

10.08.2026:

ORDER REGARDING THE RIGHT OF AUDIENCE
BY THE CO-ACCUSED

The learned counsel for the accused No.14 has filed the application under Section 307 of Cr.PC seeking tendering pardon by imposing conditions and in support of his application, he relied upon the decision reported in **2023 DHC 2018** in the case of Rahul Yadav and another Vs State and another. The learned counsel for the accused No.14 has submitted that, at the earliest, the application may be allowed and after recording his evidence, the learned Spl.PP may satisfy and certify about his evidence.

2. The learned Spl. Public Prosecutor has filed memo stating that, he has no objection to tender the applicant / accused No.14 on terms and if the accused No.14 agrees completely, fully and true disclosure of whole of circumstances within his knowledge. He may be permitted to tender pardon. The learned Spl.PP has argued that, in the case on hand, the mother of the deceased is examined as PW.1 and in her chief-examination, she has supported the case of the prosecution, but in the cross, she has not supported the case, which goes to the root of the case. On those

aspects, the prosecution was intended to cross-examine PW.1 by invoking the provision under Section 154 of the Indian Evidence Act. The said request was rejected by this Court vide order dated 17.01.2026. Thereafter, the said order was challenged before the Hon'ble High Court of Karnataka and the same is pending for consideration. The CW.19 who has examined as PW.22 has supported the prosecution case partially and to the material and crucial aspects, he turned hostile. The CW.91 who is also an eyewitness may also not fully depose in favour of the prosecution. Hence, the application of accused No.14 filed under Section 307 of Cr.PC may be allowed.

3. The learned Spl.PP further argued that, the accused has no right to say on the application of accused No.14 filed under section 307 of Cr.PC. The application filed by the accused No.14 under Sec.307 of Cr.PC supports the prosecution version and it may be allowed and in this regard, he has relied upon the following rulings :

1. 2025 SCC Online Kar 7821 – Vinay Rajashekharappa Kulkarni Vs Central Bureau of Investigation rep. by Spl.PP and others.
2. SLP (Crl.) 5331 / 2025 – Chandrashekar Indi Vs CBI.
3. 2013(15) SCC 222 – CBI Vs Ashok Kumar Agarwal.
4. 1967 SCC Online SC 37 – Lt. Commandar Fascal Fernandes Vs State of Maharashtra.

5. 2019 SCC Online Kar 3845 – Naveen and others Vs State of Karnataka and another.

4. The learned designated senior counsel for the accused No.2 has argued that, all the parties and advocates of the proceedings should be informed of the application filed by the accused No.14 by furnishing copy. In the criminal proceedings, the accused has a right of audience. To comply the principles of natural justice, though statute does not contemplates, role of prosecution is there, any guilty person cannot be granted pardon as any guilty person cannot be let out without punishment. It is also argued that, no statement in writing is filed by the prosecution. The prosecution must accept the application by filing the statement, giving the pardon is to be in the interest of justice and the conditions in para 15 of the decision are not yet fulfilled by the prosecution. The learned counsel for the accused No.2 has relied upon the decision of the Hon'ble High Court of Karnataka passed in CrI.P.12176/2024 dated 04.12.2024.

5. Heard the learned counsel appearing for Accused No.14, the learned Special Public Prosecutor and the learned counsels appearing for the co-accused. Perused the application, memos and the materials placed on record.

6. In view of the rival submissions, the following point arises for consideration:

“Whether the co-accused have a right of audience in the proceedings arising out of an application filed under Section 307 of the Cr.P.C. seeking tender of pardon?”

7. The law in this regard has been considered and settled by the decisions of the Hon'ble Apex Court and other Hon'ble High Courts, which are mentioned below.

8. In the decision reported in (1973) 1 SCC 751 in the case of State of UP Vs Kailash Nath Agarwal and others, at paragraph 22, the Hon'ble Apex Court has observed thus:

22. The decision that has been brought to our notice holding that Section 435 cannot be invoked in the case or an order made either under Section 337 or under Section 338 is that of a learned Single Judge of the Delhi High Court in M.M.Kochar V.State. **The learned Judge has held that the tender of pardon and its acceptance by the person concerned is a matter entirely between the court and the person to whom pardon is tendered and that a co-accused has no power to challenge the same, as it is a purely executive or administrative action and not a judicial decision.** Tendering of pardon, it is further stated, is only an exercise of one of the many prerogatives of the sovereign. After having held that the High Court's jurisdiction cannot be invoked under Section 435, the learned Judge on merits held that the tender of pardon was legal.

