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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.846 of 2020

Order reserved on: 29-6-2020

Order delivered on: 15-7-2020

Rajkumar Sahu, S/o Shri Budhram Sahu, aged about 38 years, R/o Mines, Purana Bazarpara, 56 Mines, Katkona, P.S. Patna, Tahsil Baikunthpur, Civil and Revenue District Korea (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through P.S. Patna, Tahsil Baikunthpur, Civil and Revenue District Korea (C.G.)

---- Respondent

For Petitioner: Mr. Amit Kumar Chaki, Advocate.
For Respondent / State: -
Mr. Animesh Tiwari, Deputy Advocate General.
Amicus Curiae: Mr. Anurag Dayal Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Proceedings of this matter were taken for final hearing through video conferencing.

2. Can this Court in exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') admit the privilege of bail to the petitioner (accused turned approver) who has been granted pardon under Section 306(1) of the Code, during the pendency of trial by the jurisdictional Magistrate in view of the legislative bar engrafted under Section 306(4)(b) of the Code is the short question which has fallen for consideration in this petition on the following background: -

3. The petitioner along with other co-accused persons were arraigned in the FIR dated 29-6-2016 registered for offence punishable under Section 420 read with Section 34 of the IPC along with Section 10

of the Chhattisgarh Protection of Interest of Depositors Act, 2005. Accordingly, they were charge-sheeted before the jurisdictional Magistrate. The petitioner's application for anticipatory bail was rejected by this Court in M.Cr.C.(A)No.1127/2016 on 5-1-2017. Thereafter, he was arrested on 28-3-2017 and thereafter, his regular bail application was also rejected by this Court in M.Cr.C. No.3282/2017 on 13-11-2017 and his Special Leave Petition (Crl.) Diary No.6942/2019 was also rejected by the Supreme Court on 11-3-2019 with a direction to conclude the trial within one year from that day.

4. The petitioner made an application for grant of pardon under Section 306(1) of the CrPC stating that he wanted to make full and complete disclosure of the case in which is an accused. The learned Judicial Magistrate First Class by its order 17-2-2020 granted that application on the condition of his making a full and true disclosure of the whole of the circumstances within within his knowledge relative to the offence and directed the case to be committed to the Court of Chief Judicial Magistrate under clause (b) of sub-section (5) of Section 306 of the Code. Thereafter, the petitioner made an application for bail stating that since he has already been granted pardon and he has accepted the conditions of pardon, therefore, his status has been changed to that of a witness from accused and since he is in custody since 28-3-2017, therefore, he be released on bail. The learned jurisdictional Magistrate by order dated 16-4-2020 rejected the application holding that the petitioner is already not on bail and is in custody and therefore he cannot be released on bail until the termination of trial in view of the legislative bar engrafted under clause (b) of sub-section (4) of Section 306 of the Code. Thereafter, this petition under Section 482

of the Code has been preferred by the petitioner invoking the inherent jurisdiction of this Court stating inter alia that Section 306(4)(b) of the Code cannot be taken as an absolute bar or prohibition or fetter on the inherent power of this Court under Section 482 of the Code and since the petitioner has been granted pardon under Section 306(1) of the Code and thereby he has occupied the status of a witness, Sections 437 and 439 of the Code are not available to release him on bail being inapplicable and further, since he is in custody for more than three years and he has unnecessarily been detained in jail and on account of COVID-19, he has not been examined till now, and trial has not been concluded despite the imperative direction of the Supreme Court therefore, in exercise of inherent power, he be released on bail by granting this petition.

5. The State / respondent has filed its reply opposing the application for anticipatory and regular bail, as in view of the legislative bar contained in clause (b) of sub-section (4) of Section 306 of the Code and only in exceptional cases, the approver / petitioner can be released on bail in exercise of power conferred under Section 482 of the Code and therefore the petitioner is not entitled to be released on bail, as he has failed to demonstrate that he has an extraordinary and exceptional case to be released on bail.

