



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. 26017 OF 2024 (GM-RES)

Between:

Asim Shariff
S/o Late Anwar Shariff,
Aged about 47 years
R/at No. 61, 1st Main,
S.K. Garden, Benson Town,
Bengaluru - 560046
(Petitioner is in Judicial Custody)

...Petitioner

(By Sri Mohammed Tahir, Advocate)

And:

National Investigation Agency
Ministry of Home Affairs,
Branch Office, Bengaluru,
3rd Floor, BSNL Telephone Exchange,
HAL, 2nd Stage, Indiranagar,
Bengaluru-560 008
Represented by its Superintendent of Police.

...Respondent

(By Sri. Prasanna Kumar P., Spl.P.P.)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India read with 482 of Cr.P.C. praying to quash the impugned order dated 12.08.2024 in Spl. C. No.

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KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



181/2017 for the offences punishable under sections 302, 201 read with section 34 of IPC and sections 3 and 27 of Arms Act and under sections 15, 16, 17, 18 and 20 of Unlawful Activities (Prevention) Act 1967, passed by 49th Additional City Civil and Session Judge, Special Court for trial of NIA Cases CCH-50 at Bengaluru at Annexure-E, consequently appreciate the application at Annexure-F and quash the order dated 06.07.2024 at Annexure-D.

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 accused no.5 in Spl.C.C.No.181/2017, on the file of Special Court for Trial of NIA cases, Bengaluru, has called in question the order dated 12.08.2024 produced at Annexure 'E'. The events that led to this writ petition being filed are:

2. In the course of proceedings in Spl.C.C.No.181/2017 relating to murder of one Rudresh,



accused no.6 while in custody, sent a letter to the Special Court through the Chief Superintendent of Central Prison seeking pardon as he was ready to make full disclosure of circumstances relating to the case. Acting upon his application, the Special Court directed the Additional Chief Metropolitan Magistrate to record the statement of accused no.6, and thereafter, by order dated 6.7.2024, it granted pardon to accused no.6 exercising power under Section 306 of Cr.P.C. by imposing some conditions. Then accused no.5 made an application, vide Annexure 'F', under Section 48 read with Section 45 of UAPA to recall the order dated 6.7.2024. After hearing both sides, the Special Court dismissed the said application. This is the order challenged in this writ petition.

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

4. Sri. Mohammed Tahir posited his argument in such a way that once sanction order is granted to proceed



against an accused for the scheduled offences and the Special Court takes cognizance of the offences, that accused cannot become an approver as Section 48 of UAPA is a bar for tendering pardon. It was his argument that Section 5(2) of Prevention of Corruption Act provides for an accused becoming an approver, but in UAPA, which is a code by itself such a provision is not there. For this reason Section 306 of Cr.P.C. cannot be applied to permit an accused to become an approver, and it is in this context Section 48 of UAPA has applicability and therefore impugned order is to be set aside.

5. Sri. Prasanna Kumar argued that Section 306 of Cr.P.C. permits tendering of pardon to an accused who becomes an approver. In UAPA there is no provision similar to Section 5(2) in Prevention of Corruption Act, but Section 16 of the NIA Act makes it clear that the provisions of Cr.P.C. are applicable and the trial in the Special Court takes place in accordance with procedure prescribed for sessions trials. Therefore pardon may be granted to an accused. He argued that Section 48 of



UAPA states that the provisions of UAPA has over riding effect over the provisions in other laws that are inconsistent with provisions of UAPA, Section 306 of Cr.P.C. is not inconsistent in anyway and for this reason, the writ petition is misconceived.

6. Given an analysis to the legal position, it may be stated that, Section 306 Cr.P.C. provides for tendering pardon to a person who is an accused in a criminal case. The expression, "With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence" in Section 306 Cr.P.C. only connotes a meaning that pardon can be tendered to a person who is involved in an incident of crime, not to any other person. On the assumption that he will be having full knowledge about the facts and circumstances of the case, and his evidence will help decide case properly, the court will permit him to become a witness, of course this decision will have to be taken cautiously and by imposing conditions on the accused who seeks pardon. Now so far as offences under UAPA, obtaining of sanction under



Section 45 is a prerequisite for taking cognizance of offences said to have been committed by an accused. Without sanction an accused cannot be prosecuted. In other words, if sanction is not granted, no one can be prosecuted and in that event nobody can be arraigned as an accused for the offences under UAPA. Because pardon can only be granted to an accused, sanction is prerequisite even for that accused who wants to turn an approver. Section 48 of UAPA has nothing to do with tendering of pardon; Section 306 of Cr.P.C. is not inconsistent with provisions of UAPA. For the reason that Section 5 (2) of Prevention of Corruption Act provides for a procedure to tender pardon, and such provision is not there in UAPA, it cannot be said that Section 306 of Cr.P.C. cannot be followed in a proceeding for the offence under UAPA.

7. Referring to Section 16 of the NIA Act, the Special Court has held as below :

"17. A plain reading of sub section (1) of the said section, the Special Court is conferred with magisterial power to take cognizance of the offence upon a complaint or upon a police report



without the accused being committed to it for trial. Sub-section (3) of the said section confers power of a Court of Session to the Special Court. It is pertinent to note that this court is a Special Court constituted under section 11 of NIA Act to try the scheduled offences. Therefore, this court is vested with magisterial power as well as the power of a Court of Session. The Magistrate of the First Class and the Court of Session have power to tender pardon under the provisions of Cr.P.C. In this case, this court is trying the scheduled offence under the NIA Act. This court has tendered pardon to accused No.6 by exercising the power conferred under sub-section (1) and (3) of the said section. The said section is also not inconsistent with any provisions or any Rule or Order made under the U.A.(P) Act. On this ground also, the application filed by accused No.5 is liable to be rejected.”

Further it is also held by the Special Court that tender of pardon and its acceptance by the person concerned is entirely between the court concerned and the person to whom it is made, a co-accused cannot question it. Section 306 of Cr.P.C. is not inconsistent with any of the provisions of UAPA.



8. The reasons given by the Special Court do not suffer from legal infirmity. This writ petition is devoid of merits, and consequently the writ petition is dismissed.

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

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

Sd/-
List No.: 1 Sl No.: 7