



CNR: KAHC010664162026

NC: 2026:KHC:52742
WP No. 30279 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

WRIT PETITION NO. 30279 OF 2026 (GM-RES)

BETWEEN:

SMT VIJAYALAKSHMI
W/O DARSHAN,
AGED ABOUT 40 YEARS
R/O NO.217,
TOOGUDEEPA NILAYA,
"F" ROAD, NEAR S.S. HOSPITAL,
2ND STAGE, RAJARAJESHWARINAGAR,
BENGALURU -560 098.

[REPRESENTATIVE OF DARSHAN
BEING HER WIFE, SINCE,
HE IS IN JUDICIAL CUSTODY,
CENTRAL PRISON, BENGALURU].

...PETITIONER

(BY SRI. HASHMATH PASHA SENIOR ADVOCATE FOR
SRI. NASIR ALI.,ADVOCATE)

Digitally
signed by R
MANJUNATHA

Location:
HIGH COURT
OF
KARNATAKA

AND:

1. STATE OF KARNATAKA
BY KAMAKSHIPALYA POLICE STATION,
BENGALURU - 560 079

[REP. BY SPECIAL PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU].

2. MR. KEVAL RAM DORJI



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S/O. JAYABAHADOUR DORJI,
SECURITY OFFICER IN SATVA ANUGRAHA
APARTMENT, SUMMANAHALLI,
BENGALURU,
R/O. NEAR INDIAN PETROL BUNK, ULLAL,
BENGALURU CITY 560 110.

3. PRADOOSH S. RAO @ PRADOOSH,
S/O. SUBBARAO,
AGED 40 YEARS,
R/O NO.56, J.P. ROAD,
GIRINAGAR, BENGALURU CITY -560 026.

[NOW IN JUDICIAL CUSTODY,
CENTRAL PRISON, BENGALURU].

4. THE CHIEF SUPERINTENDENT,
CENTRAL PRISON,
PARAPPANA AGRAHARA,
BENGALURU-560 100.

5. THE STATION HOUSE OFFICER
AND POLICE INSPECTOR OF
PARAPPANA AGRAHARA,
BENGALURU-560 100.

...RESPONDENTS

(BY SRI P.PRASANNA KUMAR, SPECIAL PUBLIC PROSECUTOR
FOR R1;

SRI. K. DIWAKAR, SENIOR ADVOCATE FOR
SRI. SANTHOSH V., ADVOCATE FOR R3;
SMT. WAHEEDA M.M., HIGH COURT
GOVERNMENT PLEADER FOR R4 & R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482
CODE OF CRIMINAL PROCEDURE PRAYING TO QUASH THE
ORDER DATED 16.09.2026 IN REJECTING THE MEMO
16.09.2026 PASSED IN S.C.NO.1319/2024 ON THE FILE OF
LVIII ADDL. CITY CIVIL AND SESSIONS JUDGE, AT



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BENGALURU CITY AS PER ANNEXURE-A AS ILLEGAL AND ABUSE OF PROCESS OF LAW AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri Hashmath Pasha, learned Senior Counsel appearing on behalf of Sri Nasir Ali, counsel for the petitioner, Sri P. Prasanna Kumar, learned Special Public Prosecutor for respondent No.1, Sri K.Diwakar, learned Senior Counsel appearing on behalf of Sri Santhosh V., counsel for respondent No.3/accused No.14 and Smt. Waheeda M.M., learned High Court Government Pleader for the respondent Nos.4 and 5.

2. Present petition is filed by the petitioner on behalf of accused No.2 under Article 226 and 227 of the Constitution of India read with Section 482 Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.,) = 528 of Bharatiya Nagarik Suraksha Sanhitha (for short 'BNSS') with the following prayer:

"Wherefore, the petitioner most humbly prays that this Hon'ble Court may be pleased to issue a writ



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certiorari or a writ or order or directions of appropriate nature;

- i) *To quash the Order dt. 16.09.2026 in rejecting the memo dt.16.09.2026 passed in S.C.No.1319/2024 on the file of LVIII Addl. City Civil and Sessions Judge, at Bengaluru City as per Annexure - "A" as illegal and abuse of process of law;*
- ii) *To quash the Order dt.16.09.2026 in allowing the application filed u/s.307 of Cr.P.C. by Respondent No.3 (A-14) passed in S.C.No.1319/2024 on the file of LVIII Addl. City Civil and Sessions Judge, at Bengaluru City as per Annexure - "B" as illegal and abuse of process of law and consequently to dismiss the application filed u/s.307 of Cr.P.C. by Accused No.14 as per Annexure - "E";*
- iii) *And to issue order or direction of appropriate in nature directing Respondent No.5 to register FIR and to Investigate in respect of Complaint lodged by Respondent No.4 on 14.09.2026, which is numbered as under Reference No.PO1800260622334 and Petition No.2331/2026 as per Annexure "J" effectively for offence u/s.42 of Karnataka*



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Prisons (Amended) Act, 2022 and submit report to this Hon'ble Court for deciding of this writ petition in accordance with Law;

iv) To grant such other or reliefs as this hon'ble court deems fit to grant in the facts and circumstances of the case in the interest justice."

3. Facts in the nutshell which are utmost necessary for disposal of the present petition are as under.

4. Husband of the petitioner is accused No.2 in S.C.No.1319/2024 on the file of LVIII Additional City Civil and Session Judge, Bengaluru (CCH-59), in all seventeen accused persons are arraigned by the prosecution and they are facing the charges for the offences predominantly under Section 302 and 201 of Indian Penal Code (hereinafter referred to as 'IPC') along with other offences.

5. During the course of investigation, accused No.14 did not choose to support the investigation and as such, charge sheet is also filed against him predominantly under Sections 302 and 201 of IPC along with other offences. Matter has now reached the stage of recording the evidence of the prosecution witnesses.



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6. Shorn of unnecessary details as to the proceedings that has taken place hitherto, when the matter was listed before the Court for purpose of trial, accused No.14 filed an application under Section 307 of Cr.P.C on 05.08.2026.

7. An application contained several aspects of the matter as to why he has chosen to become an approver to the prosecution. Copy of the application was furnished to the prosecution. In response to the same, a memo came to be filed by the prosecution where under the prosecution agreed the proposal made by the accused No.14.

8. Learned Trial Judge after hearing the parties including the husband of the present petitioner, allowed the said application.

9. Validity of the said order was subject matter of a criminal petition before this Court in CrI.P.13595/2026.

10. Co-ordinate Bench of this Court heard the counsel for accused No.2 and the State and by considered order dated 08.09.2026, allowed the said criminal petition and remitted the matter to the Trial Court for fresh disposal in accordance with law.



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11. Operative portion of the order dated 08.09.2026 reads as under:

"ORDER

- (i) *Criminal petition is allowed in part.*
- (ii) *The orders dated 20.08.2026 and 25.08.2026 passed by the LVIII Additional City Civil and Sessions Judge, Bengaluru in S.C.No.1319 of 2024 stand obliterated and the matter remitted back to the hands of the concerned Court to pass an order afresh on the application under Section 307 of the Cr.P.C., within one week from the date of receipt of the copy of this order and regulate its procedure, taking the issue to its logical conclusion. While so doing, the Court shall bear in mind the observations made in the course of the order.*

Consequently, I.A.No.1 of 2026 also stands disposed."

12. Post remand, the husband of the petitioner filed a memo before the trial Court which reads as under:



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"Memo

1. *It is necessary to be pointed out about the recent development as to the conduct and activities of A-14 Pradosh S. Rao (Approver Applicant) Central Prison, Bengaluru that since many days he is using one secret mobile phone through one official of Central Prison, Bengaluru by name Shri Mounesh H. Kori and having continues talk with his wife and many others and because of these these external unauthorised contact, A-14 - Pradosh S. Rao has been influenced and pressurised to become Approver for extraneous reasons and in it many persons involvement is there and therefore the application to treat him Approver is not free and voluntary but due to co-ercion, undue influence and promise made to A-14 by many persons and behind this there is a deep conspiracy of many persons against this Accused No.2 to spoil his life and regarding this Higher Officers of Central Prison, Bengaluru have suspended the said official by name Shri Mounesh H. Kori and they have also submitted complaint before Parappana Agrahara police on 14.09.2026 upon which NCR case is registered and after preliminary enquiry it is likely to register FIR for cognizable offence. The copy of suspension order is produced at **ANNEXURE - "A"**. The copy of Media Report regarding NCR case registered in Parappana Agrahara Police Station is produced at **ANNEXURE-"B"**.*