6. Mr. Amit Kumar Chaki, learned counsel appearing for the petitioner, would submit that the bar contained in Section 306(4)(b) of the Code is confined to that of the Court of jurisdictional Magistrate only where the trial is pending and even it would not be applicable if the tender of pardon is accepted by the learned Sessions Judge after the committal of case under Section 307 of the Code and even

otherwise, the petitioner has already been detained in jail for three years and his status from accused has changed to that of a witness and he will make full and complete disclosure of the case, otherwise, he has to suffer prosecution not only for offence under Section 420 of the IPC for which he was criminally charge-sheeted, but also for making false evidence looking to the provisions contained in Section 308 of the Code. Mr. Chaki, learned counsel, would further submit that power of the High Court under Section 482 of the Code is not in any way inhibited by Section 306(4)(b) of the Code, as its applicability is fully confined to that of the jurisdictional Magistrate considering the application under Section 306(1) of the Code. He would rely upon the decision of the Supreme Court in the matter of **Suresh Chandra Bahri v. State of Bihar**[1]. Therefore, it is a fit case where exercising power under Section 482 of the Code, the petitioner deserves to be released on bail.

7. Mr. Animesh Tiwari, learned Deputy Advocate General appearing for the State / respondent, would submit that power under Section 482 of the Code to release the approver on bail can be exercised only in exceptional cases to which the petitioner has failed to make out. He would further submit that eleven witnesses have already been examined, only six witnesses and the petitioner have to be examined and they will be examined expeditiously. Therefore, it is a fit case where the petition deserves to be dismissed.

8. Mr. Anurag Dayal Shrivastava, learned counsel appearing as *amicus curiae*, would submit that applicability of Section 306(4) of the Code is confined only to that of a Magistrate trying the case and the Sessions Judge while granting pardon under Section 307 of the

1 AIR 1994 SC 2420 : 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60

Code is empowered only to enlarge the approver on bail as the provisions engrafted under Section 306(4) of the Code are not attracted if the accused has tendered pardon after the commitment of case under Section 307 of the Code. He would rely upon the decision of the Supreme Court in the matter of **A. Devendran v. State of T.N.**[2]. He would further submit that the engrafting bar in shape of Section 306(4)(b) of the Code is definitely 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 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. Therefore, in the facts and circumstances of the case, this Court can very well exercise the jurisdiction under Section 482 of the Code and release the approver on bail to prevent the abuse of process of Court and for ends of justice. He would further rely upon the decision of the Delhi High Court in the matter of **Prem Chand v. State**[3] and Full Bench decision of the Rajasthan High Court in the matter of **Noor Taki alias Mammu v. State of Rajasthan**[4] to buttress his submission.

9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

10. Section 306 of the Code provides for tender of pardon to accomplice. Sub-section (1) of Section 306 of the Code states as under: -

"**306. Tender of pardon to accomplice**.—(1) With a

2 (1997) 11 SCC 720
3 1985 Cri. L.J. 1534
4 1986 Cri. L.J. 1488

> 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."

11. The above-stated provision is based on very salutary principles of public policy and public interest. The dominant object be that the offenders of the heinous and grave offences do not go unpunished, the legislature in its wisdom considered it necessary to introduce Section 306 and confine its operation to cases mentioned in it. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence. {See **Suresh Chandra Bahri** (supra); SCC p. 106, para 42.}

12. Similarly, their Lordships of the Supreme Court in the matter of **Bangaru Laxman v. State (Through CBI) and another**[5] have held

5 (2012) 1 SCC 500

that under Section 306 of the Code, the basis of exercise of power is not to judge the extent of culpability of the persons to whom the pardon is tendered. The main purpose is to prevent failure of justice by allowing the offender to escape from a lack of evidence.

13. After having noticed the object of en-grafting Section 306(1) of the Code, if the scheme of Section 306 is scanned, it would appear that the Chief Judicial Magistrate and the Metropolitan Magistrate have the power and jurisdiction to grant pardon at any stage of investigation, inquiry and trial, but the Magistrate of First Class shall have jurisdiction only at the stage of enquiry into or the trial of the offence, meaning thereby, the Magistrate of First Class cannot exercise the power of tendering of pardon at the stage of investigation. The other thing is that the condition which is prescribed for granting of pardon is '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 commission thereof'.

14. Similarly, sub-section (2) of Section 306 of the Code prescribes the nature of offences to whom the power of tender of pardon could be exercised. It states as under: -

> "(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."

