

CC No.283/19, IA No.37/2026
CBI Vs Texcomash International & Ors.
RC No.BDI/2011/E0002/BS & FC/CBI/
New Delhi

04.05.2026

Present : Sh. Tajvinder Singh, Ld. PP, CBI.

Sh. Arjun Syal, Ld. Counsel for A-23, through V/c.

Sh. Saurav Kumar, Ld. Proxy Counsel for A-24.

Sh. Ranjeet Singh, Ld.Proxy Counsel for A-29 & A-30.

As per previous order, accused persons were granted liberty not to appear today.

Vide my separate order of even date, separate applications moved on behalf of A-11 & A-24 seeking right of hearing, are dismissed and the oral submissions in this behalf on the part of other accused persons, stands rejected. It is held that co-accused persons do not have a right of hearing on the application u/S 306 CrPC of A-23. However, this court shall take assistance of the Ld. Counsel for accused persons, as and when it deems fit while hearing on the said application.

Be put up on **date already fixed i.e. 26.05.2026** for hearing on the aforesaid application u/S 306 CrPC.

(Atul Krishna Agrawal)
Special Judge, CBI-19 (PC Act)
RADC/New Delhi/04.05.2026

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ORDER

1. Vide this order, I shall decide whether co-accused persons have a right of hearing on the application under Section 306 Cr.PC filed by accused no. 23 Manoj Kumar Garg for turning approver and for grant of pardon or not?
2. The background facts are that the present FIR was registered for the offences punishable u/S 120B IPC read with Section 420/467/468/471 IPC read with Section 13 (2) of PC Act. The charge-sheet of this case was filed on 13.07.2012 and subsequently, the prosecution filed two supplementary charge-sheets, keeping further investigation open. Thereafter, pending further investigation, A-23 moved an application u/S 306 Cr.PC on 09.05.2016, seeking grant of pardon and for turning approver, in favour of the prosecution.
3. It was stated in the application that the applicant had voluntarily filed this application at his own free will, without any force, pressure or duress, either from the

prosecution or otherwise. It was further stated that the applicant will not hesitate in making full and true disclosure of the whole of the circumstances, within his knowledge relating to the offence alleged in the present case against M/s Texcomash International Ltd. and its Directors and other persons.

4. Subsequently, applicant/A-23 was examined before a Metropolitan Magistrate u/S 164 Cr.PC where he claims to have made complete and true disclosure of all the facts and had not concealed any material fact.

5. Notice of the application was issued to CBI which filed its first reply on 02.11.2016 stating that CBI had no objection to take accused Manoj Kumar Garg as an Approver, provided he made true and full disclosure of the crime, during trial and to forfeit Rs.6 Crores deposited by him in the Court, at the time of his bail. A status report dated 17.12.2016 thereafter was filed by CBI, justifying its position regarding claiming forfeiture of Rs.6 Crores. However, since A-23 did not agree to the forfeiture of Rs.6 crores claiming that the said amount was not part of defrauded bank funds and was deposited only to get bail, the CBI withdrew its NOC given to A-23 for grant of tender of pardon.

6. Thereafter, on 08.06.2017, another status report filed by the CBI stating that in order to determine whether Manoj Kumar Garg was main accused or facilitator, some more time was required as Letter of Rogatories (LRs) were pending execution and the application under Section 306 Cr. PC of A-23 be considered only after execution of LR's. Certain other status reports were filed by CBI thereafter wherein it is stated that the amount defrauded by A-23 could not be ascertained as LR's were pending execution. So, the said application under Section 306 Cr. PC was also kept pending.

7. The said application u/S 306 Cr. PC was again pressed by A-23 in the year 2025 before Ld. Predecessor and thereafter, vide order dated 26.09.2025, the Ld. Predecessor of the Court directed the CBI to give specific reply / response on merits of the application of A-23, without taking up any plea regarding forfeiture of Rs.6 Crores or regarding outcome of LR's, as such uncertainty was required to be removed for moving ahead in the trial and not only for deciding the application of A-23. It was further directed to IO for giving the specific reply on merits of the plea of the accused, so that the application can be decided this way or that way, more particularly, in the light of para 9 of the reply dated 30.11.2017.

8. Before the aforesaid reply could be filed by CBI, the Ld. Predecessor of the Court sought recusal of the matter on personal grounds and subsequently vide order dated 17.10.2025 of Ld. PD&SJ, RACC, the present matter was transferred to this Court. The CBI filed one another reply dated 21.11.2025 before this court in terms of order dated 26.09.2025 stating that it had no objection to grant of pardon and for making A-23 an Approver in the case, provided he makes a true and full disclosure of the crime, during the trial.

9. After securing the attendance of all the accused persons (some accused persons were arrayed as an accused in the supplementary chargesheets filed later on) and compliance of Section 207 Cr.PC, when this Court proceeded to hear submissions on the part of A-23 and CBI on the aforesaid application u/S 306 Cr.PC, few of the co-accused persons claimed a right of hearing on the said application. It was vehemently argued on their behalf that the applicant / A-23 Manoj Kumar Garg has been shown as the main conspirator of the alleged offence, as per the charge-sheet and the role of the other accused persons was that of being co-conspirator as per the prosecution. Hence, their rights would be gravely prejudiced, if they are not given right of hearing. It was also stated that the CBI has been making flip flop in its stand qua A-23, taking contradictory stands, which also needed to be highlighted

before the Court. The Ld. Counsels on behalf of A-6, A-11, A-24, A-25, A-27, A-29 and A-30 were the Ld. Counsels for accused persons, who vehemently opposed the consideration and disposal of the present application without hearing them. Two separate applications were also filed on behalf of A-11 and A-24 in this regard.

10. It was argued on behalf of A-11 that as per the charge-sheet, it was the specific case of CBI that A-23 Manoj Garg and his brother Vipin Kumar Gupta were the principal accused. Further, A-23 was a habitual offender of economic offences and was accused in five other cases. Further, as per first supplementary charge-sheet, A-23 was involved in the alleged transaction since the beginning and he had stated false facts before Hon'ble Delhi High Court and Hon'ble Supreme Court. All these facts and many other facts related to A-23 were required to be considered at the time of deciding his application under Section 306 Cr.P.C. Further, since the other accused persons are alleged to be in conspiracy with A-23, their rights would be prejudicially affected if this application is decided without hearing him. Various judgments were relied upon by A-11 which are as follows :-

(a) P.R.Sarkar & Ors. Vs The State of Bihar, 1974 Cri. LJ 957,

(b) State Vs Sunil Batra (1978) ILR 2 Delhi 536,

(c) Pascal Fernandes Vs The State of Maharashtra and Ors., (1968) 1 SCR 695,

(d) Ashok Kumar Aggarwal Vs CBI, 2007 (98) DRJ 80,

(e) State of UP Vs Kailash Nath Agarwal & Ors., 1973 Cri. LJ 196 and

(f) Prashant Goel Vs State and Another, 134 (2006) DLT 221.

11. A-24 had also moved an application claiming right of hearing and for issuance of notice of application u/S 306 Cr.PC of A-23, to all the other accused persons. It was stated that during the hearing on the said application on 31.05.2019, the Ld. Predecessor of this court had noted the contention of CBI that it was not in a position to argue on the application, till the LRs are received from the concerned countries. The CBI had also withdrawn the NOC given to A-23 for tender of pardon. Till the present date, the LRs have not been received by CBI, hence, the position which was as on 31.05.2019, remains the same even as on date. However, despite that CBI all of a sudden, on 21.11.2025 filed a reply that it had no objection if A-23 was made an approver after grant of pardon, provided he made a true and full disclosure of crime during the trial.

12. It is further stated that A-24 would be adversely affected party in the application relating to grant of pardon to A-23 and hence, it is entitled to be granted personal

hearing in accordance to the principals of natural justice. Reliance was placed upon various judgments wherein this principal of natural justice has been highlighted. It is further stated that even on 19.03.2018, the co-accused in this case had been granted opportunity to make their submissions with reference to aforesaid application of A-23 and thereafter, there was no reason whatsoever as to why the applicant/A-24 ought to be prevented from making his submissions with regard to the application of A-23.

13. It is further stated that the main question which arises is whether A-23 is the main accused or not and if A-23 is main accused, can he be made an approver. In the earlier reply dated 24.01.2017 of CBI, it was stated that A-23 had received an amount of Rs.53,09,26,541/- and was the direct beneficiary of the same. Hence, it was strange as to how CBI as per its latest reply/report was agreeing for giving no objection and it was all the more expedient that A-24 was granted personal hearing in the present case.

14. It is further stated that another question which arose for consideration was whether discharge can be granted by the court despite withdrawal of consent by CBI u/S 306 Cr.PC. Withdrawal of consent of CBI is reflected in orders dated 23.03.2018 and 31.05.2019. Hence, in the light of

withdrawal of consent by CBI and in the absence of change of circumstances since 2017, it is not clear as to why the application of pardon has been taken up for hearing and that too, without providing hearing to other co-accused.

15. It is alleged that A-23 is the main facilitator of the entire controversy and even otherwise, he had not made a true declaration in his statement u/S 164 Cr.PC. Lastly, it is submitted that no pardon can be granted without the consent of prosecution, which had been withdrawn by CBI earlier. Further, the testimony of co-accused as an approver should advance the interest of justice and the Special Judge must have material before him to show what the nature of that testimony will be. Further, the grant of pardon is a judicial act and while performing the said act, the Special Judge is bound to consider the consequences of grant of pardon, taking into consideration the policy of State and to certain extent compare the culpability of the person seeking pardon qua the other co-accused. Prayer is accordingly made to permit A-24 to be heard on the application.

16. Ld. Counsel for A-24 has relied upon the following judgments:-

(a) Asit Kumar Kar Vs State of W.B.(2009) 2 SCC 703,

(b) Mrunalinidevi Puar Vs Gaekwad Investments Corpn. (P) Ltd. (2012) 12 SCC 570,
(c) P. Sundarrajan Vs R. Vidhya Sekar (2004) 13 SCC 472,
(d) Prashant Goel Vs State, 2006 SCC OnLine Del 853,
(e) Prabhat Ranjan Sarkar Vs State of Bihar, 1973, SCC OnLine Pat 44,
(f) State Vs Sunil Batra, 1978 SCC, OnLine Del 36 and
(g) Kushal Kumar Aggarwal Vs Directorate of Enforcement, 2025 SCC OnLine SC 1221.

17. Arguments were also addressed on behalf of Ld. Counsel for A-29 & A-30 wherein he put forth a legal objection qua the grant of pardon by comparing the provisions of Sections 306 & 307 Cr.PC. Ld. Counsels for A-6 and for other accused persons, also argued in favour of right of hearing to be granted to the co-accused persons again pointing towards the prejudice which will be caused to them in case they are not heard.

18. I have heard and considered the arguments put forth by all the Ld. Counsels for accused persons including the applicant/A-23 as well as Ld. PP, CBI.

19. At the outset it is pertinent to mention that the relevant provision in this case ought to be Section 5(2) of PC Act and not Section 306 or 307 Cr.PC. Section 5(2) of the Act is as follows:-

“A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.”

(emphasis supplied)

20. This Section nowhere provides for a right of hearing to co-accused persons on an application for Pardon moved by one of the accused. Now coming to the judgments relied on behalf of A-11, it has been held in P.R.Sarkar & Ors. Vs The State of Bihar, 1974 Cri.LJ 957, as follows:-

“11. Before parting with this case, I may observe that the District Magistrate while granting pardon shall hear the accused persons also because it is a Judicial Proceeding. If the order of granting pardon is passed during investigation, the accused shall not be heard because till that time no police report (Chargesheet under Section 173 of the Code) is preferred against the accused persons. It may be further noted that in the present case, the chargesheet was presented by the Delhi Special Police Establishment and cognizance was taken on the basis of the chargesheet by the Special Magistrate; and therefore, on that basis the Special Magistrate will conduct fresh enquiry under Chapter XVIII of the Code of Criminal Procedure as indicated above.”