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2. Since the matter is under investigation regarding the conduct and activities of A-14 to become Approver, it is just and necessary to defer the passing of order on application filed by A-14 u/s.307 Cr.P.C. seeking pardon, until Investigation is completed on NCR, Petition, otherwise serious injustice will result to Accused No.2 because he has been targeted by many persons who are zealous, rival and inimical to him in Kannada Film field."

13. Learned Trial Judge re-heard the matter and again allowed the application vide order dated 16.09.2026. The operative portion reads as under:

"The application filed by accused No.14 Mr.Pradoosh S Rao under Section 307 of the Code of Criminal Procedure, is allowed.

Pardon is tendered to the accused No.14 and he is admitted as an approver, subject to the following conditions;

(i) Accused No.14 shall disclose full and true disclosure of the whole of the circumstances within his knowledge relating to the offences and to every other person at the time of his examination as a witness.

(ii) Accused No.14 shall be retained in the custody until the conclusion of the trial.

(iii) If accused No.14 willfully conceals anything essential or gives any false evidence or fails to comply with the conditions imposed herein, his status shall be



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changed back to that of an accused and he shall liable to be tried for the offences alleged against him by the prosecution, as well as for giving false evidence, in accordance with law."

14. Validity of the said order is called in question in this petition on the following grounds:

"GROUNDS"

- *The impugned orders at Annexure - "B" and "C" passed by the Hon'ble Trial Court is illegal and perverse and the same are liable to be quashed.*
- *No application was filed by the prosecution under Sec.307 of Cr.P.C, to tender pardon to Accused No.14 or any other Accused. Thereby, it is clear that the prosecution was not in need of Approver's evidence to prove its case.*
- *Application u/s.307 of Cr.P.C. from prosecution arises, when its case is so weak due to lack of evidence, but, the offences alleged against the Accused is heinous and grave and to prevent the Accused in escaping from punishment, then the prosecution to chooses among the Accused to tender pardon and take his evidence as an Approver. The very fact that no such step was taken by the prosecution itself suggests that it had not required the evidence of Approver.*



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- *In this case, the application is filed by Accused No.14 suo-moto stating that he wants to become an Approver. Such an application at the instance of Accused will not be accepted ordinarily by the prosecution or court.*
- *In this case, when the Accused No.14 has filed application u/s.307 of Cr.P.C. on 05.08.2026, though it was notified to prosecution on 05.08.2026 at 6 P.M, but, on 06.08.2026 the prosecution has filed memo agreeing for tendering pardon to Accused No.14. This memo filed by prosecution is not based on any valid grounds. But the grounds urged in the memo by prosecution is that the mother of deceased who was examined as PW-1, though, she has supported the prosecution case fully in examination-in-chief, but in cross-examination by defence she has failed to support the version of prosecution on few crucial aspects. This statement of the prosecution is not correct. Because, though prosecution has sought for treating PW-1 as hostile, before the Hon'ble Trial Court, which was rejected by Order dt. 17-01-2026.*
- *Against this order of rejection, the prosecution has filed criminal petition before this Hon'ble High Court in CrI.P.No.6820/2026 and this*



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Hon'ble Court dismissed the said petition stating that PW-1 has not shown any element of hostility to prosecution. Thereby, this ground was not existed in view of the decision passed by the Hon'ble High Court, but, still the Trial Court has relied this ground to tender pardon to Accused No.14.

