



2025:CGHC:29710-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 551 of 2025

Union of India Through National Investigation Agency, Sector 24, Atal Nagar, Naya Raipur Chhattisgarh.

... Appellant(s)

versus

Dinesh Tati S/o Masa Tati R/o Palnar, P.S. Gangalur District Bijapur, Chhattisgarh.

... Respondent(s)

For Appellant(s) : Mr. B.Gopa Kumar and Mr. Himanshu Pandey,
Advocates

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

02.07.2025

1. Heard Mr. B.Gopa Kumar and Mr. Himanshu Pandey, learned counsel for the appellant / Union of India.
2. As per the office report dated 21.04.2025, it transpires that the notice has been served to the respondent on 29.03.2025 and the matter

has been taken up today, but on behalf of the respondent, no counsel is present to contest the present appeal filed by the Union of India, hence Court proceeds to hear the matter.

3. The appeal is preferred by the appellant against the order dated 07.02.2025, passed by the learned NIA Special Court, Jagdalpur refusing the application filed under Section 306(1) of Cr.P.C. (343 of the BNSS) for grant of permissions to tender pardon to one of the accused persons-cum-surrendered naxal.

4. Brief facts of the case are that a crime was registered on 16/06/2023 by the Kotwali Police Station, District Bijapur having Crime No. 68/2023 under Section 8(1)(3) (5) of Chhattisgarh Special Public Security Act 2005. The allegations inscribed therein in the report in brief are that the Kotwali Police had arrested one person, Dinesh Tati, Son of- Masa Tati, resident of Palnar, PS Gangalur, District- Bijapur, Chhattisgarh. During personal search, a black colour bag containing Rs. Ten Lakh (Rs. 2000x500) notes was found to be kept in yellow polythene cover, one pass book, 80 naxal pamphlets, and some medicines which were seized. Upon examination of the said accused Dinesh Tati, he revealed that he had received the said amount of Rs. Ten Lakhs from a Surrendered Naxal (named 'A' as mentioned by the Hon'ble Court of Special Judge, Jagdalpur), Shanti Hemla (Area Committee Member), Pandru Pottam (Area Commander in Chief), all belonging to proscribed terrorist organization CPI (Maoist). Further the above accused persons told Dinesh Tati to purchase a tractor out of this money from John Deer Tractor at showroom Majiguda, Bijapur, Chhattisgarh and while returning he was directed to go to Kandulanar and hand over the 80 Naxal

pamphlets to Venkat @ Vishwanath, Bhopalpatnam Local Organization Squad Commander of Madded Area Committee. Subsequent to that later on, during the course of investigation by the state police Sec 10, 13 (1)(2), 39,40 of UA(P) Act 1967 were also invoked.

The Central Government had received information regarding registration of F.I.R. No.68/2023 dated 16/06/2023 at Kotwali Police Station, District Bijapur. Subsequent to the above turn of events, the Central Government was of the view that Scheduled Offence under the NIA Act, 2008 has been committed and giving full regard to the gravity of the offences and security ramifications, it was found to be necessary that the offence need to be investigated by the National Investigation Agency in accordance with the provisions of NIA Act 2008. In pursuance of the opinion formed thus by Central Government, an order was issued exercising power under Section 6(4)(5) read with Section 8 of NIA Act 2008 on 27/03/2024 to take over the matter.

In furtherance to the above order of the Ministry of Home Affairs, Government of India, (CTCR Division), New Delhi Order no 11011/35/2024/NIA dated 04/03/2024 and 27/03/2024, the NIA has re-registered the said F.I.R. as RC No.- 17/2024/NIA/RPR on 04/04/2024.

The appellant is a Central Government Agency established by the Indian Government at the National level to investigate and prosecute offences affecting the sovereignty, security, integrity as well as economic security of the country. It has been established after the 2008 Mumbai terror attacks as need for a Central Agency to combat terrorism was found essential in the interest of National security and integrity of the country.

Thereafter, Appellant-NIA started the investigation pertaining to the serious offence committed by the accused persons and during the course of investigation, an application was filed by the Agency before the learned trial Court under section 343 BNSS (306 Cr.P.C.) for tendering pardon to a person who had close acquaintance with the facts and circumstances of the present case.

Upon hearing the application filed by the Appellant, the learned trial Court rejected the application stating that the provision provided under Section 306 (4)(b) CrPC (New law 343 of BNSS) has the applicability in the present case and the condition provided therein under the said provisions of law has not been complied with and on this basis the application filed by the appellant was rejected. Hence this appeal.

