



2025:DHC:2619



\$~

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

Reserved on: 27th February, 2025

Pronounced on: 16th April, 2025

+ CRL.M.C. 1075/2025

RADHA KUSHWAHA

.....Petitioner

Through: Mr. Joginder Tuli, Ms. Joshini Tuli,
Ms. Victoria Neri and Ms. Tanuja
Qureshi, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for the
State.
SI Dharamveer, P.S. Chhawla.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') and Section 528 of the Bharatiya Nagrika Suraksha Sanhita, 2023 (for short, 'BNSS') has been filed seeking the following prayers: -



“a) Set aside the order dated 10.02.2025 passed by the Ld. ASJ, Dwarka District Court Courts, New Delhi being erroneous, illegal and arbitrary in SC No. 440975/2016 registered U/s 302/120B IPC at P.S. Chhawla in FIR No. 130/2012 and direct CRL.M.C.-1075-2025 28 the Ld. Trial Court to record the deposition of the Petitioner as an approver/accomplice in the present case and grant Petitioner tender of pardon; and

b) Issue directions to the Ld. Trial Court to discard the earlier evidence affidavits in terms of Section 3 of the Indian Evidence Act and consider and appreciate the Evidence Affidavit filed on record on dated 08.11.2024 before the Ld. Trial Court and decide the Application u/s 306 and 307 CRPC,1973 of the Petitioner Afresh; and

c) Pass any other order which this Hon’ble Court may deem fit in the interest of justice.”

2. The present petition has been filed challenging the order dated 10.02.2025 passed by the learned Trial Court dismissing the 4th application filed on behalf of the petitioner under Sections 306/307 of the CrPC seeking permission for tendering of pardon.

3. The petitioner is facing trial in case FIR No. 130/2012, under Sections 302/201/34/120B of the IPC, registered at P.S. Chhawla along with other co-accused persons. It is the case of the prosecution that on 13.06.2012, a DD No. 16A was received at P.S. Chhawla to the effect that a very foul smell was emanating from a locked house. On receipt of the said DD entry, the concerned police team reached at the spot. The said house was opened by breaking the locks and on searching the house a highly decomposed, naked and mutilated body of the deceased was found covered in a polythene plastic. The hands and legs of the body had been cut, which were kept in a separate



polythene packet. Accordingly, the present FIR was registered and after completion of investigation, the chargesheet was filed before the Court of competent jurisdiction.

4. It is the case of the prosecution that the present petitioner along with her husband/co-accused- Mohd. Khalid and other co-accused persons had entered into a conspiracy, in pursuance of which, it is alleged that the deceased was called by the present petitioner as the husband of the petitioner, Mohd. Khalid, had objected to their relationships, and thereafter, the petitioner alongwith the other co-accused persons, killed the deceased and mutilated his body, which was discovered, as pointed out hereinabove.

5. The matter has been pending for prosecution evidence since 2012.

6. Learned counsel appearing on behalf of the petitioner submits that the petitioner was under a constant threat of co-accused, Mohd. Khalid, as her minor daughter was about 1½ years old and was threatened to be murdered by co-accused, Mohd. Khalid, if the petitioner raised any hue and cry or if the said incident was reported to anyone else. It is further stated that the petitioner was compelled by co-accused, Mohd. Khalid, to call the deceased to her house as he was having suspicion that she was having extra marital affair with the deceased. It is submitted by learned counsel for the petitioner that the latter is ready to become an approver after making a full and complete disclosure of entire circumstances within her knowledge relating to the offence.



7. It is submitted that the learned Trial Court had failed to appreciate and take into account the affidavit dated 08.11.2024 giving a brief outline as to what the petitioner intends to testify. It is submitted that the affidavit placed on record by the petitioner along with the application under Sections 306/307 of the CrPC is not evidence within the meaning of Section 3 of the Indian Evidence Act, 1872 (for short, 'IEA') as well as Section 296 of the CrPC and therefore, the dismissal of the application by the learned Trial Court is misplaced as per settled principles of law and facts.