- *Another ground is CW-90 Mohan Kumar was examined as PW-22, but he has turned hostile. This witness is only a hearsay and formal witness for having received some Photo of deceased to his mobile from CW-91. As per charge sheet he is not a material witness.*
- *Thus, it is clear that, both PW-1 and PW-22 are not eye witnesses, but, they are formal witnesses and PW-1 has fully supported the case of prosecution and the Hon'ble High Court is pleased to dismiss the petition filed by prosecution to treat PW-1 as hostile in CrI. Pet No.6820/2026.*
- *Thus, it is clear that, there is no definite statement of prosecution that, its case is so weak and it cannot prove the offence unless Accused No.14 is examined as Approver. Prosecution was unable to say so because in the Charge Sheet, it has relied two eye witnesses who are CW-76 and CW-91 and they are yet to be examined. While*



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resisting for bail application prosecution was asserting that it has full proof case even against even Accused No.14. Therefore, at the instance of prosecution no application is filed for tendering pardon to any of the accused.

- *In this case, application is filed by Accused No.14 himself and that application is self interested one and it is due to instigation, undue influence and promise made to him by others who are inimical to this Accused No.2 and the reason to submit this that right from the date of arrest on 11.06.2024, Accused No.14 had not filed any application u/s.307 of IPC for more than two years, but filed only on 05.08.2026, by then, he was contacting his wife through unauthorised mobile phone which he was using secretly by him and this fact is revealed, recently on 12.09.2026, when the Chief Superintendent of Central Prison, Bengaluru (Respondent No.4) has suspended an official by name Mr. Mounesh H. Kori who said to have facilitated Accused No.14 for use of extra mobile phone clandestinely and further, on 14.09.2026, the Respondent No.4 - Chief Superintendent of Central Prison, Bengaluru has lodged Complaint against Accused No.14 before Parappana Agrahara Police, upon which against Accused No.14 a NCR case is registered, though, it ought to have been FIR, because it is an offence punishable u/s.42 of Karnataka Prisons*



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(Amendment) Act of 2022, which is cognizable offence. The copy of NCR Acknowledgement is A herewith produced at ANNEXURE - "J". –

- *When this fact of misuse of mobile phone facility by Accused No.14 has revealed, the Accused No.2 strongly believe that, it is this unauthorised mobile phone facility has enable Accused No.14 to contact with others to become an Approver.*
- *When this fact of misuse of mobile phone from prison was brought to the notice of the Hon'ble Trial Court by filing memo dt.16.09.2026 before passing order on the application u/s.307 of Cr.P.C, the Hon'ble Trial Court ought to have considered the allegations made in the memo to consider, whether Accused No.14 deserves to be treated as an Approver. On the contrary it is mentioned that, the order on the application u/s.307 of Cr.P.C. was kept ready. Hence, allegations made in the memo was not taken into consideration to decide the application for pardon. But, the separate order is passed to reject the memo and thereby it is clear that, these subsequent development of misuse of mobile phone by Accused No.14 in prison has not been considered at all in the context of passing order u/s.307 of Cr.P.C.*



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- *Though the Hon'ble High Court in the Order dt.08.09.2026 passed in Crl.P.No.13595/2026 has directed the Trial Court to pass order within one week. When the Trial Court is passing an important Judicial order granting pardon to Accused No.14, it ought to have considered the subsequent development which was brought to the notice of Trial Court by filing memo on 16.09.2026 before passing order on 16.09.2026.*
- *The Order dt.16.9.2026 as per Annexure-B indicates that the order which was kept ready was pronounced without considering the memo filed by Accused No.2. This suggests that the Trial Court without advertng to the grounds urged in the memo, the impugned order on the application of Accused No.14 is passed which is mechanical, perverse and illegal and it is liable to be vitiated.*
- *The Hon'ble Trial Court erred against relying the antecedent of Accused No.14 to grant pardon to him by relying the Police Report.*
- *The Hon'ble Trial Court has predetermined and declared PW-14 as man of truthful one and he will not be going to falsely implicate and he will tell the truth. These kind of reason's in the impugned order suggests that the Trial Court itself as taken the role of prosecution and*



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predetermine the credibility of Accused No.14, which are all irrelevant and beyond the scope of power incribed u/s.307 of Cr.P.C. and therefore, the impugned order suffers from serious illegality and arbitrary in nature.