21. Again in the case titled as State Vs Sunil Batra (1978) ILR 2 Delhi 536, it has been held that :-

“159. On a plain reading of S. 337(1) the stage at which a conditional pardon can be tendered has been indicated: "at any stage of the investigation or inquiry inquiry into or trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence.....". Having thus

indicated the stage from and up to which conditional pardon can be tendered, the proviso imposes the limitation that the power of tendering such pardon cannot be exercised by any 1st Class Magistrate; other than the District Magistrate, unless he is a Magistrate making the inquiry or hiding the trial there is the rider added that when the offence is under investigation no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be enquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof. The above sub-section (1) and the proviso make a distinction between two stages of the case, namely, the stage of investigation and the later inquiry into or trial of the offence. In the present case we are concerned with the tender of pardon at the stage of investigation, that is, before the stage of inquiry or trial. This distinction has to be prominently borne in mind while noticing some of the cases cited to us at the bar. The following observations of B. P. Jha, J. in *P.R. Sarkar v. State of Bihar* (1974 Criminal Law Journal 957) seem to bear precisely on this question. "If the order granting pardon is passed during investigation, the accused shall not be heard because till that time no police report (chargesheet under section 173 of the Code) is preferred against the accused persons" . In a petition under S. 561-A of the old Criminal Procedure Code to quash the commitment the validity of the order of a Magistrate tendering pardon without recording reasons was held to be illegal. After giving a direction for the tendering of pardon, if necessary, in accordance with law the learned Judge made certain observations to indicate that the District Magistrate while granting pardon would "bear the accused persons also because it is a judicial proceeding."

(160) The existence of a judicial proceeding, when an offer of pardon is made, seems to make a difference-a vital difference- in the matter of whether any person who may be said to be affected by the order of tender of pardon should also be heard. When there is no judicial proceeding in existence, the hearing of any person could not even be postulated. If there should be any such hearing even at that stage the question naturally arises as to who would be the persons who should be heard. Are they the persons who are then arraigned by the police as accused ? Supposing, in this eventuality, those who are arraigned as accused persons by the police are heard but some more persons are added as accused after the pardon is tendered and accepted but before charge-sheet. Is filed, would the order of tender of pardon, made already, become invalid as against those who were

added later, on the ground that they (or any of them) were not heard? Could it be even suggested that the Magistrate is under a duty to hear the newly added persons (after tender of pardon) and review or set aside the pardon granted by him already to an accused? Supposing an order of tender of pardon is made without hearing the other or some, arraigned by the police during the stage of investigation as accused but those persons are subsequently dropped when the charge sheet is filed would that order be regarded as invalid because the Magistrate was bound to have heard those arraigned by the police as accused, even though they have been subsequently dropped by the police. Surely, one should be slow to reach a conclusion, on this portion of the case, which would give rise to so many anomalies. On the other hand, by making a distinction between the stage of investigation and the later stage of trial or enquiry, such anomalies at least are altogether avoided; for that reason itself, even if not for any other, such a distinction may well be made.

(161) We respectfully agree with B. P. Jha, J. when he made such a distinction, though he has not articulated the reasons in support of the distinction he made.”

22. Then in the case of *Pascal Fernandes Vs The State of Maharashtra and Ors.*, (1968) 1 SCR 695, the Hon’ble Supreme Court observed that :-

“14. The next question is whether the Special Judge acted with due propriety in his jurisdiction. Here the interests of the accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice if it is prejudicial to an accused. There are also matters of public policy to consider. Before the Special Judge acts to tender pardon, he must, of course, know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused. What is meant by public policy is illustrated, by a case from Dublin Commission Court (*Reg v. Robert Dunne*, 5 Cox Cr. cases 507) in which Torrens, J. on behalf of himself and Perrin, J. observed as follows:

"From what I can see of this case, this witness Bryan, who has been admitted as an approver by the Crown is much the more criminal of the two on his own showing..... I regret that this witness, Bryan, has

been admitted as evidence for the Crown and thus escaped being placed upon his trial. It is the duty of Magistrates to be very cautious as to whom they admit to give evidence as approvers, and they should carefully inquire to what extent the approver is mixed up with the transaction, and if he be an accomplice, into the extent of his guilt....."

