



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
CRIMINAL PETITION NO: 6976 OF 2021

Between:

1. Gajjala Uma Sankar Reddy, S/o. Devanatha Reddy, 37y, R/o. Maha Siva Bhavani Milk Dairy, Opp. RTC Bus Stand, Nallapi Reddy Palli Road, Pulivendula, Permanent resident of H.No.1-54, B. sunkesula Village, simhadripuram Mandal, YSR kadapa Dist.

...PETITIONER(S)

AND:

1. Central Bureau of Investigation, Rep. by its Speical Public Prosecutor, High Court of A.P. at Amaravathi.
2. Shaik Dastagiri, S/o Sri Shaik Haja Valli, 24y, D.No.3-10-54, Jayamma colony, Pulivendula Town, YSR kadapa Dist.
3. Muli Venkata Krishna Reddy, S/o Narasimha Reddy, 58y, D.No.3-5-57-2, Near Mitta Malleswara Swamy School, Pulivendula Town, Y.S.R. Kadapa Dist.

...RESPONDENTS

Counsel for the Petitioner(s): T NAGARJUNA REDDY

Counsel for the Respondents: A CHANNAKESHAVULU (PP FOR CBI)

The Court made the following: ORDER



HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Criminal Petition Nos.6976 and 6980 of 2021

Common Order:

Assailing the order dated 26-11-2021 passed in CrI.M.P. No.84 of 2021 by the learned Chief Judicial Magistrate cum Principal Assistant Sessions Judge, Kadapa, whereby he has allowed the petition filed by the prosecuting agency i.e. the Central Bureau of Investigation (CBI) under Section 306 of Cr.P.C and tendered pardon to accused No.4 in CBI Case R.C.No.4(S)/2020/SC-III/ND, these two criminal petitions under Section 482 of Cr.P.C are filed by accused 1 and 3 respectively.

2. Criminal Petition No.6976 of 2021 was filed by accused No.3 and Criminal Petition No.6980 of 2021 was filed by accused No.1. Therefore, both the petitions were heard together and they are being disposed of by this common order.

3. The case pertains to a brutal murder of Sri Y.S. Vivekananda Reddy (hereinafter will be referred as “deceased”, for brevity) on the intervening night of 14/15-3-2019 in his own house, who was former M.L.A of Pulivendula Constituency, former Minister of the erstwhile State of Andhra Pradesh, former Member of Lok Sabha of Kadapa Parliamentary Constituency and former Member of A.P. Legislative Council and former Member of Parliamentary Committee on Science and Technology and Environment and



Forest. He was also the brother of the former Chief Minister of the erstwhile State of Andhra Pradesh Sri Y.S. Rajasekhara Reddy and junior paternal uncle of the present Chief Minister of the State of Andhra Pradesh Sri Y.S. Jaganmohan Reddy.

4. As per the prosecution version, on 15-3-2019 in the early morning Sri M.V. Krishna Reddy, Personal Assistant of the deceased, lodged a report with Pulivendula Urban Police stating that the deceased was found dead lying on the floor in a pool of blood in the bathroom attached to his bedroom and that there were injuries on the forehead, back of the head and on the palm and other parts of the deceased. The said report was registered as a case in Crime No.84/2019 of Pulivendula Urban Police Station initially under Section 174 of Cr.P.C. When the Police reached the scene of offence, it is found that blood on the floor was completely wiped at the scene of offence and an attempt was made deliberately to destroy the evidence at the scene of offence. The dead body was sent for post-mortem examination. Thereafter, the section of law is altered to Sections 302 and 201 of IPC. Immediately, a Special Investigation Team i.e., SIT was constituted headed by the Additional Director General of Police, CID, to investigate the case to find out the culprits who committed the said offence of murder. During the course of investigation, accused No.1 – Thummala Gangi Reddy alias Yerra Gangi Reddy and two other persons by name Venkata Krishna Reddy and Y.Prakash were arrested on 05-4-2019.



Later on, the names of Venkata Krishna Reddy and Y.Prakash were deleted from the list of accused. While the case is being investigated by the SIT and as the culprits could not be traced, various writ petitions have been filed in this Court to entrust the investigation to the CBI.

5. Pursuant to the common order dated 11-3-2020 passed in W.P.Nos.3144 of 2019 and 1639 of 2020 by this Court, the investigation was entrusted to the CBI. Therefore, the CBI has taken up the investigation in this case and has been investigating the said case. Thereafter, several witnesses were examined by the CBI and accused 2 and 3 (Yaditi Sunil Yadav and Gajjala Uma Sankar Reddy) were also arrested during the course of investigation. CCTV footages near the house of the deceased were also collected. The Watchman of the deceased, by name Ranganna, was examined by the Police and he disclosed the names of accused 1 to 4 stating that he has seen accused No.1 staying along with the deceased in his house on that night and that he has also seen accused 2 to 4 entering the house of the deceased on the night of 14-3-2019 and again accused 1 to 4 leaving the said house after some time. The investigation revealed that a conspiracy was hatched up to commit the murder of the deceased. While so, when the statement of accused No.4, by name Shaik Dastagiri, who was the former driver of the deceased, was recorded by the CBI under Section 161 of Cr.P.C on 25-8-2021, he has given the detailed version



relating to the motive to commit murder of the deceased and as to how the conspiracy was hatched up, by whom and where the conspiracy was hatched up and how they committed the murder of the deceased. On 27-8-2021, his confessional statement under Section 164(1) of Cr.P.C was recorded before the competent Magistrate wherein he has again given a detailed account relating to the motive to commit murder of the deceased and as to how the conspiracy was hatched up and where it was hatched up and how they have executed their plan and perpetrated the offence of murder of the deceased. Thereafter, accused No.4 – Shaik Dastagiri has requested in writing to the CBI to tender pardon to him stating that he would disclose all the facts relating to the offence of murder of the deceased that was committed and requested to treat him as an accomplice. The CBI has accepted his request and filed an application dated 22-10-2021 in CrI.M.P. No.84 of 2021 before the Chief Judicial Magistrate cum Principal Assistant Sessions Judge, Kadapa, under Section 306 of Cr.P.C., to tender pardon to Shaik Dastagiri, who is accused No.4 in the said case. Notices were ordered on 26-10-2021 to accused 1 to 3.

6. Accused 1 to 3 have filed their objections by way of filing counter opposing the request of the CBI to tender pardon to accused No.4. On 11-11-2021, the learned Magistrate directed to furnish copies of statements of accused No.4 recorded under Sections 161 and 164 of Cr.P.C to the



counsel of accused 1 to 3. After hearing both the prosecution and the accused, the learned Magistrate by the impugned order allowed the petition tendering pardon to accused No.4 on 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 commission of the said offence and directed accused No.4 to appear before the Judicial Magistrate of First Class, Pulivendula, for his examination as contemplated under Section 306(4)(a) of Cr.P.C on receipt of summons from the said court.

7. Aggrieved thereby, these two criminal petitions by accused 1 and 3 were filed questioning the legality and validity of the impugned order of tendering pardon to accused No.4.

8. Learned Special Public Prosecutor for CBI filed counter affidavit on behalf of respondent No.1 i.e. the CBI opposing the two petitions. It is pleaded that murder of the deceased was committed as per well designed plan after hatching up a conspiracy by accused 1 to 4 and they have committed the said murder of the deceased very secretly and thereafter they have also caused disappearance of the evidence. It is stated that accused No.4 has played a key role from the inception of the crime as he was part of the conspiracy, preparation made for murder of the deceased and execution of their plan to murder the deceased. So, to avoid



the process of law, these criminal petitions are filed by accused 1 and 3. It is further pleaded that after analyzing the evidence that was collected till now, the CBI has accepted the request of accused No.4 and filed application under Section 306 of Cr.P.C to tender pardon to him and no threat or inducement was given to accused No.4 and no bargain was struck between the CBI and accused No.4. It is stated that the issue relating to grant of pardon is between the person concerned and the court and the other accused have no *locus standi* to question the same. The learned Chief Judicial Magistrate also, after considering the material on record and while exercising his discretion, has allowed the petition. Finally pleaded that the credibility of the statement of accused No.4 cannot be looked into at this stage and it has to be looked into only after trial of the case is completed and in the final adjudication of the case while appreciating the said evidence along with the other evidence that was adduced by the prosecution. Therefore, prayed for dismissal of the petition.