- *The order u/s.307 of Cr.P.C. to be passed by the Trial Court is a Judicial order. The Accused No.2 was entitled to participated in the proceedings, but not permitted and therefore the impugned order dt.10.09.2026 and 16.09.2026 is illegal."*

15. Sri Hashmath Pasha, learned Senior Counsel reiterating the grounds urged in the writ petition, would contend that even after the order came to be passed by this Court on 08.09.2026, the Trial Judge has again erred in allowing the application filed by the accused No.14, which is detrimental to the interest of the husband of the petitioner. Therefore, order of the trial Court allowing the application filed by the accused No.14 under Section 307 Cr.P.C., needs to be set aside.

16. He would further contend that the decision to file the application under Section 307 Cr.P.C., by accused No.14 is motivated inasmuch as even after the matter was committed to



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the Sessions Court, accused No.14 did not choose to file application under Section 307 Cr.P.C., and after few witnesses were examined on behalf of the prosecution; one such important witness namely, the mother of the deceased having supported the case of the prosecution in the examination-in-chief and deposed the truth in the cross-examination. But, when prosecution sought for treating the said witness as hostile witness which was refused by the Trial Court, prosecution approached this Court. This Court dismissed the plea of the prosecution.

17. Sri Pasha, further argued that the accused No.14 utilizing the facility of talking to his Advocate namely, Santhosh, spoke to his wife and secretly and stealthily decided to file the application under Section 307 Cr.P.C., which is demonstrated by the husband of the petitioner herein before the Trial Court by detailing out the circumstances which persuaded the accused No.14 to file an application under Section 307 Cr.P.C., after the order dated 08.09.2026. But the Trial Judge did not consider the same in right perspective and again allowed the application which is detrimental to the



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interest of the husband of the petitioner and thus sought for quashing the order.

18. He would also contend that in the first instance itself, the prosecution filing a simple memo in accepting the proposal itself is against the principles of law governing the decision to be taken on an application under Section 307 Cr.P.C.

19. In that regard, Sri Hashmath Pasha places reliance on the judgment of the Hon'ble Apex Court in the case of ***LT. Commander Pascal Fernandes vs State of Maharashtra and others*** reported in **AIR 1968 SC 594**.

20. Sri Hashmat Pasha would invite the attention of this Court to the paragraph 15 of the aforesaid decision which reads as under:

"15. In this case the Special Judge made no effort to find out what Jagasia had to disclose. The English law and practice is (a) to omit the proposed approver from the indictment, or (b) to take his plea of guilty on arraignment, or (c) to 'offer no evidence and permit his acquittal, or (d) to enter a nolle prosequi. In our criminal jurisdiction there is a tender of a pardon on condition of full disclosure. Section 8(2) of the Criminal Law Amendment Act is enabling.



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Without recourse to it an accused person cannot be examined as a witness in the same case against another accused. To determine whether the accused's testimony as an approver is likely to advance the interest of justice, the Special Judge must have material before him to show what the nature of that testimony will be. Ordinarily it is for the prosecution to ask that a particular accused, out of several may be tendered pardon. But even where the accused directly applies to the Special Judge, he must first refer the request to the prosecuting agency. It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency and must, therefore, be exercised only when the prosecuting joins tendered pardon because it does not need approver's testimony. It may also not like the tender of pardon to the crime or the worst offender. The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case. The learned Special Judge did not bear these considerations in mind and took on himself something



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from which he should have kept aloof. All that he should have done was to have asked for the opinion of the public prosecutor on the proposal. But since the Public Prosecutor, when appearing in the High Court, stated that the prosecution also considered favourably the tender of pardon to Jagasia we say no more than to caution Magistrates and Judges in the matter of tender of pardon suo motu at the request of the accused. This practice is to be avoided. Since the prosecution in this case also wants that the tender of pardon be made it is obvious that the appeal must fail. It will accordingly be dismissed”.

21. He would further contend that the principles of law enunciated in **LT.Commander Pascal Fernandes** supra, commander is consistently followed by the Hon'ble Apex Court, which would govern the decision to be taken in respect of an application under Section 307 Cr.P.C.

