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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 17.03.2026
Judgment pronounced on: 04.07.2026

\+ **CRL. M.A. 17144/2025, CRL. M.A. 17145/2025 & CRL. M.A. 17146/2025 IN CRL. REV. P. 1283/2024 *(disposed of)***

TAJINDER PAL SINGH ....Petitioner

Through: Mr. Rajeev Awasthi, Adv.

versus

DIRECTORATE OF ENFORCEMENT ....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED, Mr. Vivek Gurnani & Mr. Pranjal Tripathi, Advs.

M/S NKG INFRASTRUCTURE LTD. ….Applicant

Through: Mr. Vijay Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

CRL. M.A. 17145/2025

Exemptions granted, subject to all just exceptions.

Application stands disposed of.

CRL. M.A. 17144/2025

1. This is an application filed by M/s NKG Infrastructure Ltd. under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023/Section 482 of Code of Criminal Procedure, 1973 ("***CrPC***") read with Article 227 of the Constitution of India seeking recall of order dated 03.12.2024 passed by this Court granting the accused Tajinder Pal Singh the status of Approver and setting aside the order dated 22.08.2024 passed by the Special Judge, Rouse Avenue Court, New Delhi.

FACTUAL BACKGROUND

2. The Directorate of Enforcement ("***ED***") registered an ECIR dated 06.07.2022 on the basis of alleged predicate offence registered by the CBI under Section 120 B read with Section 420 of Indian Penal Code and Section 13 (2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988.

3. As per the said ECIR, the applicant, who is an accused, got a tender for supply, installation, testing and commissioning of electromagnetic flow meters and corresponding O&M Operation for five years which was floated by Delhi Jal Board ("***DJB***") on the basis of a false performance certificate. The work was sub-contracted to M/s Integral Screw Industries Ltd., a proprietorship firm of Sh. Anil Kumar Aggarwal. An amount of Rs. 24,74,71,376/- was released by DJB to the applicant against the work awarded to it out of which Rs. 10,62,22,694/- which was generated into proceeds of crime and shared by the applicant.

4. The petitioner in the main petition, Sh. Tajinder Pal Singh moved an application under Section 306 and 307 of CrPC before the Rouse Avenue Court seeking grant of pardon for his alleged role in money laundering. The applicant herein moved an application for impleadment bearing I.A.

No. 14/2024 in C.T. Case No. 12/2024 titled Directorate of Enforcement v. Jagdish Kumar Arora and Ors. in the application of the petitioner seeking tender of pardon. The same was rejected by the Special Judge *vide* Order dated 30.07.2024. Subsequently, the Special Judge, Rouse Avenue Court, on 22.08.2024, dismissed the application filed by the petitioner under Section 306 and 307 seeking pardon.

5. The order of dismissal dated 22.08.2024 was challenged by the petitioner through the instant Criminal Revision Petition. The petitioner was granted the status of the approver by this Court *vide* order dated 03.12.2024 while setting aside the order dated 22.08.2024 passed by the Special Judge, Rouse Avenue Court.

6. It is the case of the applicant that order dated 03.12.2024 has been passed without hearing the applicant herein and grave prejudice has been caused to the applicant. Hence, the present application.

<u>SUBMISSIONS ON BEHALF OF THE APPLICANT</u>

7. Mr. Vijay Aggarwal, learned counsel for the applicant, states that the impugned order needs to be recalled as the applicant herein was a necessary party to the main Revision Petition and thus, has the right to be heard by virtue of Section 401 (2) of the CrPC, 1973. He emphasises that Section 401 (2) CrPC, 1973 mandates that no order shall be passed which may cause prejudice to the accused or any other person, unless an opportunity of hearing has been afforded. The applicants and other accused were not made respondents in the present petition thereby causing violation of principles of natural justice and thus, causing prejudice to the accused. Therefore, the Order dated 03.12.2024 is void due to procedural lapses.

8. He states that wherever the necessary parties are not added, such orders are liable to be recalled as the same are vitiated by procedural lapse. He relies on ***Parmod Bagga v. State.***[1]

9. He further states that this Court has the power to recall orders in cases of such procedural impropriety and there is no requirement of approaching the Supreme Court. Thus, the bar of Section 362 CrPC also does not apply in the present case and review of a procedural defect is permissible. Moreover, if a judgment has been pronounced without jurisdiction or without granting the opportunity of being heard by the affected party, it becomes nullity and the bar of Section 362 CrPC does not operate. He relies on the following judgments:

a. ***Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal***[2]

b. ***State of Punjab v. Davinder Pal Singh Bhullar***[3]

c. ***Ganesh Patel v. Umakant Rajoria*** [4]

d. ***Budhia Swain v. Gopinath Deb***[5]

e. ***Directorate of Revenue Intelligence v. Mohd. Abaad Ali and Anr.***[6]

SUBMISSIONS ON BEHALF OF ED

10. Mr. Hossain, learned Special Counsel for ED, at the outset assails to maintainability of the present application. He states that the Trial Judge *vide* detailed order dated 30.07.2024 passed in I.A. No. 14/2024 in CT. Case No. 12/2024 had dismissed the application filed by the applicants seeking impleadment in the pardon proceedings. The said order was