8. Learned counsel for the petitioner to support his case has placed reliance on the following judgments: -

- i) **Narayan Chetanram Chaudhary and Ors. v. State of Maharashtra¹;**
- ii) **Rahul Yadav & Ors. v. State and Ors²; and**
- iii) **Jayalakshmi Jaitly v. CBI & Anr.³.**

9. This Court has perused impugned order dated 10.02.2025, passed by learned Trial Court whereby the 4th application filed on behalf of the petitioner seeking permission for tendering pardon was dismissed. At the time of passing the impugned order, it is noted, that out of 45 witnesses cited by the prosecution, 44 had already been examined. The petitioner was granted bail on 16.01.2018. As per the record, the first application filed by the petitioner was dismissed as withdrawn with liberty to file afresh *vide* order

¹ (2000) 8 SCC 457

² 2023:DHC:2108

³ 2013:DHC:7316



dated 07.12.2023 passed by the learned Trial Court. Thereafter, the 2nd application filed on behalf of the petitioner was dismissed by the learned Trial Court *vide* order dated 05.07.2024. However, Co-ordinate Bench of this Court in **CRL.M.C. 6202/2024** *vide* order dated 09.08.2024 granted liberty to the petitioner to file a fresh application. Accordingly, the third application was filed by the petitioner which was dismissed by the learned Trial Court *vide* order dated 29.11.2024, and thereafter, again, a Co-ordinate Bench of this Court in **CRL.M.C. 7791/2024** *vide* order dated 07.10.2024 gave liberty to the petitioner file a fresh application. Resultantly, the petitioner filed her fourth application which was dismissed by the order challenged in the present petition.

10. It is noted that the prosecution did not support the application filed on behalf of the petitioner to seek permission for becoming an approver and had, in fact, opposed the same before the learned Trial Court. Learned Trial Court while disposing of the application *vide* impugned order had observed and held as under: -

“6. Before proceeding any further, it would be appropriate to refer to brief facts of the case culminating in the present adjudication. As per recitals in the charge-sheet, on 13.06.2012, intimation was received at PS Chhawla to the effect that bad odour was coming from house no. B-12, Shyam Vihar, Najafgarh, New Delhi, which was found to be locked. Poster of one Rising Sun Coaching Centre and Dance Academy, mentioning mobile numbers 9873105330 and 9999366948 was found affixed on the said house. Upon breaking open the locks of one room, in the said house, one naked body (torso) without head, both hands and feet in highly decomposed condition was found. The severed head, both hands and both legs were also found at the spot. Other injuries were noticed on the body. Various articles enumerated in the charge-sheet were seized from the spot. From another room, documents of



vehicle bearing no. DL4CAD 7920 were discovered. The car was found to be of Mr. Sanjay Kumar Rohilla who was found to be missing since 06.06.2012. The dead body was positively identified by the relatives of Mr. Sanjay Kumar Rohilla. The car had already been recovered unclaimed on 07.06.2012. Inquiry was made and it was discovered that deceased had received phone call from mobile number 9716423336 on 06.06.2012. The said mobile phone was found to be of the accused/applicant. It was found that the said house where the dead body was recovered had been taken on rent by the accused/applicant and her husband Altaf who was working as a driver with one Shiv Kumar Contractor. During further inquiry, it was found that the actual name of Altaf was Mohd. Khalid. The accused Mohd. Khalid and his wife Radha were arrested on 19.06.2012 from Old Delhi Railway Station. Pertinent to present adjudication, one SIM Card bearing no. 30006879074 Vodafone company was recovered from the purse of accused Radha. Recoveries were also effected from and at instance of accused Mohd. Khalid. Co-accused Jeetu and Dinesh were arrested later on. From CDR, it was found that accused Radha had made call to the deceased from her mobile phone number 9716423336 lastly on 06.06.2012 at 06.08 pm. The location of the mobile phones of the accused/applicant was of Shyam Vihar, Najafgarh from 06.06.2012 at 06.00 pm to 07.06.2012 till 09.00 am and thereafter, the location was of Mumbai. Location Charts of the mobiles of the deceased and accused persons were obtained. Exhibits were sent for forensic examination. The accused persons were accordingly charge-sheeted for commission of offences punishable U/s 302/201/120 B/34 IPC.