22. In that regard, he places reliance on the judgment of the Hon'ble Apex Court in the case of **Central Bureau of Investigation vs Ashok Kumar Aggarwal and Another**, reported in **(2013) 15 Supreme Court Cases 222**.

23. Sri Hashmath Pasha would invite the particular attention of this Court to paragraphs 25 to 27 and paragraph number 32 and 33 of the said decision which reads as under.



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"25. The observations made in Lt. Commander Pascal Fernandes (supra) were sought to be construed by the learned ASG as requiring the court to indubitably agree to the tendering of pardon if the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony. We do not agree since this court was contemplating a situation where the proper course for the Judge was to ask for a statement from the prosecution and as the prosecution emphasised that it indubitably agreed to the tendering of pardon as it will be in the interests of a successful prosecution of the other offenders.

26. It was contended by Mr. K.V. Vishwanathan, learned ASG, that the court must invariably agree to tendering a pardon if the proposal to pardon originates from the prosecution or if the prosecution supports it. Since the prosecution, as in this case, supported the plea of respondent no.2 for grant of pardon and for becoming an approver, the High Court committed an error in reversing the order of the Special Judge. If this contention is accepted, it would completely marginalise the role of the court and take away the discretion of a judge in ensuring a fair trial and doing justice in a criminal case. We, therefore, reject the contention.



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27. *The aforesaid view stands fortified by the judgment of this Court in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, wherein it has been held that the order of pardon cannot be passed mechanically and the court has to apply its mind while exercising such powers. In Bawa Faqir Singh v. Emperor, AIR 1938 PC 266, while dealing with the issue of grant of pardon under the provisions of the old Code, it was held that tendering pardon under the provisions of Section 337 of the old Code is "a judicial act and under the special precautions, rules and consequences which the statute sets out".*

32. *From the aforesaid discussion on the issue, it is evident that the law laid down by this Court in Lt. Commander Pascal Fernandes (supra) and Laxmipat Choraria (supra) still holds the field. In spite of our repeated query, no case where a different view from the aforesaid two cases has been taken could be brought to our notice.*

33. *In view of the above and considering the judgment of the Privy Council in Bawa Faquir Singh (supra), we are of the view that the grant of pardon by a court under Section 306 Cr.P.C. on being asked by the accused and duly supported by the State is a judicial act and while performing the said act, the Magistrate is bound to consider the consequences of grant of pardon taking into consideration the policy of*



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the State and to certain extent compare the culpability of the person seeking pardon qua the other co-accused."

24. Sri Hashmath Pasha would further contend that the memo filed by the prosecution agreeing to accept the proposal of accused No.14 to become the approver would not meet the requirements of the statement as is mentioned in **LT. Commander Pascal Fernandes** supra and there is no mention in the memo to accept the proposal of accused No.14 that the prosecution case would otherwise fail if the permission to become the approver is not granted. As such, the memo of the prosecution is nothing but a memo *simpliciter* without there being meeting the requirement of the statement as is enunciated by the Hon'ble Apex Court in **LT. Commander Pascal Fernandes** supra

25. Lastly, Sri Hashmath Pasha would contend that the decision to become an approver at a belated stage by accused No.14 in due consultation with some people outside the prison in the guise of talking to the Advocate by utilizing the facility offered to an under trial prisoner is lost sight of by the learned Trial Judge so also the action initiated by the prison authority is



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against Sri Mounesh H Kori and departmental enquiry being initiated against him.

26. Per contra, Sri P. Prasanna Kumar, learned Special Public Prosecutor would support the order passed by the learned Trial Judge dated 16.09.2026 allowing the application even after the order came to be passed by the co-ordinate bench of this Court on 08.09.2026.

27. Sri Prasanna Kumar would further contend that the principles of law enunciated in **LT Commander Pascal Fernandes** and **Ashok Kumar Aggarwal**, relied on by the learned counsel for the petitioner would itself make clear that the order passed by the learned Trial Judge is just and proper.

28. He would further contend that what has been enunciated in the judgment of the **LT. Commander Pascal Fernandes** is that when an application is filed by the accused, bypassing the prosecution and allowing the application *suo motu* by the Court is deprecated and not after hearing the prosecution. Therefore sought for dismissal of the writ petition.

29. Sri K. Diwakar, learned Senior Counsel representing the petitioner No.3/accused No.14 on behalf of Sri Santosh



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Advocate, would submit that the application filed by the accused No.14 to become an approver is the just decision taken by accused No.14. Since the said decision being voluntary is tested by the learned Trial Judge on three consecutive dates, namely 17.08.2026, 18.08.2026 and 20.08.2026.

30. Therefore, the contentions urged on behalf of the petitioner that it is a motivated decision cannot be countenanced in law.

31. Sri Prasanna Kumar as well as Sri K. Diwakar would contend in unison that no right has been affected insofar as the husband of the petitioner is concerned and as much as considering the application under Section 307 of Cr.P.C., is always between the Court and the approver. They also contend that co-accused has no right of audience in deciding said application and all that the co-accused will get the right in such circumstances is to cross examine the approver on all counts including the decision to become approver. Thus, sought for dismissal of the writ petition.

32. Having heard the arguments of both sides, this Court perused the material on record meticulously.



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33. On such perusal of the material on record, it is to be noted that there is a direction by the Hon'ble Apex Court in the very same case for the prosecution to go ahead with the trial on a time bound manner and to examine sixty witnesses from the date of the order of the Hon'ble Apex Court within an year. Therefore, trial is under progress.

34. For one reason or the other, trial is getting delayed. That does not mean that the delay should be attributed to the husband of the petitioner or any other accused or for the prosecution. Procedural aspects, rights of the concerned parties, whenever is infringed according to them, they are approaching this Court with one petition or the other.

35. But, fact remains that the Trial has not progressed in the requisite momentum. In fact it may not be out of place that this Court acceded to request of the husband of the petitioner in another petition where husband of the petitioner sought for his physical presence when the material witnesses are to be examined.



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36. An accused person, approaching the Court with a decision to become an approver by filing an application under Section 307 Cr.P.C., is the right of that accused person.

37. In order to appreciate the same, it is just and necessary for this Court to cull out Section 306 and 307 of Cr.P.C., for ready reference:

"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).



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(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-



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(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."

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."*

38. After the cognizance is taken and the matter is committed to the Sessions Court, provisions of Section 307 Cr.P.C., will have to be utilized by an accused person to become an approver.

39. It is settled principles of law and requires no emphasis that the principles governing the consideration of the application under Section 306 and 307 of Cr.P.C., are one and the same.



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40. The only distinction is that 306 of Cr.P.C., would operate before the cognizance is taken and Section 307 Cr.P.C., would be applicable when the matter is committed to the Sessions Court.

41. Keeping the above principles in the background and the language employed in both the sections, it is to be noted that any accused in a criminal trial has got a right to file an application under Section 306 or 307 Cr.P.C., at any stage of the trial before the judgment is passed.

42. The intention of the legislature is to provide a chance to an accused to retrace his steps and aid the Court in arriving at a just decision in a given case.

43. In the present case, when such is the intention of the legislature, only on the ground that the application came to be filed belatedly on 05.08.2026, the Trial Court was not required to reject the same. In fact, Trial Court has made some observations in this regard in the impugned order which in the considered opinion of this Court is totally surplusage and unwarranted.



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44. May be the Trial Court was compelled to consider the same based on the memo filed by the husband of the petitioner herein post remand by the Order dated 08.09.2026 of the Co-ordinate Bench of this Court.

45. Be it what it may. The Trial Court has also taken note of the conduct of the accused No.14, which is also in the considered opinion of this Court, totally immaterial for consideration of the application under Section 307 of Cr.P.C.

46. On the contrary, it is settled principle of law and requires no emphasis that a murder convict is also a competent witness in any other criminal case.

47. When such is the settled legal principle, enquiring into the conduct of the proposed approver or delay in filing the application for seeking the permission to become an approver is totally uncalled for and unwarranted. May be an account of sheer inexperience, the learned Trial Judge swayed away with the submissions made at the Bar in regard to holding an enquiry with regard to the delay as well as the conduct of accused No.14 which is evident from the impugned order.



