

# THE NIA LEGAL BULLETIN



## ISSUE 1 (August 2024)

### A Compilation of Legal Updates and Relevant Judgments

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## **I. CHHATTISGARH HC ON APPROVERS [Sec 306 – 308 CrPC/ 343 – 345 BNSS]**

### **➤ Why in News?**

The NIA had filed an application u/s 306(1) CrPC to tender conditional pardon to the two accused in RC-11/2019/NIA/DLI and the NIA Special Court rejected the application. The NIA preferred an appeal against the Special Court's Order. The Chhattisgarh High Court remanded the matter in this case to the Ld. NIA Special Court to reconsider NIA's application seeking grant of pardon to two accused who had surrendered during the case deeming the NIA Special Court's order as a non-speaking order, swayed by extraneous considerations. The Chhattisgarh HC reiterated the mandate of the (trial) Court under the law, i.e. to minutely scrutinize the statements of the surrendering accused persons, and to arrive at his own satisfaction whether those persons supposed to have been directly or indirectly concerned in or privy to an offence, in respect of which, application for pardon was made.

### **➤ Brief Summary of the case (of the NIA)**

**Legal Proceedings in case RC-11/2019/NIA/DLI regarding grant of pardon to accused Nanda and Badal:** In this case, during the investigation, two Naxals, namely the accused, Nanda and Badal, who were FIR named, surrendered.

1. When the NIA filed an application for grant of pardon to both the accused in the concerned NIA Special Court, the application was rejected on the ground that the two accused, having surrendered, believed that they were not likely to be prosecuted and hence, their statements may not be reliable.
2. NIA preferred to challenge the said order before the High Court. The High Court remanded back the matter to the Trial Court for re-consideration.
3. The NIA Special Court considered the statements of the accused persons in which they have provided evidence against themselves as being part of the CPI(Maoist) and also revealed their involvement in the commission of the crime. Based on their statements, the Court tendered pardon to the surrendered Naxals.

### **➤ Legal Provisions and Court Rulings**

The word approver is neither defined nor used in the CrPC or the BNSS, but is dealt with under sections 306, 307 and 308 (corresponding sections 343, 344 and 345 of the BNSS). Usually, when there is a dearth of prosecutable evidence to prove the case against the accused persons, the accused person, whose role is

minimal amongst all the accused persons (who is usually an accomplice) can be made an approver by the order of a Competent Court, in a case for giving evidence by making a full and true disclosure. It has to be borne in mind that the evidence of approver being that of an accomplice is *prima facie* of a tainted character and generally requires corroboration for conviction.

Following is a summary of the objective of the concept of ‘approver’ and the procedures to be followed under the CrPC:

Sr No.	Process/ Legal Issues	Rule Position/ Position of Law related to the Legal Issue
1.	What is the objective of the concept of the approver under the CrPC?	<ul style="list-style-type: none"> <li>i. <b><i>Yakub Abdul Razak Memon v. State of Maharashtra</i></b>, (2013) 13 SCC 1: ‘The object of Section 306 CrPC is to tender pardon in cases where a grave offence is alleged to have been committed by several persons so that the offence could be brought home with the aid of the evidence of the person pardoned. The legislative intent of this provision is, therefore, to secure the evidence of an accomplice in relation to the whole of the circumstances, within his knowledge, related to the offence and every other person concerned.’</li> <li>ii. <b><i>Suresh Chandra Bahri v State of Bihar</i></b>, 1995 (Suppl.Vol.-1) SCC 80: ‘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.’</li> </ul>
2.	To whom is pardon tendered?	<ul style="list-style-type: none"> <li>i. Any person supposed to have been directly or indirectly concerned in or privy to an offence [<b><i>Prithipal Singh v State of Punjab</i></b>, (2012) 1 SCC 10: ‘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.’]</li> <li>ii. Offences covered:-               <ul style="list-style-type: none"> <li>a. Any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952</li> <li>b. Any offence punishable with imprisonment which may extend to 7 yrs or with a more severe sentence</li> </ul> </li> </ul>