9. The very first contradictions are regarding the date and time when the applicant had called deceased Sanjay Rohilla and when he agreed to meet her.



Affidavit dt. 14.12.23 filed alongwith 2 nd application	Amended affidavit dt. 06.06.24 filed alongwith 2 nd application	Affidavit dt. 22.08.24 filed alongwith 3 rd application	Amended Affidavit dt. 13.09.24 filed alongwith 3 rd application	Affidavit dt. 08.11.24 filed alongwith 4 th application
Applicant called deceased 3-4 times but he did not pick up. She kept calling on 3rd and 4th June 2017 and he said that he would meet her on 05.06.2017. (Para 8)	Applicant called deceased 3-4 times but he did not pick up. She kept calling on 3rd and 4th June 2012 and he said that he would meet her on 05.06.2012. (Para 8)	Applicant kept calling the deceased 3-4 times but he did not pick up. She again kept calling him and he said that he will meet her in the evening of 06.06.2012. (Para 8)	Applicant called the deceased 3-4 times but he did not pick up. She kept calling on 3rd 4th June 2012 and he said that he will meet her in the evening of 06.06.2012. (Para 8)	Applicant called the deceased from mobile no.97164 23336 on 03.06.2012 but he did not respond. She again called him on 4th and 5th June 2012 on which he promised to meet her on 06.06.2012. (Para 14)
Khalid made her call the deceased on 05.06.2017 and deceased agreed and said that he would come by 06.00 pm. (Para 10)	Khalid made her call the deceased on 05.06.2012 and deceased agreed and said that he would come by 06.00 pm. (Para 10)	The applicant made several calls to deceased on 06.06.2012 and he agreed and said that he would come by 06.00 pm. (Para 10)	Khalid made her call to deceased and she called the deceased for about 12 times from 2.28 pm to 6.28 pm on 06.06.2012. Deceased agreed to come between 06.30-7.00 pm. (Para 10)	She called him 12 times from 2.28 pm to 6.28 pm on 06.06.12 and he agreed and told that he would be



2025:DHC:2619



				coming by 6.30- 7.00 pm. (Para 14)
--	--	--	--	---

10. Thus the applicant / accused has taken contradictory stands as to when she had called the deceased. As per one affidavit, the applicant / accused had called the deceased in 2017, while as per other affidavits, she had called the deceased in the year 2012. Furthermore, as per three affidavits, she had called the deceased on 3rd 4th June and 5th June. While as per the last affidavit, she had called the deceased on 3rd, 4th, 5th and 6th June 2012. In the initial affidavits, her assertions was that deceased agreed to meet her on 5th June (when he was murdered) while in her later affidavits, her assertions was that the deceased agreed to meet her on 6th June (when he was murdered).

11. Furthermore, the stand of the applicant has not been consistent in various affidavits regarding the sequence of events. The contradictions in this regard are tabulated here under:

Affidavit dt. 14.12.23 filed alongwith 2 nd application	Amended affidavit dt. 06.06.24 filed alongwith 2 nd application	Affidavit dt. 22.08.24 filed alongwith 3 rd application	Amended Affidavit dt. 13.09.24 filed alongwith 3 rd application	Affidavit dt. 08.11.24 filed alongwith 4 th application
When Sanjay Rohilla started drinking with Khalid, Dinesh asked her to go to another room and locked it (Para 11)	When Sanjay Rohilla started drinking with Khalid, Dinesh asked her to go to another room and locked it from outside. (Para 11)	When Sanjay Rohilla started drinking with Khalid, Dinesh pushed her to second room and locked it from outside. (Para 11)	When Sanjay Rohilla became semi conscious and lay on the Wooden platform, Khalid asked her to get her chunni and strangulated the deceased. Dinesh and Jeetu tied legs of deceased	When Sanjay Rohilla became semi conscious and lay on the wooden platform, Khalid asked her to get her chunni and strangulated the deceased.



			with wire. (Para 11). When she shouted, she was pushed to the second room and locked from outside. (Para 12)	Dinesh and Jeetu tied legs of deceased with wire. (Para 16). When she shouted, she was pushed to the second room and locked from outside. (Para 17)
--	--	--	--	---

12. Thus, as per two affidavits, she was asked by Dinesh to go to another room while as per the other affidavits, she was pushed to the second room by Dinesh. Furthermore, in her amended affidavit filed with 3rd application, the affidavit filed alongwith 4th application, her assertion was that Khalid asked her to get her chunni with which he strangled the deceased and Dinesh and Jeetu had tied the legs of deceased with wire prior to the point of time when she was pushed to the other room while no such assertions was made by her in any other previous affidavits. Pertinently, in the initial affidavits, the applicant / accused did not make any allegations against accused Dinesh.

13. There are also contradictions in the various affidavits as to the actual commission of offence and whether the applicant had seen the actual commission of offence. The various contradictions in this regard are tabulated here under:

Affidavit dt. 14.12.23 filed alongwith 2 nd application	Amended affidavit dt. 06.06.24 filed alongwith 2 nd application	Affidavit dt. 22.08.24 filed alongwith 3 rd application	Amended Affidavit dt. 13.09.24 filed alongwith 3 rd application	Affidavit dt. 08.11.24 filed alongwith 4 th application
--	--	--	--	--



While locked in the room, she saw Jeetu coming with a white sack. He took out wire from the sack and tied it over the neck of deceased. (Para 12) When she was in locked room and was shouting, the accused persons did everything in front of her daughter. Khalid repeatedly placed knife on her daughter's neck and made gestures as if he was cutting her neck. (Para 13)	While locked in the room, she saw Jeetu coming with a white sack. He took out wire from the sack and tied it over the neck of deceased. (Para 12) When she was in locked room and was shouting, the accused persons did everything in front of her daughter. Khalid repeatedly placed knife on her daughter's neck and made gestures as if he was cutting her neck. (Para 13) On seeing this, she fainted and she when got up, Khalid and Jeetu were not in the room but Dinesh was sitting in the room with her daughter. (Para 14) At about 4.00 am, when	While locked in the room, she saw Jeetu coming with a white sack. He took out wire from the sack and tied it over the neck of deceased. (Para 12) When she was in locked room and was shouting, the accused persons did everything in front of her daughter. Khalid repeatedly placed knife on her daughter's neck and made gestures as if he was cutting her neck. (Para 13) On seeing this, she fainted and she when got up, Khalid and Jeetu were not in the room but Dinesh was sitting in the room with her daughter. (Para 14) At about 4.00 am on 07.06.2012, when Khalid	While locked in the room, she saw Jeetu coming with a white sack. He took out wire from the sack and tied it over the neck of deceased. (Para 12) Mohd. Khalid had cut both hands of deceased from elbow with knife and Dinesh assisted him. Then Mohd. Khalid had cut both legs of deceased with assistance of Dinesh. Jeetu put cello tape on points of body to stop blood flow. Then Mohd. Khalid and Dinesh cut the neck of deceased. They tried to cut the main part of the body but could not do so as intestine came out. (Para 14) When she was in locked room	When deceased back semi conscious after drinking beer and lay down on wooden platform, Mohd. Khalid asked her to get the chunni and strangled the deceased. Dinesh and Jeetu had tied legs of deceased with wire. (Para 16) Mohd. Khalid had cut both hands of deceased from elbow with knife and Dinesh assisted him. Then Mohd. Khalid had cut both legs of deceased with assistance of Dinesh. Jeetu put cello tape
---	---	--	--	--