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48. Having said thus, the procedure to be adopted when an application is filed by the accused on his own to become an approver under Section 307 of Cr.P.C., to be considered by the learned Trial Judge is enunciated in the judgment of ***LT.Commander Pascal Fernandes*** in Paragraph 15 as referred to supra.

49. On the question of requisite procedure to be adopted, there cannot be any dispute as counsels for State as well as accused No.14 did not differ with the ruling of ***LT.Commander Pascal Fernandes***.

50. In fact, Special Public Prosecutor also placed reliance on the very same paragraph 15 of the said judgment.

51. On close reading of paragraph 15 of the said judgment, it is to be noted that when an application is filed by the accused, Court cannot bypass the prosecution and *suo motu* allow the application.

52. In all such circumstances, the Court which is required to consider the application filed under Section 307 of Cr.P.C., by the prosecution on behalf of the accused, necessarily it is required to be heard as to whether prosecution



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would be interested in accepting the request made by a particular accused or not.

53. It is in that context, the memo filed by the prosecution though very short, on 06.08.2026 assumes importance.

54. Sri Hashmath Pasha would contend that prosecution was very swift in filing the memo on 06.08.2026 itself, which shows that there was some tacit understanding between the accused No.14 and prosecution in filing the said application and therefore some ill motive can be attributed.

55. Taking note of the direction issued by the Hon'ble Apex Court to conclude the trial in a time bound manner, prosecution filing the reply to application filed by accused No.14 on the very next day cannot be tainted with any ill motive.

56. Likewise, allegation that the accused No.14 misusing the facility granted to him, like any other under trial prisoner, to register three telephone numbers and speak to such telephone numbers through the land line of the prison, is concerned, all that is found from the suspension order passed against Mounesh H Kori (prison official) and the report of Sub-



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Inspector of Police, Parappana Agrahara, dated 14.09.2026 would go to show that accused No.14 having registered a mobile telephone bearing number 9845288100, representing that the said telephone number is that of his Advocate Sri Santhosh, but actually was utilizing that facility to speak to his own wife. Therefore the decision to file the application to become an approver is ill motivated cannot be countenanced in law, that too having regard to the fact that the approver is yet to be examined and he needs to be cross-examined by the accused No.2 in the trial in accordance with law.

57. Moreover, disputed factual aspects cannot be the subject matter of writ jurisdiction or while exercising the inherent jurisdiction.

58. This Court no doubt, is invested with inherent power to set right an illegal order or an order which is detrimental to the interest of an accused in a criminal trial.

59. Apart from inherent powers vested in it under Section 482 of Cr.P.C., this Court also enjoys the power under Article 227 of the Constitution of India, which is supervisory in nature in setting right any illegality or illegal order that has



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been passed by district judiciary during the course of proceedings either civil or criminal.

60. Thus, whenever this Court is required to exercise power either under Article 227 of the Constitution of India or under Section 482 of Cr.P.C., (528 BNSS), Petitioner should make out a case before this Court that such illegality has occurred in a given case.

61. Keeping the said principles of law in the background, when the material facts of the present case is analyzed, learned Trial Judge allowing the application under Section 307 of Cr.P.C., especially when the prosecution has not objected for the same, taking note of the fact that the accused No.2 has no right to oppose such an application, this Court does not find any illegality whatsoever in the order passed by the learned Trial Judge.

62. In fact, such an application when to be entertained by the Court, is only between the proposed approver, Court and the prosecution. Co-accused *per se* has no right at all in opposing such request by the proposed approver.



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63. When such is the mandate of law as could be seen from the ***LT. Commander Parscal Fernandes*** which was consistently followed and upheld in ***Ashok Kumar Aggarwal*** supra, this Court does not find any legal infirmity or perversity in the impugned order, warranting this Court to exercise either the inherent jurisdiction or supervisory jurisdiction.

64. Consequently, following:

ORDER

- (i) Writ petition is ***dismissed***.
- (ii) However, accused No. 2 is at liberty to cross-examine the approver and all such questions which are legally permissible in such cross-examination is reserved.

**Sd/-
(V SRISHANANDA)
JUDGE**

MR
List No.: 2 SI No.: 2