9. Heard Sri S.Niranjan Reddy, learned Senior Counsel, representing Sri T.Nagarjuna Reddy, learned counsel appearing for the petitioner/accused No.3 in CrI. P. No.6976 of 2021; Sri B.Adinarayana Rao, learned Senior Counsel, representing Sri Srinivas Rao Bodduluri, learned counsel appearing for the petitioner/accused No.1 in CrI. P. No.6980 of 2021; Sri Gudapati Venkateswara Rao, learned counsel for



accused No.4 and Sri A.Chenna Keshavulu, learned Special Public Prosecutor for respondent No.1/CBI.

10. Sri S.Niranjan Reddy, learned Senior Counsel for accused No.3, submits that accused 1 and 3 have been challenging the impugned order on three grounds viz.,

(i) There are *mala fides* on the part of the CBI, the prosecuting agency, in reporting 'No Objection' for grant of anticipatory bail to accused No.4 to secure his evidence as an approver.

(ii) That pardon can be granted to the co-accused under Section 306 of Cr.P.C only when no evidence is available to prosecute the other accused and to prove the guilt against them and when sufficient evidence is available to prove the guilt of the other accused that pardon cannot be tendered to the co-accused even when he discloses all the facts relating to the commission of the said offence; and

(iii) The evidence that is so far collected by the Prosecuting Agency and the preliminary charge-sheet that was filed by the CBI were not produced before the learned Magistrate at the time of hearing the petition filed under Section 306 of Cr.P.C to enable him to exercise his discretion whether to grant or not to grant pardon and it vitiates the impugned order.

These are the three primary grounds on which learned Senior Counsel for the petitioner/accused No.3 sought to assail the impugned order.



11. As regards the first ground of *mala fides* is concerned, elaborating the same, it is contended by the learned Senior Counsel that accused No.4 – Shaik Dastagiri gave statement under Section 161 of Cr.P.C on 25-8-2021 wherein he has admitted his guilt and also stated as to how the conspiracy was hatched up by accused 1 to 3 and himself, to kill the deceased and as to how they killed him and his confessional statement was also recorded under Section 164(1) of Cr.P.C on 27-8-2021 wherein he has reiterated all the said facts and thereafter accused No.4 filed an application for anticipatory bail on 07-10-2021 in CrI.M.P. No.720 of 2021 and subsequently on 21-10-2021, he addressed a letter to the CBI stating that he intends to turn as an approver and thereafter the CBI did not oppose his anticipatory bail and accordingly anticipatory bail was granted to accused No.4 on 22-10-2021 by the IV Additional Sessions Judge, Kadapa and as such it is clear that a bargain was struck between accused No.4 and the CBI. Learned Senior Counsel would submit that but for the anticipatory bail that was granted as the CBI did not oppose the same, accused No.4 would not have turned as an approver and as such there are *mala fides* on the part of the CBI in obtaining the statements from accused No.4 and accused No.4 did not give the same voluntarily.

12. As regards the second ground, learned Senior Counsel would submit that the evidence of the Watchman,



by name Ranganna, would establish that he has seen accused No.1 staying along with the deceased in the house on that night and that he has also seen accused 2 to 4 entering the house of the deceased during the night of 14-3-2019 and that he heard some sounds in the house and that he has again seen accused 1 to 4 leaving the house after some time and that accused No.1 warned him not to disclose the said facts to anyone with dire consequences and as such evidence is available to the prosecution to prosecute the accused 1 to 4 for the said offence. He would submit that it is not as though that there is no evidence available in proof of complicity of the accused in commission of the said offence. In other words, it is his specific contention that it is only when no evidence is available for the prosecution to prosecute the other accused and to prove their guilt that the request of the co-accused to tender pardon to him on the condition of becoming an approver by disclosing full and true facts relating to the commission of the said offence can be accepted and not otherwise. So, according to him, as there is evidence of the Watchman Ranganna and other scientific evidence available that accepting the request of accused No.4 and granting pardon to him by the impugned order is not legally valid and the impugned order is unsustainable under law.