9. In the decision reported in **(2010) SCC OnLine Guj 11728** in the case of Central Bureau of Investigation Vs N.K.Amin and others, at paragraphs-17, 19, 21, 22(15) and 55(b) It is observed as thus:

17. The crucial aspect, which may arise for the consideration in the present case under Section 306 of Cr.P.C., is as to whether the other co-accused i.e. the accused other than the one, who is to be granted pardon if the person, who is to be granted pardon is, an accused, have any say in the matter or not. **Section itself does not speak for hearing to the other co-accused and it only speaks for the exercise of the power by the learned Magistrate for grant of pardon.** Right of the co-accused or any accused, who is to be or is charge-sheeted and/or tried in any Criminal Court for the evidence collected or may be collected by the prosecution or the Investigating Officer, as such would begin only when he has to be arrested/charged and he is to be tried based on such evidence.

19. At this stage, it appears to us that it is essentially a matter between the accused, who has applied for pardon under Section 306 of Cr.P.C., and the prosecution or the investigating machinery and the Court i.e. the learned Magistrate. The other co-accused will have no say in the matter and the reason being if the pardon is granted, and the statement of the accomplice witness is recorded, then the other co-accused will have a right of cross-examination to the person making the statement.

21. We may also refer to another decision of the Delhi High Court, in the case of M. M. Kochar v. The State,

reported in AIR 1969 Delhi 21 and more particularly the observations made at para 17, which reads as under :-

“17. ... The tender of pardon and its acceptance by the person concerned is a matter entirely between the Court concerned and the person to whom it is made and if the tender of a pardon is accepted by the accomplice concerned, the only obligation placed upon the prosecution is to examine him as a witness in the case. He will then be subjected to cross-examination by the co-accused and it will be for the co-accused to show by such cross-examination that the statement that is made by the accomplice is a false statement. ...”

22. We may also refer to another decision of Madras High Court in case of Senthamarai v. S. Krishnaraj” reported in 2002 Criminal Law Journal, page 2375 and the observations made at para 12, 13, 14, and 15, which reads as under :-

15. The pardon proceeding which takes before the Magistrate is neither an enquiry nor a trial in which an opportunity must be given to the other accused to show to the court that the statement of the accused seeking pardon is not true. Only during the course of trial, the opportunity will be given to the accused to show to the court that the approver's evidence at the trial is untrustworthy in view of the contradictions or improvements made by him by allowing the accused to cross-examine.”

55. In view of the aforesaid observations and discussion, the conclusion can be deduced as under :-

(a) Section 306 of Cr.P.C., is clear in itself and in view of the various decisions of the Apex Court and also of the

other High Courts, including the view expressed by us while interpreting Section 306 of Cr.P.C., there is no unguided or arbitrary power vested to the learned Magistrate but are rather for advancement of the interest of justice.

(b) The say of the other co-accused is not required to be considered, nor they have any role to play when the question is to be considered by the learned Magistrate for grant of pardon after hearing a person applies for pardon and the prosecution or the investigating machinery but all the co-accused will have a right to cross-examination to the accomplice witness if his statement is recorded before the learned Magistrate and will have further right of cross-examination if such evidence is thereafter used by the prosecution at the time of trial for supporting its case or otherwise at the appropriate stage.

10. In the decision reported in 2026 SCC OnLine Del 4943 in the case of Tajinder Pal Singh Vs Directorate of Enforcement at paragraphs 11, 29 and 30, it is observed thus:

11. The learned Special counsel, on merits, makes two-fold submissions:

11.1 The granting of pardon and making of accused an approver is an issue between the Court and the applicant accused. The Co-accused has no right to be heard. He relies on Ashok Kumar Aggarwal v. CBI, M.M. Kochar v. State. Gurvinder Singh Bhatia V CBI and State of U.P. v. Kailash Nath Agarwal.

11.2 It is a well settled law that a Court shall agree to tendering pardon if the prosecution makes a fit case that the tender of pardon is in the interest of successful prosecution of the remaining offenders. He relies on Lt. Commander Pascal Fernandes v. State of Maharashtra.

