

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THURSDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

:PRESENT:

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA**

CRIMINAL PETITION NO: 11098 OF 2023

Between:

Mohd Kaleem @ Mohd Abdul Kaleem @ Arshad Khan, s/o Late Mohd Abdul
Kareenn

Petitioner/Accused No.7

AND

The National Investigation Agency, By Deputy Superintendent of Police.
Hyderabad

Respondent/Complainant

Petition under Section 482 of Cr.P.C, praying that in the circumstances stated in the grounds filed in support of the Criminal Petition, the High Court may be pleased to enlarge the petitioner/Accused No 7 in SC 03 of 2023 (Rc01/2-23/NIA/HYD) on the file of IVth Addl Metropolitan Session Judge Cum Spl Court for the NIA cases, Hyderabad;

The petition coming on for hearing, upon perusing the Petition and the grounds filed in support thereof and upon hearing the arguments of Sri T. SHARATH, Advocate for the Petitioner and Sri P.VISHNU VARDHAN REDDY(Special Public Prosecutor for the NIA) for the Respondent, the Court made the following Order:

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
CRIMINAL PETITION No. 11098 OF 2023**

Between:

Mohd.Kaleem @ Mohd. Abdul Kaleem
@ Arshad Khan

.. Petitioner

And

The National Investigation Agency.
Represented by Deputy Superintendent of Police,
Hyderabad.

.....Respondents

DATE OF INTERIM ORDERS PASSED: **23.11.2023**

SUBMITTED FOR APPROVAL.

THE HON'BLE SRI JUSTICE K.LAKSHMAN

- 1 Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No
- 2 Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
- 3 Whether His Lordship wish to see the
fair copy of the Judgment? Yes/No

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

* HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE K. SUJANA

+ CRIMINAL PETITION No.11098 OF 2023

(Interim Orders)

% Passed on:23-11-2023(Hon'ble Sri Justice K.Lakshman)

Between:

Mohd. Kaleem @ Mohd. Abdul Kaleem @ Arshad Khan .. Petitioner

Vs.

\$ The National Investigation Agency, rep.by
Deputy Superintendent of Police, Hyderabad. .. Respondent

! For Petitioner : Mr. T. Sharath

^ For Respondent : Mr. P. Vishnu Vardhan Reddy,
Learned Spl.P.P. for NIA.

< Gist :

> Head Note :

? Cases Referred :

1. 2022 Law Suit (Jhar) 294
2. SLP (Crl) Nos.7375 and 9788 of 2012
3. 2014 (1) SCC 258
4. AIR 1998 SC 598
5. AIR 1952 Mad 833
6. 1984 SCC Online Delhi 311
7. 1994 AIR 2420= 1995 Supp 1 SCC 80
8. (2021) 2 SCC 427
9. 1980 AIR 1579
10. (1990) 1 SCC 1981
11. 2011 Cr.L.J. 1529
12. CRM (M) No.554 of 2022 order dated 11.04.2023.
13. Crl.Misc. Petition No.846 of 2020, decided on 15.07.2020
14. 1986 SCC OnLine Raj.11

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION No.11098 of 2023

INTERIM ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Heard Sri T. Sharath, learned counsel for the petitioner and Sri P.Vishnu Vardhan Reddy, learned Special Public Prosecutor for NIA.

2. The Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.')

 by the petitioner herein to release him on bail.

3. The petitioner herein is A.7 in S.C.No.3 of 2023, arising out of Rc.01/2-3/NIA/HYD, on the file of IV Additional Metropolitan Sessions Judge-cum-Special Court for the NIA Cases, Nampally, Hyderabad. He was arrested on 16.02.2023. The offences alleged against him are punishable under sections 18, 18-B and 20 of Unlawful Activities (Prevention) Act, 1967 (for short 'the UA Act') and Section 4,5 and 6 of the Explosives Substances Act (ES Act). Thereafter, he was turned as Approver. He has filed a petition vide Crl.M.P.No.734 of 2023 showing his willingness to become an Approver for NIA and sought to tender pardon. The trial Court allowed the said petition vide order dated

30.06.2023, considered the petition for tendering pardon and made the petitioner/A.7 as Approver. He made his statement voluntarily before the learned Magistrate on 08.05.2023. He undertook to follow the conditions of Section 306 IPC stating that he will be available as a witness to depose the same during the trial in the said case. Thereafter, he has filed an application vide Crl.M.P.No.903 of 2023 under Section 439 read with Section 306 of Cr.P.C. before the trial Court seeking to grant bail. Vide order dated 03.08.2023, the designated Court dismissed the said application on the ground that the petitioner herein/Approver who is in custody, cannot be granted bail by the trial Court and Section 437 and 439 of Cr.P.C. are not attracted in the case of Approver and the remedy open to the petitioner/A.7 is under Section 482 of Cr.P.C.