15. Sub-sections (3), (4) and (5) of Section 306 of the Code are procedures which are required to be followed by the Judicial Magistrate and the Magistrate is obliged to proceed with trial and

commit it for trial either to the Court of Session if the offence is triable exclusively by that Court or to the Court of Special Sessions Judge or in any other case to the Chief Judicial Magistrate under sub-section (5). In between the Judicial Magistrate in compliance of the provision of Section 306(4)(b) is empowered to detain the person in custody in whose favour the pardon has been tendered, if the said person is already not on bail and then he will be detained in custody until the termination of trial.

16. Before proceeding further, it would be appropriate to notice here Section 307 of the Code which reads 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."

17. The aforesaid provision (Section 307 of the Code) empowers the Sessions Court the power to direct tender of pardon at any time after commitment of case but before judgment is passed and it is meant exclusively to be exercised by the Court of Session. The rider is only the subject with the condition as prescribed under Section 306(1) of the Code. It is also clear that if the Session Court exercises the power of tendering pardon under Section 307 of the Code, then the provision of Section 306(4)(b) would not be available or operative as available to the Judicial Magistrate exercising the tender of pardon to accomplice.

18. The aforesaid legal position has been brought out by their Lordships of the Supreme Court very clearly in **A. Devendran** (supra) in which their Lordships have clearly held that if the accused is tendered pardon after commitment by the Court to

which the proceeding is committed in exercise of power under Section 307 of the Code then in such case, the provision of sub-section (4)(a) of Section 306 are not attracted. It was observed by their Lordships as under: -

> “11. The correctness of the rival submissions again would depend upon true interpretation of Sections 306 and 307 of the Code. Under Section 307 when pardon is tendered after commitment of the proceedings by the Court to which the commitment has been made the legislative mandate is that the pardon would be tendered on the same condition. The expression "on the same condition" obviously refers to the condition of tendering a pardon engrafted in sub-section (1) of Section 306, the said condition being that the person concerned makes a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. Sub-section (4) of Section 306 cannot be held to be a condition for tendering pardon. A combined reading of sub-section (4) of Section 306 and Section 307 would make it clear that in a case exclusively triable by the Sessions Court if an accused is tendered pardon and is taken as an approver before commitment then compliance of sub-section (4) of Section 306 becomes mandatory and non-compliance of such mandatory requirements would vitiate the proceedings but if an accused is tendered pardon after the commitment by the Court to which the proceeding is committed in exercise of powers under Section 307 then in such a case the provisions of sub-section (4) of Section 306 are not attracted. The procedural requirement under sub-section (4)(a) of Section 306 to examine the accused after tendering pardon cannot be held to be a condition of grant of pardon. The case of *Suresh Chandra Bahri v. State of Bihar* on which the learned counsel for the appellants strongly relied upon deals with a case where pardon had been tendered to an accused before the commitment proceedings and the question was whether non-compliance of sub-section (4)(a) of Section 306 would vitiate the trial. The Court held that the provision contained in clause (a) of sub-section (4) of Section 306 is of mandatory nature and, therefore, non-compliance of the same would render an order of commitment illegal. It is no doubt true, as contended by Mr. Muralidhar, the learned counsel appearing for the appellants, that the procedure indicated in sub-section (4)(a) of Section 306 is intended to provide a safeguard to an accused inasmuch as the approver has to make a statement disclosing his evidence at the preliminary stage before the committal order is made and thereby the accused becomes aware of the evidence against him and further such evidence of an approver can be ultimately shown as untrustworthy during the trial when the said approver makes any contradictions or improvements to his earlier version. But still when the

> legislature in Section 307 have made specific reference to only on "such conditions" and not to the other procedures in Section 306 it would not be a rule of interpretation to hold that even sub-section (4)(a) of Section 306 would also be applicable in such a case."

19. Thus, from the aforesaid legal analysis, it is quite vivid that the provision under Section 306(4)(b) of the Code is applicable to the Judicial Magistrate First Class if the pardon is granted by him, but if the pardon is granted to accomplice by the learned Sessions Judge under Section 307, Section 306(4) particularly clause (b) mandating his continuation of custody till the termination of trial would not be applicable and the learned Sessions Judge would have the jurisdiction to release him on bail if found appropriate.