29. To my mind, the scheme of Section 306 CrPC does not confer a right to be heard on every co-accused. The Court at the stage of granting a pardon, either before the filing of chargesheet or after the chargesheet has been filed and stage of inquiry has commenced but before the trial, does not adjudicate upon the guilt of the other co-accused. The grant of pardon is not an act which itself causes prejudice to the co-accused and does not by itself lead to their conviction. The approver is rather to be examined at the stage of trial and then further cross examined, before his/her testimony can become an admissible evidence. The opportunity at the stage of trial to cross examine the approver and impeach his/her credibility is sufficiently afforded to the co-accused. **Thus, the only effective opportunity to the co-accused to question the reliability of the approver can be granted at the stage of trial.**

30. The law in this regard has been considered and settled by this Court. In Ashok Kumar Aggarwal, even though the prayer of the petitioner for pardon was rejected, the coordinate Bench of this Court categorically held that the right of co-accused arises only at the stage of trial and the co-accused has no right to ask for a hearing in the proceedings of pardon. The judgment was affirmed by the Supreme Court in CBI v. Ashok Kumar Aggarwal. The relevant portion of the

judgment of this Court reads as under:

At the stage of investigation, if the accused applies for pardon and the prosecution also supports him, normally the matter is between the Court and the accused and other co-accused have no right whatsoever to intervene or ask for hearing. The right of a co-accused in respect of an approver arises only at the stage of trial. It is also well-settled that once prosecution agrees to tender of pardon, the Special Judge would not take upon himself the task of considering the possible weight of the approver's evidence or to determine the propriety of tendering pardon.

11. In the decision reported in **2001 SCC OnLine Mad 894** in the case of **Senthamarai Vs S.Krishnaraj** and another at **paragraphs 15, 16 & 17**, it is observed thus:

15. The pardon proceeding which takes before the Magistrate is neither an enquiry nor a trial in which an opportunity must be given to the other accused to show to the court that the statement of the accused seeking pardon is not true. Only during the course of trial, the opportunity will be given to the accused to show to the court that the approver's evidence at the trial is untrustworthy in view of the contradictions or improvements made by him by allowing the accused to cross-examine.

16. From these principles laid down in various decisions, it is clear that the other co-accused cannot be competent enough to tell the court that the statement of the person concerned is false and therefore, the pardon cannot be granted. Therefore, the contention with regard to the

difference stand taken by accomplice may not deserve acceptance.

17. Similarly, the accused cannot question the stage at which the pardon has been granted. As a matter of fact, Section 306 Cr.P.C. would provide that the Chief Judicial Magistrate of any Magistrate of the first class inquiring into or trying the offence may tender pardon at any stage of the inquiry or trial.

12. In the decision reported in **2007 SCC Online Del 1113** in the case of **Ashok Kumar Aggarwal Vs Central Bureau of Investigation** and another at **paragraph 16(9)**, it is observed thus:

“As discussed above, at the stage of investigation when an accused applies for pardon and the prosecution also supports him, the matter remains between the Court and the accused applying for pardon and the other accused have no right whatsoever to intervene or ask for hearing. The other accused against whom evidence of the approver is likely to be used, shall have sufficient opportunity to cross-examine the approver when examined in the course of trial and show to the Court that his evidence is not reliable or he is not a trustworthy witness. Whatever material the petitioner intends to use against the approver, he would be entitled to use it against him during trial to discredit him. The law does not prohibit tender of pardon to a principal accused even. The tender of pardon remains within the domain of judicial discretion of the Court before which the request of an accused for tender of pardon is made. Therefore, a co-accused cannot be permitted to raise objections against tender of pardon

to another accused at this stage.”

13. In the decision reported in **2018 SCC Online All 7520** in the case of **Yadav Singh Vs State of UP and others** at **paragraph-6**, it is observed thus:

6. Learned counsel for the CBI has vehemently defended the impugned order, stating that the said order does not suffer from any lacuna as the same has been passed in accordance with law and in compliance with this Court's order and the direction of this Court that the opportunity be given to the accused as the same was ment to give opportunity of hearing to respondent no. 3 (co-accused). Further in this regard, he has placed reliance upon **T.K. Bhattacharya v. C.B.I.**, 2015 Law Suit(P&H) 2910, where in Para 9 following has been held.

9. Besides, in view of judgment in **Senthamarai's case (supra)**, it appears that co-accused has no locus-standi to question grant of pardon to an approver. Truth or falsity of statement of the accused seeking pardon is to be decided by court alone. It has been held that issue regarding pardon is a matter entirely between court and the person to whom it is granted. Only obligation on the prosecution is to examine such a person as a witness during trial. Pardon proceedings being neither an inquiry nor a trial, no opportunity of hearing needs to be afforded to co-accused at this stage.

14. In the decision reported in **2015 SCC Online Del 13078** in the case of **Gurvinder Singh Bhatia Vs CBI** at **paragraph-13**, it is observed thus:

13. It was asserted by learned counsel for second

respondent- Approver that it is for the prosecution to decide whether it requires an approver to prove its case and if so, then who is best suited. It was pointed out that in the instant case, second respondent is a vital link between the accused and the offence in question and to secure the conviction, evidence of second respondent is of paramount importance. It was submitted that co-accused of second respondent had never seriously sought pardon and had merely projected themselves as victims of circumstances. Lastly, it was submitted that accused cannot sit in judgment to decide what constitutes sufficient evidence as it is the prerogative of the prosecution and the discretion has been rightly exercised and that the decision in Ashok Kumar (supra) is of no avail to petitioner and his co-accused and so, this petition deserves dismissal.

14. After having considered the submissions advanced, impugned order, the material on record and the decisions cited, this Court finds that co-accused have no legal right to raise any grievance against order granting pardon. It has been so reiterated by Apex Court in C.B.I. v. Ashok Kumar Aggarwal (2013) 15 SCC 222 with a rider that in exercise of revisional/inherent powers, correctness, legality or propriety of an order granting pardon can nevertheless be suo moto examined. The grounds of interference with an order of pardon, as highlighted by Apex Court in C.B.I. v. Ashok Kumar Aggarwal (supra), are as under : -

“The grounds of interference may be, where the facts admitted or approved, do not disclose any offence or the court may interfere where the facts do not disclose any offence or where the material effects of the party are not

considered or where judicial discretion is exercised arbitrarily or perversely.”

15. In the decision reported in **2025 SCC Online Kar 7821** in the case of Vinay Rajashekharappa Kulkarni Vs CBI at **paragraph-20, 23**, the Hon’ble High Court of Karnataka has observed thus:

20.To an application filed by the accused, the prosecution can file its objections contending that the person who is seeking pardon is not trustworthy to be granted pardon. The co-accused can also object or have a say when there is procedural violation in granting pardon.

23.....But the co-accused will have a right to question procedural illegality in granting pardon, and not the order granting pardon on its merit. The issue is answered accordingly.”

This Court had held that co-accused will only have a right to question procedural illegality in granting pardon and not the order granting pardon or its content.

16. In the decision reported in **2019 SCC OnLine Kar 3845** in the case of Naveen and others Vs State of Karnataka and another at **paragraph-16**, the Hon’ble High Court of Karnataka has observed thus:

16.....As per Section 306 Cr.PC. The crucial aspect which the Court has to see is that, to whom the pardon has been granted, is an accused and whether he is having any say in the matter or not. Even as could be seen from Section 306 of Cr.PC, nowhere it speaks that, before passing any pardoning order, the co-accused must be heard. The right

of the co-accused comes into play only when the evidence of the said accomplice was recorded before the Court as a witness. Till then co-accused are not having any right.

17. In the above referred decisions, it is clearly held that, the co-accused has no right to say or participate in the pardon proceedings. The right of the co-accused comes into play only when the evidence of the said accomplice was recorded before the Court as a witness. Till then co-accused are not having any right.

18. Now, coming to the case on hand, during the course of trial, the accused No.14 has invoked the jurisdiction of this Court under Section 307 of the Cr.P.C. seeking tender of pardon. The application is yet to be considered on its merits. At this stage, the learned Designated Senior Counsel appearing for Accused No.2 Sri Hashmath Pasha and the learned counsels appearing for the other co-accused have sought permission to participate in and be heard in the proceedings relating to the tender of pardon to Accused No.14.