On seeing this, she fainted and she when got up, Khalid and Jeetu were not in the room but Dinesh was sitting in the room with her daughter. (Para 14) At about 4.00 am, when Khalid and Jeetu came back, they had some polythene bag with them. Khalid, Dinesh and Jeetu locked her and her daughter in a room. (Para 15) When in the morning at around 9.00 am, the other accused opened	Khalid and Jeetu came back, they had some polythene bag with them. Khalid, Dinesh and Jeetu locked her and her daughter in a room. (Para 15) When in the morning at around 9.30 am, the other accused opened the door, she saw Rohilla sir was cut into six parts and his head was covered with tape. She saw Khalid cutting part of thigh in which there was a rod. (Para 16)	and Jeetu came back, they had some polythene bag with them. Khalid, Dinesh and Jeetu locked her and her daughter in a room. (Para 15) When in the morning at around 9.30 am, the other accused opened the door, she saw Rohilla sir was cut into six parts and his head was covered with tape. She saw Khalid cutting part of thigh in which there was a rod. (Para 16)	and was shouting, the accused persons did everything in front of her daughter. Khalid repeatedly placed knife on her daughter's neck and made gestures as if he was cutting her neck. (Para 13)	on points of body to stop blood flow. Then Mohd. Khalid and Dinesh cut the neck of deceased. They tried to cut the main part of the body but could not do so as intestine came out. (Para 14) When she was in locked room and was shouting, the accused persons did everything in front of her daughter. Khalid repeatedly placed knife on her daughter's neck and made gestures as if he was cutting her neck. (Para 18)
--	--	---	---	---



the door, she saw Rohilla sir was cut into six parts and his head was covered with tape. She saw Khalid cutting part of thigh in which there was a rod. (Para 16)				
---	--	--	--	--

14. As per assertions in the affidavit and amended affidavit filed by her alongwith the second application and her affidavit filed alongwith the 3rd application, she had fainted and did not witness the incident, while in her remaining affidavits, she has given details of the incident. Similarly, as per the affidavits filed by her alongwith the 2nd application and initial affidavit filed alongwith the 3rd application, the applicant had asserted that she only saw accused Khalid cutting knee of the deceased while as per her assertions in remaining affidavits she gave details of how the dead body was cut by the other accused persons. Thus, the applicant / accused has changed her stance even as to the aspect if she witnessed the entire incident.

15. Furthermore, the applicant was inconsistent and has taken contradictory stands regarding the disposal of the body parts in her various affidavits which are tabulated here under:

Affidavit dt. 14.12.23	Amended affidavit dt. 06.06.24 filed	Affidavit dt. 22.08.24 filed alongwith 3 rd	Amended Affidavit dt. 13.09.24 filed	Affidavit dt. 08.11.24 filed
------------------------	--------------------------------------	--	--------------------------------------	------------------------------



filed alongwith 2 nd application	alongwith 2 nd application	application	alongwith 3 rd application	alongwith 4 th application
When body odor started coming out, Jeetu said that they would be caught and Khalid wrapped all these pieces. After wrapping those pieces, he put them in the loader and threatened the applicant to come with him and forcibly took her and her daughter in the same loader. (Para 17)	When body odor started coming out, Jeetu said that they would be caught and Khalid wrapped all these pieces. After wrapping those pieces, he put them in the loader and threatened the applicant to come with him and forcibly took her and her daughter in the same loader. (Para 17)	When body odor started coming out, Jeetu said that they would be caught and Khalid wrapped all these pieces. After wrapping those pieces, he put them in the loader and threatened the applicant to come with him and forcibly took her and her daughter in the same loader. (Para 17)	When body odor started coming out, Jeetu said that they would be caught and Khalid wrapped all these pieces. After wrapping those pieces, he put them in the loader and threatened the applicant to come with him and forcibly took her and her daughter in the same loader. (Para 14)	After wrapping all the body pieces of deceased, Dinesh and Jeetu left the place of incident. Khalid locked all the rooms of premises i.e. B- 12, Phase-I, Shyam Vihar, New Delhi and thereafter took the applicant and her daughter with him in the loader. (Para 21 & 22)

16. Thus in other affidavits except the affidavit filed with the present application, contention of applicant / accused was that the pieces of dead body were put in a loader by the co-accused Mohd. Khalid which is contrary to the record as per which, the pieces of



dead body were recovered from H.No.B-12, Shyam Vihar, Najafgarh, New Delhi. The applicant / accused changed her stand in this regard and asserted in the affidavit filed with the present application that the parts of dead body were left in the house where offence was committed.

