this Hon'ble Court by invoking the inherent power of the court u/s 482 Cr.P.C. for release of the petitioner on bail. He submitted that the petitioner is in jail custody since 12.11.2018 i.e. more than three years. On the point of maintainability of his petition under section 482 Cr.P.C, he relied in the case of *Noor Taki alias Mammu v. State of Rajasthan,* reported in *1986 SCC OnLine Raj 11*. Paragraph nos.3, 5, 14, 15, 18 and 19 of the said judgment are quoted hereinbelow:

> *"**3.** Mr. M.I. Khan, Public Prosecutor appearing on behalf of the State, opposed the bail application on the ground that an approver can never be enlarged on bail if he was not on bail at the time when pardon was granted to him. He referred to the provisions of section 306(4), which run as under:*
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> *"S. 306(4)-Every person accepting a tender of pardon made under sub-section (1)-*
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> *(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;*
>
> *(b) shall, unless he is already on bail, be detained in custody until the termination of the trial."*
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> *He submits that clause (b) of sub-S. (4) of S. 306 is mandatory and accused has to be detained in custody until the termination of the trial if he was not already on bail. He submits that in Chapter XXXIII of the Code of Criminal Procedure, where the provisions as to bail and bail bonds have been incorporated under sec. 437 & 439 Cr. P.C., bail can only be granted to a person accused of an offence. It is submitted that while enacting the provisions of Section 439 Cr. P.C. the Legislature used different phraseologies in this Section it self. For grant of bail the words used are, 'that any person accused of an offence and in*

custody be released on bail' but in sub-s. (2) for cancellation the words used are 'any person who has been released on bail under this Chapter, can be arrested and committed into custody, thus an approver, who is a witness and not an accused cannot be granted bail under the provisions of Section 439 Cr. P.C. but if he is already on bail, his bail can be cancelled under sub-s.—(2). It is submitted by Mr. Khan that apart from Section 439 Cr. P.C. there is no other provision in the Code of Criminal Procedure which empowers the court to grant bail to any person detained. It is submitted that Section 482 Cr. P.C. can also not be pressed into service because Legislature has given a clear mandate in form of Section 306(4)(b) that the approver shall be detained in custody until the termination of trial and in this view of the matter detention of the approver in jail cannot be brought under the purview of inherent powers under Section 482 Cr. P.C. and such case would not be covered to prevent an abuse of the process of the court or otherwise to secure the ends of justice. It is submitted that when the Legislature enacted Section 306(4)(b), it was conscious of the fact that there is a public policy behind it. It is submitted that firstly, there is a safety of the approver himself because when he makes the disclosure of the facts and involves the other accused persons, if he is released on bail, then he can either be killed or an attempt can be made on his life or he can be threatened so as to change his statements. Secondly, if he is released on bail, there are every chances of his becoming hostile or not being available to the court for evidence. It is also submitted that there is also expediency concerning the law and order, Learned Public Prosecutor has relied on A.L. Mehra v. The State (3), Bhawani Singh v. The State (4), Karuppa Sarvai v. Kundaru alias Muniandi (5), Pajerla Krishna Reddi (6), Haji Ali Mohamal v. Emperor (7), In re Dagdoo Bapu (8) and Dev Kishan's case (supra).

***5.** We have given our earnest consideration to the rival contentions and have looked into the cases cited by the bar.*

***14.** Aforesaid perusal of the various authorities and on a careful consideration of Section 306(4)(b) and Section 439 Cr. P.C. we have absolutely no hesitation in holding that provisions of Sec. 439 Cr. P.C. do not apply in a case of approver in view of the bar under Section 306(4)(b) Cr. P.C. There can be no doubt that when the Legislature enacted Section 306(4)(b), there was an object behind them and they did so because they were of the opinion that the approver must make a complete and correct disclosure of entire facts and circumstances. He must disclose to the court his knowledge which he possesses due to his involvement in the crime. He has to give statement which is not only exculpatory but is inculpatory and in case he is released on bail, a situation may aries where relations of the accused or the accused themselves, who are on bail, may win over the approver or threaten with dire consequences and he may*

abscond, there may be chances that he may completely be evaporated. When these provisions are enacted, at the same time, Legislature enacted the provisions about recording of evidence in Sessions case or in a warrant trial before a Magistrate. It was expected in a sessions case that once the prosecution case starts, the learned Sessions Judge would record the evidence day to day till the trial is completed and in the court of Magistrates the maximum period for detention of an accused in custody was limited to six months. Even during the investigation the Legislature gave a mandate that accused shall not be detained more than 30 days in a murder case and for more than 60 days in other cases. Therefore, it was never contemplated that a trial will take inordinate delay in its termination and not only the accused but approver shall also be detained in custody. Accused has been given a right to apply for the bail but the approver not, as is apparent from the bare perusal of Section 439 Cr. P.C. Therefore, a circumstance may arise due to prolonged trial even when the approver has been examined and has supported the prosecution case, he may be detained in jail despite the fact that even the principal accused has been granted bail. It is in these circumstances that the question arises, whether an approver should be granted indulgence of being released from detention or his liberty should be curtailed for no fault on his part Argument has been advanced by Mr. Dhankar that such a prolonged detention of the accused is violative of Article 21 of the Constitution of India, and further that Section 306(4)(b), Cr. P.C., may be declared as directory and not mandatory.

15. *Taking the second point first, there is no question of holding whether Section 306(4)(b) is directory or mandatory as there is no specific provision in the entire Criminal Procedure Code which gives a right to the approver to apply for bail. As mentioned above Section 439 Cr. P.C. does not apply to an approver. It applies only to a person accused of an offence. An approver when once granted pardon, no more remains an accused unless he violates the conditions of pardon and sub-sequently tried for the offence. Hence as an approver his status is that of witness and not that of the accused. That being so, Section 439 Cr. P.C. would not apply and consequently the discussion on the point whether Section 306(4)(b) is directory or mandatory, is merely on academic exercise and that too in futility. So far as the provision of Sec. 439 Cr. P.C. being violative of Art. 21 of the Constitution of India, suffice it to say that argument has been advanced only to be rejected. Approver, as a matter of right, cannot claim bail and as mentioned above there is no provision granting him bail. We have already discussed above the reasons which appear to us persuaded the Legislature not to make a provision for granting bail to an approver. But Article 21 of the Constitution of India can be looked into for seeking an aid to the contention that the scope of inherent*

powers of this Court should be so explained so as to cover the cases of an approver for consideration of bail in proper cases. In Francis Coralia Mullin's case (supra), their Lordships of the Supreme Court defined the scope of Article 21 of the Constitution of India. In that case the petitioner had challenged his detention under COFPOSA Act and an argument was advanced challenging the constitutional validity of certain clauses of the detention order. Their Lordships held,

> *"It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. This court expanded the scope and ambit of the right to life and personal liberty enshrined in Article 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights …*

The position now is that Article 21 as interpreted in Maneka Gandhi's case (supra) requires that no on shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise."

18. *A perusal of the aforesaid cases coupled with that of many other cases, like that of Sunil Batra v. Delhi Administration (15) and yet another case of Hussainara Khatoon reported in (1980) 1 SCC 81 : AIR 1979 SC 1360, we have no hesitation in holding that detention of a person even by due process of law has to be reasonable, fair and just and if it is not so, it will amount violation of Article 21 of the Constitution of India. Reasonable expeditious trial is warranted by the provisions of the Criminal Procedure Code and in case this is not done and an approver is detained for a period which is longer than what can be considered to be reasonable in the circumstances of each case, the Court has always power to declare his detention either illegal or enlarge him to bail while exercising its inherent powers. Section 482 Cr. P.C. gives wide power to this Court in three circumstances. Firstly, where the jurisdiction is invoked to give effect to an order of the Court. Secondly—if there is an abuse of the process of the Court and thirdly, in order to secure the ends of justice. There may be occasions where a case of approver may fall within latter two categories. For example in a case where there are large number of witnesses a long period is taken in trial where irregularities and illegalities have been*

