



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO. 3910 OF 2025 (GM-RES)

Between:

Asim Shariff
Aged about 40 years
R/at H.No. 61, 1st Main,
S.K. Garden, Benson Town,
Bengaluru - 560046
(Petitioner is in Judicial Custody)

...Petitioner

(By Sri Mohammed Tahir, Advocate)

And:

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA

1. National Investigation Agency
Ministry of Home Affairs,
(GOI) Branch Office, Bengaluru,
3rd Floor, BSNL Telephone Exchange,
HAL, 2nd Stage, Indiranagar,
Bengaluru-560 008
Represented by its Superintendent of Police.
2. Mohammed Ghouse Nayazi
S/o Nayaz Ahmed
Aged about 42 years
R/at No.304, 17th Cross,
2nd Block, RT Nagar, Bengaluru-560032
(Presently at Judicial Custody)



3. Nayaz Ahmed
S/o Mohammed Ibrahim
Aged about 69 years
R/at No.304, 17th Cross,
2nd Block, RT Nagar
Bengaluru-560032.

...Respondents

(By Sri. Prasanna Kumar P., Spl.P.P. for R1/NIA)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to set aside the order dated 21/01/2025 passed by the learned 49th Additional City Civil and Session Judge (Special Judge for Trial of NIA Cases) at Bengaluru, in Spl.C.No.181/2017, at Annexure-A and consequently issue writ of mandamus or direct the learned trial court to appreciate the application filed by the petitioner under Section 91 of Cr.P.C before the trial court at Annexure-B.

This Writ Petition, coming on for preliminary hearing, this day, order was made therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

ORAL ORDER

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

The order dated 21.01.2025 passed by the Special Court for Trial of NIA Cases, Bengaluru, in Spl.C.181/2017 on an application filed under Section 91 of the Code of Criminal Procedure is assailed by accused No.5 who was the applicant.



2. Accused No.5 wanted production of the details of the Jail Visitors' Book relating to PW76 and a direction to the agency, i.e., NIA to collect the Call Data Records (CDRs) pertaining to mobile No. 8123995827 (belonging to the father of PW76) for the period March 2024 to 10.12.2024 along with location details. In the application it was stated that PW76 became an approver for a *quid pro quo*. When PW76 was in custody his father and his advocate played active role to settle certain terms with the NIA. It appears that PW76 did not become approver voluntarily and he was induced to become an approver by the NIA, which affected the interest of other persons. To prove that there was inducement, it is necessary that the Jail Visitors' Book and other records are necessary.

3. The Special Public Prosecutor of the NIA filed statement of objections to the application. The Special Court rejected the application giving reasons that PW76 was earlier arrayed as accused No.6. Since accused No.6 was absconding no charge sheet was filed against him at



the initial stage even though the NIA had collected evidence against him. After his arrest supplementary charge sheet was filed against accused No.6 who later on became an approver. It is stated by the Special Court that accused No.6 approached the court voluntarily by filing an application seeking pardon. After examining the materials on record pardon was tendered to him according to Section 306 of Cr.P.C and he was treated as a witness. He was examined in the court also. There was no coercion on accused No.6 to become an approver nor did he become so for *quid pro quo*. Moreover when PW76 was cross-examined he was extensively cross-examined regarding the coercion or inducement to become an approver and he denied all those suggestions. It is also observed that during the period when PW76 was in jail, it is quite natural that his father might have visited the jail to meet his son and merely for this reason it cannot be stated that father visited the jail to induce him to become an approver. The Visitors' Book does not disclose what actually was the



conversation between the father and the son. For these reasons application cannot be allowed.

4. We have heard the argument of Sri Mohammed Tahir for the petitioner and Sri P.Prasanna Kumar, the Special Public Prosecutor for the NIA.

5. It is the argument of Sri Mohammed Tahir that unless there was coercion on or inducement to accused No.6 he would not have become approver. The NIA put pressure on father of accused No.6 to make his son agree to become an approver for some benefit extended to him. The father and the NIA officers frequently visited the jail to meet accused No.6. Therefore the petitioner suspects the involvement of the NIA officers in accused No.6 becoming an approver. The petitioner being one of the accused persons in the case has all the right to substantiate his defence by demonstrating that accused No.6 was induced or threatened to become an approver. To see that the trial is fairly held, the details as sought by the petitioner are necessary to be summoned and the trial court should



have allowed the application. Since the application was wrongly dismissed, the impugned order is to be set aside by allowing the writ petition.

6. Sri P.Prasanna Kumar opposed the application and argued for sustaining the impugned order. He argued that when accused No.6, i.e., PW76 was being cross-examined on behalf of the other accused he was questioned extensively that there was a threat to him or he was induced before he turned an approver. PW76 denied all the suggestions and answered very clearly that he voluntarily became an approver. This being the stand of PW76, it is not necessary to summon the Jail Visitors' Book or the CDR details. He submitted that when PW76 was in jail, the father was permitted to meet in the usual course. If for this reason father met his son in the jail it cannot be said that he went to the jail at the instance of NIA officers to convince him to become an approver. He also brought to the notice of this Court a copy of the letter written by PW76 to the NIA officers stating that the



counsel for the petitioner met him when he was sitting in a court corridor and asked him to support the other accused by giving an admission in the court that the NIA officers forced him to become an approver. When PW76 refused to give such an admission, he was asked to answer at least that he became an approver on his father's advice. This letter demonstrates the manner in which the petitioner wanted PW76 to lie in the court. Therefore the application is devoid of merits and the writ petition must be rejected.

7. While it is no doubt true that whenever an accused comes forward to become an approver with a view to obtaining pardon, the court must be satisfied that the accused has come forward voluntarily without any kind of inducement or threat or coercion. It is only after this satisfaction an accused is permitted to become an approver. In the case on hand it is not in dispute that accused No.6 was absconding earlier and he was arrested on 02.03.2024. Thereafter supplementary charge sheet



was filed against him. He filed an application under Section 306 of Cr.P.C seeking pardon and after the application was allowed he was examined as PW76 during trial. On behalf of accused No.5, i.e, the writ petitioner, PW76 was cross-examined by putting questions that he became an approver for a *quid pro quo* and that he was also coerced by the NIA. But PW76 has denied all the suggestions given to him that his father and advocate played active role in collusion with officers of NIA. When PW76 himself has denied the suggestions, as has been rightly held by the Special Court, even if the Jail Visitors Book or the call details are summoned, no purpose would be served. When PW76 was in jail the father could meet him as it was permitted. Except the date and time of visit nothing more would be forthcoming from the Visitors' Book. Even if it is assumed that the father visited the Jail very often it does not lead to an assumption that he did so only to convince his son to become an approver. The other family members of PW76 might have visited the jail but their visit also does not help in any way. If the father



had made telephone calls from his mobile phone no inference can be drawn that he made calls only to see that his son, PW76, would become an approver. Therefore the application is meritless and the Special Court has rightly dismissed the application.

8. Above all the copy of the letter submitted by Sri P.Prasanna Kumar is annoying. This is a complaint against the defence counsel. It is clearly written in the said letter that PW76 was asked to give an admission in the court that the NIA officers forced him to become an approver. When he said 'no', he was also asked to admit a suggestion that his lawyer, i.e., Muzaffar Ahamed convinced him to become an approver. To this also he did not agree and then he was asked to answer that he became approver on father's advice. The letter also discloses the firm answer of PW76 that he would not lie. The Special Court has taken this letter on record. Therefore from this letter, all the allegations about coercion or inducement against PW76 cannot be accepted



at all. The application under Section 91 appears to be frivolous and rightly it was dismissed by the Special Court. We do not find good ground to entertain the writ petition. Writ Petition is dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

CKL
List No.: 1 Sl No.: 7