13. As regards the third ground, learned Senior Counsel would elaborate contending that the entire evidence that was collected by the prosecution during the course of investigation



and the preliminary charge-sheet that was filed by the prosecution was not placed before the learned Magistrate to ascertain whether there is sufficient evidence to prosecute the accused and to prove their guilt or not and to enable him to exercise his discretion whether to grant pardon to him or not and the failure on the part of the prosecution to place the said record before the learned Magistrate vitiates the impugned order.

14. Thus, precisely on the aforesaid three grounds, the legality and validity of the impugned order has been questioned by the learned Senior Counsel appearing for accused No.3.

15. Sri B.Adinarayana Rao, learned Senior Counsel appearing for the petitioner/accused No.1 in CrI. P. No.6980 of 2021, while reiterating the aforesaid submissions made by Sri S.Niranjan Reddy, learned Senior Counsel, would contend that when sufficient evidence is available to prosecute the accused and to prove their guilt that the request of the co-accused to tender pardon to him cannot be accepted. He would also submit that as there is evidence of the Watchman Ranganna, who stated that he has seen accused entering the house of the deceased on that night and hearing some sounds inside the house and has again seen accused 1 to 4 leaving the house after some time, to prove the complicity of the accused in commission of the said offence, tendering of



pardon to accused No.4 is legally unsustainable. Therefore, he would pray to set aside the impugned order.

16. Learned counsel for accused No.4-proposed approver would submit that as accused No.4, being one of the guilty participants along with other accused who committed the murder of deceased, has decided to disclose all the facts and circumstances leading to the genesis of the crime, how conspiracy was hatched up and how the murder was committed, that he is entitled to make a request to tender pardon to him on condition of making full disclosure of all the said facts and the learned Magistrate who is satisfied that it is essential for the prosecution to have the evidence of accused No.4 to establish the guilt of other accused in the crime and to prevent their escape for want of evidence, has exercised the discretion in favour of accused No.4 and granted pardon to him and the said matter is only in between the court and accused No.4 and the other co-accused cannot question the same and they have no *locus standi* to question the impugned order. He would submit that the person who actually got grudge against the deceased are accused 1 to 3 and they engaged the services of accused No.4, who was the former driver of the deceased, by offering crores of rupees to him and as such the evidence of accused No.4 is essential for the prosecution to establish the guilt against accused 1 to 3, who were the main culprits and thereby prayed for dismissal of the criminal petitions.



17. Learned Special Public Prosecutor for CBI would submit that despite the best efforts made earlier by the SIT and now by the CBI that direct evidence relating to the commission of murder of the deceased could not be obtained. He would submit that accused No.4, who is one of the conspirators and who is one of the accused who participated in commission of the offence of murder of the deceased along with the other accused, has now disclosed all relevant facts relating to the commission of the offence of murder of the deceased by all the accused including himself right from the time when the conspiracy was originally hatched up to commit murder of the deceased and also regarding the motive to kill the deceased and as to how they entered the house of the deceased as per their plan after preparing for commission of the offence of murder of the deceased and as to how they killed the deceased. So, in order to secure better evidence to see that the real culprits are not let off scot-free for want of sufficient evidence that the CBI has accepted the request of accused No.4 to tender pardon to him as he willingly came forward to be an approver and to give evidence in this case. It is pleaded that the learned Magistrate has given ample opportunity and fair hearing to the other accused before allowing the petition and after considering the facts and circumstances of the case and the statements of accused No.4 that the learned Magistrate has rightly exercised his discretion and tendered pardon to accused No.4 under



Section 306 of Cr.P.C by giving sufficient reasons and there is absolutely no irregularity or illegality in passing the impugned order. Therefore, he prayed for dismissal of the two petitions.