20. At this stage, it would be further appropriate to notice the provisions of Sections 337 and 339 of the old Code of Criminal Procedure, 1898 which are almost in identical terms with the provisions of Sections 306 and 308 of the Code of Criminal Procedure, 1973. Sub-section (3) of Section 337 of the old Code of 1898 provided as under: -

> "(3) Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session, or High Court, as the case may be."

21. The Law Commission of India in its Forty-First Report suggested amendment in Section 337(3) of the old Code of 1898 in the shape of Section 306(4) of the Code of 1973. Paragraph 24.21 of the said Report is as under: -

> 24.21. Under sub-section (3), an approver, unless he is already on bail, has to be detained in custody until the termination of the trial. The trying Magistrate or Sessions Court has no power to release the approver on bail. Though this may seem harsh, particularly where the trial is prolonged, we do not think the provision should be changed. In extraordinary cases of hardship, the approver can approach the High Court whose powers as to bail are very wide.
>
> It is fairly clear that the words "unless he is on bail"

> do not prevent a Court from cancelling the bail previously granted to an approver and the general provisions as to cancellation or modification of bail apply to an approver as they apply to the accused persons under trial."

22. A careful perusal of the aforesaid report would show that the Law Commission suggested that though the proposed provision of Section 306(4)(b) of the Code of 1973 appears to be harsh, particularly when the trial is prolonged, but the said provision should not be changed and in extraordinary cases of hardship, the approver can approach the High Court whose powers as to bail are very wide.

23. The provision contained in Section 306(4) of the Code came to be considered for judicial scrutiny before the Delhi High Court in **Prem Chand** (supra) in which it has been held by their Lordships of the Division Bench that 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. Their Lordships further considering the inherent power of the Court under Section 482 of the Code have held as under: -

> "17. The power available under this provision is notwithstanding anything else contained in the Code. In case the High Court is satisfied that an order needs to be made to prevent abuse of the process of any Court, or otherwise to secure the ends of justice, the inherent powers are available and they are not limited or affected by anything else contained in the Code. We are not oblivious that these powers have not to be ordinarily invoked where specific provisions are contained in the Code or specific prohibitions enacted. However, in cases where the circumstances unmittigatingly bring out that a grave injustice is being done, and an abuse of process of court is taking place, either as a result of the

> acts of the accused taking place, either as a result of the acts of the accused or the unavoidable procedural delays in the Courts, we are of the firm opinion that the inherent powers should and need to be exercised. The approver's evidence in the present case has already been recorded, and no useful purpose is being served in his detention. The administration of justice is not in any manner likely to be affected by his release. There is no reason to suppose that the machinery of law would not be able to give protection to the petitioner in case any adventurism is sought to be displayed by his confederates, or their supporters. The conduct of the petitioner in seeking his release itself shows that he carries no apprehensions. It would not be, therefore, correct for the Court to still create such fears and profess to provide him unsolicited protection by detaining him for indefinite period. Thus in the case of *A.L. Mehra v. State*[6], the Punjab High Court released the approver from confinement in exercise of inherent powers to prevent the abuse of the process of court, finding that he had been in confinement for several months. Similarly the Madras High Court in the case of *Karuppa Servai v. Kundaru*[7] laid emphasis on the detention of an approver till he has deposed at the trial in the Sessions Court truly and fully to matters within his knowledge."

24. Not only this, the issue was considered by the Full Bench of the Rajasthan High Court in **Noor Taki alias Mammu** (supra) especially with reference to Section 306(4)(b) of the Code and ultimately it was held that the High Court in exceptional and reasonable case has power and jurisdiction under Section 482 of the Code to enlarge the approver on bail. Their Lordships of the Full Bench observed as under: -

> "19. A perusal of the aforesaid cases coupled with that of many other cases, like that of *Sunil Batra v. Delhi Administration*; 1980 Cri LJ 1099 : (AIR 1980 SC 1579), and yet another case of *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna* reported in AIR 1979 SC 1360 : (1979 Cri LJ 1036), 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 to violation of Article 21 of the Constitution. 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, this Court has always power to declare his detention either illegal or

6 AIR 1958 Punj 72 : 1958 Cri LJ 413
7 1953 Cri LJ 45

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 so, 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 terms 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.. Section 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 in times without number, that there is nothing in the Code to fetter the powers of the High Court under Section 482, Cr.P.C.. Even if there is a bar in different provisions for the three purposes mentioned in Section 482, Cr.P.C. and one glaring example quoted is that though Section 397 gives a bar for interference with interlocutory orders yet Section 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 Section 482 Cr.P.C.. Therefore, Section 482, Cr.P.C. gives ample power to this Court. However, in exceptional cases to enlarge the approver on bail, 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 the High 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 outlive the period of sentence, if convicted, his detention can be declared to be illegal, as violative of Article 21 of the

Constitution."