4. Thereafter, the petitioner herein had filed a petition under Section 482 of Cr.P.C. Registry of this Court took an objection with regard to maintainability of the said application filed under Section 482 of Cr.P.C., he has to file an appeal under Section 21 of the National Investigation Agency Act, 2008 (for short, 'the NIA Act'). Learned counsel for the petitioner re-presented the said petition stating that the petitioner herein is an Approver, he cannot file an application under

Section 439 of Cr.P.C. but he has to file petition under Section 482 of Cr.P.C. and this Court is having power to grant bail to him on considering the entire material on record. The learned counsel for the petitioner also relied upon the principle laid down by the Jharkhand High Court in **Sudhanshu Ranjan @ Chhotu Singh Vs. Union of India**¹. Learned Single Judge, relying on the principle laid down by the Apex Court in **State of Andhra Pradesh vs. Md.Hussain @ Saleem**² and in **Sadhwi Pragya Singh Thakur vs. National Investigation Agency**³ vide order dated 08.11.2023 held that the bail application filed by the accused before the High Court should be heard by a Division Bench in accordance with Section 21 of the NIA Act. Thus, learned Single Judge directed the Registry to number the petition and place before Division Bench. In compliance of the said order, Registry numbered the said petition and listed before this Court.

5. Sri T.Sharath, learned counsel for the petitioner would contend as follows:-

¹. 2022 Law Sajt (Jhar) 294
². SLP (Crl) Nos.7375 and 9788 of 2012
³. 2014 (1) SCC 258

- i. The petitioner is A.7 in the aforesaid crime. Originally the case is registered as First Information Report No.204 of 2022 by the Police, CCS, Hyderabad.
- ii. During the course of investigation, he was arrested on 16.02.2023. Thereafter, investigation was entrusted to National Investigating Agency (NIA), who in turn re-registered the case as crime Rc.01/2-23/NIA/HYD.
- iii. The offences alleged against the petitioner herein are punishable under Sections 18, 18(B) and 20 of the UA Act, and Sections 4, 5 and 6 of the Explosives Substances Act (ES Act).
- iv. On completion of investigation, the Investigating officer had laid charge sheet against the A.1 to A.3 before the concerned Court on 29.03.2022 and the said Court taken cognizance vide Special S.C.No.3/2023 and charges against the accused are yet to be framed. Further investigation can be done against the remaining accused including the petitioner herein.
- v. He turned as approver.

- vi. Vide order dated 30.06.2023 in Crl.M.P.No.734 of 2023, pardon was granted to him and he turned as Approver. His statement was recorded on 08.05.2023.
- vii. The investigation was entrusted to NIA who in turn registered a case in Rc.01/2-23/NIA/HYD. Once he turned as Approver and pardon was granted, he loses the status of an accused. Therefore, Section 437 and 439 of Cr.P.C. is not applicable and he cannot file an application seeking bail under the said provision.
- viii. Therefore, on consideration of the said facts, the trial Court vide order dated 03.08.2023 dismissed the bail application filed by him. Therefore, a petition filed under Section 482 of Cr.P.C. seeking bail to the petitioner/A.7/approver is maintainable.
- ix. The High Court is having power to grant bail to the accused by recording the reasons on consideration of the material. The bail application has to be heard and decided by the learned Single Judge, but not by a Division Bench as it is not an appeal filed in terms of Section 21 of the NIA Act.
- x. He has also placed reliance on the principle laid down by Jharkhand High Court in **Sudhanshu Ranjan** (supra). According

to him, **Md. Hussain** (supra) and **Sadhwi Pragya Singh** (supra), Apex Court did not consider the status of the Approver. The petitioners therein are accused, and they were not Approvers. No pardon was granted to them. If the accused bail is rejected by the trial Court, he has to file an appeal under Section 21(4) of the NIA Act. Here, the present petitioner is an Approver and therefore, the order dated 03.08.2023 passed by the trial Court, is not appealable order in terms of the Section 21(4) of NIA Act. The petitioner has to file an application under Section 482 of Cr.P.C. He has filed.

