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

CNR No. DLHC010202042026

+ **BAIL APPLN. 1777/2026**

ATHAR SAEED

.....Petitioner

Through: Mr. Sumeet Kaul and Mr.
Himanshu Singhal, Advocate.

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Ms. Shilpa Singh, SPP NIA and
Mr. Priyam Agrawal, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

18.08.2026

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1. By way of this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], the applicant seeks regular bail in connection with FIR No. RC-35/2022/NIA/DLI dated 30.07.2022, registered at Police Station NIA, New Delhi, under Section 120B of the Indian Penal Code, 1860, Sections 17/18/22A of the Unlawful Activities (Prevention) Act, 1967 ["UAPA"], and Sections 23/8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. I have heard Mr. Himanshu Singhal, learned counsel for the applicant, and Ms. Shilpa Singh, learned Special Public Prosecutor for the respondent – National Investigation Agency ["NIA"]. The NIA has filed its reply dated 11.07.2026.

3. The prosecution case concerns seizure of a total of 102.784



kilograms of heroin by the Customs authorities on 24.04.2022 and 26.04.2022. The contraband was allegedly concealed in a consignment of licorice roots [*Mulethi*] imported into India from a supplier in Afghanistan. The investigation was transferred to the NIA, and a chargesheet was filed against two accused. Subsequently, the applicant was arrested on 30.04.2024, and a supplementary chargesheet was filed against him and six other co-accused on 07.06.2024. In the supplementary chargesheet, the applicant is accused of being involved in transactions with the Afghan entity by sending remittances and handling the proceeds of drugs.

4. The applicant was arrested on 30.04.2024.

5. The applicant filed an application under Sections 306, 307, and 308 of the Code of Criminal Procedure, 1973 ["CrPC"], seeking grant of pardon, and his statement under Section 164 of the CrPC was recorded before the Magistrate's Court on 26.10.2024. Subsequently, the applicant was granted pardon and accepted as an approver by the Special Court *vide* order dated 07.12.2024.

6. The applicant was examined before the Special Court as PW-1 on 03.12.2025 and 07.12.2025, during which he supported the prosecution case. His deposition stands concluded.

7. In support of the present application, Mr. Singhal submits that the applicant has been accepted as an approver, and his examination before the Special Court already stands concluded. He submits that the applicant has undergone incarceration for approximately two years and three months. The prosecution has cited more than 200 witnesses, of whom only three have been examined thus far. The trial is, therefore, unlikely to



conclude in the near future. Learned counsel submits that, in these circumstances, no useful purpose would be served by keeping the applicant in custody.

8. Ms. Singh also submits that the continued incarceration of the applicant is not warranted. She points out that Section 343(4)(b) of the BNSS [corresponding to Section 306(4)(b) of the CrPC] requires a person who has accepted a tender of pardon to remain in custody until the conclusion of the trial. However, learned counsel fairly submits that, in certain circumstances, Courts have, notwithstanding the said provision, granted bail to approvers, while the trial remains in progress.

9. The affidavit in reply filed by the NIA is in line with the aforesaid submissions of Ms. Singh. The relevant paragraphs of the affidavit in reply are extracted below:

*“11. In the present case, the applicant / accused has, co-operated with the investigation. Respondent agency has also stated that they have no objection to them being granted a pardon. Moreover, there are 200 total witnesses in the case, around 75 of whom are non-formal. The trial is at the stage of prosecution evidence. As of now, 03 PWs including the Applicant / accused were examined before this Hon'ble NDPS Court, PHCs, New Delhi. **In such a scenario, the continued incarceration of the Applicant would serve no purpose and in fact, would defeat the ends of justice.***

*12. In this regard, it is respectfully submitted that the Applicant / court witness has made a true, full and complete disclosure of the entire facts and circumstances within his knowledge, and has deposed to the same before the Ld. Special Court, NDPS, PHCs, New Delhi. The Applicant / court witness was arrested in this case on 30.04.2024 and has since remained in the judicial custody of the Ld. Special Court, NDPS, PHCs, New Delhi. In these facts and circumstances, and having regard to the guidelines laid down by the Hon'ble Supreme Court of India and the Hon'ble Higher Courts, **the continued incarceration of the Applicant / court witness is not warranted.**”¹*

¹ Emphasis supplied.



10. Section 343 of the BNSS [corresponding to Section 306 of the CrPC] is relevant to the present case, and reads as follows:

“Section 343. 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 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 any other law for the time being in force;

(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—

(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 any other law for the time being in force, 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.”²

11. In *Prem Chand v. State*³, a Full Bench of this Court, while dealing with a reference concerning the propriety of grant of bail to an approver, held as follows:

*“15. In both the Session cases, the petitioner has not been impleaded as an accused. As already noted above, the scheme of different provisions of law, as referred to above, is that an approver does not acquire the character of an accused till after the trial, and that too when the Public Prosecutor certifies that he has by wilfully concealing anything essential or by giving false evidence has not complied with the conditions on which the pardon was given. Rather even at this stage, he is entitled to show that he has in fact complied with the conditions upon which the same was tendered. If he succeeds in doing so, that is the end of the matter. If, however, the court is satisfied with the certification by the Prosecutor in spite of the submissions of the approver then his trial starts and he acquires the character of the accused. It is as such that in sub-section (4) of Section 306 the word used qua him for the first time is “accused”. During the course of the trial of the main accused, his position remains that of a witness. Can such a person who is at this stage not being formally accused of an offence, be detained? The legislature has permitted this, as he is treated differently from the other witnesses appearing in criminal trials. He was, in fact, associated with the crime, and would have been treated as an accused in normal course, but for his volunteering to make a clean breast of himself and lay before the court the full and true facts involved in the crime as are known to him. He is, therefore, not unoften termed as accomplice witness. His detention, therefore has been considered advisable, and the object discernable which has been taken note of in judicial decisions is that he should be kept away from susceptibilities and influences of his confederates from retracting what he has already volunteered to speak, and at the same time to protect him from their wrath in case he resists their pressures. **However, in cases where his evidence has already been recorded, and there is nothing to show that the prosecution at any stage sought to get him declared hostile, and the Prosecutor too has not even raised a semblance of the contention that there would be likelihood of his moving later under Section 308Cr. P.C., and further that in spite of his detention for a long time, there is little possibility of early conclusion of the trial, the question to be considered is whether it would not amount to an abuse of***

² Emphasis supplied.

³ 1984 SCC OnLine Del 311 [hereinafter, “*Prem Chand*”].



process of court to still detain him and his release not in the interest of justice. As already noted above, the opposition to his release is coming from the side of the accused, while the State has not appeared to contest the same before us. In our opinion, the accused should have little say in such matter, for patronage to individual vendetta has no place in the administration of justice.

16. Section 482 of the Code of Criminal Procedure is to the following effect:—

“Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

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 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 (supra)*⁴ 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 *Karuppa Servai (supra)*⁵ 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.

⁴ *A.L. Mehra (Approver) v. The State*, 1957 SCC OnLine Punj 100.

⁵ *Karuppa Servai v. Kundara alias Muniandi Thevan*, 1951 SCC OnLine Mad 378.



*18. We are further of the opinion that there is no rational basis for inflexible classification of approvers who are in detention, and those who because of fortuitous circumstances happen to be on bail at the time of grant of pardon. A person being granted bail and still not in detention are not considered in law as incompatible. So far as allurements of release if allowed pardon, it is inherently there in any pardon. As such too much of significance and rigidity need not be attached to time factor. Moreover, a witness, even though an accomplice need not be detained for more than what is essential for procurement of or enabling him to give his evidence. **His personal liberty can, therefore, be curtailed, if at all, for beneficial ends of administration of justice, and once they are served, his further detention becomes irrelevant.** This detention till that earlier stage may also be considered proper to avoid creation of the impression of too ready an approver to serve his personal end of immediate or early let off even in cases where the involvement of the other accused in that crime may turn out to be doubtful. The existence of the provision of detention thus may serve as a damper to opportunists who may be too keen to oblige the police, and also prevent a possible abuse of this process as a short-cut by investigating agencies when they find no other evidence available or dubiously seek to involve innocent persons.”⁶*

More recently, coordinate Benches of this Court in *Amit Chakraborty v. State NCT of Delhi*⁷ and *Saif Ateeque Nachan v. National Investigation Agency*⁸ have also applied the aforesaid principles, while granting bail to approvers.

12. Applying these principles to the present case, I am of the view that it is appropriate to release the applicant on bail. As noted above, the applicant was accepted as an approver by the Special Court *vide* order dated 07.12.2024, under Section 306 of the CrPC [corresponding to Section 343 of the BNSS], and there was no challenge to that order. His evidence has also been recorded, and he has supported the prosecution case. The applicant has himself filed this application for bail, which makes it clear that he does not harbour any apprehension as to his safety.

⁶ Emphasis supplied.

⁷ 2024 SCC OnLine Del 3336.



In any event, as held by the Full Bench of this Court in *Prem Chand*⁹, that is a matter for the police to take care of. The applicant has already been in custody for a period of over two years and three months, and the trial is likely to be fairly prolonged, as more than 200 witnesses are to be examined, out of which only three witnesses have been examined so far. In such circumstances, the continued incarceration of the applicant would defeat the ends of justice.

13. For the aforesaid reasons, it is directed that the applicant be released on bail in connection with FIR No. RC-35/2022/NIA/DLI dated 30.07.2022, registered at Police Station NIA, New Delhi, subject to furnishing a personal bond in the sum of Rs. 25,000/-, with one surety in the like amount, to the satisfaction of the concerned Trial Court/Duty Magistrate, and subject to the following further conditions:

- a. The applicant shall appear before the Trial Court as and when required.
- b. The applicant shall comply with the conditions of pardon.
- c. The applicant shall furnish his mobile number to the Investigating Officer [“IO”], and shall keep the mobile phone running and always switched on. The mobile number shall not be changed or switched off without prior intimation to the IO.
- d. The applicant shall give his residential address to the IO, and shall not change his residential address without prior intimation to the IO.
- e. The applicant shall not leave the country without prior permission

⁸ CRL.M.C. 5213/2024 and connected matter, decided on 20.12.2024.

⁹ Paragraph 17.



of the Trial Court.

14. The application stands disposed of in the above terms.

15. It is clarified that the observations made herein are solely for the purpose of adjudication of the present bail application, and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.

16. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATEEK JALAN, J

AUGUST 18, 2026

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