

**IN THE COURT OF SH NARESH KUAMR LAKA:  
SPECIAL JUDGE: CBI-20 (PC ACT) ROUSE AVENUE COURTS: NEW  
DELHI**

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**In the matter of:**

**CBI**

**vs.**

**Dr. Vikas Gupta & Ors.**

**Case FIR No. DAI-2019-A-0015/CBI/ACB/ND**

**CBI No. 24/21**

**U/s 120-B IPC r/w Sec. 7,11,12 &**

**Sec. 13(2) r/w 13(1)(d) of PC Act, 1988**

**CNR No. DLCT11-000169-2021**

**21.12.2022**

**ORDER**

Vide this order, I shall dispose of an application filed on behalf of CBI seeking recording of statement of the approver witness namely, Sh. Basant Goel under Section 306 (4) Cr.P.C.

2. Arguments on the said application were already heard on the last date of hearing. The said application has been opposed by the approver witness and he has also relied in this regard on the case of “**A. Devendran vs. State of T.N. (1997) 11 SCC 720**” decided on 21.10.1997 by Hon'ble Supreme Court.

3. From the perusal of the statutory provisions of Section 306 and 307 Cr.P.C., this Court is of the considered opinion that there are different stages of tendering of pardon and if it is made before the commitment of the case, then a statement is required to be recorded as per Section 306(4) Cr.P.C. but

when the case has already been committed or is pending before a Special Court, then there is no such condition and the pardon is given under Section 307 Cr.P.C which does not stipulate any such procedure.

4. Distinction has been drawn by the Hon'ble Supreme Court of India in the above cited case between the word “condition” and “procedure” and the following observations of the Hon'ble Supreme Court of India squarely apply to the present issue:

*“10. The next question that arises for consideration is as to whether non-examination of the approver as a witness after grant of pardon and thereby non-compliance of Sub-section 4(a) of Section 306 vitiates the entire proceeding. In the case in hand there is no dispute that after the Chief Judicial Magistrate granted pardon to the accused he was not examined immediately after the grant of pardon and was only examined once by the learned Sessions Judge in course of trial. The question that arises for consideration is : When an accused is granted pardon after the case is committed to court of sessions would it be necessary to comply with Sub-section (4)(a) of Section 306 of the Code. The contention of Mr. Mohan, the learned Counsel appearing for the State in this connection is that Section 307 merely mandates that pardon should be tendered on the same condition and such condition obviously refers the condition indicated in Sub-section (1) of Section 306, namely, on the accused making 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 thereof. According to the learned Counsel Sub-section (4) of Section 306 is not a condition for tendering pardon but is merely a procedure which has to be followed when a person is tendered pardon by a Magistrate in exercise of power under Section 306. Since after a case committed to the court of sessions pardon is tendered by the court to whom the commitment is made, it would not be necessary for such court to comply with Sub-section (4)(a) of Section 306. Mr. Muralidhar, the learned Counsel appearing for the appellants on the other hand contended, that the object and purpose engrafted in Clause (a) of Sub-section (4) of Section 306 is to provide a safeguard to the accused who can cross-examine even at the preliminary stage on knowing the evidence of the approver against him and can impeach the said testimony when the approver is examined in court during trial, if any contradictions or improvements are made by him. This right of the accused cannot be denied to him merely because*

*pardon is tendered after the proceeding is committed to the court of sessions.*

11. *The correctness of the rival submissions again would depend upon true interpretation of Sections 306 and 307 of the Code. Under Section 307 when pardon is tendered after commitment of the proceedings by the Court to which the commitment has been made the legislative mandate is that the pardon would be tendered on the same condition. The expression "on the same condition" obviously refers to the condition of tendering a pardon engrafted in Sub-section (1) of Section 306, the said condition being the person concerned on making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. Sub-section (4) of Section 306 cannot be held to be a condition for tendering pardon. A combined reading of Sub-section (4) of Section 306 and Section 307 would make it clear that in a case exclusively triable by the Sessions Court if an accused is tendered pardon and is taken as an approver before commitment then compliance of Sub-section (4) of Section 306 becomes mandatory and non-compliance of such mandatory requirements would vitiate the proceedings but if an accused is tendered pardon after the commitment by the Court to which the proceeding is committed in exercise of powers under Section 307 then in such a case the provisions of Sub-section (4) of Section 306 are not attracted. The procedural requirement under Sub-section (4)(a) of Section 306 to examine the accused after tendering pardon cannot be held to be a condition of grant of pardon. The case of Suresh Chandra Bahri etc. v. State of Bihar (1995) supp. 1 Supreme Court Cases 80, on which the learned Counsel for the appellants strongly relied upon deals with a case where pardon had been tendered to an accused before the commitment proceedings and the question was whether non-compliance of Sub-section (4)(a) of Section 306 would vitiate the trial. The Court held that the provision contained in Clause (a) of Sub-section (4) of Section 306 is of mandatory nature and, therefore, non-compliance of the same would render an order of commitment illegal. It is no doubt true, as contended by Mr. Muralidhar the learned Counsel appearing for the appellants, that the procedure indicated in Sub-section (4)(a) of Section 306 is intended to provide a safeguard to an accused inasmuch as the approver has to make a statement disclosing his evidence at the preliminary stage before the committal order is made and thereby the accused becomes aware of the evidence against him and further such evidence of an approver can be ultimately shown as untrustworthy during the trial when the said approver makes any contradictions or improvements to his earlier version. But still when the legislature in Section 307 have made specific reference to only on "such conditions" and not to the other procedures in Section 306 it would not be a rule of interpretation to hold that even Sub-section (4)(a) of Section 306 would also be applicable in such a case."*

4. In the absence of citing of any other judgement of the Hon'ble Supreme Court by the Ld. PP for CBI contrary to the aforesaid observations, the present application of CBI is dismissed and there is no need to examine approver witness twice. Copy of the order be given dasti to both the parties, if desired.

**(Naresh Kumar Laka)**  
**Special Judge (PC Act) (CBI-20),**  
**Rouse Avenue District Courts,**  
**New Delhi/21.12.2022**