- xi. Without considering the said facts, learned Single Judge vide order dated 08.11.2023 directed the Registry to number the petition and place before a Division Bench.
- xii. The order dated 08.11.2023 is contrary to law and also principle laid down by the Jharkhand High Court in **Sudhanshu Ranjan** (supra).
- xiii. With the said submissions, he sought to list the matter before the Single Judge to consider bail application of the petitioner under Section 482 of Cr.P.C.

6. Whereas, Sri P.Vishnu Vardhan Reddy, learned Special Public Prosecutor for NIA, referring the **Md.Hussain @ Saleem** (supra) and also 21(4) of NIA Act, would contend that the petitioner herein has to file a bail application under Section 21 of the NIA Act, instead he has filed a petition under Section 482 of Cr.P.C. and considering the same, learned Single Judge, vide order dated 08.11.2023, rightly directed the Registry to number the petition and list before Division Bench in terms of Section 21 of the NIA Act.

CONSIDERATION AND FINDINGS OF THE COURT:

7. In the light of the foresaid discussion, it is not in dispute that the petitioner/A.7 was arrested on 16.02.2023. He turned as an approver. His statement was recorded by the learned XII Additional Chief Metropolitan Magistrate under Section 164 (1) of Cr.P.C. He has filed an application vide Crl.M.P.No.734 of 2023 showing his willingness to become an Approver for NIA and sought to tender pardon to him. Vide order dated 30.06.2023, the trial Court allowed the said application and granted pardon to him. Thus, the petitioner/accused became Approver.

8. He has filed an application under Section 439 read with 306 of Cr.P.C. vide Crl.M.P.No.903 of 2023 in Rc.01/2-23/NIA/HYD seeking

bail. Vide order dated 03.08.2023, the trial court dismissed the said application holding that the said application filed under Section 437 and 439 of Cr.P.C. seeking bail is not maintainable and he has to file an application under Section 482 of Cr.P.C. seeking bail.

9. As discussed supra, there is no dispute that the petitioner/A.7 turned as an approver and vide order dated 30.06.2023, the trial Court granted pardon to him. There is no challenge to the said order and it attained finality.

10. In the light of the same, it is relevant to refer the status of an 'approver'. Section 306 of Cr.P.C. deals with the tender of pardon to Accomplice and Section 307 of Cr.P.C. deals power to direct tender of pardon and Section 308 deals with trial of person not complying with conditions of pardon. The said provisions are relevant and the same are extracted below:-

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.

307. Power to direct tender of pardon.

At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the

trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

308. Trial of person not complying with conditions of pardon.

(1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence: Provided that such person shall not be tried jointly with any of the other accused: Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall-

(a) if it is a Court of Session, before the charge is read out explain to the accused;

(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

11. Once the accused declared as an Approver and granted pardon, loses the status of an accused.

12. The said issue is no more *res integra*. The Hon'ble Apex Court in **Delhi Administration Vs. Jagadeesh**⁴ categorically held that once the accused is granted pardon under the Code of Cr.P.C., he ceases the status of accused and becomes witness to the prosecution. So long as the learned Public Prosecutor does not certify that he has failed to comply with the conditions of grant of pardon, he continues to be a witness.

13. In **Karuppa Servai vs. Kundaru @ Muniandi Thevan**⁵ Madras High Court observed that Section 306(4)(b) of Cr.P.C. is based on very salutary principles of public policy and public interest. The Approver has to be kept in safe custody till the conclusion of the trial like a sealed will in a will forgery case and then disposed of according to merits. He is not to be allowed to be let off on bail.

14. In **Premchand vs. State**⁶, Full Bench of Delhi High Court, referring to Section 306 (4)(b) of Cr.P.C, held that the accused loses his character as such when pardon is granted to him, is, of course, an accomplice. However, the character of accused can be again attributed to him. If his case falls under Section 302 of Cr.P.C. i.e. when the Public Prosecutor certifies that he is willfully concealing anything essential or

⁴. AIR 1998 SC 598

⁵. AIR 1952 Mad 833

⁶. 1984 SCC Online Delhi 311

by giving false evidence or not complied with the conditions on which the tender was made. As well as the accused complies with the conditions imposed by the Court while granting pardon, he loses the Character of accused and he will be treated as an Approver. Once Public Prosecutor certifies under Section 308 of Cr.P.C. that accused by willfully concealing anything essential or by giving false evidence has not complied with the conditions imposed while granting pardon. If he succeeds, he will be treated as an Approver. If, however, the Court is satisfied with the certification issued by the Public Prosecutor in spite of submissions of the Approver, then his trial starts and he acquires character of the accused.

15. Paragraph Nos.6 to 10 and 15 and 20 are relevant which are extracted below:-

6. Section 306 of the Cr. P.C. makes provision for tender of pardon to an accomplice. It is 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 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 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. Sub-section (4) of this Section next reads as under:

- (4) Every person accepting a tender of pardon made under Sub-section (I) -
- (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.

7. Under Section 308, in case the Public Prosecutor certifies that in his opinion the person who has accepted a tender of pardon has, either by willfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence. Such person, however, has not to be tried" jointly with any of the other accused. Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under Section 164, or by a court under Sub-section (4) of Section 306 can be given in evidence against him at such trial. At the same time, the accused person is left entitled to plead at such trial that he has complied with the condition upon which such tender was made, in which case, it is for the prosecution to prove that the condition has not been complied with. If the Court then finds that he, in fact, complied with the terms of grant of pardon, it shall, notwithstanding anything contained in the Code, pass judgment of acquittal.

8. It is the provisions of Section 306(4)(b) providing 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 which have come up for interpretation. Its constitutional validity has also been challenged.

9. So far as the language used in Section 306(4)(b), it is quite explicit that the person accepting tender of pardon unless already on bail, has to be detained in custody till the end of the trial. The word used is "shall", and there is almost a unanimity of opinion of different High Courts that 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 protect him from the wrath of the confederates he has chosen to expose, and secondly to prevent him from the temptation of saving his erstwhile friends and companions, who may be inclined to assert their influences, by resiling from the terms of grant of pardon. In fact, the Madras High Court in the case *Karuppa Servai v. Kundaru*, has observed that this provision is based on very salutary principles of public policy and public interest. The Approver's position was considered to be like a sealed will in a will forgery case, and he should not be allowed to let off on bail. The Rajasthan High Court has in *Ayodhya Singh v. State* 1973 Cri LJ 768 and *Lallu v. State* 1979 Raj LW 465 taken the view that the provisions in this regard are mandatory, and that Court cannot go behind the wisdom of the legislature* as expressly laid down under Section 306, Cr. P.C. In the former case the * circumstance that the disposal of the case was likely to take a long period of time as" the prosecution had cited 174 witnesses, was not considered as valid ground for bail when the law prohibits any such release till the termination of the trial. In *Mukesh Ramchandra Reddy*, 1958 Cri LJ 343, the Andhra Pradesh High Court has as well interpreted the word "shall" in the said provisions as primarily obligatory and casting a duty on the Court to detain an accused to whom pardon has been tendered, in custody until the termination of the trial. The Punjab High Court in *A. L. Mehra v. State*, declined to draw an analogy from the power available with the Court to grant bail to accused at any stage of the trial, and it was observed that it was not within the competency of the Court to admit an Approver to bail when the law declares in unambiguous language that the

Approver shall not be released until the decision of the case. These special provisions were treated to override the general provisions entitling the Court to grant bail.

10. There is, therefore, little doubt that so far as the plain reading of Section 306(4)(b), Cr. P.C., the same leaves no manner of doubt 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 the grant of pardon. This has been almost the uniform view of judicial decisions, and the use of the word "shall" has been interpreted to leave no flexibility in this regard. The general power of grant of bail available to the Courts under the Code is thus circumscribed by the special provisions. In fact, an accused loses his character as such when pardon is granted to him. He is, of course, an accomplice. However, the character of accused can be again attributed to him if his case falls under Section 308, Cr. P. C. That is when the Public Prosecutor certifies that he has by willfully concealing anything essential, or by giving false evidence has not complied with the condition on which the tender was made. Rather even at this stage he is entitled to show that he has, in fact, complied with the condition upon which such tender was made. If he succeeds in doing so, that is the end of the matter. If, however, the Court is satisfied with the certification by the Public Prosecutor in spite of the submission by the Approver, then his trial starts and he acquires the character of accused. It is as such that in Sub-section (4) of Section 308 the word used qua him for the first time is "accused".