18. As it is vehemently contended by the learned Senior Counsel in both the petitions that there is sufficient evidence already collected by the CBI to prosecute the accused and to prove their guilt and as such pardon cannot be granted to accused No.4 and that the said entire evidence is not produced before the learned Magistrate except the statements of accused No.4 recorded under Sections 161 and 164 of Cr.P.C, this Court while hearing these petitions on 06-01-2022, directed the learned Special Public Prosecutor for CBI to produce copy of the preliminary charge-sheet filed before the Court along with the statements of the witnesses so far recorded for examination by this Court. Accordingly, pursuant to the said direction, on 20-01-2022 the learned Special Public Prosecutor for CBI has produced copy of the preliminary charge-sheet and other material relating to the investigation of this case in a sealed cover before this Court.

19. Perused the entire record including the preliminary charge-sheet and the statements of the witnesses so far recorded. As many as 241 witnesses have been cited in the charge-sheet which includes all official witnesses and also the scientific evidence that was collected in this case. Statements of many of the witnesses are recorded and statements of some of the official witnesses, it is stated, are not recorded.



20. The facts of the case emanating from the record clearly reveal that all the accused 1 to 4 i.e. accused No.1 – Thummala Gangi Reddy, accused No.2 – Y.Sunil Yadav, accused No.3 – Gajjala Uma Sankar Reddy and accused No.4 – Shaik Dastagiri had motive to kill the deceased. As per the preliminary charge-sheet, the investigation revealed that the deceased lost his election held for the Legislative Council and he was suspecting that some of the accused worked against him in the said election and that he got grudge against them and that there are also disputes among them relating to allotment of ticket to contest for the ensuing election of Member of Kadapa Parliamentary Constituency and that there were also differences between the deceased and the accused relating to the settlement of a land dispute which is in Bengaluru and as such accused 1 to 3 have decided to commit murder of the deceased. Accused No.4 – Shaik Dastagiri was the former driver of the deceased and accused 1 to 3 took the help of Dastagiri to plan as to how to commit murder of the deceased by offering Rs.5 Crores to him and accordingly they all entered into a conspiracy to commit murder of the deceased and that thereafter they have executed their plan and committed murder of the deceased in a brutal manner very secretly as per their pre-planned strategy and thereafter caused disappearance of the evidence.

21. Even though the said murder took place long back on the intervening night of 14/15-3-2019 and the local Police



initially took up the investigation and thereafter even a SIT was constituted and they conducted investigation almost for a period of one year, they could not collect direct evidence regarding the commission of murder of the deceased. Even after the investigation was entrusted to the CBI and they took up the investigation in the month of March, 2020 and even after lapse of more than one year period, even the CBI was also unable to collect direct evidence in this case. The evidence of Watchman Ranganna, at best, only establishes the fact that he has seen accused No.1 staying along with the deceased in his house on that night and that thereafter he has seen accused 2 to 4 entering the house of the deceased in the midnight and hearing some sounds inside the house and that thereafter he has seen accused 1 to 4 leaving the house of the deceased after some time and that accused No.1 warned him not to disclose the said facts anywhere with dire consequences. But what has actually transpired inside the house or in the bedroom and bathroom of the deceased was not witnessed by the Watchman Ranganna. At best, it would be only a piece of circumstantial evidence available to the prosecution. Even the other evidence collected i.e., the scientific evidence etc., would only be a circumstantial evidence available to the prosecution. Therefore, in the said facts and circumstances of the case, as accused No.4 who is directly concerned in commission of the said offence of murder along with the other accused, has



now come forward voluntarily to make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned including his role relating to the commission of the said offence, the CBI with a view to obtain the said direct evidence of accused No.4 to see that the real culprits are not escaped for want of sufficient evidence accepted the request of accused No.4 to tender pardon to him. Accordingly, as per the request made by accused No.4, the CBI has accepted his request and filed the petition under Section 306 of Cr.P.C to tender pardon to accused No.4. As can be seen from the preliminary charge-sheet and the entire evidence that is now collected during the course of investigation, no evidence is available to the prosecution to prove as to what has actually transpired inside the house of the deceased on the intervening night of 14/15-3-2019 when the murder took place. Therefore, to establish as to what has actually transpired inside the house after the accused entered the house of the deceased on that night, tender of pardon to accused No.4 became inevitable to the CBI to secure direct evidence which is other unobtainable in the facts and circumstances of the case to prove the individual overt acts of each of the accused and as to what has transpired inside the house of the deceased and how the murder was committed etc.