committed by the Court and a re-trial is ordered and while doing at the accused persons are released on bail, the release of the approver will be occasioned for securing the ends of justice Similarly, there may be cases that there may be an abuse of the process of the court and the accused might be trying to delay the proceedings by absconding one after another, the approver may approach this Court for seeking indulgence. But this too will depend upon the facts and circumstances of each case. Broadly, the parameters may be given but no hard and fast rule can be laid down. For instance, an approver, who has already been examined and has supported the prosecution version, and has also not violated the terras of pardon coupled with the fact that no early end of the trial is visible, then he may be released by invoking the powers under Section 482, Cr. P.C. Sec. 482 Cr. P.C. gives only power to the High Court. Sessions Judge cannot invoke the provisions of the same. High Court therefore in suitable cases can examine the expediency of the release of an approver. We are not inclined to accept the contention of the learned Public Prosecutor that since there is a specific bar under Section 306(4)(b), Cr. P.C., Section 482 Cr. P.C., should not be made applicable. Their Lordships of the Supreme Court has said it in terms without number, that there is nothing in the Code to fetter the powers of the High Court under Sec. 482 Cr. P.C. Even if there is a bar in different provisions for the three purposes mentioned in Sec. 482 Cr. P.C., and one glaring example quoted is that though Sec. 397 gives a bar for interference with interlocutory orders yet Sec. 482 Cr. P.C. has been made applicable in exceptional cases. Second revision by the same petitioner is barred yet this Court in exceptional cases invoke the provisions of Sec. 482 Cr. P.C. Therefore, Sec. 482 Cr. P.C. gives ample power to this Court. However, in exceptional cases to enlarge the approver on bail, and we answer the question that according to Section 306(4)(b) Cr. P.C. the approver should be detained in custody till the termination of trial, if he is not already on bail, at the same time, in exceptional and reasonable cases this Court has power under Section 482 Cr. P.C., to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much prolonged, which would otherwise out-live the period of sentence, if convicted, his detention can be declared to be illegal, as violative of Article 21 of the Constitution.

19. *Having answered the reference as above, we have perused the facts of this case. The occurrence relates to July, 1983, and the accused was arrested on March 12, 1984. He moved an application before the Chief Judicial Magistrate seeking pardon on April 27, 1984 and his application was allowed by the learned Chief Judicial Magistrate and he was declared as an approver. The petitioner's statement as an approver has been recorded in the court of Sessions during trial as is apparent from the order of the Additional Sessions Judge No. 4, Jaipur City, Jaipur. It is*

not denied that he has fulfilled all the conditions on which pardon was granted to him. He is in detention for more than 22 months now. Accused persons have been released on bail, and we feel in these circumstances approver have been put in the circumstances worse than those who are facing the charge sheet. The end of the trial is not insight as more than 20 witnesses are yet to be examined as stated before us. In these circumstances, we confirm the order of interim bail granted by Hon'ble Mehta, J. by his order dated Oct. 28, 1985 and direct that the approver shall continue to remain on bail during the pendency of the trial on entering into a personal bond in the sum of Rs. 5,000/- (Rs. Five thousand) to the satisfaction of the Deputy Registrar (Judicial), Rajasthan High Court, Jaipur Bench, Jaipur."

7. Relying on this judgment, he submitted that the petition is maintainable under section 482 Cr.P.C. He further relied in the case of *Fariyad v. State of Rajasthan* reported in *1983 SCC OnLine Raj 295.* Paragraph no.6 and 7 of the said judgment are quoted hereinbelow:

> "***6.*** *In Re Dagdoo Bapu's case (supra) it has been observed:—*
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> *"The offence under inquiry was an offence of murder and the accused was placed before the Magistrate on a charge of that offence on the 7th September 1920. But as the prosecution case was that another accused Dhondoo Surabhoo, who had absconded, was the principal offender the pardon was tendered. The principal offender has not been arrested, and it appears that there is no prospect of his arrest for trial.*
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> *The prosecution desire the discharge of Dagdoo Bapu as otherwise he would be detained for an indefinite period in the custody as an approver.'*
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> ***7.*** *Further, it was observed in A.L. Mehra's case (supra), as under:—*
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> *"It could not have been the intention of the Legislature that a person who has been granted a pardon in respect of a particular offence should be kept in confinement for an indefinite period particularly when Government have not been able to decide during the last 15 months whether the prisoners should be prosecuted at all. While there can be no doubt that the approver was apprehended under an originally valid and regular process duly and properly issued, his continued detention in custody when the prosecution of offenders is not being seriously contemplated appears to me to constitute an abuse of the*

process of the Court.

Indeed the delay which is being occasioned in the decision of this important matter leaves one in reasonable doubt as to whether the detention of the approver is directed to achieve the object of law or merely to harass him for his part in the crime. It seems to me therefore, that although the process of arrest was proper in its inception, the complaint of the approver arises in consequence of subsequent proceedings. Sub-section (3) of sec. 337 implies that there is a trial in progress and its object is to secure the evidence of the approver for such trial.

If there is no such trial and no Ikelihood of such a trial then cessante ratione len ipsa cessat. In re Dagdoo Bapu, ILR 6 Bom. 120 at p. 123 : (AIR 1922 Bom. 177 (1) at p. 177(1)(J). This is an eminently fit case in which the inherent powers of this court to prevent the abuse of the process of the Court be exercised in favour of a person who has been in confinement for several months and who was recently released on parole at the urgent request of the Solicitor-General. I direct that the approver shall be Released on bail on furnishing security to the satisfaction of the District Magistrate."

8. Relying on this judgment, he submitted that the petitioner has been allowed as approver cannot be detained in jail for an indefinite period as rest of the accused persons are absconding and in anticipation of their apprehending, the petitioner cannot be allowed to remain in jail for indefinite period. He further relied in the case of *Shammi Firoz v. NIA* and submitted that section 437 and 439 of the Cr.P.C. cannot be pressed into service by an approver for his enlargement on bail. In such a contingency, notwithstanding the bar under section 306(4)(b) Cr.P.C. and only remedy is under section 482 Cr.P.C. Relying on this judgment, he submitted that the petition under section 482 Cr.P.C is maintainable.

9. Section 306 Cr.P.C is quoted hereinbelow:

306. Tender of pardon to accomplice*.—(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and*

true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

10. Section 307 of Cr.P.C. speaks as under:

***307. Power to direct tender of pardon**.— At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person."*

11. Per contra, Mr. Vikramjit Banerjee, learned A.S.G.I appearing for the N.I.A submitted that at this stage, the petition under section 482 Cr.P.C. is not maintainable on behalf of the petitioner as the other accused persons are still required to be examined. He submitted that detention of the approver in custody must end with the trial as

envisaged under section 306 (4)(b) of the Cr.P.C. He further submitted that it is not meant to punish the person in whose favour pardon has been tendered but to protect him from the possible indignation, rage and resentment of his associates in a crime. To buttress his argument, he relied in the case of *Suresh Chandra Bahri v. State of Bihar, 1995 Sup. (1) SCC 80.* Paragraph no.34 of the said judgment is quoted hereinbelow:

> *"**34.** As regards the contention that the trial was vitiated by reason of the approver Ram Sagar being released on bail contrary to the provisions contained in clause (b) of sub-section (4) of Section 306 of the Code. It may be pointed out that Ram Sagar after he was granted pardon by the learned Magistrate by his order dated 9-1-1985, was not granted bail either by the committing Magistrate or by the learned Additional Judicial Commissioner to whose court the case was committed for trial. The approver Ram Sagar was, however, granted bail by an order passed by the High Court of Patna, Ranchi Bench in Criminal Miscellaneous Case No. 4735 of 1986 in pursuance of which he was released on bail on 21-1-1987 while he was already examined as a witness by the committing Magistrate on 30-1-1986 and 31-1-1986 and his statement in sessions trial was also recorded from 6-9-1986 to 19-11-1986. It is no doubt true that clause (b) of Section 306(4) directs that the approver shall not be set at liberty till the termination of the trial against the accused persons and the detention of the approver in custody must end with the trial. The dominant object of requiring an approver to be detained in custody until the termination of the trial is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associates in a crime whom he has chosen to expose as well as with a view to prevent him from the temptation of saving his one time friends and companions after he is granted pardon and released from custody. It is for these reasons that clause (b) of Section 306(4) casts a duty on the court to keep the approver under detention till the termination of the trial and thus the provisions are based on statutory principles of public policy and public interest, violation of which could not be tolerated. But one thing is clear that the release of an approver on bail may be illegal which can be set aside by a superior court, but such a release would not have any affect on the validity of the pardon once validly granted to an approver. In these circumstances even though the approver was not granted any bail by the committal Magistrate or by the trial Judge yet his release by the High Court would not in any way affect the validity of the*

pardon granted to the approver Ram Sagar."

12. Relying on this judgment, he submitted that the life of the petitioner is in danger which has been disclosed in the counter affidavit and the Court may not entertain this petition at this stage under section 482 Cr.P.C. On the ground of threat, the bail petition is fit to be rejected. He relied in the case of *Aamir Abbas Dev v. State, through NIA,* reported in *2013 SCC OnLine Del 5042.* Paragraph nos.12 and 13 of the said judgment are quoted hereinbelow:

> *"12. In the Full Bench decision of this Court in Prem Chand's case (supra), which was cited by the appellant's counsel, the accused were being prosecuted for an offence triable exclusively by a Court of Session and it was held that the provisions of Section 306(4)(b) being mandatory the approver had to be kept in custody till the conclusion of the trial. The reasons given by the Full Bench for taking such a view are to be found in para nos. 6 to 10 and 15 of the judgment which are reproduced below:-*
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> > *"6. Section 306 of the Cr. P.C. makes provision for tender of pardon to an accomplice. It is provided that with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into or the trial of the offence may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. Sub-section (4) of this Section next reads as under:*
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> *(4) Every person accepting a tender of pardon made under Subsection (I) -*
>
> *(a) shall be examined as a witness in the court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;*
>
> *(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.*
>
> > *7. Under Section 308, in case the Public Prosecutor certifies that in his opinion the person who has accepted a tender of pardon has, either by willfully*

concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence. Such person, however, has not to be tried" jointly with any of the other accused. Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under Section 164, or by a court under Sub-section (4) of Section 306 can be given in evidence against him at such trial. At the same time, the accused person is left entitled to plead at such trial that he has complied with the condition upon which such tender was made, in which case, it is for the prosecution to prove that the condition has not been complied with. If the Court then finds that he, in fact, complied with the terms of grant of pardon, it shall, notwithstanding anything contained in the Code, pass judgment of acquittal.

8. It is the provisions of Section 306(4)(b) providing that every person accepting a tender of pardon, shall unless he is already on bail, be detained in custody until the termination of the trial which have come up for interpretation. Its constitutional validity has also been challenged.

9. So far as the language used in Section 306(4)(b), it is quite explicit that the person accepting tender of pardon unless already on bail, has to be detained in custody till the end of the trial. The word used is "shall", and there is almost a unanimity of opinion of different High Courts that the legislature has not envisaged grant of bail to a person during the trial after he has accepted pardon. The underlying object of requiring the approver to remain in custody until the termination of trial is not to punish him for having agreed to give evidence for the State, but to protect him from the wrath of the confederates he has chosen to expose, and secondly to prevent him from the temptation of saving his erstwhile friends and companions, who may be inclined to assert their influences, by resiling from the terms of grant of pardon. In fact, the Madras High Court in the case Karuppa Servai v. *Kundaru, has observed that this provision is based on very salutary principles of public policy and public interest. The approver's position was considered to be like a sealed will in a will forgery case, and he should not be allowed to let off on bail. The Rajasthan High Court has in*

Ayodhya Singh v. *State 1973 Cri LJ 768 and Lallu* v. *State 1979 Raj LW 465 taken the view that the provisions in this regard are mandatory, and that Court cannot go behind the wisdom of the legislature* as expressly laid down under Section 306, Cr. P.C. In the former case the * circumstance that the disposal of the case was likely to take a long period of time as" the prosecution had cited 174 witnesses, was not considered as valid ground for bail when the law prohibits any such release till the termination of the trial. In Mukesh Ramchandra Reddy, 1958 Cri LJ 343, the Andhra Pradesh High Court has as well interpreted the word "shall" in the said provisions as primarily obligatory and casting a duty on the Court to detain an accused to whom pardon has been tendered, in custody until the termination of the trial. The Punjab High Court in A.L. Mehra* v. *State, declined to draw an analogy from the power available with the Court to grant bail to accused at any stage of the trial, and it was observed that it was not within the competency of the Court to admit an approver to bail when the law declares in unambiguous language that the approver shall not be released until the decision of the case. These special provisions were treated to override the general provisions entitling the Court to grant bail. (emphasis supplied)*

10. There is, therefore, little doubt that so far as the plain reading of Section 306(4)(b), Cr. P.C., the same leaves no manner of doubt that a person accepting a tender of pardon has to be kept in custody till the trial is over unless he was on bail at the time of the grant of pardon. This has been almost the uniform view of judicial decisions, and the use of the word "shall" has been interpreted to leave no flexibility in this regard. The general power of grant of bail available to the Courts under the Code is thus circumscribed by the special provisions. In fact, an accused loses his character as such when pardon is granted to him. He is, of course, an accomplice. However, the character of accused can be again attributed to him if his case falls under Section 308, Cr. P.C. That is when the Public Prosecutor certifies that he has by willfully concealing anything essential, or by giving false evidence has not complied with the. condition on which the tender was made. Rather even at this stage he is entitled to show that he has, in fact, complied with the condition upon which such tender was made. If he succeeds in doing so, that is the end of the matter. If, however, the Court is satisfied with the certification by the Public Prosecutor in spite of the submission by the approver, then his trial starts and he acquires the character of

accused. It is as such that in Sub-section (4) of Section 308 the word used qua him for the first time is "accused". (emphasis laid)

……
……..

15. In both the Session cases, the petitioner has not been impleaded as an accused. As already noted above, the scheme of different provisions of law, as referred to above, is that an approver does not acquire the character of an accused till after the trial, and that too when the Public Prosecutor certifies that he has by willfully concealing anything essential or by giving false evidence has not complied with the conditions on which the pardon was given. Rather even at this stage, he is entitled to show that he has in fact complied with the conditions upon which the same was tendered. If he succeeds in doing so; that is the end of the matter. If, however, the Court is satisfied with the certification by the Prosecutor in spite of the submissions of the approver then his trial starts and he acquires the character of the accused. It is as such that in Sub-section (4) of Section 306 the word used qua him for the first time is "accused". During the course of the trial of the main accused, his position remains that of a witness. Can such a person who is at this stage not being formally accused of an offence, be detained? The legislature has permitted this, as he is treated differently from the other witnesses appearing in criminal trials. He was, in fact, associated with the crime, and would have been treated as an accused in normal course, but for his volunteering to make a clean breast of himself and lay before the Court the full and true facts involved in the crime as are known to him. He is, therefore, not unoften termed as accomplice witness. His detention, therefore, has been considered advisable, and the object discernible which has been taken note of in judicial decisions is that he should be kept away from susceptibilities and influences of-his confederates from retracting what he has already volunteered to speak, and at the same time to protect him from their wrath in case he resists their pressures. However, in cases where his evidence has already been-recorded, and there is nothing to show that the prosecution at any stage sought to get him declared hostile, and the Prosecutor too has not even raised a resemblance of the contention that there would be likelihood of his moving later under Section 308, Cr. P.C. and further that in spite of his detention for a long time, there is little possibility of early conclusion of the

> *trial, the question to be considered is whether it would not amount to an abuse of process of Court to still detain him and his release not in the interest of justice. As already noted above, the opposition to his release is coming from the side of the accused, while the State has not appeared to contest the same before us. In our opinion, the accused should have little say in such matter, for patronage to individual vendetta has no place in the administration of justice."*
>
> *13. In a recent judgment delivered by a learned Single Judge of this Court in the case of "Bangaru Laxman v. State", 2011 Apex Decisions (Delhi) 53 also it was held, relying upon the Full Bench judgment in Prem Chand's case (supra), that accused who is given pardon by a Special Judge has also to be detained in jail as provided under Section 306(4)(b) Cr.P.C. till the conclusion of the trial."*

13. Mr. Banerjee, the learned A.S.G.I. distinguished the judgment relied by learned counsel for the petitioner in the case of *Noor Taki alias Mammu v. State of Rajasthan(supra)* and submitted that in that case all the persons have been examined and after then only Article 21 came in force for consideration by the Rajasthan High Court. Mr. Banerjee, the learned ASGI further relied in the Division Bench judgment in the case *Tipru Buruma v. National Investigation Agency, New Delhi* in *Cr.Appeal (DB) No.790 of 2019* which has been disposed of by order dated 01.10.2020. He relied in paragraph nos. 14 and 15 of the said judgment, which is quoted hereinbelow:

> *"**14.** The question whether the approver accepting the tender of pardon can be released on bail or not, has been dealt with by the Hon'ble Apex Court in a famous case arising out of this State, in Suresh Chandra Bahri v. State of Bihar, reported in 1995 Supp (1) SCC 80. In the said case the approver, who was an accomplice accused in the case of gruesome murder of a lady and two children, was refused bail by the Court of Magistrate granting the pardon, and also by the Court of Session, but was granted bail by the High Court. In the backdrop of these facts the law was laid down as follows:—*
>
> *"34. As regards the contention that the trial was vitiated by reason of the approver Ram Sagar being released on bail contrary to the provisions contained in clause (b) of sub-section (4) of Section 306 of the Code. <u>It may be pointed out</u>*

that Ram Sagar after he was granted pardon by the learned Magistrate by his order dated 9-1-1985, was not granted bail either by the committing Magistrate or by the learned Additional Judicial Commissioner to whose court the case was committed for trial. The approver Ram Sagar was, however, granted bail by an order passed by the High Court of Patna, Ranchi Bench in Criminal Miscellaneous Case No. 4735 of 1986 in pursuance of which he was released on bail on 21-1-1987 while he was already examined as a witness by the committing Magistrate on 30-1-1986 and 31-1-1986 and his statement in sessions trial was also recorded from 6-9-1986 to 19-11-1986. It is no doubt true that clause (b) of Section 306(4) directs that the approver shall not be set at liberty till the termination of the trial against the accused persons and the detention of the approver in custody must end with the trial. The dominant object of requiring an approver to be detained in custody until the termination of the trial is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associates in a crime whom he has chosen to expose as well as with a view to prevent him from the temptation of saving his one time friends and companions after he is granted pardon and released from custody. It is for these reasons that clause (b) of Section 306(4) casts a duty on the court to keep the approver under detention till the termination of the trial and thus the provisions are based on statutory principles of public policy and public interest, violation of which could not be tolerated. But one thing is clear that the release of an approver on bail may be illegal which can be set aside by a superior court, but such a release would not have any affect on the validity of the pardon once validly granted to an approver. In these circumstances even though the approver was not granted any bail by the committal Magistrate or by the trial Judge yet his release by the High Court would not in any way affect the validity of the pardon granted to the approver Ram Sagar."