5. Learned counsel for the appellant argued that the learned trial Court has recorded the findings and observations in the impugned order dated 07-02-2025, which are totally contrary against the principles laid down not only by the statutory provisions, but also against the principles laid down by the Hon'ble Apex Court. Hence, the impugned order rejecting the application filed by the Appellant is bad in law and improper on facts and law therefore the same is liable to be quashed and set aside. Further, in the present case, the rejection of the application by the learned trial Court is on the basis of provision provided under section 343 (4)(b) of BNSS (old act 306 (4)(b) of Cr.P.C). The above provision states as under "Shall, unless he is already on bail, be detained in custody until the termination of the trial" it is pertinent to submit that the approver in this present case though he is an accused but has not been arrested hence there is no question of being on bail. It is apt to mention that the said approver is a

surrendered Naxalite 'A' and has been in the State Police as Secret Soldier under the Scheme And Rehabilitation Policy formulated by the State Government to accommodate the surrendered Naxalite and bring them into the main stream of social and political life. The contention of the learned trial court while rejecting the application for approver is unfounded, misplaced and surmised under the law. The learned trial Court has committed a grave mistake of fact that the approver accused is not intrinsically involved in the crime. Further, on bare perusal of the statement made under section 164 of Cr.P.C which reveals in no uncertain terms that the concerned accused was deeply involved with the planning and execution of the crime. His statement unravels not only conspiracy and execution of the crime but also the perpetrators and their respective roles. Therefore, the present accused should be allowed to tender evidence that would in turn help for the just prosecution of the perpetrators/ accused persons.

6. Learned counsel for the appellant also argued that in a similar case filed by the NIA having number CRA 754/2020 “**State vs Hidma and others**”, this Hon'ble court allowed the criminal appeal and directed the learned NIA Court for reconsideration of the application filed by the applicant in the light of the observation made therein by this Court in the said criminal appeal. This Court while tendering disposition in favor of the State also quoted judgments passed by various Hon'ble High Courts and Hon'ble Apex Court which is completely relevant and valid to the applicability of the present case. The Hon'ble apex court in the matter of **Suresh Chandra Bahari Vs State of Bihar reported in SCC 1995** suppl. Volume 1 at page no 80 stated that since many a time the crime is

committed in a manner for which no clue or trace is available for its detention and therefore pardon is granted for appreciation of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished. The object of Section 306 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 be brought home to the rest. The issue pertaining to the present criminal appeal is no more a matter of res-integra as many of the judgments pronounced by the Hon'ble Supreme Court has categorically stated and opined that section 306 of Cr.P.C is an essential part to prove the escape of the offenders from punishment in heinous offences for lack of evidence therefore pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.

7. Learned counsel for the appellant also argued that on a bare perusal of the order passed by the learned trial Court, it would make clear that the learned trial Court erred in appreciating the facts that the present appellant-prosecuting agency had only urged for granting or tender pardon to the accused /surrendered person. Further, it is suffice to mention that, nothing adversarial or prejudicial would be caused against the accused if pardon of the accused approver is allowed in the interest of the justice. Also, there is an ample evidence that serious offences pertaining to UAPA are charged against the accused persons which is necessary to be looked into as a serious security threat to the Nation by the banned terrorist organizations and in view of it, it is essential and

important to consider the application filed under the above narrated provisions of the criminal procedure in the interest of complete justice.

8. Learned counsel for the appellant lastly argued that in a similar matter, the Division Bench of this Court has decided the matter of ***State (Through National Investigation Agency) vs. Hidma and Others in CRA No. 754 of 2020*** vide order dated 05.10.2021 and the issue involved in the present matter is identical.

9. In order to appreciate the submission of learned counsel for the appellant, it is relevant to refer to the provisions contained under Section 343 of BNSS (306 of the Cr.P.C.), which reads as under:-

343. “Tender of pardon to accomplice.

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his 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 the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a

Special Judge appointed under any other law for the time being in force;

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made,

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that

Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under any other law for the time being in force, if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

10. Further, the provisions contained under Section 344 in BNSS, 2023 (307 of the Cr.P.C.) reads as under:-

344. Power to direct tender of pardon.

At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

11. Further, the provisions contained under Section 345 in BNSS, 2023 (308 of the Cr.P.C.) reads as under:-

345. Trial of person not complying with conditions of pardon.

(1)Where, in regard to a person who has accepted a tender of pardon made under section 343 or section 344, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 215 or section 379 shall apply to that offence.

(2)Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 183 or by a Court under sub-section (4) of section 343 may be given in evidence against him at such trial.

(3)At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the

prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall-

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Sanhita, pass judgment of acquittal.