22. In this context, it is significant to note that the language employed in Section 306 of Cr.P.C makes it manifest that the very object of granting pardon to the co-accused is to secure the evidence of the said person, who is directly or indirectly involved in commission of the offence. The Section itself starts with the words “***with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to any offence***”. So, the intention of the Legislation or the object underlying the Section is very much clear from the aforesaid express words used in the opening part of the Section. Therefore, having regard to the facts and circumstances of the case, if the Magistrate is of the opinion that with a view to obtain evidence of a person, who is directly or indirectly concerned in or privy to any offence that it is essential to tender pardon to him, it is well within the competence of the learned Magistrate to exercise his discretion and grant pardon to the co-accused. The said power of the Magistrate to grant pardon is not circumscribed by any condition except the condition of the said person making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence.

23. It is now well settled law that the guiding principle for tendering of pardon to an accomplice is to prevent the escape of the offenders from punishment in grave cases for lack of evidence. In the instant case, as already discussed



above, no evidence is available for the prosecution to prove as to what has actually transpired inside the house of the deceased after accused 1 to 4 entered the house and before they left the house and to prove the actual overt acts of individual accused in commission of the said offence. So also to prove the motive part and the preparation to commit the said offence also, they require sufficient evidence to establish the same. In the statement given by accused No.4 – Shaik Dastagiri under Section 161 of Cr.P.C as well as in his confessional statement under Section 164 of Cr.P.C, he has given a detailed account right from the inception as to how each of the accused got motive to kill the deceased and as to how they met together and where they met together and when they met together and how they entered into a conspiracy and how they made preparation to commit murder of the deceased and how they planned for the murder and how they purchased the weapon i.e., the axe to kill the deceased and how they entered the house and how they actually attacked the deceased and committed the murder of the deceased by giving individual overt acts and how they left the house and thereafter escaped. So, this evidence of accused No.4 along with the other evidence collected by the prosecution would help the prosecution to prove the complicity of each of the accused in hatching up a conspiracy and in committing the offence of murder of the deceased and as to how they caused disappearance of evidence etc. His evidence is also essential



to the prosecution as an accomplice to prevent the escape of the other offenders from punishment in grave cases of like nature for lack of evidence.

24. Therefore, considering the said evidence on record and the facts of the case, the learned Magistrate has rightly exercised his discretion in favour of the prosecution and tendered pardon to accused No.4 on the condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. So, there is no patent illegality in the impugned order.

25. Therefore, the contention of learned Senior Counsel for the petitioners/accused 1 and 3 that there is sufficient evidence for the prosecution to prove the complicity of the accused and to establish their guilt and as such pardon cannot be tendered to accused No.4, cannot be countenanced and it is liable to be rejected.

26. As regards the other contention of the learned Senior Counsel for the petitioners/accused 1 and 3 that the CBI did not object for grant of anticipatory bail to accused No.4 and as such there was a bargain struck between the CBI and accused No.4 and accordingly accused No.4 agreed to turn as an approver and his statements are not voluntary is concerned, this Court finds no merit in the said contention. The record reveals that on 25-8-2021 itself, accused No.4 in his statement under Section 161 of Cr.P.C recorded by the CBI has given full and detailed account relating to the



