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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 605 of 2017****Order Reserved on 29.08.2017****Order Delivered on 11.09.2017**

S. K. Ranu S/o C.C. Ranu, Aged About 55 Years R/o Luthra Hospital,
Nehru Nagar, Police Station- Civil Lines, Bilaspur, Tahsil- Civil &
Revenue, District- Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Central Bureau Of Investigation Through Superintendent Of Police(C.B.I.) Qr. No. 4, Street -15, Sector- 9, Bhilai, District- Durg, Chhattisgarh
2. Anand Kumar S/o Nathuni Kumar, Aged About 48 Years Ex- Colliery Manager, Amgaon (O C) District- Surajpur, Presently Posted At South Eastern Coalfields Limited, Korba, R/o At Qtr. No. C-6, Officer Colony, Near Gm, Office S.E.C.L. Korba, District- Korba, Chhattisgarh.

---- Respondents

For the Petitioner	: Shri B.N. Mishra and Shri T.K. Jha, Advocates.
For the Respondents	: Shri Kishore Bhaduri and Shri Pawan Kesharwani, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

1. Heard.
2. This petition has been brought under Section 482 of the Code of Criminal Procedure with a prayer to set aside the order dated 01.02.2017 passed by the Learned trial Court granting pardon to the main accused/ respondent No.2.
3. It is submitted by counsel for the petitioner that charges have been framed and charge-sheet has been filed against the petitioner and respondent No.2 for the offences under Sections 120B, 409 and 420 of the

Indian Penal Code and under Section 13 (2) read with Section 13 (1) (c) and (d) of the Prevention of Corruption Act. It is also submitted by counsel for the petitioner that respondent No.2 has been granted pardon and made approver vide order dated 01.02.2017 whereas he is the main accused in the case which has been overlooked by the trial Court. The trial court has erroneously mentioned in the order that respondent No.2 is not the main accused in the case whereas, in the capacity of manager, respondent No.2 had the main role to play. Attention has been drawn to Section 17 of the Mines Act. While passing the order under Section 306 of Cr.P.C., the provision has not been complied with.

4. Reliance has been placed on the judgment of Bombay High Court in the case of **Nagnath versus State of Maharashtra** in **W.P.(Cr.) No. 758 of 2013** decided on 18.02.2014, in which it was held by the Bombay High Court that the main accused in the case cannot be granted pardon. It is also submitted that Section 17 of the Mines Act provides that Manager shall be responsible for the overall management, control, supervision and direction of the mine and all such instructions when given by the owner of a mine or agent shall be confirmed in writing forthwith.

5. Learned counsel for the respondent/ State has submitted that the trial Court has decided the matter on the material available on record and came to the conclusion that respondent No.2 is not the main accused in the case. Under these circumstances, no question can be raised with respect to the order passed under Section 306 of the Cr.P.C. Reliance has been placed on the judgment of this Court in the case of **Central Bureau of Investigation versus O.P. Singhania** passed by this Court in **Criminal Revision No. 705**

of 2015 vide order dated 14.01.2016.

6. Heard Learned counsel for both the parties and the documents on record perused.

7. Section 306 of Cr.P.C. is as under:

'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);

(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 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.'

8. In the judgment of **CBI versus O.P. Singhania (supra)**, this Court has held in paragraphs 9 and 10 ;

'9. Bare reading of Section 306 of the Code makes it clear that object of this Section is to obtain true evidence of offences by the grant of pardon to accomplice/approver so as to prevent the escape of the offenders from punishment for lack of evidence in grave cases. It is further apparent that Section 306 is a condition precedent to the accomplice/approver who is giving full and true disclosure of the facts within his knowledge. It is only a promise which is required from the person who is ready to become approver that he would give full and true disclosure of facts within his knowledge of the offences and every person concerned. The legal position is further clear that after recording

the statement under Section 306 (4) of the Code and after the evidence is recorded in the trial, if the trial Court comes to the conclusion that the accomplice/approver has not given full and true disclosure of the facts within his knowledge then in that case Section 308 of the Code would come in play and his pardon can be revoked and he may be tried for the offences in respect of which the pardon was so granted. The basis of exercise of this power is not to judge the extent of culpability of the person to whom the pardon is tendered. The main purpose is to prevent failure of justice by allowing the offenders to escape from a lack of evidence in grave offences.

10. To summarize, Section 306 of the Code provides that the Court has to look into (i) whether the respondent is directly or indirectly privy to the offence committed (ii) whether the prosecution needs his evidence to make their case strong against the main offenders (iii) promise from the respondent that he would make full and true disclosure of the facts relating to the offence and the offenders and (iv) consent of the respondent to turn approver.'

9. In view of the submissions made and the material on record, it is apparent that the purpose of Section 306 of the Cr.P.C. appears to have been made out by granting pardon to the co-accused respondent No.2. The provision under Section 306 of Cr.P.C. does not intend to decide on the culpability of the approver but its main purpose is to prevent failure of justice by allowing the offenders to escape because of lack of evidence in offences of grievous nature. Section 306 of Cr.P.C. provides that the person who is considered to be pardoned under this provision is alleged to have been directly or indirectly concerned in or privy to an offence and he may have acted in the commission of offence either as a principal or abettor, then this

provision shall apply. Out of the number of accused arrayed in the charge-sheet, respondent No.2 is not arrayed as the main accused. The contentions raised by the petitioner who is himself arrayed as the main accused No.1 in the case concerned that respondent No.2 happens to be the main accused, requires to be proved.

10. It is true that Section 17 of the Mines Act provides that the mines shall be operated under the supervision of the Manager but in this case the petitioner was occupying a higher post, that is to say, he was the then General manager of the Public Undertaking concerned and respondent No.2 was one of the managers working under him. Hence, at this stage it cannot be said that the whole responsibility of the offence committed can be saddled only on respondent No.2 and he can be regarded as main accused in the case.

11. The submissions made on behalf of the petitioner in support of this petition do not have force, which cannot be accepted without there being support of evidence. Hence, for these reasons, this petition appears to be devoid of merits, which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge