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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 344/2013 & Crl. M.A. No. 9479/2013**

ARVIND KHANNA

..... Petitioner

Through: Mr. Rajan K. Chourasia,
Mr. Ravinder Kumar and
Mr. Rakesh Kumar, Advocates

versus

C B I

..... Respondent

Through: Mr. Narender Mann, Special Public
Prosecutor CBI with Manoj Pant,
Advocate with Ins. Manoj Kumar.

+ **CRL.REV.P. 345/2013 & Crl. M.A. No. 9486/2013**

ARVIND KHANNA

..... Petitioner

Through: Mr. Rajan K. Chourasia,
Mr. Ravinder Kumar and
Mr. Rakesh Kumar, Advocates

versus

C B I

..... Respondent

Through: Mr. Narender Mann, Special Public
Prosecutor CBI with Manoj Pant,
Advocate with Ins. Manoj Kumar.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **19.07.2013**

Petitioner is facing trial in two CBI cases No. 28/2012 and case No. 38/2012 in which he had filed an application under Section 306 of Cr.P.C. seeking pardon which stands declined by trial court vide

order of 23rd May, 2013.

Since impugned order in the above captioned petitions proceeds on similar lines and the challenge to it by petitioner is also on identical grounds therefore above captioned petitions were heard together and are being disposed of by this common order.

The trial in these two cases i.e. case No. 28/2012 and case No. 38/2012 is at the stage of recording statement of accused persons under Section 313 Cr.P.C. When the prosecution evidence was about to conclude, petitioner had filed application under Section 306 of Cr.P.C. seeking pardon which has been declined by the impugned order on the following premise :-

"It is thus clear that the object of tendering pardon is to obtain evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence. In the present case, the CBI has argued that they are not dependent upon the testimony of the applicant/accused and that they had already led sufficient evidence on record against the accused persons to establish their guilt. Further, it is pertinent to note that in the instant case, FIR was registered on 24.01.2004 and prosecution evidence was closed on 02-05-2013. The present application has been filed on 11-12-2012 i.e. about 12 years after the registration of the case. The present applicant/accused has not given any reason as to why he is moving the application at a belated stage i.e. about 10 years after registration of the case. The facts and circumstances under which applicant/accused Arvind Khanna has moved application under Section 306 Cr.P.C. in the other two cases referred above are different from the present case. "

Learned counsel for petitioner assails the impugned order by

contending that in another case between the parties, a coordinate Bench of this Court vide order of 24th May, 2011 (*Annexure-7*) has granted conditional pardon to petitioner so that it could be seen as to whether on turning approver petitioner's deposition is able to secure conviction of petitioner's co-accused or not.

It was also urged on behalf of petitioner that impugned order erroneously proceed on the ground that petitioner has been convicted vide order of 7th December, 2012 whereas the said order has been set aside in appeal. Attention of this court was drawn to a counter affidavit filed by respondent in some other Special Leave Petition where petitioner is an accused, to point out that in the counter affidavit of 3rd January, 2013 respondent has maintained before the Apex Court in SLP (Crl.) No. 5842/2012 (*Annexure P-5*) that petitioner as an approver can provide missing links of evidence on point of conspiracy against co-accused. Thus, it is submitted that impugned order is erroneous and deserves to be set aside and petitioner ought to be granted pardon as his statement under Section 164 of Cr.P.C. is admissible under section 30 of Evidence Act.

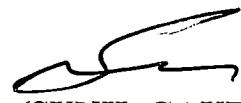
Mr. Narender Mann, learned Special Public Prosecutor for respondent-CBI supports the impugned order and submits that after the evidence is recorded, petitioner's application seeking pardon cannot be entertained and that it is evident from the order of 28th May, 2013 (*Annexure P-7*) that respondent-CBI had given no objection as the said case was at charge stage. What distinguishes the instant case from another case in which order (*Annexure P-7*) has been passed is that this case is at the fag end of trial, whereas the case referred to in

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the order (*Annexure P-7*) was at the initial stage of trial. Otherwise also, each case is on its own facts and so reference to respondent's counter affidavit in SLP No. 5842/2012 (*Annexure P-5*) is of no avail. It is pointed out that evidentiary value of petitioner's statement under Section 164 Cr.P.C. is not required to be pre-judged at this stage and even if it is ultimately found to be admissible, respondent CBI will not be relying upon it and in any case it would have corroborative value only. Thus, it is submitted that there is no substance in these two petitions.

Upon hearing both sides, on perusal of the impugned order and the material on record, I find that the object of Section 306 of Cr.P.C. is to secure evidence in cases of grave offences so that the crime committed does not go unpunished. In the instant matter, respondent CBI maintains that it has enough evidence to secure conviction of the accused and is not dependent upon the statement of petitioner under Section 164 Cr.P.C.

Thus, finding no illegality or perversity in the impugned order, these two petitions are dismissed while not commenting on merits of these two cases.


(SUNIL GAUR)
Judge

JULY 19, 2013

pkv