25. Similarly, the Kerala High Court in the matter of **Shammi Firoz v. National Investigation Agency, Ministry of Home Affairs, Govt. of India, New Delhi**[8] has clearly held that despite the embargo under Section 306(4)(b) of the Code, the High Court may in a given case release the approver on bail by calling into aid its inherent power under Section 482 of the Code and observed as under: -

> "12. Once an accused person is granted pardon he ceases to be an accused person and becomes a witness for the prosecution. Since an approver is not a person accused of an offence, Sections 437 and 439 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. it has been held in the decisions relied on by the petitioner that the High Court can in a given case release the approver on bail by invoking the inherent power under Section 482 Cr.P.C.. Formerly, Courts were very rigid in enforcing the legislative mandate under Section 306(4)(b) corresponding to Section 337(3) of the old Code. (See *A.L. Mehra v. State*, AIR 1958 Punjab 72; *Bhawani Singh v. The State*, AIR 1956 Bhopal 4; *In re Pajerla Krishna Reddi*, 1953 Cri LJ 50 (Madras); *Haji Ali Mohammed v. Emperor*, AIR 1932 Sind 40; *Dev Kishan v. State of Rajasthan*, 1984 Cri LJ 1142 (Rajasthan)). But after the fundamental right guaranteed under Article 21 of the Constitution of India has been laid on a wider canvass through the epoch making judicial pronouncements of the Apex Court, Courts have diluted the rigour of Section 306(4)(b) Cr.P.C. to make it in conformity with the rights under Article 21 of the Constitution of India. That explains the merging view that despite the embargo under Section 306(4)(b) Cr.P.C., the High Court may in a given case release the approver on bail by calling into aid its inherent power under Section 482 Cr.P.C."

26. From a conspectus of the afore-stated judgments and the principles of law culled out therein, it is quite pellucid that the provision contained in Section 306(4)(b) of the Code requiring the approver to be detained in custody till the termination of trial if he is not already on bail, is meant not to punish the person in whose favour the pardon has been tendered but to protect him from possible

8 2011 Cri. L.J. 1529

indignation, rage and resentment of his associates in a crime to whom he has chosen to expose, as pointed out by their Lordships of the Supreme Court in **Suresh Chandra Bahri** (supra) and in appropriate case, this Court in its inherent jurisdiction under Section 482 of the Code is empowered to release him on bail imposing appropriate conditions particularly when his status is turned to that of a witness from an accused as pointed out very clearly by their Lordships of the Supreme Court in the matter of **A.J. Peiris v. State of Madras**[9] in which their Lordships pertinently held as under:-

> "... We think that the moment the pardon was tendered to the accused he must be presumed to have been discharged whereupon he ceased to be an accused and became a witness."

27. This principle of law held by the Supreme Court in **A.J. Peiris** (supra) was followed with approval further by their Lordships of the Supreme Court in the matter of **State (Delhi Administration) v. Jagjit Singh**[10].

28. Further, the Supreme Court in the matter of **Gian Singh v. State of Punjab**[11] pertinently observed regarding inherent power of this Court as under: -

> "20. More than 65 years back, in King Emperor v. Khwaja Nazir Ahmad it was observed by the Privy Council that Section 561-A (corresponding to Section 482 of the Code) had not given increased powers to the Court which it did not possess before that section was enacted. It was observed:
>
> > "The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as Their Lordship think, it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing

9 AIR 1954 SC 616
10 AIR 1989 SC 598
11 (2012) 10 SCC 303

of the code."

> 55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, concedere videtur et id since quo res ipsae esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exist ..."