3.	What is the primary consideration/condition for tendering pardon?	<b>Condition [Sec 306(1) CrPC]:</b> full and true disclosure of the whole of circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor in the commission thereof
4.	Who is the competent authority to grant pardon to an accomplice and what is the process of the same?	<p><b>Who may grant pardon to an accomplice? [Sec 306(1) CrPC]</b></p> <ul style="list-style-type: none"> <li>i. CJM/Metropolitan Magistrate – at any stage of investigation/inquiry/trial</li> <li>ii. MFC – at any stage of inquiry/trial</li> <li>iii. Court to which the case is committed for trial – at any time after the commitment of the case but before judgment is passed (s 307, CrPC/ s 344 BNSS)</li> </ul> <p><b>Magistrate to record the following while tendering pardon [Sec 306(3) CrPC]</b></p> <ul style="list-style-type: none"> <li>i. Reasons for tendering pardon</li> <li>ii. Whether the tender was or was not accepted by the person to whom it was made. The statement would be recorded by the Magistrate and signed by the accused.</li> </ul> <p><b>Person accepting the tender of pardon shall be: [Sec 306(4) CrPC]</b></p> <ul style="list-style-type: none"> <li>i. examined as a witness both in the Court of the Magistrate taking cognizance and in the subsequent trial. However, where the Special Judge takes cognizance of offence directly, section 306 would get by-passed (<i>A. Srinivasulu v The State Rep. by the Inspector of Police</i>, 2023 SCC OnLine SC 900); and</li> <li>ii. detained in Judicial Custody until termination of the trial, unless he is already on bail;</li> </ul>
5.	What is the value of evidence given by the approver?	<p><b>Corroboration of the approver's evidence is necessary [Sec 133 IEA/ 138 BSA]</b></p> <p><i>Sitaram Rao v State of Jharkhand</i>, (2007) 12 SCC 630: Explained about the corroboration required in a case where the evidence of an accomplice plays a role.</p> <ul style="list-style-type: none"> <li>i. It is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain a conviction.</li> <li>ii. The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the</li> </ul>

		<p>testimony of the accomplice or complainant that the accused committed the crime.</p> <p>iii. The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another.</p> <p>iv. The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.</p>
6.	What happens if the approver does not comply with the conditions of the pardon?	<p><b>Trial of person not complying with conditions of pardon [Sec 308 CrPC/ 345 BNSS]</b></p> <p>The following consequences shall flow in case of non-compliance with the conditions of pardon:</p> <p>i. Such person may be tried for</p> <ol style="list-style-type: none"> <li>the offence in respect of which the pardon was so tendered or</li> <li>for any other offence of which he appears to have been guilty in connection with the same matter, and</li> <li>for the offence of giving false evidence only with the sanction of the High Court.</li> </ol> <p>ii. Such person shall not be tried jointly with any of the other accused.</p> <p>iii. During the trial:</p> <ol style="list-style-type: none"> <li>Statements made by him may be given in evidence against him at such trial.</li> <li>The accused shall be entitled to plead that he has complied with the condition, while the burden of proof is on the prosecution to prove the non-compliance.</li> <li>The Court shall ask the accused whether he pleads that he has complied with the conditions before the charge is read out and explained to the accused (if Court of Session) or before the evidence of the prosecution witnesses is taken (if Court of a Magistrate)</li> <li>In case the accused pleads so, the Court shall record the plea and proceed with the trial, and before passing the judgment if the Court finds that he has so complied, the Court shall acquit him.</li> </ol>

## **II. PUNJAB & HARYANA HC [Avoiding delay at the Stage of Framing of Charges]**

### **➤ Why in News?**

In *Gursant Singh v State through NIA*, three accused persons in RC/23/2020/NIA/DLI applied for regular bail at the Punjab and Haryana High Court, citing a long delay in framing of charges by the NIA Special Court, Mohali. The prosecution apprised the Court of the delay tactics engaged by the accused persons. This led to the immediate framing of charges through the HC's intervention.

