

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.646 of 2024

Munwar Affaque @ Munawar Afaque age 23 years old, son of
Afaque Ahmad, resident of Behind Syndicate Building, Kanta Toli
Chowk, P.O- Kanta Toli, P.S.- Lower Bazar, District- Ranchi.

... Petitioner

Versus

The State of Jharkhand ... Opposite Party

For the Petitioner : Mr. Sourabh Kumar Das, Advocate
Mr. Abhishek Kumar, Advocate
For the State : Mr. Vineet Kumar Vashistha, Spl.P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with the prayer to release the petitioner on bail, who became an approver under Section 307 of the Code of Criminal Procedure in connection with S.T. Case No.783 of 2022 corresponding to Sukhdeonagar P.S. Case No.238 of 2022 involving the offences punishable under Sections 302, 120B/34 of the Indian Penal Code as well as Sections 27, 35 of the Arms Act in exercise of the power under Section 482 of the Code of Criminal Procedure.

3. Learned counsel for the petitioner submits that the petitioner was accused of the said case. In his statement under Section 313 of the Code of Criminal Procedure, the petitioner stated that he wants to be an approver; subsequently, the petitioner herein, filed an application for pardon and such petition after being allowed, the petitioner became an approver. Vide order

dated 09.08.2023, the petitioner was granted pardon under Section 307 of the Code of Criminal Procedure. It is next submitted that after the petitioner became the approver, he has been examined as Prosecution Witness No.26. It is then submitted that since the petitioner has turned as an approver, he is no more an accused person of the case. Therefore, it is submitted that Section 437 or Section 439 of the Code of Criminal Procedure cannot be pressed into service for releasing him on bail.

4. Relying upon the judgment of the Bombay High Court in the case of **Danish Ali Jamaluddin Ahmed Vs. The State of Maharashtra through DCB CID, Mumbai 400 001** reported in **2023:BHC-AS:34991**, learned counsel for the petitioner submits that in that case, the approver was granted bail by the High Court. It is also submitted that the trial is at the stage of argument now. Hence, it is submitted that the petitioner be admitted to bail.

5. Learned Spl.P.P. appearing for the State on the other hand submits that it is the mandate of Section 306(4)(b) of the Code of Criminal Procedure that the approver be detained in custody until the termination of the trial, unless he is already on bail. But Section 306(4)(b) of the Code of Criminal Procedure is applicable only in case of tender of pardon to an accomplice at the preliminary stage, by a Magistrate before commitment of a case but in this case, the pardon was tendered after commitment of the case in exercise of the power under Section 307 of the Code of Criminal Procedure. Hence, restriction of the detaining the approver in custody until the termination of the trial is not applicable to this case.

6. In support of his contention, learned Special Public Prosecutor relies upon the judgment of the Hon'ble Chhattisgarh High Court in the case of **Rajkumar Sahu Vs. State of Chhattisgarh** reported in **2020 SCC OnLine**

Chh 109 and submits that in that case, the Single Judge Bench of the Hon'ble Chhattisgarh High Court has observed in para-19 that since the mandate under Section 306(4)(b) of the Code of Criminal Procedure for continuation of the approver in custody till the termination of the trial, would not be applicable to tender pardon under Section 307 of the Code of Criminal Procedure, hence, the learned Sessions Judge would have jurisdiction to release such accused on bail, if found appropriate. It is next submitted that the petitioner could have approached the learned Sessions Judge concerned instead of filing this Criminal Miscellaneous Petition before this Court.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the records, it is pertinent to mention here that, it is without any doubt, the mandate of continuation of the approver in custody till the termination of the trial, if at the time of turning approver, the approver is not on bail in case of tender of pardon to an accused under section 306 (1) of the Code of Criminal Procedure; but such mandate is certainly not attracted to an approver, who has been tendered pardon in exercise of the power under Section 307 of the Code of Criminal Procedure. The question then arises that after tendering of pardon, as the approver ceases to be an accused person of the case, can he be granted bail in exercise of the power under Section 482 of the Code of Criminal Procedure?

8. True it is that when the court exercises the power under Section 307 of the Code of Criminal Procedure for tendering pardon to an accused, the bar for releasing the approver if he is not already on bail till the conclusion of the trial as contained in Section 306(4)(b) of the Code of Criminal Procedure is not applicable, he can be released on bail by the learned

Sessions Judge. But in the absence of any express provision in the Code of Criminal Procedure for release of such approver on bail, the High Court can consider the application for releasing such approver on bail in exercise of its power under Section 482 of the Code of Criminal Procedure.

9. Now coming to the facts of the case, the deposition of the petitioner-approver has already been recorded and he has supported the case of the prosecution. The trial is in the stage of argument. The petitioner has been in custody since 07.06.2022 as mentioned in para-13 of this Criminal Miscellaneous Petition.

10. Considering the aforesaid facts of the case, the prayer of the petitioner is allowed.

11. The petitioner namely Munwar Affaque @ Munawar Afaq shall be released on bail on furnishing bail bond of Rs.1,00,000/- (One Lakh Rupees Only) with two sureties of the like amount each to the satisfaction of the learned Additional Judicial Commissioner-III, Ranchi in connection with S.T. Case No.783 of 2022 corresponding to Sukhdeonagar P.S. Case No.238 of 2022 with the condition that he shall appear before the trial court as and when directed by the trial court and also furnish his mobile number and photocopy of the Aadhar Card in the court below with an undertaking that he will not change his mobile number during the trial of the case and he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing the facts to Court or any Police Officer and that the petitioner will not tamper with the evidence.

12. In the result, this Criminal Miscellaneous Petition is allowed to the aforesaid extent only.

13. In view of disposal of this Criminal Miscellaneous Petition, I.A.
No.4703 of 2025 is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th of September, 2025
AFR/ Saroj