29. Thus, from the aforesaid discussion, it is quite vivid that this Court under inherent power of Section 482 of the Code can consider issue of grant of bail to the approver, having the status of witness only after being discharged from the case, the prohibition contained in Section 306(4)(b) of the Code is applicable to the Magistrate granting pardon, but it is not applicable to the Sessions Judge while he grants pardon to the accused under Section 307 of the Code and consequently, despite the legislative bar contained in Section 306(4)(b) as held by the Supreme Court in **A. Devendran** (supra), this Court can consider the application for releasing him on bail with certain conditions in its inherent jurisdiction under Section 482 of the Code in appropriate and reasonable case.

30. Now, the question for consideration would be, whether it is a case where the petitioner should be released on bail exercising the power under Section 482 of the Code subject to imposing reasonable conditions?

31. True it is that the petitioner was arrested on 28-3-2017 and thereafter, he was charge-sheeted and he has been granted pardon by the Judicial Magistrate in exercise of power conferred under

Section 306(1) of the Code on 17-2-2020 and though the Supreme Court on 11-3-2019 directed the trial Magistrate to conclude the trial within one year from that day, but up to 10-3-2020, the trial could not be concluded and as pointed out by the State / respondent, only eleven witnesses have been examined till now and six witnesses apart from the petitioner are yet to be examined before the trial Court. Even after grant of pardon, now, the petitioner has completed three years from the date of his custody, particularly more than four months from the date of granting pardon i.e. 17-2-2020. As pointed out earlier by the Supreme Court in **A.J. Peiris** (supra) followed by **Jagjit Singh's** case (supra), the moment the pardon was tendered to the accused on 17-2-2020, he is ceased to be an accused and become a witness and his status as on today is not that of an accused making Section 439 of the Code inapplicable since despite the order of the Supreme Court, the trial Could not be concluded.

32. Therefore, taking into consideration the fact that the petitioner's status is that of a witness only after grant of pardon to him and that the petitioner's custody is for more than 3 years, more than four months from the date of pardon and trial is likely to take time on account of COVID-19 and considering the pandemic situation that is prevailing today, it would be appropriate to release the petitioner on bail subject to the following conditions: -

1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Court concerned for his appearance as and when directed by the said Court.
2. He shall make full disclosure in accordance with Section

306(1) of the Code and shall make himself available for trial and not tamper with the witnesses who are yet to be examined and keep himself away from the accused persons.

3. The State is directed to ensure that the petitioner makes a full and true disclosure as pointed in Section 306(1) of the Code and in case if he fails to make disclosure, then the competent authority concerned will proceed in accordance with Section 308 of the Code without fail.

33. The petition is allowed to the extent indicated herein-above. It is made clear that the observations made herein-above are only for the purpose of adjudicating this petition filed by the petitioner and nothing herein be construed in the merits of the matter and the pending trial will be concluded strictly in accordance with law.

34. Before parting with the record, a word of caution is necessary for the trial Court. Their Lordships of the Supreme Court on 11-3-2019 directed for conclusion of trial within one year from that date, but the affidavit filed pursuant to the direction of this Court on 2-7-2020 would show that only eleven witnesses have been examined so far and six witnesses in addition to the petitioner are yet to be examined. Non-conclusion of trial within the timeline despite the order of the Supreme Court cannot be countenanced. It is not the case that meanwhile, COVID-19 has stepped in followed by lock-down and closure of the courts. One year period had already expired on 10-3-2020. The trial Court ought to have been vigilant and could have concluded the trial well before the timeline indicated by their Lordships of the Supreme Court. Be that as it may, the trial Court is now directed to conclude the trial expeditiously without further delay and loss of time.

35. This Court appreciates the assistance rendered by Mr. Anurag Dayal Shrivastava, *amicus curiae*, who in short notice appeared and assisted the Court excellently.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.846 of 2020

Rajkumar Sahu

Versus

State of Chhattisgarh

Head Note

Approver who has been granted pardon under Section 306(1) of the CrPC can be released on bail in exercise of inherent jurisdiction under Section 482 of the CrPC.

एकबाली साक्षी जिसे दण्ड प्रकिया संहिता की धारा 306 (1) अंतर्गत क्षमादान दिया गया है, उसे दण्ड प्रकिया संहिता की धारा 482 अंतर्गत उच्च न्यायालय की अंतर्निहित शक्तियों के अनुप्रयोग में जमानत प्रदान किया जा सकता है।