15. In both the Session cases, the petitioner has not been imp leded as an accused. As already noted above, the scheme of different provisions of law, as referred to above, is that an Approver does not acquire the character of an accused till after the trial, and that too when the Public Prosecutor certifies that he has by willfully concealing 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 submissions 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 not 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, and 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 discernible 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 resemblance of the contention that there would be likelihood of his moving later under Section 308, Cr. 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.

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 unreasonable end 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 Cr. P. C. may be open to serious challenge.

16. In **Suresh Chandra Bahri Vs. State of Bihar**⁷, the Apex Court had an occasion to deal with as to whether pardon granted to an Approver is to be declared as invalidated when High Court grants bail to him. On examination of the facts of the case, the Apex Court held that even though the Approver was not granted any bail by the committal Magistrate or by the trial Court yet his release by the High Court would not in any way effect the validity of the pardon granted to the Approver by the High Court. Thus, the Apex Court did not find fault with the High Court granting bail to the approver under Section 482 of Cr.P.C. Therefore, once pardon is granted to the accused, he will be treated as a witness but not as an accused. Therefore, Section 439 of Cr.P.C. do not

⁷. 1994 AIR 2420= 1995 Supp I SCC 80

apply in a case of Approver seeking bail. There is no specific provision in the entire Cr.P.C. which gives a right to the approver to apply for bail. But he cannot be left remediless. As held by the apex Court in **Suresh Chandra Bahri** (supra), the 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 indigestion, rage and resentment of his associates in a crime. The protection and right guaranteed to him under Article 21 of the Constitution of India would violate, if bail is not granted to him till trial terminates. In the said circumstances, the only option left to him is filing of an application under Section 482 of Cr.P.C.

17. Section 482 of Cr.P.C. deals with inherent powers of High Court and it says nothing in the Code shall be deemed to be limited or effect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. Thus, High Court can grant relief to an accused under three circumstances:-

- i. Where the jurisdiction is invoked to give effect to an order of the Court,
- ii. If there is an abuse of process of the Court,
- iii. In order to secure the ends of justice.

Therefore, the High Court is having power to grant bail to the petitioner herein under certain exceptional circumstances in exercise of its power under Section 482 of Cr.P.C. The said principle was also laid down by the Apex Court in **Arnab Manoranjan Goswami vs The State Of Maharashtra**⁸

18. In view of the law laid down by the Apex Court in **Sunil Batra vs. Delhi Administration**⁹ and in **Hussainara Khaton vs. Home Secretary, State of Bihar**¹⁰, the detention of a person even by due process of law is to be reasonable, fair and just, if it is not solely amounts to violation of Article 21 of the Constitution of India.

19. In **Shammi Firoz Vs. National Investigation Agency**¹¹, the Apex Court held that Section 437 and 439 of Cr.P.C. cannot be pressed into service by an Approver for his enlargement on bail. In such a

⁸. (2021) 2 SCC 427

⁹. 1980 AIR 1579

¹⁰. (1990) 1 SCC 1981

¹¹. 2011 Cr.L.J. 1529

contingency, notwithstanding the bar under Section 306(4)(b) Cr.P.C. and only remedy is under Section 482 of Cr.P.C.

20. In the light of the aforesaid legal position, as discussed supra, the petitioner herein has been made Approver under Section 306 of Cr.P.C. and therefore, Section 437 and 439 of Cr.P.C. cannot be pressed into the case of an approver. Therefore, the only remedy available to him is filing of an application under Section 482 of Cr.P.C.

21. It is relevant to note that the learned Single Judge of Jharkhand High court in **Sudhanshu Ranjan** (supra), Jammu and Kashmir High Court in **Tariq Ahmed Dar Vs. National Investigation Agency**¹², Chhattisgarh High Court in **Rajkumar Sahu v. State of Chattisgarh**¹³, Rajasthan High Court in **Noor Taki alias Mammu v. State of Rajasthan**¹⁴ considered the aforesaid provisions of Cr.P.C. and law laid down by different High Courts and the Apex Court extensively and held that the only remedy available to an Approver seeking bail is filing an application under Section 482 of Cr.P.C. We respectfully agree with the said view taken by Jharkhand and Jammu and Kashmir High Courts.

¹². CRM (M) No.554 of 2022 order dated 11.04.2023.