23. Finally in Ashok Kumar Aggarwal Vs CBI, 2007

(98) DRJ 80, it has been held that:-

“23. As held in the aforesaid case, the Court observed, in no uncertain terms, that no procedure or action can be in the interest of justice if it is prejudicial to an accused. The Special Judge is not to assume the role of the public prosecutor and he is to ask the opinion of the public prosecutor on the proposal. However, at the same time, it needs to be emphasised that the Court is not a mute spectator and keeping in mind the interest of co-accused persons, he should at least consider that the prosecution is not unduly favoring the person seeking pardon, at the cost of the co-accused. **It has been held by this Court in M.M. Kochar v. The State that tender of pardon and its acceptance by the person concerned, is a matter entirely between the Court and the person to whom the tender is rendered and it is a purely executive or administrative action and not a judicial decision. This judgment was approved by the Apex Court in State of UP v. Kailash Nath Agarwal and Ors. Treating the action as administrative action, the principles on which judicial review of administrative action is permissible would come into play.**”

(emphasis supplied)

24. The court refrains to cite other judgments relied upon by the Ld. Counsel for other accused persons since those judgments mostly elucidate the principle of Natural Justice regarding “Audi Alteram Partem” i.e. hear the other side, which principle is not something which can be denied by this court even otherwise.

25. Now coming to the judgments filed on behalf of applicant/A- 23 on the aspect that co-accused persons do not have a right of hearing on such an application, in case titled as C.B.I. Vs Ashok Kumar Aggarwal and Ors.. (2013) 15 SCC 222, it has been held that :-

“10. Respondent 1 moved an application on 3-5-2001 claiming that he had a right to oppose the application filed by Respondent 2 seeking pardon. However, the said application was rejected by the learned Special Judge on the same day. The said order dated 3-5-2001 rejecting the application of Respondent 1 claiming the right to oppose the application filed by Respondent 2 was affirmed by the High Court vide order dated 10-7-2001 2 and by this Court vide order dated 8-10-2013.

11. The reply to the letter rogatory dated 18-7-2001 was received by CBI on 30-7-2001 and the said reply was placed before the Court. CBI requested the Court that it should be permitted to retain the same for further investigation which was allowed. The learned Special Judge allowed the application of Respondent 2 seeking pardon and made him an approver vide order dated 7-9-2001.”

26. Then in the case titled as Senthamarai v S Krishnaraj (2002) 1 CTC 143, it has been held that :-

“14. Whether the statement made by the accused seeking for pardon is voluntary or not is to be decided by the Court alone. If it is the case of the other accused that the statement of the approver is wrong and belated, it has to be established by subjecting the approver to cross-examination that the statement made by him was a false statement.

15. The pardon proceeding which takes before the Magistrate is neither an enquiry nor a trial in which an opportunity must be given to the other accused to show to the court that the statement of the accused seeking pardon is not true. Only during the course of trial, the opportunity will be given to the accused to show to the court that the approver's evidence at the trial is untrustworthy in view of the contradictions or improvements made by him by allowing the accused to cross-examine.

16. From these principles laid down in various decisions, it is clear that the other co-accused cannot be competent

enough to tell the court that the statement of the person concerned is false and therefore, the pardon cannot be granted. Therefore, the contention with regard to the difference stand taken by accomplice may not deserve acceptance.”

27. A-23 has further relied upon the case titled as Joseph Kuok Vs CBI CRL.M.C. 355 of 2007 where the approver application was allowed after filing of chargesheet and it was held as follows:-

“5. APPROVER - Satish Gupta is a graduate from Delhi University and before his statement under Section 164 of Cr. P. C. was recorded, certain questions were put to him, which are on page 16 of the paper book and they reflect that the disclosure about the offence in question by approver - Satish Gupta is voluntary one. It cannot be said at this stage that approver - Satish Gupta was not privy to the offence as from the charge sheet filed in this case by the Respondent, it appears that approver - Satish Gupta was a vital link between the exporters and the officials and he was very much party to the processing of the documents vide which exports were made and the said documents have been found to be forged and he is the best person who can throw light on the facts as to how the consignments were cleared without inspection by the department and goods worth Rs.30 crores were passed off as worth Rs. 69 lacs only.

6. It will not make any difference that in the statement under Section 164 of Cr.P.C. of approver - Satish Gupta, he has not highlighted his role which is abundantly clear from the charge sheet of this case as indicated above. In the proceedings of grant of pardon, when approver - Satish Gupta was questioned, he had replied that he felt that his confession will help to meet the ends of justice in this case. Thus, impliedly, approver – Satish Gupta has accepted the conditional pardon granted to him and he had been read over his confessional statement, which he had admitted to be correct.

7. Basically, it is for the prosecution to make up its mind to seek pardon for a particular accused or not and as to whether the existing evidence is sufficient or not and the co-accused cannot question the grant of pardon to a particular accused if it is in accordance with the law. I have scrutinized the impugned order and I am satisfied that the reasons recorded

for granting pardon to approver - Satish Gupta are neither extraneous nor irrelevant and the grant of pardon to approver- Satish Gupta is within the four corners of the law. As such, the impugned order does not suffer from any illegality or infirmity. The present petition is dismissed being bereft of merit.”

(emphasis supplied)

28. Then in the case of T.K Bhattacharya Vs CBI and Anr., 2015 SCC OnLine P&H 11354, the Hon'ble High Court observed that :-

“8. It is evident that it is up to the prosecution to lead cogent evidence before the court. If it finds during proceedings that a particular witness can be of help as an approver, it is always at liberty to invoke relevant provisions of Cr.P.C. Under such circumstances, the court is entitled to grant pardon to such accused as held in aforesaid judgment. Special Judge exercising the power does not act on his own behalf but on behalf of the prosecuting agency. In the instant case, application was moved by the prosecution before the Special Judge seeking to invoke section 306 Cr.P.C. On perusal of contents thereof, he decided to grant pardon subject to the condition that approver would make full and true disclosure of the entire circumstances within his knowledge relating to the crime and every other person concerned therewith as accused or abettor. Thus, plea of the petitioner that no reason has been assigned in the impugned order passed by the Special Court deserves to be rejected. The approver also made a statement under section 164 Cr.P.C. before the Special Judicial Magistrate, CBI, Patiala on 11.02.2014 making a disclosure of the facts to his knowledge. Needless to observe that petitioner is at liberty to cross examine said witness during the course of trial. Petition is thus, without any merit deserves dismissal.”

9. Besides, in view of judgment in Senthamarai's case (supra), it appears that co-accused has no locus-standi to question grant of pardon to an approver. Truth or falsity of statement of the accused seeking pardon is to be decided by the court alone. It has been held that issue regarding pardon is a matter entirely between court and the person to whom it is granted. Only obligation on the prosecution is to examine such a person as a witness during trial. **Pardon proceedings being neither an inquiry nor a trial, no opportunity of hearing needs to be afforded to co-accused at this stage. As**

trial proceeds, co-accused would get ample opportunity to cross-examine the approver and to show that his evidence was untrustworthy. Even the stage at which power under section 306 Cr.P.C. is exercised by the court, cannot be questioned by co-accused (para 17 of the judgment in Senthamarai's case (supra))”

(emphasis supplied)

29. Then in case titled as Yadav Singh Vs State of UP, 2018 SCC OnLine All 7520, it has been held that :-

“8. It is apparent from the perusal of the above case law that even in this case it was held by the Hon'ble Apex court that Respondent no. 1 did not have a legal right to raise any grievance, which would amount to that he did not have a right to oppose the pardon being sought by Respondent no. 2, however the view simultaneously was also expressed that in such a case court ought to apply its mind to consider the consequences of grant of pardon and also should look into the details as to whether the person seeking grant of pardon had criminal antecedents and in case he had, whether granting pardon to such a person would be justified. Further the court also ordered to take into consideration the culpability of the person seeking pardon qua the other accused.

9. Therefore, in view of above, we are also the view that in the case at hand the applicant did not have any right to be heard in respect of the disposal of application for granting pardon moved by co-accused, O.P. no. 3 Mohan Lal Rathi. It is apparent that the facts of the above mentioned case are totally different from the facts of the present case. No criminal antecedent is alluded to the O.P. no.3 in the present case who was nothing but a Chartered Accountant of the main accused applicant and his other family members, also co-accused, who used to help them in digesting the ill-gotten wealth on the basis of professional skill by suggesting modes of investments in various companies which were opened in the names of the family members of the main accused. The learned trial court has recorded in the impugned judgment/order that in a statement dated 29.11.2016 recorded by the Metropolitan Magistrate, Patiala House, New Delhi under section 164 Cr. P.C. the O.P. no. 3 had made a disclosure in respect of 30 entries pertaining to the transactions made by the accused persons which led to enrichment of these accused illegally. It is also mentioned

that in the statement of O.P. no. 3 dated 31.05.2018 recorded under section 306 (1) he has made full and true disclosure of the offence and hence taking into consideration the facts and circumstances of the case it was evident that O.P. no. 3 was not the main accused, rather the main accused was Yadav Singh-applicant, who being a public servant, misused his position as such in procuring ill-gotten wealth and made huge properties in his own name as well as in the name of his family members/co-accused and thus the O.P. no. 3 had helped the main accused as well as other co-accused in acquiring wealth beyond their known sources of income and the O.P. no. 3/co-accused had full knowledge of the mode and manner in which the said crime was committed by the main accused along with his family members and therefore it was concluded by the trial court that by granting pardon and making him approver, the O.P. no. 3 would be of immense help in proving the case against main accused and other co-accused. Therefore, it is also evident that the trial court has also made an assessment of the culpability of O.P. no. 3 qua other co-accused and in these circumstances the impugned order does not appear to suffer from any lacuna.”

30. Then in case titled as Navtar Singh Vs Director of Enforcement and Another with Jagat Singh Vs Director of Enforcement, (2010) 13 SCC 255, it has been held that :-

“27.In Lloyd v. McMahon, Lord Bridge observed: “My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

31. Having considered the arguments from both sides, in my considered opinion, the counsel for other accused persons have channelized their energy mostly on the aspect as to why pardon u/S 306 CrPC should not be granted to A-23 rather than explaining as to how co-accused persons have a right of hearing on an application u/S 306 Cr.PC moved by another co-accused. It has been argued that as per the charge sheet and the previous reports/ replies filed by CBI, A-23 was one of the main accused in this case being the master mind of alleged conspiracy, pursuant to which the alleged offences have been committed. The role of other accused persons was lesser in comparison, so A-23 cannot be granted pardon. However, these arguments are not relevant for the purposes of deciding the present issue in hand i.e. whether co-accused persons have a right of hearing or not and this question may arise for consideration of this court, at a later stage.

32. Infact, the only judgment which may help the other co-accused persons in establishing their right of hearing, is the case of State vs Sunil Batra, 1978 ILR 2 Delhi 536. However, as rightly submitted on behalf of A-23, the said judgment relied upon by the other co-accused to establish their claimed right of hearing, post filing of chargesheet, has been passed relying upon another judgment in the case titled as PK Sarkar Vs State of Bihar 1974 CLJ 957. However, the said judgment can now only have a

persuasive value since, the said judgment was passed while dealing with Section 337 of the earlier Cr.PC, 1898 whereas the present application has been filed u/S 306 Cr.PC, 1973. It has been rightly pointed out by Ld. Counsel for A-23 that unlike the erstwhile Section 337, Section 306 of Cr.PC 1973, does not have any proviso which makes any distinction between two stages of the case i.e. before the stage of investigation and the later inquiry into or trial of the offence. Hence, since Section 306 of Cr.PC, 1973 does not create any such distinction between two stages of the case, the said judgments in case titled as P.R. Sarkar (Supra) and Sunil Batra (Supra) may not be applicable to the present application u/S 306 Cr.PC, 1973, in the humble opinion of this court.

33. It is trite to observe that a criminal court does not have any such power as is not provided under the Statute since it cannot pass any order as it may deem fit, to further the ends of justice like a civil court can do. The powers of a criminal court are restricted and bound by express provisions of Cr.PC and other Statutes dealing with criminal offences. As per Section 306 Cr.PC, there is no right of hearing prescribed, to be granted to other co-accused persons on any such application moved by one of the co-accused. It is also correct that the said Statute at the same time, does not bar any such right of hearing to be given to the co-accused persons. There are divergent views

of High Courts of the country, as stated above. Under such circumstances, whether any co-accused is to be heard or not, may depend upon facts and circumstances of the case and the wisdom of the court, ofcourse guided by judicial pronouncements.

34. It was also contended on behalf of other co-accused persons that grave prejudice will be caused to them in case, A-23 is made an approver in this case. However, this court fails to understand whether there can be any such situation or case wherein no prejudice will be caused or the rights of co-accused will not be adversely affected, if one of the accused person (part of criminal conspiracy) applies for and is granted pardon. Since, the accused who has been granted pardon, would be privy to the alleged conspiracy and so, in a sense, direct evidence of existence of conspiracy may come on record, if the co-accused is examined as an approver in court. Hence, this argument of the right of co-accused persons being gravely & adversely affected does not hold much water, if the law provides for the same.

35. In the case titled as Ashok Kumar Aggarwal Vs CBI, 2001 CrI.L.J. 3710 and Senthamori Vs Krishnaraj & Ors. 2002, CrI.L.J. 2375, it has been held that the other accused persons have no role in this process in as much as it is something between the court and the accused to whom

pardon is being granted or considered. It was held by Hon'ble Delhi High Court in Ashok Kumar Aggarwal (Supra) that:-

“At the stage of investigations when an accused applies for pardon and the prosecution also supports him, the matter remains between the Court and the accused applying for pardon and the other accused have no right whatsoever to intervene or ask for hearing. The other accused against whom evidence of the approver is likely to be used, shall have sufficient opportunity to cross-examine the approver when examined in the course of trial and show to the Court that his evidence is not reliable or he is not a trustworthy witness. Whatever material the petitioner intends to use against the approver, he would be entitled to use it against him during trial to discredit him. The law does not prohibit tender of pardon to a principal accused even. The tender of pardon remains within the domain of judicial discretion of the Court before which request of an accused for tender of pardon is made. Therefore, a co-accused can not be permitted to raise objections against tender of pardon to another accused at this stage.”

(emphasis supplied)

36. The aforesaid order of Hon'ble Delhi High Court has been upheld by Hon'ble Supreme Court in SLP (Crl.) No. 3021 of 2001 vide order dated 08.10.2001.
37. It was also argued that A-23 has not made full and true disclosure of the facts as is required both u/S 306 Cr.PC as well as u/S 5 (2) of PC Act. It is alleged that A-23 has concealed certain vital facts. Be that as it may. Whether there has been a complete and true disclosure of facts or not, has to be seen by the prosecution and the court. The only right available with the co-accused persons is the right of cross examination of such an approver.

Hence, this argument is quite premature at this stage, even when the court has not begun hearing on the application u/S 306 Cr.PC.

38. Having considered all the facts and circumstances of the case, in my considered and humble opinion, other co-accused persons do not have any right of hearing on an application u/S 306 Cr.PC moved by one of the co-accused. However, at the same time, it is worthwhile to mention that CBI has been doing somersault and blowing hot and cold, with regard to the role of applicant/A-23. In the supplementary charge-sheet, applicant/A-23 has been referred to as one of the principle accused. Then in its reply dated 02.11.2026, CBI gave conditional NOC for A-23 to become an approver on the condition that he makes a true and full disclosure and with further condition of forfeiture of Rs. Six Crores, furnished at the time of bail. However, when A-23 denied the said forfeiture, CBI filed another interim reply dated 24.01.2017 withdrawing its NOC for grant of pardon. Then pursuant to order dated 15.01.2017 of Ld. Predecessor of this court, Status Report dated 08.06.2017 was filed by CBI stating that it would be in a position to tell if A-23 was the main accused or not only upon the execution of LRs and for keeping the said application pending. Thereafter, other status reports were filed by CBI and vide the last reply dated 21.11.2025, CBI stated that it had no objection to take A-23 as an approver

in this case, provided he made true and full disclosure of the crime, without insisting for forfeiture of Rs.Six Crores. The above aspects creates a reasonable suspicion with regard to the legal and factual stand taken by CBI concerning the applicant/ A-23. Hence, this court may be required to seek assistance of other accused persons during hearing on this application.

39. Accordingly, in view of the aforesaid facts and circumstances, the applications moved by A-11 and A-24 seeking right of hearing and the oral submissions made on behalf of other accused persons, stand dismissed / rejected. It is however clarified that the court may seek assistance of other accused persons as and when it deems fit, during arguments u/S 306 Cr.PC, so as to arrive at a just and fair decision while disposing the said application. Co-accused persons however, cannot claim a right of hearing.

40. Ordered accordingly.

**(Announced in the
open court on 04.05.2026.**

**(Atul Krishna Agrawal)
Special Judge, CBI-19 (PC Act)
RADC/New Delhi**