



\$~82

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

+ **CRL.REV.P. 1283/2024, CRL.M.A. 33988/2024**

TAJLNDER PAL SINGHPetitioner

Through: **Mr. Rajeev Awasthi, Adv.**

versus

DIRECTORATE OF ENFORCEMENTRespondent

Through: **Mr. Zoheb Hossain, Special counsel
with Mr. Manish Jain, Mr. Vivek
Gurnani, Mr. Swadish Vats, Mr.
Kartik Sabharwal, Adv.**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.12.2024

%

1. This is a petition seeking to set aside the impugned order dated 22.08.2024 passed in I.A. No. 12/2024 in Ct. Case No. 12/2024 rejecting the application for grant of pardon.
2. The petitioner had moved an application seeking pardon in the present case for turning an approver.
3. It is recorded that the petitioner accepts his role as mentioned in the prosecution complaint and further that the petitioner is desirous of making a full and thorough disclosure of all the circumstances within his knowledge relating to the offence which will aid and benefit the ED to prove the case against other accused persons not only during trial but also for further investigation.
4. The learned Sessions Court was of the view that the testimony of the



petitioner would be important if there is no evidence available with the ED. However, the learned Sessions Court further observed that there is enough evidence available with the ED to prosecute other accused persons.

5. Hence, the present petition.

6. In the present case, Mr. Awasthi, learned counsel for the petitioner states that the petitioner has already agreed to all the allegations against him made in the prosecution complaint only on agreeing to the assurance of the prosecution that the petitioner would be made an approver and thereafter a witness in terms of Section 307 Cr.P.C.

7. In the present case, the case set up by the petitioner is admitted by the respondent ED and in paras 12 and 13 of the status report handed over in Court today, it has been averred as under:

“12. That, an application was filed by the petitioner/accused (Tajinder Pal Singh) under Section 306 & 307 of Cr.P.C., which was dismissed by the Hon’ble Special Judge vide Order dated 22.08.2024. However, the said Application was not opposed by the Respondent Directorate, as the same would be favourable for establishing the case of the prosecution and proving the culpability of other accused persons in the offence of money laundering.

13. Therefore, the Hon’ble Special Court has erroneously rejected the Application under Section 306/307 of CrPC, 1973 and it is submitted that the present Revision Petition may be allowed, as per law.”

8. It is stated that the petitioner has already given a pendrive containing codes which only the petitioner is to decipher, which is crucial and important for the respondent ED to be able to connect the money trail in the present case.

9. My attention has also been drawn to the judgment of Hon’ble Apex Court in ***Lt. Commander Pascal Fernandes v. State of Maharashtra, 1967***



SCC OnLine SC 37, wherein the following has been observed:

“15....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 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.....”

10. In view of the above, once the prosecution is seeking the petitioner as a witness and has agreed to the fact that he may be tendered pardon, keeping in mind, the evidence that is sought from the petitioner the quality as well as the quantity of the same in my view, it was not correct on the part of the learned Sessions Court to get into the subjective satisfaction of the prosecuting agency.

11. For the said reasons, the petition is allowed and the order dated 22.08.2024 passed in I.A. No. 12/2024 in Ct. Case No. 12/2024 rejecting the application for grant of pardon is dismissed.

12. The petitioner will be treated as an approver and given benefit of sections 306 and 307 CrPC .

13. The petition is disposed of.



14. Status report is taken on record.

JASMEET SINGH, J

DECEMBER 3, 2024/DM

Click here to check corrigendum, if any