12. The scope and ambit as also the object behind the scheme of grant of pardon to an accomplice was explained by the Hon'ble Supreme Court in the case of **Suresh Chandra Bahri vs. State of Bihar, 1995 (Suppl. Volume-1) SCC 80**, as below:-

42. "We have already reproduced above Section 306 of the Code the provisions of which apply to any offence triable exclusively by the Court of Special Judge to any offence punishable with imprisonment extending to seven years or with a more serious sentence. Section 306 of the Code 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 (sic). Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is

unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce this section and confine its operation to cases mentioned in Section 306 of the Code. The object of Section 306 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 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence."

13. In later decisions of the Supreme Court, the aforesaid principle has been succinctly followed in the case of ***Chandran vs. State of Kerala (2011) 5 SCC 161, Prithipal Singh vs. State of Punjab, (2012) 1 SCC 10, Yakub Abdul Razak Memon vs. State of Maharashtra, (2013) 13 SCC 1 and Somasundaram vs. State, (2020) 7 SCC 722.***

14. From perusal of the order dated 07.02.2025 passed by the NIA Special Court, it transpires that the application of the appellant has been rejected relying upon the judgment passed by the Hon'ble Supreme Court in Criminal Appeal No. 329/1992 Suresh Chandra Bahari vs.

State of Bihar and Others, Criminal Appeal No. 159/2022 and Criminal Appeal 159/1992 and other Criminal Appeal 160/1992 and holding that in the context of the opinion mentioned in the judgment of the Hon'ble Supreme Court above and sub-clause (b) of sub-section 4 of Section 306 Cr.P.C., for pardon of the co-accused, it is also a necessary condition that unless that person is already on bail, he will be kept in custody till the conclusion of the trial.

Whereas in this case, the accused surrendered Naxalite "A" mentioned in the application in respect of whom pardon is sought is neither already on bail nor has he been arrested nor is he in custody. Therefore, in the context of sub-clause 'b' of sub-section 4 of section 306 Cr.P.C. and the opinion of the trial Court in the above mentioned judicial precedent, the necessary condition of sub-clause 'b' of sub-section 4 of section 306 Cr.P.C. is not fulfilled in respect of the person mentioned in the application submitted by the prosecution.

15. The surmise, which guided, the learned NIA Court to reject the application, is that application in respect of whom pardon is sought is neither already on bail nor has he been arrested nor is he in custody, is contrary to the statutory scheme of Section 306 of the Cr.P.C. The power to tender pardon upon fulfillment of certain conditions has its own consequences to flow. Merely because, grant of pardon would result in certain legal consequences to flow, as has been provided under Section 306 of the Cr.P.C., the application for grant of pardon could not have been rejected.

16. In the case of ***Chandran vs. State of Kerala (2011) 5 SCC 161***, the Supreme Court had an occasion to appreciate the evidence of a person, who had not been put on trial, but could have been tried jointly with the accused and found his evidence reliable in view of the law laid down by that Court in ***Laxmipat Choraria vs. State of Maharashtra, AIR 1968 SC 938***.

Considering the legal position as discussed in the case of ***Chandran and Laxmipat Choraria*** (supra), the Supreme Court in the case of ***Prithipal Singh*** (supra) summarized the law, on the point, as below:-

"43. In view of the above, the law on the issue can be summarised to the effect that the deposition of an accomplice in a crime who has not been made an accused/put to trial, can be relied upon, however, the evidence is required to be considered with care and caution. An accomplice who has not been put on trial is a competent witness as he deposes in the court after taking oath and there is no prohibition in any law not to act upon his deposition without corroboration."

17. The aforesaid discussion, leads to irresistible conclusion that without scrutinizing the statements and materials placed before it and without considering the fact that it has power vested under Section 344 of the BNSS (Section 307 of the Cr.P.C.) to consider the application of the appellant for pardon, the learned NIA Court, mechanically rejected the application of the appellant, which is perse illegal. Hence, the impugned order is set aside.

18. The matter is remanded back to the NIA Special Court for re-consideration of the appellant's application afresh, in the light of the provisions under Section 344 of the BNSS (Section 307 of the Cr.P.C.) and the order passed by the Division Bench of this Court in the matter of ***State (Through National Investigation Agency) vs. Hidma and Others*** passed in CRA No. 754/2020.

19. In the result, the appeal is **allowed** to the extent indicated above.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Manpreet

HEAD-NOTE

Section 307 of the Code of Criminal Procedure (now Section 344 of the Bharatiya Nagarik Suraksha Sanhita BNSS, 2023) empowers the Court to direct tender of a pardon to an accomplice in a case. This means that if a person is believed to have been involved in a crime, the Court can offer them a pardon (immunity from prosecution), if they agree to testify truthfully against other accused individuals in the case.