[1] 2007 SCC OnLine Del 1219.
[2] 1980 Supp SCC 420.
[3] (2011) 14 SCC 770.
[4] 2022 SCC OnLine SC 2050.
[5] (1999) 4 SCC 396.
[6] Crl L.P. 330 of 2013 (Delhi High Court), order dated 17.11.2014.

never challenged by the applicants. Thus, the judgment of the Trial Court conclusively decides the dispute between the party. It is well settled that even if a nullity, the order is required to be challenged in appropriate proceedings. Thus, the present application is liable to be dismissed on this preliminary ground. He places reliance on various judgments including:

a. ***M.P. Housing and Infrastructure Development Board v. K.P. Dwivedi***[7]
b. ***Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group***[8]
c. ***Sneh Gupta v. Devi Sarup***[9]

11. Learned Special Counsel, on merits, makes two-fold submissions:

11.1 The granting of pardon and making of accused an approver is an issue between the Court and the applicant accused. The Co-accused has no right to be heard. He relies on ***Ashok Kumar Aggarwal v. CBI***[10]; ***M.M. Kochar v. State***[11]; ***Gurvinder Singh Bhatia v. CBI***[12] and ***State of U.P. v. Kailash Nath Agarwal***[13].

11.2 It is a well settled law that a Court shall agree to tendering pardon if the prosecution makes a fit case that the tender of pardon is in the interest of successful prosecution of the remaining offenders. He relies on ***Lt. Commander Pascal Fernandes v. State of Maharashtra***[14].

<u>SUBMISSIONS ON BEHALF OF THE PETITIONER</u>

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[7] (2022) 3 SCC 783.
[8] (2011) 3 SCC 363.
[9] (2009) 6 SCC 194.
[10] 2007 SCC OnLine Del 1113.
[11] 1968 SCC OnLine Del 6.
[12] 2015 SCC OnLine Del 13078.
[13] (1973) 1 SCC 751.
[14] 1967 SCC OnLine SC 37.

12. Mr. Rajiv Awasthi, learned counsel for the petitioner, opposes the maintainability of the present application. He states that once a final order is passed by a Court, it becomes functus officio and thus is specifically barred under Section 362 of CrPC to alter or review the same except to correct clerical or arithmetical error. The applicant by way of the present application has sought to set aside three final orders being order dated 03.12.2024 of this Court, Order dated 30.07.2024 dismissing the application of the applicant seeking impleadment and order dated 15.01.2025 granting pardon to the petitioner in compliance of the order of this Court. As wide as the powers of Section 482 CrPC are, the same would be impermissible under Section 362 CrPC. He relies on various judgments including:

a. ***Vikram Bakshi v. R.P. Khosla and Anr.***[15]

b. ***Mostt. Simrikhia v. Smt. Dolley Mukherjee @ Smt.***[16]

c. ***Dr Sanjeev Rasaina Vs CBI***[17]

13. Further, he points out that a similar application for impleadment was filed by the accused before the Trial Court and the same was rejected. The order rejecting the said application has not been challenged by the applicant. Thus, the judgment of the Trial Court on the said issue has become final.

14. It is also stated that the co-accused has no right to be heard while the application for grant of pardon is being considered by the Court. In the regard reliance has been placed on the following judgments:

a. ***Yadav Singh v. State of U.P.***[18]

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[15] SLP (Crl.) No. 3425/2025.
[16] Criminal Appeal No. 128 of 1990 dated on 2 March, 1990.
[17] CRL. M. C. 878/2021 dt. 3rd Jan 2022.

b. ***Senthamarai v. S. Krishnaraj***[19]

c. ***Pradeep Nirankar Nath Sharma v. State of Gujarat***[20]

d. ***Gurvinder Singh Bhatia v. CBI***[21]

REJOINDER SUBMISSIONS ON BEHALF OF THE APPLICANT

15. Countering the arguments of the ED, learned counsel for the applicant states that the law of Revision is governed by Section 397 and 401 CrPC and even a party who was not required to be heard before the Trial Court is a necessary party in Revision when the rights of that party are affected. Thus, no order can be passed by the High Court while exercising the Revisional Jurisdiction under Section 401 CrPC to the prejudice of a co-accused. He places reliance on ***Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd.***[22] and ***Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel***[23]***.***

16. He also states that since the trial court had refused to grant relief to the petitioner under Section 306 CrPC seeking the status of approver, there was no reason why the applicant should have challenged the order dated 30.07.2024. Further, the applicant did not have any knowledge with respect to the instant Revision Petition.

17. He further points out the judgments of ***Prabhat Ranjan Sarkar v. State of Bihar***[24] and ***State v. Sunil Batra***[25] where a distinction has been drawn between the application of Section 306 CrPC prior to the stage of filing of chargesheet and subsequent to the stage of filing of chargesheet. In the

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[18] 2018 SCC OnLine All 7520.
[19] 2001 SCC OnLine Mad 894.
[20] Crl. Rev. Appn. No. 983/2023.
[21] Supra N. 12.
[22] (2009) 2 SCC 363.
[23] (2012) 10 SCC 517.
[24] 1973 SCC OnLine Pat 44.
[25] 1978 SCC OnLine Del 36.

former there is no requirement to hear the accused, whereas in the latter, the accused is required to be heard.

ANALYSIS AND FINDINGS

18. There are two aspects which are to be considered:

a. