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

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Reserved on: 03.05.2024***Pronounced on: 06.05.2024***+ **CRL.M.C. 988/2024****AMIT CHAKRABORTY**

..... Petitioner

Through: Mr. A.S. Kulshrestha and Mr.
Lalit Kumar, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with Inspector Ashok,
Special Cell/NDR, Mr.
Akhilesh Pratap Singh, Ms.
Hina Khan and Mr. Lalit
Kumar, Advocates
Mr. Zoheb Hossain, Counsel
for Delhi Police with Mr.
Akhand Pratap, Advocate**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****INDEX TO THE JUDGMENT**

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SWARANA KANTA SHARMA, J.

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks release from custody in case FIR No. 224/2023, registered on 17.08.2023 under Sections 13/16/17/18/22C of Unlawful Activities (Prevention) Act, 1956 and Sections 153A/120B of Indian Penal Code, 1860 ('IPC').

FACTUAL BACKGROUND

2. The FIR, in a nutshell, was registered on the allegations that foreign funds had been infused illegally in India by Indian and Foreign entities, inimical to India, in pursuance of a conspiracy to disrupt sovereignty and territorial integrity of India, to cause disaffection against India and to threaten the unity, integrity, security of India. It is alleged that since April 2018, such fraudulent funds, running into crores of rupees had been received by M/s. PPK Newsclick Studio Pvt. Ltd. through illegal from M/s. Worldwide Media Holdings LLC, USA and others. It was also alleged that Mr.



Prabir Purkayastha, Mr. Mr Doraiswami Raghunandan, Mr. Amit Sengupta, Mr. Bappaditya Sinha, Mr. Gautam Navlakha, Mrs. Geeta Hariharan, Mr. Amit Chakraborty (petitioner) and M/s. Worldwide Media Holding LLC were the shareholders of PPK Newsclick Studio Pvt. Ltd. The petitioner was arrested on 03.10.2023 in the present FIR.

3. The present petitioner was arrested on 03.10.2023 and since then, he has been in custody. The petitioner had initially filed a petition before this Court, whereby he had challenged his arrest and remand to police custody. However, the same was dismissed by the Co-ordinate Bench on 13.10.2023. The Special Leave Petition filed against this order was withdrawn by the petitioner on 22.01.2024.

4. In the meanwhile, an application dated 20.12.2023 had been moved on behalf of the petitioner under Section 306 of Cr.P.C. before the learned Additional Sessions Judge, New Delhi District, Patiala House Courts, wherein it was prayed that the petitioner be granted pardon and be allowed to become an approver in the present case. The said application was allowed by the learned ASJ on 06.01.2024 and pardon was granted to the petitioner.

5. Now by way of this petition, the petitioner prays that he be released from the custody as he has already been granted pardon in this case.

SUBMISSIONS MADE BEFORE THIS COURT

6. Learned counsel appearing on behalf of the petitioner argues that the petitioner has turned an approver, and his statement under



Section 164 of Cr.P.C. in relation to the present case has already been recorded and no useful purpose is being served by his detention in jail. It is stated that the petitioner undertakes to make himself available for any further investigation and undertakes to abide by the conditions imposed by this Court in event of grant of bail and he is willing to cooperate with the prosecution and would depose as and when necessary. It is also stated that the trial in the present case has yet not started and the case is at the stage of investigation only. Learned counsel further argues that the provision of Section 306(4)(b) of Cr.P.C. cannot be taken as an absolute provision and this Court has inherent powers under Section 482 in appropriate cases to release the approver from custody. It is submitted by the learned counsel on behalf of the petitioner that the petitioner is 56-year-old who is suffering from permanent physical disability to the tune of 57% on account of the post-polio paralysis of lower extremities, and in support of same, disability certificate of the petitioner has been annexed with the petitioner. It is stated that as a result of the disability, the petitioner is dependent on wheelchair for his movements. It is further stated that the petitioner's family consists of his mother, brother, sister, wife and son, who also suffer from multiple health issues, which have been enlisted in the contents of the petition. Therefore, in the circumstances it is prayed that the present petition be allowed.

7. Learned Special Counsel appearing on behalf of Delhi Police/State submits that the prosecution has no objection if the petitioner is released from custody since his statement under Section



164 of Cr.P.C. has already been recorded before the learned ASJ wherein he has disclosed the truth and made full disclosure of the facts related to the present case, considering which he has been granted pardon, subject to certain conditions. It is further submitted that in the charge sheet, the petitioner has been cited as a witness and therefore, the prosecution has no objection if the present petition is allowed.

8. This Court has heard arguments addressed by learned counsel for the petitioner and learned Special Counsel for the respondent, and has considered the material placed on record.

ISSUE IN QUESTION

9. The issue arising for adjudication in this case are:

Whether the petitioner, who has been granted pardon, can be released from judicial custody in view of provisions of Section 306 of Cr.P.C., and whether this Court should exercise such discretion in the present case?

ANALYSIS & FINDINGS

I. Tender of Pardon under Section 306 of Cr.P.C.

10. In the present case, the petitioner had filed an application dated 20.12.2023, under Section 306 of Cr.P.C. before the learned ASJ, wherein he had submitted that he wanted to assist the investigating agency by becoming an approver and by divulging the true facts



before the Court, and in view of the same, his statement may be recorded and he may be granted pardon.

11. For the purpose of reference, it shall be appropriate to extract Section 306 of Cr.P.C. hereunder:

“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.”

II. Bar to Grant of Bail under Section 306(4)(b) of Cr.P.C. vs. High Court's Inherent Power under Section 482 of Cr.P.C.

12. The cause for filing the present petition before this Court is the fact that as per Section 306(4)(b) of Cr.P.C., every person who accepts pardon, unless is already on bail, cannot be released from detention/custody until the trial is concluded.

13. However, there are catena of judgments authored by Co-ordinate Benches of this Court as well as other High Courts which unanimously hold that the bar under Section 306(4)(b) of Cr.P.C. to release or grant bail to an approver who has been granted pardon is limited to the Trial Courts, and the High Court, exercising its inherent powers under Section 482 of Cr.P.C., can order the release of an approver from detention in appropriate cases.

14. A few of these decisions are referred to in the succeeding paragraphs.

15. The Hon'ble Full Bench of this Court, in case of ***Prem Chand v. State 1984 SCC OnLine Del 311***, had observed as under:



“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 un-mitigating 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.....

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.

19. Thus the 48th Report of the Law Commission in para 24'21 took note that in extra-ordinary cases of hardship an approver can approach the High Court whose powers as to bail are very wide.”



16. The relevant observations of Hon'ble High Court of Jammu & Kashmir in the recent case of *Tariq Ahmed Dar v. NIA 2023 SCC OnLine J&K 236* are reproduced hereunder:

“ In **2007 Supreme(J&K) 467** [Kumad Kumar Mandal—Appellant Vs. State of J&K and Others—Respondents] relied by Ld. Counsel for petitioner, while granting bail to an approver/petitioner indicted for commission of offences in FIR No. 138/2014 of Police Station Leh punishable u/ss 366-A, 302, 376, 202, 212, 342, 176 & 201 RPC, this Court while granting bail to approver in paragraphs 7&9 of the judgment observed as under:-

7. Legal position is clear too and no more res integra. There is complete Bar to the release of the approver until the termination of the trial, if the approver had not been released on bail prior to the tender of pardon to him. However, in appropriate cases, having regard to the facts and circumstances of the case, an approver can be released on bail by the High court in exercise of inherent powers under section 561-A Cr. P.C. (section 482 Central Code). 9. There cannot be any quarrel with the legal position that in terms of section 337 (3) Cr.P.C. bail to the approver, who is in custody, cannot be granted. However, in an appropriate case, this Court can release him on bail in exercise of inherent power under section 561-A Cr.P.C. Having regard to the nature of the involvement of the petitioner in the incident and the role said to have been played by him, his having supported the prosecution case at trial of the case and the fact that he is now in custody from last more than two years, the interest of justice demands that he is released on bail instead of keeping him in custody.