### **➤ Brief Summary of the case of the NIA**

1. In *Gursant Singh v State through NIA*, three accused persons in RC/23/2020/NIA/DLI applied for regular bail at the Punjab and Haryana High Court, citing a long delay in framing of charges by the NIA Special Court, Mohali. Countering the same, the NIA Special PP brought to the notice of the High Court, by submitting all the zimini orders of the NIA Court to date, that a discharge application of one of the accused has been pending for adjudication since 02.12.2021. At the same time, it was also highlighted that the accused has sought undue adjournments. The Court was apprised that the accused persons have been filing multiple discharge applications as a tactic to delay the framing of charges.
2. The High Court also considered the fact that while charges have not been framed, many of the accused are already on bail benefiting from the pending discharge application. Therefore, on 26.04.2024, the High Court on its own called for an explanation of the NIA Court seeking details as to the reasons for the delay in deciding the application and how the accused and their counsel can be given so much of leverage in delaying the process of prosecution. After the High Court's intervention, charges were framed in the present case.
3. It is pertinent to note that the Special PP's act of apprising the Court of the delay tactics engaged by the accused counsel led to the immediate framing of charges through the Court's intervention. Such an appropriate counter from the prosecution side could help in the timely framing of charges and also prevent the other accused on bail from taking more advantage of the delay.
4. The course of action taken by the NIA Special PP here may be considered a good practice to be adopted in future NIA cases where the accused or his counsel attempts to delay the trial by filing discharge petitions. The NIA Branch Offices may take note of this for handling similar cases.

➤ **Legal Provisions and Court Rulings**

Some of the factors considered while granting bail owing to delay in trial are listed as under, along with the cases whereunder they were mentioned/promulgated by the Courts.

- Delay in the conclusion of the trial, particularly if it is solely attributable to the prosecution [Nemi Puri vs. State of Jharkhand – Jharkhand HC];
- Length of the accused's custody [Indrani Pratim Mukerjea vs. Central Bureau of Investigation - Supreme Court; Sandeep @ Raja Acharya vs. State of Orissa (with interim relief and office report) - Supreme Court];
- Likelihood of the trial not being completed soon [Indrani Pratim Mukerjea vs. Central Bureau of Investigation - Supreme Court, Devendra Pratap Singh vs. State of Uttar Pradesh - Supreme Court];
- Stage of the evidence and the nature of the remaining witnesses to be examined [Devendra Pratap Singh vs. State of Uttar Pradesh - Supreme Court];
- Absence of new evidence or facts to support the charges, especially if there has been a significant delay in filing the charge sheet [Raushan Kumar Ray vs. State of Jharkhand – Jharkhand HC];
- The Court in its judgment has emphasised that the right to speedy trial is a fundamental right within the scope of Article 21 of the Constitution. The Court observed that, if the trial is unnecessarily delayed for no fault of the accused, the court must exercise its power to grant bail. [Manish Sisodia v. Central Bureau of Investigation | Special Leave Petition (Criminal) No. 8167 of 2023].

### **III. MANIPUR HC ON EFFECT OF NON-OBTENANCE OF PROSECUTION SANCTION ON BAIL [Crl. Appeal No. 11 of 2024]**

#### **➤ Why in News?**

The Manipur High Court on 22<sup>nd</sup> August, 2024, set aside the Special Court's order granting bail to the person who is accused of waging war against India for cessation and creation of an independent “Government of the People's Democratic Republic of Kukiland,” which was granted on the grounds that the prosecution sanction had not been obtained.

#### **➤ Brief Facts of the Case**

The Special Court (NIA) granted default bail to two accused namely Lhaineikim Lhouvum @ Kikim and Mark Thangmang Haokip on the ground that, the subject charge sheet filed against the accused was without obtaining the prosecution sanction order, therefore the charge-sheet ought to be considered as an incomplete charge-sheet, entitling the accused for the grant of default bail.

The bench comprising Chief Justice Siddharth Mridul and Justice A. Guneshwar Sharma referred to the case of Judgebir Singh and Ors. vs. National Investigation Agency where it was that a chargesheet filed without prosecution sanction cannot be termed as an incomplete chargesheet and the accused cannot claim a right to be released on default bail for want of sanction in this circumstance.

*“From the ratio of the Judgebir Singh (supra), it is now a settled proposition of law that, chargesheet filed without prosecution sanction order cannot be treated as an incomplete chargesheet so as to enable the accused to claim an indefeasible to be released on default bail. We are concomitantly of the view that, the learned Special Judge (NIA), Imphal West erred grossly in holding that the subject chargesheet filed without prosecution sanction order from the competent authority is an incomplete chargesheet and the accused is entitled to be released on bail.”*, the Judgment authored by Chief Justice Mridul said.