17. Thus, the applicant for reason best known to her has given contradictory versions of the incident in the various affidavits filed by her on record. The contradictions are not minor contradictions but go to the very root of the prosecution version. It is well settled that the evidence of an accomplice is a weak type of evidence. Considering that the applicant had changed her version at every possible stage for reason best known to her, granting pardon to her under Section 306/307 Cr.P.C would not be of any help to the State rather the same might prejudice fair trial of the case.

18. It is argued on behalf of applicant / accused that the previous affidavits filed by her cannot be relied upon in terms of Section 296 Cr.P.C. Section 296 Cr.P.C. is re-produced here under :

“296. Evidence of formal character on affidavit (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this code. (2) The court may, if it thinks fit, and shall, on the application of the prosecution of the accused, summon and examine any such person as to the facts contained in his affidavit”.

19. Thus, Section 296 Cr.P.C permits evidence of formal character on affidavits and is no help to the applicant / accused in the facts of the present case. The affidavits in the present case filed by the applicant / accused to show her bonafides, to show that she was ready to make full and complete disclosure of all facts within her knowledge as well as to show to the State the material about which she would depose in case she was granted pardon. The said affidavits cannot be brushed aside and rather the other accused persons would have every right to challenge veracity of testimony of the applicant / accused, in case she is granted tender of pardon by using the said affidavits. This arguments of the applicant / accused is liable to be rejected.



20. Perusal of the affidavit filed by applicant / accused Radha alongwith present application shows that the same is completely self exculpatory. The sum and substance of the affidavit is that the applicant / accused Radha was acting under fear/coercion of co-accused Mohd. Khalid. As per the applicant / accused her only role was that she had called the deceased Sanjay Rohilla from 3rd to 6th June 2012 and he said that he would meet her in the evening of 06.06.2012.

21. Furthermore, as per the prosecution version, one banner “Rising Sun Coaching Centre” mentioning mobile numbers 9873105330 and 9999366948 was found to have been put up outside the house where the offence was committed. As per prosecution version, the deceased Sanjay Rohilla was called to the said house on pretext that accused Radha was running the said dance academy and would not work with him. As per the prosecution version, the mobile phone number 9873105330 was issued in the name of one Jai Bhagwan which was lost and was being used by accused Radha. The affidavit is completely silent as to the said aspect.

22. Thus the affidavit is rather totally self serving and exculpatory. The application lacks bonafides and is rather damaging to the prosecution version. Apparently the applicant / accused has not made and is not ready to make full and true disclosure of the whole circumstances of the case including the facts and circumstances especially within her knowledge. The applicant / accused has taken contradictory stands in various affidavits filed by her alongwith her applications for tender of pardon which damage her veracity.”

11. Power to grant pardon in a given set of facts and circumstances of the case will depend on the subjective satisfaction of the Court concerned. Exercise of such power shall be governed by the judicial conscience of the concerned Court. In the present case, the learned Trial Court has discussed the various affidavits filed by the petitioner in support of her application to



become an approver and after examining the same, the learned Trial Court came to the conclusion that the affidavits on behalf of the petitioner were self-serving and exculpatory. As pointed out hereinabove, 44 PWs out of 45 have already been examined by the prosecution and all the relevant material was before the learned Trial Court at the time of examining the affidavit(s) of the petitioner. The contention of the learned counsel appearing on behalf of the petitioner is that various affidavits cannot be relied upon and could not have been thus compared by the learned Trial Court, is not tenable. It is the duty of the learned Trial Court to assess all the material on record before arriving at a subjective satisfaction whether the case for grant of pardon to a person is made out or not. No doubt that the provision of Section 308 of CrPC provides for procedure in case the person granted pardon does not give a statement making full and true disclosure of the circumstances within his/her knowledge, however, at the first instance the concerned Court has to satisfy its judicial conscious with regard to the testimony of the aforesaid person who wishes to become an approver. In the considered opinion of the said Court, if a testimony of a proposed approver instead of assisting the prosecution's case has the propensity to create doubt or damage the prosecution's case, then such a person cannot be permitted to become an approver.