commission of offence of murder of the deceased by all the accused. On 27-8-2021 itself, he has given his confessional statement under Section 164(1) of Cr.P.C before the learned Magistrate. Thereafter, in the month of October, 2021, i.e. on 07-10-2021, he has moved for anticipatory bail. While the said application is pending, on 21-10-2021, he has addressed a letter to the CBI stating that he intends to become an approver. Therefore, considering the fact that he has made a full disclosure of facts and circumstances relating to the manner in which the conspiracy was hatched up and as to how the murder was committed, given in the month of August, 2021 itself and as he has now come forward on 21-10-2021 with his letter to become an approver, as the CBI was of the opinion that his evidence as an approver after tendering pardon would be helpful to the prosecution to prove the guilt of the accused beyond all reasonable doubt and as it would prevent the real offenders to escape for want of evidence and as he is cooperating in the investigation, the CBI did not oppose his application for anticipatory bail. Therefore, it cannot be said that there were any *mala fides* on the part of the CBI in accepting the request of accused No.4 to tender pardon to him and it cannot also be said that there was any bargain that was struck between accused No.4 and the CBI in this regard.

27. As already noticed supra, with a view to secure evidence to prove the commission of offence by the accused



beyond all reasonable doubt and to prevent escape of the offenders for lack of evidence, the CBI has accepted the said request for tender of pardon. Considering the same grounds, the learned Magistrate has also allowed the application of the CBI and tendered pardon to accused No.4. Therefore, that part of the contention raised by the learned Senior Counsel for the petitioners/accused 1 and 3 is also liable to be rejected.

28. As regards the third ground that the preliminary charge-sheet and the statements of the witnesses recorded are not produced before the learned Magistrate to ascertain whether there is sufficient evidence or not and to enable him to exercise his discretion whether to grant pardon or not, and that it is fatal to the case of the prosecution and it vitiates the impugned order is concerned, no doubt, the preliminary charge-sheet along with the statements of the other witnesses is not produced before the learned Magistrate. But the statement of accused No.4 under Section 161 of Cr.P.C and the confessional statement of accused No.4 given under Section 164(1) of Cr.P.C whereunder he has given a detailed account as to how the conspiracy was hatched up to commit the murder of deceased and how they committed the murder was given, are produced before the learned Magistrate along with the other record. The learned Magistrate has considered the same and he was satisfied that the said statement was given voluntarily by accused No.4 and that he made a full



disclosure of all the facts relating to the commission of offence and as he was of the opinion that the said evidence is essential to prove the guilt of the other accused, he has exercised his discretion properly to tender pardon to accused No.4. Even otherwise, non-production of the preliminary charge-sheet before the learned Magistrate is only a curable defect. It is only required to examine whether there is sufficient evidence to prove the complicity of the other accused and to prove the guilt against them or not. The said preliminary charge-sheet is now produced before this Court. This Court has perused and examined the same. Except the evidence of the Watchman Ranganna, which only establishes that he has seen the accused entering the house of the deceased and hearing some sounds inside the house and thereafter the accused leaving the house, there is no other direct evidence available to prove as to what has actually transpired inside the house of the deceased during that night and how the murder was actually committed and no direct evidence is also available to prove the conspiracy and preparation made for murder of the deceased etc. Therefore, the said defect, even if any, now stands cured by producing the said preliminary charge-sheet along with the other evidence before this Court. So, non-production of the said preliminary charge-sheet before the trial Court by itself would not vitiate the impugned order. Therefore, as there is no sufficient evidence and direct evidence to prove the guilt



against the accused and to prevent their escape for lack of evidence, it become inevitable for the CBI to accept the request of accused No.4 to tender pardon to him and to become an approver. The evidence of accused No.4 would be helpful to the CBI to prove the case against the other accused beyond all reasonable doubt and to prevent their escape for lack of evidence. Therefore, the said contention of the learned Senior Counsel for the petitioners/accused 1 and 3 is devoid of merit and it is rejected.

29. This Court, therefore, does not find any legal infirmity in the impugned order of the learned Magistrate. The learned Magistrate has applied his mind to the facts and circumstances of the case and rightly exercised his discretion in favour of the prosecution by taking into consideration the correct legal position relating to the grant of pardon under Section 306 of Cr.P.C and allowed the petition. The impugned order is perfectly sustainable under law and it warrants no interference by this Court.