¹³. Crl.Misc.Petition No.846 of 2020, decided on 15.07.2020

¹⁴. 1986 SCC OnLine Raj.11

22. It is relevant to note that Section 21 of the NIA Act, deals with the appeal and the same is extracted below:-

21 Appeals. –

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from: Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days: Provided further that no appeal shall be entertained after the expiry of period of ninety days.

23. As per Section 21(4) of the Act, an appeal shall lie to the High Court against an order of Special Court granting or refusing bail. The said appeal has to be heard by a Bench of two Judges of the High Court.

24. As discussed supra, at the cost of repetition, the petitioner herein was turned as an Approver, granted pardon, and therefore, he loses the character of accused, he will be treated as a witness unless and until Court declares him as an accused in terms of Section 308 of Cr.P.C. on

the certification of the Public Prosecutor. In the present case, the pardon order dated 30.06.2023 attained finality. There is no certification by the Public Prosecutor and there is no order by the Court below under Section 308 of Cr.P.C. therefore, he is not an accused.

25. Considering the said aspects only, the bail application filed by the petitioner under Section 439 read with 306 of Cr.P.C., vide order dated 03.08.2023 in Crl.M.P.No.903 of 2023 in RC.01/2-3/NIA/HYD, the trial Court dismissed. The application vide Crl.M.P.No.1322 of 2023 filed by the petitioner under Section 167(2) of Cr.P.C. seeking mandatory bail was also dismissed on the ground that the approver cannot press Section 439 of Cr.P.C. and only remedy available to him is filing an application under Section 482 of Cr.P.C. Therefore, it is not an order under appeal in terms of Section 21 of the NIA Act. There is no refusal or granting of bail by the Special Court. Special Court dismissed the aforesaid two applications vide orders dated 03.08.2023 and 26.10.2023 on the ground that the petitioner being Approver cannot press Section 439 of Cr.P.C. seeking bail.

26. It is relevant to note that in **Md.Hussain @ Saleem** (supra), the Apex Court did not consider the said aspects, more particularly, the

remedy available to an Approver under Section 482 of Cr.P.C. In the said cases, the issue fell for consideration was whether a bail application filed by an accused has to be heard by a Division Bench consisting of two judges of High Court in terms under Section 21 of the NIA Act. There is no consideration of position of an Approver under Section 306 (4)(b) of Cr.P.C. even in **Sadhwi Pragya Singh Thakur** (supra). There is also no consideration of the said aspects by the Apex Court. There is no consideration of the said aspects by the learned Single Judge in the order dated 08.11.2023. Therefore, learned Single Judge, erroneously directed the Registry to number the petition and place before the Division Bench. Learned Single Judge failed to see that the petition filed by the petitioner is under Section 482 of Cr.P.C. seeking bail. It is not an appeal filed under Section 21 of the NIA Act. Therefore, learned Single Judge erred in directing the Registry to number the application filed under Section 482 of Cr.P.C. seeking bail and list before a Division Bench.

27. In the light of the aforesaid discussion, we are of the considered view that the petitioner/A.7 has to file an application under Section 482 of Cr.P.C. seeking bail and the same is maintainable. In exceptional

cases, High Court can grant bail to an approver in exercise of its inherent powers under Section - 482 of Cr.P.C.

28. Therefore, the Registry is directed to place this matter before the learned Single Judge, dealing with the bail applications. It is for the learned Single Judge to consider and dispose it of in accordance with law.

//TRUE COPY//

SD/-P. PADMANABHA REDDY
ASSISTANT REGISTRAR


SECTION OFFICER

To,

1. The IV Addl. Metropolitan session Judge Cum Spl Court for the NIA cases, Nampally, at Hyderabad
2. The XII Addl. Chief Metropolitan Magistrate, Hyderabad
3. The Superintendent, Chanchalguda Jail, Hyderabad
4. The Deputy Superintendent of Police, National Investigation Agency, Hyderabad (by RPAD)
5. The Under Secretary, Ministry of External Affairs, Union of India, New Delhi
6. The Secretary, Advocate Association, High Court of Telangana, Hyderabad
7. 11 LR Copies
8. One CC to Sri T. SHARATH, Advocate [OPUC]
9. Two CCs to Special Public Prosecutor, High Court at Hyderabad [OUT]
10. Two spare copies

HIGH COURT

**KL,J
&
SKS,J**

DATED:23/11/2023

ORDER

CRLP.No.11098 of 2023

DIRECTION

