

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1048 of 2024

Arising Out of PS. Case No.-25 Year-2022 Thana- NIA District- Patna

Mandeep Yadav @ Manjeet Yadav @ Matla S/o Sri Hari Yadav R/o Village-
Mahulaniya, Police Station- Chakarbanda, District- Gaya, Bihar

... .. Appellant/s

Versus

The National Investigation Agency through its Superintendent of Police Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arvind Kumar Mouar, Advocate Mr. Raj Krishna Jha, Advocate
For the N.I.A.	:	Dr. K.N.Singh, A.S.G. Mr. Arvind Kumar, Spl. P.P. NIA Mr. Shivaditya Dhari Sinha, AC to ASG Mr. Paritosh Parimal, Advocate Mr. Pramod Kumar, P.P. NIA

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 12-09-2024

The appellant has filed the present appeal under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter referred to as 'NIA Act') against order dated 09.08.2024 passed by the learned Special Judge, NIA, Patna in connection with Special NIA Case No. 06 of 2022 arising out of R.C. No. 25/2022, whereby the learned Special Judge, NIA, Patna rejected the bail application filed by the appellant.

2. Heard learned counsel for the appellant Mr. Arvind Kumar Mouar assisted by Mr. Raj Krishna Jha and Dr. K.N. Singh, learned A.S.G. for the N.I.A. assisted by Mr. Arvind



Kumar, Mr. Shivaditya Dhari Sinha, Mr. Paritosh Parimal and Mr. Pramod Kumar.

3. Brief facts, leading to filing of the present appeal, are as under:-

3.1. Informant gave her *fardbeyan*, on 02.11.2018 at 09:15 p.m., alleging that, on 02.11.2018 at about 05:30 p.m., husband of the informant was abducted by C.P.I. (Maoist) cadres from his house using motorcycle No. BR260844. Thereafter, the husband of the informant, namely Naresh Singh Bhokta, was produced in *Jan Adalat* attended by more than 50-60 maoists north of village Sahiya, P.S. Madanpur, District-Aurangabad. Thereafter, it was learnt that firing has taken place near Badhai Bigaha canal and one person has been killed. Crime case No. 274 of 2018 was registered under Sections 364, 302, 34 of I.P.C., Section 27 of Arms Act and Section 17 of C.L.A. Act.

3.2. Thereafter, the National Investigation Agency (N.I.A.) registered a case No. RC-25/2022/NIA/DLI dated 24th June, 2022 under Sections 364, 302, 34 of I.P.C., Section 27 of Arms Act, Sections 16, 18, 20, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA Act') and Section 17 of C.L.A. Act in pursuance to the order of Ministry of Home Affairs, Government of India. By way of the said order, the



NIA has been directed to take up the investigation arises from F.I.R. No. 274 of 2018 of P.S. Madanpur, District-Aurangabad, Bihar.

3.3. The NIA carried out the investigation and filed charge-sheet against 11 accused persons and thereafter the Special Judge, NIA, Patna took cognizance against all 11 accused persons and framed charges against 9 charge-sheeted accused persons on the basis of evidence available on record.

3.4. The appellant Mandeep Yadav @ Manjeet Yadav @ Matla, while in judicial custody, had given the consent in writing before the learned Special Judge, NIA, Patna for making a full and true disclosure of the entire circumstances which was within his knowledge related to offence and role played by the co-accused in commission of the crime in question.

3.5. Thereafter, his confessional statement under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') before learned Judicial Magistrate, Patna was also recorded on 06.02.2023, wherein the appellant had disclosed the entire chain of conspiracy hatched by the accused persons in the commission of crime.

3.6. Thereafter, the respondent-NIA filed a petition before the learned Court of Special Judge, NIA, Patna on 20th



February, 2023 to tender pardon to the present appellant Mandeep Yadav @ Manjeet Yadav @ Matla. On the basis of the said petition filed by NIA, learned Special Judge, NIA, Patna heard the matter at length and tendered pardon to the appellant Mandeep Yadav @ Manjeet Yadav @ Matla vide its order dated 21.02.2023.

3.7. It is further stated that the trial of the present case commenced on 24.04.2024 and the appellant herein was summoned by the Trial Court. The appellant was examined and cross-examined as a witness (PW-1) before the Trial Court. During his deposition, the appellant fully supported the entire facts and chain of conspiracy hatched by the accused persons in killing of Naresh Singh Bhokta and thereby supported the case of the prosecution. Further, PW-2 Phulia Devi (complainant) and two other witnesses have been examined during the course of the trial.

3.8. Thereafter, the appellant filed bail application before the learned Special Judge, NIA, Patna with a prayer that he may be released on bail as his deposition has already been recorded by the Trial Court and when the pardon has been granted by the Court, he ceases to be an accused of the case and rather became witness of the prosecution.

3.9. The Special Judge, NIA, Patna vide impugned order dated 09.08.2024 rejected the bail application filed by the



appellant while relying upon provisions contained in Section 306(4)(b) of the Code. The learned Special Judge, NIA, Patna has observed that there is an embargo on the Trial Court to release an approver on bail and the power can be exercised by the Constitutional Courts armed with an inherent jurisdiction.

3.10. The appellant has, therefore, preferred the present appeal under Section 21(4) of the NIA Act.

4. Learned counsel for the appellant would mainly contend that now the appellant is not an accused once the concerned Court has tendered the pardon to him. The appellant became witness in the case. Further, the respondent-NIA has already examined the appellant as PW-1. The appellant was examined and cross-examined as a witness before the learned Special Judge, NIA, Patna and the appellant has fully supported the entire facts and chain of conspiracy hatched by the accused person in killing of Naresh Singh Bhokta and thereby he had supported the case of the prosecution. It is further contended that the learned Special Judge, NIA, Patna has wrongly rejected the prayer for bail of the appellant by observing that the said Court is not empowered to release him on bail in view of Section 306(4)(b) of the Code. It is contended that once the appellant ceases to be an



accused and appeared as a witness for the prosecution, his detention till conclusion of the trial is not justified.

5. Learned counsel for the appellant has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Suresh Chandra Bahri Vs. State of Bihar** and analogous matters, reported in **1995 Supp (1) SCC 80**. At this stage, learned counsel have also placed reliance upon the order dated 06.09.2017 passed by a Division Bench of this Court in similar type of case in **Criminal Appeal (DB) No. 563 of 2017 (Sanjay Kumar @ Sanjay Sah @ Sanjay Barnwal Vs. The Union of India (N.I.A.))**. He has also placed reliance on the judgment dated 26.07.2019 passed by the Division Bench of this Court in **Criminal Appeal (DB) No. 494 of 2019 (Asikul Islam Vs. The Union of India (N.I.A.))**. Learned counsel, therefore, urged that the appellant be released on bail and the impugned order passed by the learned Special Judge, NIA, Patna be set aside.

6. On the other hand, learned counsel appearing for the respondent-NIA has referred the counter-affidavit filed on behalf of the NIA and thereafter submitted that, in fact, now the appellant is not an accused in the case and he became witness. In fact, the concerned Court has tendered pardon to him vide order dated 21.02.2023 and thereafter he was examined as PW-1 by the



prosecution. The appellant has fully supported the case of the prosecution and disclosed the entire chain of conspiracy hatched by the accused person. Thus, the respondent-NIA has no objection if the appellant who is now turned as an approver is enlarged on bail.

7. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the material placed on record and the decisions upon which the reliance has been placed. In the present case, the aforesaid facts are not in dispute. It would emerge that though initially the appellant was arrested as an accused and charge-sheet was filed against him, his statement was recorded under Section 164 of the Code before the concerned Magistrate. In fact, the appellant had given the consent in writing before the learned Special Judge, NIA, Patna for making full and true disclosure of the entire circumstances which was within his knowledge related to offence and role played by the co-accused in commission of the crime. The petition was filed by NIA before the learned Special Judge, NIA, Patna and the Special Judge, vide order dated 21.02.2023, tendered pardon to the present appellant. It is not in dispute that the respondent prosecuting agency has examined the appellant as PW-1 during the course of the trial. He has been



cross-examined, and during his deposition before the Trial Court, the appellant has fully supported the entire facts and chain of conspiracy hatched by the accused person in commission of the alleged crime and thereby fully supported the case of the prosecution. In fact, in the counter-affidavit filed by Rajesh Kumar Mishra, Inspector of NIA, in the present proceedings, has specifically stated, in Para-16, that the prosecution (NIA) has “**No Objection**” if Mandeep Yadav @ Manjeet Yadav @ Matla, S/o Hari Yadav, resident of Village- Mohlaniya, Post- Imamganj, PS- Chakarbandha, Gaya, Bihar who turned as approver is enlarged on bail.

8. At this stage, we would like to refer the provisions contained in **Section 306** of the **Code** which provide 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.”

9. From the aforesaid provisions contained in Section 306 of the Code, it is clear that the provision for tender of pardon to an accomplice has been made by the Parliament. It has been provided that 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 the said section applies, the Chief Judicial Magistrate or any Metropolitan Magistrate at any stage of the investigation or inquiry into or the trial of the offence, 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 related to the offence and to every other person concerned, whether as a principal or abettor in the commission thereof. Further, Section 306(4)(b) provides that every person accepting a tender of pardon shall, unless he is already on bail, be detained in custody until the termination of the trial.

10. From the aforesaid facts, the salient question which emerges for our consideration and to be decided by us is as under:-



“Whether notwithstanding the bar under Section 306(4)(b) of the Code to release the approver on bail, unless he is already on bail, until the termination of the trial, can High Court release such approver on bail during pendency of the trial? If yes, under which circumstances?”

11. From the plain reading of Section 306(4)(b) of the Code, it can be said that a person accepting a tender of pardon has to be kept in custody till the trial is over, unless he was on bail at the time of grant of pardon. The word used is “*shall*” in the aforesaid provision and, therefore, the legislature has not envisaged grant of bail to a person during the trial after he has accepted pardon. The underlying object of requiring the approver to remain in custody until the termination of trial is not to punish him for having agreed to give evidence for the State but to prevent him from the temptation of saving his erstwhile companions who may be inclined to assert their influences, by resiling from the terms of grant of pardon. The said provision is based on principle of public policy and public interest.

11.1. However, in the cases where the evidence of approver has already been recorded and there is nothing to show that the prosecution, at any stage, sought to get him declared hostile and prosecutor has not even raised a contention that there



would be a likelihood of his moving later under Section 308 of the Code and, in spite of his detention for a long time, there is a little possibility of early conclusion of the trial, the question to be considered is whether it would not amount to an abuse of process of Court to still detain him as his release is not in the interest of justice.

11.2. Further, 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.

12. At this stage, we would like to refer the decision rendered by the Full Bench of Delhi High Court in the case of **Prem Chand Vs. State**, reported in **1984 SCC OnLine Del 311**. The Delhi High Court has observed in **Para-11, 15, 18 & 20** as under:-

“11. The crucial questions raised from the side of the petitioner are whether the provisions of Section 306(4) (b) in all their rigidity can be treated as constitutionally valid, and further whether in the exercise of inherent powers under Section 482Cr. P.C., the Court can release an approver during the course of trial when it is in the ends of justice and his detention amounts to abuse of process of Court.

15. In both the Session cases, the petitioner has riot 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 riot acquire the character of an



accused till after the trial, and that too when the Public Prosecutor certifies that he has by wilfully concealirig 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 submission 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 riot 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, arid 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 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.

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 allurement 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.

20. It will not be out of place to mention that when this matter was before Single Judge, it was argued on



behalf of the petitioner that the provisions of Section 306(4) (b) in all its rigidity may land itself to constitutional challenge on the ground of being violative of Article 21 read with Article 14 of the Constitution for being arbitrary and un-reasonable and in this background one of us while making the reference order felt that if this Section applies in all its rigidity, it may have to be struck down. But since we find that in cases of hardship, the approver can approach this Court for release, we thought it fit not to go into the question of vires of this provision. In fact, but for the availability of this power with the High Court to release the approver perhaps the vires of Section 306(4)(b) of the Code of Criminal Procedure may be open to serious challenge.”

13. In the case of **Suresh Chandra Bahri** (**supra**), the Hon’ble Supreme Court has observed in **Para-34** as under:-

“34. As regards the contention that the trial was vitiated by reason of the approver Ram Sagar being released on bail contrary to the provisions contained in clause (b) of sub-section (4) of Section 306 of the Code. It may be pointed out that Ram Sagar after he was granted pardon by the learned Magistrate by his order dated 9-1-1985, was not granted bail either by the committing Magistrate or by the learned Additional Judicial Commissioner to whose court the case was committed for trial. The approver Ram Sagar was, however, granted bail by an order passed by the High Court of Patna, Ranchi Bench in Criminal Miscellaneous Case No. 4735 of 1986 in pursuance of which he was released on bail on 21-1-1987 while he was already examined as a witness by the committing Magistrate on 30-1-1986 and 31-1-1986 and his statement in sessions trial was also recorded from 6-9-1986 to 19-11-1986. It is no doubt true that clause (b) of



Section 306(4) directs that the approver shall not be set at liberty till the termination of the trial against the accused persons and the detention of the approver in custody must end with the trial. The dominant object of requiring an approver to be detained in custody until the termination of the trial is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associates in a crime whom he has chosen to expose as well as with a view to prevent him from the temptation of saving his one time friends and companions after he is granted pardon and released from custody. It is for these reasons that clause (b) of Section 306(4) casts a duty on the court to keep the approver under detention till the termination of the trial and thus the provisions are based on statutory principles of public policy and public interest, violation of which could not be tolerated. But one thing is clear that the release of an approver on bail may be illegal which can be set aside by a superior court, but such a release would not have any affect on the validity of the pardon once validly granted to an approver. In these circumstances even though the approver was not granted any bail by the committal Magistrate or by the trial Judge yet his release by the High Court would not in any way affect the validity of the pardon granted to the approver Ram Sagar.”

13.1. Thus, from the aforesaid decision rendered by the Hon’ble Supreme Court, it can be said that though the approver was not granted any bail by the committal Magistrate or by the trial Judge, yet his release by the High Court would not in any way affect the validity of pardon granted to the approver.



14. The Division Bench of this Court, in the order dated 06.09.2017 passed in **Criminal Appeal (DB) No. 563 of 2017 (Sanjay Kumar @ Sanjay Sah @ Sanjay Barnwal Vs. The Union of India (N.I.A.)** has observed as under:-

“Considering the fact that during trial, the appellant has already been examined as P.W.1 and as admitted by the respondents/ National Investigation Agency that the appellant has supported the prosecution case disclosing complicity of other accused persons, it would not be appropriate to further detain the appellant merely on technicality. Moreover, the object under Section 306 of the Code of Criminal Procedure is to get the evidence of approver recorded truthfully. Since before the trial court, the appellant has already been examined and supported the prosecution case, in all fairness, it would not be appropriate to refuse the prayer for bail.”

15. The Division Bench of this Court, in the judgment dated 26.07.2019 passed in **Criminal Appeal (DB) No. 494 of 2019 (Asikul Islam Vs. The Union of India (N.I.A.)** has recorded the submission of the learned counsel and thereafter released the concerned appellant on bail. It has been observed as under:-

“Learned counsel for the appellant submits that in almost all the above stated decisions, it has been held that Section 306 of the Code of Criminal Procedure describes a procedure and the aforesaid section does not fasten the hands of court in grant of bail to an approver.



4. Learned counsel appearing for N.I.A. supported the above stated contentions and submitted that N.I.A. has no objection if the appellant is granted bail by this court, as the appellant has helped the Investigating Agency in course of investigation as well as in trial. The aforesaid fact has also been averred by N.I.A. in its counter affidavit.

5. Considering the aforesaid facts and circumstances as well as submission of the parties, let the appellant be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge, N.I.A., Patna in connection with Special Case No. 02/2018 arising out of R.C. 15/2015, subject to the condition that one of the bailors must be close relative of the appellant who shall swear affidavit to this effect as to how he/she is related with the appellant.”

16. Keeping in view the aforesaid provision as well as the decisions rendered by the Hon’ble Supreme Court, Full Bench of Delhi High Court as well as by the Division Bench of this Court, if the facts, as discussed hereinabove, are once again examined, it can be said that though there is a bar to release the approver on bail, if he is already in custody, till conclusion of the trial, the High Court can release such approver on bail. However, it is required to be observed, at this stage, that such power can be exercised by the High Court where such an approver to whom the concerned Court has tendered the pardon and the said accused has been examined as a prosecution witness during which he has fully



supported the case of prosecution, then in such cases, such approver can be released on bail.

17. Therefore, our answer to the aforesaid question is as under:-

“Though there is a bar under Section 306(4)(b) of the Code to release the approver on bail, if he is already in custody, till termination of the trial, High Court can release such person on bail by exercising inherent powers. However, such powers can be exercised where such an approver, to whom the concerned Court has tendered the pardon and the said accused has been examined as a prosecution witness during which he has fully supported the case of the prosecution, and in such a case, the approver can be released on bail.”

18. In the present case also, from the counter-affidavit filed by the respondent-NIA, it is clear that the appellant herein has been examined as PW-1 by the prosecuting agency and the appellant has fully supported the entire facts and chain of conspiracy hatched by the accused person in killing of Naresh Singh Bhokta and has also supported the prosecution case. Further, the respondent-NIA has specifically stated, in Para-16, of the



counter-affidavit that if the appellant is released on bail, the respondent has no objection.

19. In view of the aforesaid facts and circumstances of the present case, the impugned order passed by the learned Special Judge, NIA, Patna is hereby quashed and set aside. The above named appellant is ordered to be released on bail executing bail bond on executing bond of Rs. 15,000/- (Rupees Fifteen Thousand) and upon furnishing two sureties of the like amount each to the satisfaction of learned Special Judge, NIA, Patna in connection with Special N.I.A. Case No. 06/2022 arising out of R.C. No. 25/2022.

20. The appellant should co-operate in this Court till disposal of the appeal. Till disposal of the appeal, recovery of fine is kept in abeyance.

21. The appeal is, accordingly, allowed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	13.09.2024
Transmission Date	13.09.2024