12. Grant of pardon has to be determined by the learned Trial Court, after examining the facts of the case alongwith the evidence on record, which would help the prosecution's case and not damage it. The prosecution in the present case had opposed the petitioner's application seeking for becoming an approver. The Hon'ble Supreme Court in **Lt. Commander Pascal Fernandes**



v. State of Maharashtra & Ors⁴, while examining the scope of provision of Section 337 of the CrPC, 1898 (which is corresponding to Section 306 of the CrPC, 1973) underlined the importance of say of the prosecution to examine the accused as an approver, and observed as under: -

“14. The next question is whether the Special Judge acted with due propriety in his jurisdiction. Here the interests of the accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice if it is prejudicial to an accused. There are also matters of public policy to consider. Before the Special Judge acts to tender pardon, he must, of course, know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused. What is meant by public policy is illustrated, by a case from Dublin Commission Court (*Reg v. Robert Dunne*, 5 Cox Cr. cases 507) in which Torrens, J., on behalf of himself and Perrin, J., observed as follows:

“From what I can see of this case, this witness Bryan, who has been admitted as an approver by the Crown is much the more criminal of the two on his own showing... I regret that this witness, Bryan, has been admitted as evidence for the Crown and thus escaped being placed upon his trial. It is the duty of Magistrates to be very cautious as to whom they admit to give evidence as approvers, and they should carefully inquire to what extent the approver is mixed up with the transaction, and if he be an accomplice, into the extent of his guilt....”

15.To determine whether the accused's testimony as an approver is likely to advance the interest of justice, the Special Judge must have material before him to show what the nature of that testimony will be. 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

⁴ 1967 SCC OnLine SC 37



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.....”

(emphasis supplied)

In all the three judgments relied upon by learned counsel for the petitioner, namely **Narayan Chetanram Chaudhary (*supra*)**, **Rahul Yadav (*supra*)** and **Jayalakshmi Jaitly (*supra*)**, the prosecution had supported the plea of granting pardon in the aforesaid cases.

13. The learned Trial Court while appreciating the affidavit alongwith the material on record was of the opinion that the testimony of the petitioner as an approver would actually result in causing prejudice to the prosecution’s case. The petitioner is making a statement which is contrary to the prosecution’s case. For instance, in her affidavit she states that pieces of the dead body were put in the loader by the co-accused, Mohd. Khalid, however, it is the case of the prosecution that the said pieces were recovered from House No. B-12, Shyam Vihar, Najafgarh, New Delhi.

14. Similarly, various other instances have been highlighted by the learned ASJ to come to conclusion that examining the petitioner will not advance the



interest of justice. The petitioner's stand in various affidavits regarding sequence of events are contradictory. Similarly, the contradictions in various affidavits with regard to the actual commission of offence and whether the petitioner had seen it is also contradictory. In these circumstances, examination of such a person as a witness for prosecution is fraught with possibility of causing damage to the prosecution's case. It is a settled law that testimony of an approver, as a rule of prudence, should be corroborated with some other material on record. If the nature of the deposition sought to be brought on record is untrustworthy, the same cannot be permitted. Such a witness can introduce facts favourable to the accused persons also. No doubt such a witness can be retried or punished for perjury but the damage to the prosecution's case is done.

15. It was the contention of the learned counsel appearing on behalf of the petitioner that the previous affidavits filed should not have been taken into account and compared with the affidavit filed alongwith the 4th application on the ground that the said affidavits were not evidence under the meaning of Section 3 of the Indian Evidence Act. The learned Trial Court has rightly pointed out that the affidavits filed on behalf of the petitioner are part of the record and, therefore, any contradiction or anything which is in variance to the prosecution's case shall render the testimony of such a witness weak and therefore, cause prejudice to the prosecution's case.

16. In the totality of the facts and circumstances of the case, the impugned order dated 10.02.2025 does not warrant any interference.



2025:DHC:2619



17. Accordingly, the petition is dismissed and disposed of accordingly.
18. Pending application(s), if any, are also disposed of.
19. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present petition.
20. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.
21. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

APRIL 16, 2025/bsr/nk