*“In the present case, the chargesheet without sanction order was submitted on 25.11.2022 and the default bail application was filed only on 18.03.2023. In the circumstances, the impugned order dated 28.03.2023 in Cril. Misc. (B) Case Nos. 3 of 2023 and 45 of 2023 releasing the accused on default bail is contrary to law and accordingly set aside.”*, the Court concluded.

#### **IV. SUPREME COURT ON BAIL**

##### **A. Criminal Appeal No. 2790 of 2024 [Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh]**

###### **➤ Why in News?**

In a significant judgment granting bail to an undertrial prisoner facing charges under the Unlawful Activities (Prevention) Act, 1967(UAPA), the Supreme Court on 18<sup>th</sup> July, 2024, held that a constitutional court can grant bail despite statutory restrictions if it finds that the right to speedy trial under Article 21 of the Constitution has been infringed. A bench of Justice JB Pardiwala and Justice Ujjal Bhuyan granted bail to one Sheikh Javed Iqbal on the ground of long incarceration of nine year without much progress in the trial.

##### **B. RIGHT TO BAIL TO BE READ INTO S. 45 of the PMLA [Manish Sisodia v. Directorate of Enforcement, arising out of SLP (Crl) No. 8772 of 2024]**

###### **➤ Why in News?**

The Supreme Court judgment delivered in *Ramkripal Meena v. Directorate of Enforcement*, on 9<sup>th</sup> August, 2024, where a bench of Justices Surya Kant and Ujjal Bhuyan relaxed the twin conditions under Section 45 PMLA and granted bail to the petitioner-accused citing long period of custody and the likelihood of trial not being concluded in a short span of time. The petitioner was accused of leaking and distributing question paper papers of the Rajasthan Eligibility Examination for Teachers, 2021 (REET), for a payment of Rs.1.20 crores. The Court held that when trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only the ground that the charges are very serious as there is no end in sight for the trial to conclude.

###### **➤ Legal Provisions and Court Rulings**

An accused is entitled to a speedy trial. The Supreme Court of India in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India, despite the restrictive provisions related to bail being applicable to the undertrial in the cases of NDPS Act, the UAPA and the PMLA. If the alleged offence is a serious one, then it is all the more necessary for the prosecution to ensure an expeditious trial.

### **PMLA:**

Section 45 of the Prevention of Money-Laundering Act (PMLA) of 2002 sets out two conditions for granting bail to people accused of money laundering:

- The accused must prove that they are not guilty of the crime, at least on the surface;
- The accused must convince the judge that they won't commit any crimes while on bail;

Section 45 also states that the accused cannot be released on bail unless the following conditions are met:

- The prosecutor has had a chance to oppose the bail application;
- The court is satisfied that there are reasonable grounds for believing the accused is not guilty;

### **UAPA:**

Section 43D of the UAP Act says that there shall be modified application of certain provisions of the Cr.P.C. Per sub- Section (5) of Section 43D, which starts with a non-obstante clause, notwithstanding anything contained in the Cr.P.C, no person accused of an offence punishable under Chapters IV (which includes Section 16) and VI of the UAP Act shall, if in custody, be released on bail or on his own bond unless the public prosecutor has been given an opportunity of being heard on the bail application. The proviso says that such accused person shall not be released on bail or on his own bond if the court on a perusal of the case diary or the report made under Section 173 of the Cr.P.C. is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima-facie true. Sub-Section (6) clarifies that the restrictions on granting of bail specified in sub-Section (5) would be in addition to the restrictions under the Cr.P.C. or any other law for the time being in force on granting of bail.

On the other hand, the Supreme Court in its order dated 7<sup>th</sup> February, 2024, in the case of ***Gurwinder Singh vs. State of Punjab & Another*** had held that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. Accordingly, bail application of appellant accused under Unlawful Activities (Prevention) Act, 1967 was rejected.

### **➤ Conclusion on Bails and Delayed Trials under Special Acts**

Although there appear to be conflicting responses on the restrictive bail conditions on the accused persons being tried under the special acts viz., the UAPA, the NDPS and the PMLA, the number of judgements in favour of the accused, where the delay is not attributable to the accused persons, is more than the ones where bails have been denied.