6. Ratios of the judgments (Supra) make the legal proposition manifestly clear, that the dominant object of keeping an approver to be detained in custody till the termination of trial is not intended to punish the approver for having come forward to give evidence in support of prosecution, but to protect him from possible indignation, rage and resentment of his associates in a crime to whom he was chosen to expose,



and such provision is based on public interest, there cannot be any quarrel with legal position that in terms of section 306(4)(b) Cr.pc bail to approver who was in custody cannot be granted, however, in an appropriate case High Court can release the approver on bail in exercise of it's inherent powers u/s 482 Cr.pc. Sub-Section 4 of Section 306 Cr.pc cannot be interpreted in a manner which would defeat the mandate contained in Article 21 of the Constitution of India dealing with life and personal liberty of an individual being of paramount importance in human existence. What purpose it is to be achieved by keeping an approver in custody during the trial after he satisfactorily complied with the terms and conditions of tender of pardon, he gets right to be released and cannot be allowed to remain in jail custody indefinitely. The dominant object is, that once an accused is granted pardon under the relevant provisions of the Code of Criminal Procedure, he ceases to be an accused and appears witness for the prosecution (vide AIR 1989 SC 589)."

17. The Hon'ble High Court of Chattisgarh in case of ***Rajkumar Sahu v. State of Chattisgarh*** 2020 SCC OnLine Chh 109 had answered a similar issue as under:

"24. Not only this, the issue was considered by the Full Bench of the Rajasthan High Court in *Noor Taki alias Mammu (supra)* especially with reference to Section 306(4)(b) of the Code and ultimately it was held that the High Court in exceptional and reasonable case has power and jurisdiction under Section 482 of the Code to enlarge the approver on bail. Their Lordships of the Full Bench observed as under: -

"19. A perusal of the aforesaid cases coupled with that of many other cases, like that of *Sunil Batra v. Delhi Administration*; 1980 Cri LJ 1099 : (AIR 1980 SC 1579), and yet another case of *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna* reported in AIR 1979 SC 1360 : (1979 Cri LJ 1036), we have no hesitation in holding that detention of a person even by due process of law has to be reasonable, fair and just and if it is not so, it will amount to violation of Article 21 of the Constitution. Reasonable expeditious trial is warranted



by the provisions of the Criminal Procedure Code and in case this is not done and an approver is detained for a period which is longer than what can be considered to be reasonable in the circumstances of each case, this Court has always power to declare his detention either illegal or 6 AIR 1958 Punj 72 : 1958 Cri LJ 413 7 1953 Cri LJ 45 enlarge him to bail while exercising its inherent powers. Section 482, Cr.P.C. gives wide power to this Court in three circumstances. Firstly, where the jurisdiction is invoked to give effect to an order of the Court. Secondly if there is an abuse of the process of the Court and thirdly, in order to secure the ends of justice. There may be occasions where a case of approver may fall within latter two categories. For example in a case where there are large number of witnesses a long period is taken in trial where irregularities and illegalities have been committed by the Court and a re-trial is ordered and while doing so, the accused persons are released on bail, the release of the approver will be occasioned for securing the ends of justice. Similarly, there may be cases that there may be an abuse of the process of the Court and the accused might be trying to delay the proceedings by absconding one after another, the approver may approach this Court for seeking indulgence. But this too will depend upon the facts and circumstances of each case. Broadly, the parameters may be given but no hard and fast rule can be laid down. For instance, an approver, who has already been examined and has supported the prosecution version, and has also not violated the terms of pardon coupled with the fact that no early end of the trial is visible, then he may be released by invoking the powers under Section 482, Cr.P.C.. Section 482, Cr.P.C. gives only power to the High Court. Sessions Judge cannot invoke the provisions of the same. High Court therefore in suitable cases can examine the expediency of the release of an approver. We are not inclined to accept the contention of the learned Public Prosecutor that since there is a specific bar under Section 306(4)(b), Cr.P.C.. Section 482, Cr.P.C. should not be made applicable. Their Lordships of the Supreme Court has said in times without number, that there is nothing in the Code to fetter the powers of the High Court under Section 482, Cr.P.C.. Even if there is a bar in different provisions for the three purposes mentioned in Section 482, Cr.P.C. and one glaring



example quoted is that though Section 397 gives a bar for interference with interlocutory orders yet Section 482, Cr.P.C. has been made applicable in exceptional cases. Second revision by the same petitioner is barred yet this Court in exceptional cases invoke the provisions of Section 482 Cr.P.C.. Therefore, Section 482, Cr.P.C. gives ample power to this Court. However, in exceptional cases to enlarge the approver on bail, we answer the question that according to Section 306(4)(b), Cr.P.C. the approver should be detained in custody till the termination of trial, if he is not already on bail, at the same time, in exceptional and reasonable cases the High Court has power under Section 482, Cr.P.C., to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much prolonged, which would otherwise outlive the period of sentence, if convicted, his detention can be declared to be illegal, as violative of Article 21 of the Constitution."

25. Similarly, the Kerala High Court in the matter of *Shammi Firoz v. National Investigation Agency, Ministry of Home Affairs, Govt. of India, New Delhi* has clearly held that despite the embargo under Section 306(4)(b) of the Code, the High Court may in a given case release the approver on bail by calling into aid its inherent power under Section 482 of the Code and observed as under: -

"12. Once an accused person is granted pardon he ceases to be an accused person and becomes a witness for the prosecution. Since an approver is not a person accused of an offence, Sections 437 and 439 Cr.P.C. cannot be pressed into service by an approver for his enlargement on bail. In such a contingency, notwithstanding the bar under Section 306(4)(b), Cr.P.C. it has been held in the decisions relied on by the petitioner that the High Court can in a given case release the approver on bail by invoking the inherent power under Section 482 Cr.P.C.. Formerly, Courts were very rigid in enforcing the legislative mandate under Section 306(4)(b) corresponding to Section 337(3) of the old Code. (See *A.L. Mehra v. State*, AIR 1958 Punjab 72; *Bhawani Singh v. The State*, AIR 1956 Bhopal 4; *In re Pajerla Krishna Reddi*, 1953 Cri LJ 50 (Madras); *Haji Ali Mohammed v. Emperor*, AIR 1932 Sind 40; *Dev Kishan v. State of Rajasthan*, 1984 Cri LJ 1142 (Rajasthan)). But



after the fundamental right guaranteed under Article 21 of the Constitution of India has been laid on a wider canvass through the epoch making judicial pronouncements of the Apex Court, Courts have diluted the rigour of Section 306(4)(b) Cr.P.C. to make it in conformity with the rights under Article 21 of the Constitution of India. That explains the merging view that despite the embargo under Section 306(4)(b) Cr.P.C., the High Court may in a given case release the approver on bail by calling into aid its inherent power under Section 482 Cr.P.C."

29. Thus, from the aforesaid discussion, it is quite vivid that this Court under inherent power of Section 482 of the Code can consider issue of grant of bail to the approver, having the status of witness only after being discharged from the case, the prohibition contained in Section 306(4)(b) of the Code is applicable to the Magistrate granting pardon, but it is not applicable to the Sessions Judge while he grants pardon to the accused under Section 307 of the Code and consequently, despite the legislative bar contained in Section 306(4)(b) as held by the Supreme Court in A. Devendran (supra), this Court can consider the application for releasing him on bail with certain conditions in its inherent jurisdiction under Section 482 of the Code in appropriate and reasonable case."

18. Therefore, what can be discerned from the aforesaid discussion is that the High Court, while exercising its inherent powers under Section 482 of Cr.P.C., can direct the release of an approver who has been granted pardon under Section 306 of Cr.P.C. where in view of facts and circumstances, such direction is deemed necessary to prevent abuse of process of law or to secure ends of justice.

III. Tender of Pardon to Petitioner in this Case

19. A perusal of order dated 06.01.2024 reveals that the statement of the petitioner under Section 164 of Cr.P.C. has already been



recorded before the learned Magistrate, and the investigating officer of the case ACP Sh. Lalit Mohan Negi had stated before the learned ASJ that the petitioner had disclosed all the true facts in relation to the present case out of his own free will and the said statement made by the petitioner was good evidence and thus, the investigating agency had no objection if he was allowed to become approver in this case. The petitioner was also asked by the learned ASJ with respect to his free consent and willingness to become an approver in this case, whereby he had categorically stated that he had disclosed the truth out of his own free will.