19. Sections 306 and 307 of the Cr.P.C. contain a specific statutory scheme relating to the tender of pardon to an accused who is believed to have been directly or indirectly concerned in, or privy to, an offence, on the condition of making a full and true disclosure of the whole of the circumstances within his knowledge relative

to such offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

20. A conjoint reading of Sections 306 and 307 of the Cr.PC makes it clear that, the proceedings relating to tender of pardon are essentially between the person seeking pardon, the prosecution and the Court. The statute does not confer upon every co-accused a right to participate in or to be heard in such proceedings as a matter of course. This position of law is settled in the above referred decisions.

21. The proceedings for tender of pardon cannot be equated with an inquiry or trial against the co-accused. At the stage of considering whether pardon should be tendered to an accused, the Court is required to examine the statutory requirements and the circumstances of the case, including whether the proposed approver can make a full and true disclosure of the circumstances within his knowledge. The Court is not, at that stage, required to adjudicate upon the guilt or innocence of the other accused.

22. The apprehension expressed by the co-accused that, a person who is guilty may be permitted to escape punishment cannot, by itself, confer a right of audience where no such right is contemplated by the statutory scheme. The grant of pardon is not an acquittal of the

person seeking pardon. It is a conditional exercise of judicial power, and the person to whom pardon is tendered is bound by the conditions imposed under the statute.

23. More importantly, the grant of pardon does not deprive the co-accused of their substantive right to defend themselves during the trial. If pardon is tendered and the person is examined as an approver, his statement/evidence becomes subject to the ordinary rules governing evidence in the trial. At that stage, the other accused will have the full right to cross-examine the approver and to test the truthfulness, correctness, completeness and credibility of his version in accordance with law.

24. Thus, in law, the safeguards available to the co-accused are not taken away merely because pardon is tendered. Their right to challenge the evidence of the approver arises at the appropriate stage of the trial. The law does not contemplate that such right should be advanced to the preliminary stage of consideration of the application for tender of pardon.

25. The decisions relied upon by the learned Special Public Prosecutor also indicate that the proceedings relating to tender of pardon are essentially between the accused seeking pardon, the prosecution/investigating agency and the Court, and that the role of the co-accused assumes significance after the pardon is granted and the

approver is examined, when the co-accused would have the opportunity to cross-examine him.

26. The contention of the learned designated senior counsel for Accused No.2 that the principles of natural justice necessarily require an opportunity of hearing to the co-accused also cannot be accepted in the present circumstances. The principles of natural justice cannot be invoked to create a substantive right of hearing where the statutory scheme does not contemplate such a right, particularly when the interests of the co-accused are adequately protected at the stage of trial by providing them an opportunity to cross-examine the approver and contest his evidence.

27. It is also necessary to bear in mind that, the Court while considering an application under Section 307 of the Cr.P.C., is not adjudicating upon the guilt of the co-accused. The apprehension that the evidence of the proposed approver may prejudice the defence of the co-accused is not a sufficient ground to permit them to intervene in the proceedings for tender of pardon. The probative value and credibility of the evidence of the approver are matters which can be appropriately considered only after such evidence is brought on record during the trial. Therefore, at this stage, there is no justification to permit the co-accused to participate in the

proceedings or to oppose the application as a matter of right as the law does not confers such right on the co-accused.

28. For the foregoing reasons, this Court is of the considered opinion that, the co-accused do not have a right of audience, relating to the application filed by Accused No.14 under Section 307 of the Cr.P.C. With these observations, I pass the following ;

ORDER

Accordingly, the permissions sought by the learned designated Senior counsel Sri Hashmath Pasha appearing for Accused No.2 and the other learned counsels appearing for co-accused seeking permission to participate in and be heard in the proceedings relating to the application filed by Accused No.14 under Section 307 of the Cr.PC, is hereby **rejected**.

It is clarified that, this order is confined only to the question of the right of audience of the co-accused. This Court has not expressed any opinion on the merits of the application filed by Accused No.14, the truthfulness or otherwise of the disclosure proposed to be made by him, would be considered in accordance with law.

S.C.No.1319/2024

The application filed by Accused No.14 under Sec.307 of Cr.P.C. shall be considered separately on its own merits and in accordance with law.

(SUJATA.M.SAMBRANI)

LVIII Addl. City Civil & Sessions Judge,
Bengaluru.