

S.C. No.28/2023

Present: Shri Saugata Chakraborty
JO Code- WB00767

State - vs - Dibyendu Das & five others

Order No. 4, dated 24.02.2023

Accused Avijit Bose @ Badal, Md. Samim Ali, Sahil Molla @ Uttam Chatterjee @ Bunti, Dibyendu Das, Satyendra Chowdhury and Kanai Kumar are produced from J.C. and remanded to J.C.

Learned Special P.P. is present. Learned defence advocates are also present.

Seen the appointment of Mr. Abdul Rouf Mondal made by the learned Secretary DLSA. Let it be kept with the record.

The case is fixed for consideration of charge.

At this stage a petition is filed. Copy is served.

The petition is taken up for hearing. By filing the application petitioner Dibyendu Das seeks for permission to give voluntary statement and/or confession under section 164 of Cr.P.C. for consideration of the court for tender of pardon under sections 306(2) and 307 of the Cr.P.C. It is emphatically stated by the petitioner that he will make full and true disclosure of the whole circumstances within his knowledge about the offence and about roles of the accused including his own role.

Learned Special P.P. has submitted that this particular accused Dibyendu Das out of several may be tendered pardon as it is in the interest of a successful prosecution of the other accused without the testimony of the petitioner who turns to be an approver. He has further submitted that the prosecution has no objection if the petition is allowed and the petitioner may be kept in segregation in the judicial custody.

The learned Special P.P. has relied upon 1995 Supp (1) Supreme Court Cases 80 in Suresh Chandra Bahri - vs - State of Bihar and (2012)1 Supreme Court cases 500 in Bangaru Laxman - vs - State (through CBI) and Another.

In the first case the Hon'ble Court has been pleased to observe that there can be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused. It is because all that section 306 of the Cr.P.C. requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence. It lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the procedure.

In the second case it was the observation of the Hon'ble Court that the extent of culpability of a person pardoned was not to be judged at the time of consideration of grant of pardon. The purpose is to prevent failure of justice by not allowing offender to escape from lack of evidence (emphasis in mine).

This provision under section 306 (2) of the Cr.P.C. shows that the paramount consideration for tendering pardon to an accomplice is the satisfaction of a court that the accomplice will make a true and full disclosure of the whole circumstances within his knowledge relating to the offence and the satisfaction of the prosecution that the conviction of the other accused is not easy without the approver's testimony as well.

In my considered view the petition of petitioner Dibyendu Das ought to be allowed and it is allowed.

Petitioner/accused Dibyendu Das be produced before the learned Chief Judicial Magistrate, North 24 Parganas at Barasat **forthwith** for recording of his statement under section 164 of the Code of Criminal Procedure.

The learned CJM at Barasat is requested to do the needful for recording of the same.

A copy of this order be sent to the learned Chief Judicial Magistrate, North 24 Parganas at Barasat; other copies to Superintendent of Dum Dum Central Correctional Home and Deputy Controller of Barrackpore Sub-Correctional Home for their kind information and necessary action.

The Superintendent of Dum Dum Central Correctional Home and the Deputy Controller of Barrackpore Sub-Correctional Home are directed to place the accused Dibyendu Das in segregation in Barackpore Sub-Correctional Home at once, who is arraigned in Baguiati P.S. case No. 335 dated 24.08.2022 corresponding **S.C. 28 of 2023** (G.R. 3589 of 2022).

Bench Clerk is directed to comply the same at once.

Note in the CIS.

Upload the order.

To 09.03.2023 for production.

Dict. & corrected by me,

ASJ, 4th Court.

Additional District & Sessions
Judge, 4th Court, Barasat