20. Thereafter, the petitioner was tendered pardon, subject to the following conditions:

- “...1) That accused shall make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor in the commission of offence in this case.
- 2) He shall not willfully conceal anything essential in the present case.
- 3) He shall not willfully give false evidence.
- 4) He shall comply with all the conditions on which tender is made...”

IV. Whether this Court should exercise its Judicial Discretion in Favour of Petitioner?

a. Exercise of Judicial Discretion

21. Judicial discretion forms the cornerstone of judicial decision-making, allowing judges to apply the law in a manner that is just and equitable, and in other words, to secure ends of justice or to prevent



abuse of process of law. When exercising judicial discretion, it is crucial for judges to consider all relevant facts and circumstances surrounding a case. This entails a comprehensive examination of the facts presented, the legal arguments advanced by both parties, and any mitigating or aggravating factors that may influence the outcome of the case.

22. In the case at hand, a critical decision before this Court is whether the petitioner, who is an approver and has been granted pardon, should be released from judicial custody considering the grounds on which such release has been sought and as to whether in this regard, this Court should exercise its judicial discretion under Section 482 of Cr.P.C.

b. Prosecution's No Objection

23. In the case at hand, the prosecution has stated before this Court that they have no objection if the petitioner is released from judicial custody, considering the fact that he has got his statement recorded under Section 164 of Cr.P.C. before the learned Magistrate wherein he has disclosed the true facts in relation to the present case.

24. This Court further notes that the petitioner had been arrested on 03.10.2023 and has been in custody since then, whereas the trial in the present case has yet not begun since the investigation has yet not entirely concluded.

c. Medical Condition of the Petitioner

25. Another important factor to be considered while adjudicating the present petition is the medical condition of the petitioner. As per



documents placed on record, the petitioner herein is aged about 56 years and suffers from **59% permanent physical disability** due to post-polio residual paralysis of both lower extremities. The disability certificate dated 14.07.1987 mentions that the right lower extremity is practically flail, and muscle power of his left hip, knee and ankle is Grade '3'. Moreover, owing to such disability, the petitioner is dependent on a wheelchair for his day-to-day movements.

26. The aforesaid medical condition of the petitioner has not been disputed by the respondent.

27. Given the extent of his disability and dependence on a wheelchair, it is evident that the petitioner faces significant obstacles in carrying out even basic activities of daily living. The petitioner's medical condition warrants special consideration and calls for a humane and understanding approach to his situation. In cases where an individual's physical disability significantly affects his well-being and daily functioning, the Court must acknowledge its responsibility to intervene judiciously and consider the possibility of relief or release from custody if the same is permissible under law.

d. Provision of Section 308 of Cr.P.C.

28. There is no doubt about the fact that one of the objectives behind keeping the approver in custody till the conclusion of trial is to prevent him from the temptation of saving his former friends and companions, by resiling from the terms of grant of pardon.

29. However, it is also in dispute that in case the petitioner fails to comply with the conditions of pardon such as failing to depose during



the course of trial as a prosecution witness, or deposing in contradiction to his statement recorded under Section 164 of Cr.P.C. at the time of grant of pardon or not disclosing the true and correct facts or wilfully concealing the true facts, Section 308 of Cr.P.C. would be attracted and the petitioner would be liable to be tried for the offence in respect of which he was given pardon, in addition to offence of giving false evidence.

30. The statement of the petitioner which had been recorded under Section 164 of Cr.P.C. at the time of grant of pardon would also be admissible as evidence against him, as per Section 308(2) of Cr.P.C. in case the petitioner resiles from his earlier statement, at the stage of recording of his testimony.

THE DECISION

31. Therefore, having considered the facts and circumstances of the case, the no objection of the prosecution in releasing the petitioner from custody, as well as the medical condition of the petitioner, this Court directs that the petitioner herein be released on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount, subject to the satisfaction of concerned Trial Court, on the following conditions:

- i. The petitioner shall comply with all the conditions on which pardon was tendered to him;
- ii. The petitioner shall appear before the learned Trial/Sessions Court as and when directed by the Court;



- iii. The petitioner shall not leave the country without the prior permission of the learned Trial/Sessions Court.
32. Accordingly, the present petition alongwith pending application, if any, stands disposed of in above terms.
33. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.
34. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 6, 2024/ns

Td/Ts/Asb