30. In this context, it is relevant to consider the judgment of the Apex Court in the case of **CBI v. Ashok Kumar Aggarwal**¹, wherein the grounds of interference with an order of pardon have been highlighted in Para No.26. Four grounds are enumerated in the said case by the Apex Court to interfere with order of grant of pardon. It is held as follows:

“The grounds of interference may be – (1) whether the facts admitted or proved, do not disclose any offence or (2) the court

¹ (2013) 15 SCC 222



may interfere where the facts do not disclose any offence or
(3) where the material effects of the party are not considered or
(4) where judicial discretion is exercised arbitrarily or perversely.”

None of the above grounds is existing in this case to interfere with the impugned order.

31. In ***Suresh Chandra Bahri v. State of Bihar***², the Apex Court has explained the object of Section 306 of Cr.P.C in the following words:

“The object of Section 306 of Cr.P.C therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore 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 because all that Section 306 of 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.”

32. In the instant case, the confession of accused No.4 is an inculpatory confession. He has disclosed his role played in the conspiracy along with the other accused and also regarding the preparation made by him to commit the offence by purchasing an axe and also by giving his overt acts of causing hurt to the deceased along with the other accused. So, it is not an exculpatory confession excluding himself from commission of the offence. His confession reveals both the

² 1995 SCC (Cri) 60



role played by him and also other accused in commission of the offence of murder. So, his evidence is very essential to establish the guilt of the other accused.

33. The three judgments relied on by the learned Senior Counsel for the petitioners/accused 1 and 3 in the cases of **CBI v. Ashok Kumar Aggarwal** (1 *supra*), **Kanajeti Raja Babu v. State of A.P.**³ and **Umesh Kumar, IPS v. State of A.P.** [2012 (2) ALD (CrI.) 510 (AP)] are all distinguishable on facts and they are not useful to the case of the petitioners. In fact, the judgment of the Apex Court in **CBI v. Ashok Kumar Aggarwal** (1 *supra*) is more in favour of the prosecution. It is held therein that co-accused has no legal right to raise any grievance against order granting pardon under Section 306 of Cr.P.C. It is only held that the court can exercise revision powers under Sections 397 and 401 of Cr.P.C *suo motu* to examine the validity of any such order. Moreover, as discussed *supra*, it is held as per the ratio laid down in the above judgment that the validity of the order under Section 306 of Cr.P.C can be questioned only on very limited grounds which are not existing in the present case.

34. In another case of **Kanajeti Raja Babu v. State of A.P.** (3 *supra*) also, the A.P. High Court held that the secrecy of crime and paucity of evidence, solely for the apprehension of the other offenders, recovery of the incriminating objects and production of the evidence otherwise unobtainable might afford valid grounds for exercising the power. So, this

³ 2002 (1) ALD (CrI.) 367 (AP)



judgment is also in favour of the prosecution. In fact, ultimately even though some direct evidence is available in the said case, still the A.P. High Court has confirmed the order of granting pardon to the co-accused.

35. In the 3rd judgment in ***Umesh Kumar, IPS v. State of A.P.***, the High Court of A.P. has set aside the order granting pardon on the ground that the Magistrate did not examine whether the material placed before him contained even a bare and bald allegations attracting the ingredients of cheating.

36. In the instant case, the statement and other material on record clearly reveal that the facts of the case clearly constitute an offence of murder of the deceased. Therefore, the aforesaid judgment is of no avail to the case of the petitioners.

37. Therefore, none of the grounds urged by the petitioners to assail the impugned order is sustainable under law.

38. Resultantly, the criminal petitions are dismissed confirming the impugned order of the learned Magistrate granting pardon to accused No.4. The CBI shall proceed with the further process as required under law. Pending applications, if any, shall stand closed.

CHEEKATI MANAVENDRANATH ROY, J.

16th February, 2022.

Note:- L.R. Copy to be marked.

(B/o) Ak



HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Criminal Petition Nos.6976 and 6980 of 2021
(Common Order)

16th February, 2022.
(Ak)