

**In the court of Shri Naresh Kumar Laka
Special Judge (PC Act) (CBI-20),
Rouse Avenue District Courts, New Delhi**

Case No. CBI-24/2021

RC No. DAI-2019-A-0015 dated 30.04.2019

CNR No. DLCT11-000169-2021

In the matter of:

Central Bureau of Investigation

vs.

Dr. Vikas Gupta and Ors.

Dated: 01.07.2022

ORDER

The present criminal case was pending consideration on the point of framing of charge or discharge of the accused persons. At that stage, accused Basant Goel filed the present application under Section 306 & 307 Cr.P.C. seeking tendering of pardon and to become a witness of the prosecution. Reply to the said application was filed by the CBI/Prosecution in which no objection has been raised and rather CBI consented for allowing the application and to take benefit of the accused/applicant as an approver witness. However, the two other accused persons raised objection for allowing the present application.

2. I have heard arguments on the aforesaid application from Sh. Pramod Negi, Ld. Public Prosecutor for CBI, Ms. Meenakshi Mohan, Ld. counsel for accused Dr. Vikas Gupta, Sh. Vivek Sood, Ld. Sr. Advocate with Sh. Rupesh Tyagi, Ld. Counsels for accused Basant Goel and Sh. Abhishek Yadav with Ms. Abha Shrama, Ld. Counsels for accused Dr. Kajal Goldar. Record perused.

3. The counsel for the accused Basant Goel vehemently argued that the other accused persons have no say or *locus standi* to raise such objections and in this regard he relied on the cases of '*Asha Rani vs. State of Himachal Pradesh*', *Cr. Revision No. 58 of 2014, Hon'ble High Court of Himachal Pradesh* & '*Central Bureau of Investigation vs. N.K. Amin*', *Cr. Misc. App. No. 10311 of 2010*, decided by Hon'ble Superior Courts. Be that as it may, the other accused persons were allowed to file reply and to argue on the present application to have a broader perspective of the matter without assuming their *locus standi*.

4. A brief background of the case would be helpful to consider the present application in a logical way. The present case originated after filing of a complaint by the applicant/accused Basant Goel who wrote said complaint dated 03.01.2019 to the Hon'ble Labour Minister, Government of India alleging therein that the accused Vikas Gupta (who is a Doctor), his wife and Mr. Kajal Goldar, the then DMD in ESIC proposed to him (Sh. Basant Goel) to appoint him as an agent of Medicine Manufacturing

Company namely M/s. BDR Pharmaceutical Pvt. Ltd. to whom a tender for supply of bulk quantity of medicine would be given against which a bribe amount of Rs. 1 Crore was demanded from Sh. Basant Goel which he agreed to pay and thereafter he made payment of the said amount, partly through banking mode and partly in cash. It was further alleged in the complaint that the said contract was not awarded to M/s. BDR Pharmaceutical Pvt. Ltd. as promised and when the applicant demanded refund of his amount, it was not given back to him.

5. From the aforesaid nature of allegations, it is amply clear that the accused/applicant was not only a party or privy in the commission of alleged offences of giving of bribe and/or securing a government contract with unlawful means but, at the same time, he was *prima facie* a victim also who allegedly lost his amount of Rs.1 Crore. Moreover, when all the transactions took place between the accused Basant Goel and the other two accused persons resulting into culmination of commission of alleged criminal offences, if the present application is allowed, it will secure and help presentation of best evidence before the court for at least against the other accused persons in the event they are charged and proceeded for trial. Even otherwise, the prosecution also candidly agreed for allowing the present application.

6. The Ld. Counsel for two other accused persons vehemently submitted that the accused/applicant had given contrary statements on

earlier occasions during investigation i.e. - (1) at one point of time by claiming advancement of loan amount to the accused persons and (2) at another point alleging giving of amount as bribe. Although the other accused persons have no right to point out any such defect at this stage as they have no *locus standi* or right to raise such issues as the matter of tendering of pardon is between particular accused and the court yet even if it is presumed that there are contradictory statements or stands of the applicant, the same will be considered and appreciated on merit after completion of trial at the time of taking of decision.

7. As per language of Section 306 r/w Section 307 Cr.P.C, such application can be filed at any stage of the case and any accused can become a witness during the course of trial with view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence. In the opinion of this court, such provisions have been made to secure production of best evidence and conviction of some of the accused persons by letting off a particular accused by giving him pardon who helps in securing such conviction by becoming a witness of prosecution.

8. It is also worth noting that specific power has been given to the Special Judge in cases under the Prevention of Corruption Act which reads as under:

“A special Judge may, with a view to obtaining the evidence of any

person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.”

9. The aforesaid provision gives exclusive power to this court for tendering of pardon to an accused who likes to become an approver witness and the present case squarely falls into such category of the cases. Accordingly, the aforesaid application deserves to be allowed.

10. Ld. PP for CBI argued that a statement of the accused may be directed to be recorded as per Section 164 Cr.P.C. From the plain reading of Section 164 Cr.P.C, it is clear that the said Section applies when an application under Section 306 Cr.PC is filed during the course of investigation or inquiry whereas the present case is pending at the stage of framing of charge, which means that the investigation is already completed and therefore, there is no need of recording such statement. However, the approved witness/applicant will be examined as PW1 at the appropriate stage.

11. The accused is also made aware of tendering of pardon on the condition of 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. The accused/applicant has accepted the said condition. The accused is also informed of the consequences of giving of false evidence and the provisions of Section 308 Cr.P.C.

12. In the light of aforesaid discussion, the present application is allowed and the accused Basant Goel is pardoned for the offences alleged against him upon fulfillment of the condition. The accused/applicant is also directed not to interact with other accused persons till completion of his examination during trial of the present case.

13. Put up for argument on the point of charge on **29.07.2022**. A long date is prayed by the other accused persons who wish to challenge the present order. As desired, copy of the order be given as dasti to the CBI.

Announced & dictated in
the open court on 01.07.2022

(Naresh Kumar Laka)
Special Judge (PC Act) (CBI-20),
Rouse Avenue District Courts,
New Delhi/01.07.2022