(Emphasis supplied).

15. *Taking into consideration the dominant object of requiring an approver to be detained in custody until the termination of the trial, as explained by the Hon'ble Apex Court in the aforesaid decision, we are fortified in our reasoning that if a person committing a less serious offence triable by the Magistrate, and accepting the tender of pardon, if in custody, cannot be granted bail, and he has to be detained in custody until the termination of the trial, on the same analogy and for still stronger reasons, the persons committing serious offences, triable by the Court of Session,*

> *also cannot be released on bail under the similar circumstances."*

14. Mr. Banerjee, the learned ASGI relying on these judgments, submitted that the dominant object of requiring an approver to be detained in custody until the termination of the trial is explained by the Hon'ble Supreme Court in the case of *Suresh Chandra Bahri v. State of Bihar(supra)* and the petitioner is not fit to be released on bail under section 482 Cr.P.C.

15. Mr. Indrajit Sinha, the learned counsel for the intervenor submitted that the petition will lie before the Division Bench. He further submitted that in view of Section 306(4)(b) of the Cr.P.C, the petitioner is required to remain in custody till the completion of the trial.

16. In view of the above facts and considering the submissions of the learned counsel appearing on behalf of the parties, it is an admitted fact that the petitioner has been made approver under section 306 Cr.P.C., section 437 and 439 Cr.P.C are not attracted in the case of approver. Thus, the remedy is under section 482 Cr.P.C. The judgments relied by Mr. Banerjee, the learned ASGI are on the interpretation of section 306 (4)(b) Cr.P.C.

17. Section 306 (4)(b) of the Cr.P.C was subject matter before the Full Bench of Delhi High Court in the case of *Prem Chand v. State* reported in *1984 SCC Online Del.311.* In that case a reference was made by the Single Judge for consideration of proprietary of grant of bail to an approver who was in jail for over two years, the matter was before Full Bench. In paragraph 20 of that judgment, scope of inherent power and bail to approver has been discussed as under:

> *"**20.** It will not be out of place to mention that when this matter was before Single Judge, it was argued on behalf of the petitioner that the provisions of Section 306(4)(b) in all its rigidity may land itself to constitutional challenge on the ground of being violative of Article 21 read with Article 14 of the Constitution for*

> *being arbitrary and un-reasonable and in this background one of us while making the reference order felt that if this Section applies in all its rigidity, it may have to be struck down. But since we find that in cases of hardship, the approver can approach this Court for release, we thought it fit not to go into the question of vires of this provision. In fact, but for the availability of this power with the High Court to release the approver perhaps the vires of Section 306(4)(b) of the Code of Criminal Procedure may be open to serious challenge."*

18. Thus, the objection of the Registry is answered accordingly that a petition under section 482 Cr.P.C is maintainable. Since there is no order of the Court, section 21 of U.A(P) Act is not attracted and in view of the fact that section 437 and 439 Cr.PC will not come in play so far the approver is concerned, a petition under section 482 Cr.P.C. is maintainable.

19. Mr. Ajit Kumar, the learned Senior counsel appearing for the petitioner for grant of bail to the petitioner, submitted that two accused persons namely, Sanjay Jain and Sudesh Kedia have been granted bail in Criminal Appeal (DB) No.222/2019 and Criminal Appeal No.314-315 of 2021 by this Court and Hon'ble Supreme Court, respectively. He further submitted that the two accused persons have been granted bail and the petitioner who is an approver cannot be allowed to remain in custody indefinitely when the other accused persons have not still been apprehended. There is no time limit as to by what time the other co-accused persons shall be apprehended. He further elaborated his argument by way of relying on Article 21 of the Constitution of India and submitted that the petitioner cannot be allowed to remain in jail indefinitely. He further submitted that the petitioner is ready to cooperate in investigation and trial.

20. On the other hand, Mr. Banerjee, the learned ASGI submitted that there is threat to life of the petitioner and if released, there are all probabilities that other accused persons, some of whom are

still absconding/evading their arrest, may take steps to eliminate the petitioner. Such apprehension is based for the reason that in the month of February, 2021 some of the witnesses of the case had been attacked for which a separate FIR being FIR No.15 of 2021 at PS Tandwa was registered. He submitted that if at this stage the petitioner is released on bail then there are all probabilities that the other accused persons may either try to influence him by threat or other inducements or try to eliminate the petitioner and on either of which occasion, the trial shall be seriously prejudiced. He submitted that there is statutory bar for releasing the petitioner. According to him, some of the accused persons against whom charges have been framed on 03.12.2021 are yet to cross-examine the petitioner and three accused persons have not yet put their appearance who are appellants in Cr.Appeal(DB) No.71/2020, Cr.Appeal(DB) No.117/2020 and Cr.Appeal(DB) No.119/2020. He submitted that in the investigation it was found that the petitioner was closely associated with Mahesh Agarwal, one of the non-appearing accused. He further elaborated that there are chances of the petitioner being influenced or gained over by the accused persons either through threat, coercion, allurement or inducement. On these grounds, he submitted that the petitioner is not entitled to be released on bail.

21. It is an admitted fact that by order of this Court, the deposition of the petitioner was recorded and 8 accused persons already cross-examined this petitioner and the petitioner was discharged. The other accused persons are not apprehended and some of the accused persons have not appeared in the court. The question remains that the petitioner who is approver under section 306 Cr.P.C whether can be allowed to remain in jail custody for indefinite period or not? The two of the accused persons have been granted bail by the Division Bench of this Court and by the Hon’ble Supreme Court as discussed (supra). The accused has been given a right to apply for bail but the approver not as it

is apparent from the perusal of section 439 Cr.P.C. Thus, there is no doubt in the given situation where some of the accused persons are absconding and some are before the Court, the trial will be prolonged and when the approver has been examined and has supported the prosecution case, he may be detained in jail despite that fact that even some of the accused persons have been granted bail. A person who has been made approver cannot be allowed to be remained in jail custody indefinitely. Moreover, section 306(4)(b) Cr.P.C seems to be directory and not mandatory. To keep the approver indefinitely in jail is not the intention of the legislature. In the case of *Aamir Abbas Dev v. State, through NIA(supra),* there was threat to the life and warning received by the petitioner of that case and in view of that, the Delhi High Court has not allowed the approver to go out from the jail. The petitioner is in jail custody for more than three years.

22. The Hon'ble Supreme Court in the case of *Maneka Gandhi v. Union of India,* reported in *(1978) 1 SCC 248* observed that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19 of the Constitution. It was further observed that if a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be available in a given situation. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14.

In exceptional cases to enlarge the approver on bail and

according to Section 306(4)(b) Cr.P.C. the approver should be detained in custody till the termination of trial, if he is not already on the bail, at the same time, in exceptional and reasonable cases the High Court has power under section 482 Cr.P.C to enlarge the approver on bail or in case there are circumstances to suggest that his detention had been so much prolonged, which would otherwise outlive the period of sentence, if convicted, his detention can be declared to be illegal as violative of Article 21 of the Constitution of India.

23. In the case of *P.Chidambaram v. Directorate of Enforcement* reported in *(2020) 13 SCC 791,* the rule of bail was discussed at paragraph 23 which is quoted hereinbelow:

> "***23.*** *Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately*

the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

24. In view of the above facts, reasons and analysis and considering that two accused persons have been granted bail and the petitioner is in custody for more than three years, the following order is passed:

(i) The petitioner is directed to be released on bail on furnishing bail bond of Rs.50,000/- and two sureties of the like amount each to the satisfaction of learned Special Judge, NIA-cum-Additional Judicial Commissioner-XVI, Ranchi in connection with RC-06/2018/NIA/DLI dated 16.02.2018 corresponding to Special (NIA) Case No.03/2018; and

(ii) The petitioner shall appear in the court of learned Special Judge, NIA-cum-Additional Judicial Commissioner-XVI, Ranchi for examination of remaining persons against whom charge has been framed as disclosed by the learned counsel appearing for the N.I.A., on all dates of hearing, till the conclusion of the trial, except on those dates, by filing petition under section 317 Cr.P.C by assigning valid reasons.

25. Cr.M.P.No.1300 of 2021 is allowed in the aforesaid terms and disposed of.

26. I.A.No.5750 of 2021 also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Jharkhand High Court, Ranchi
Dated 22/04/2022
N.A.F.R/ SI/,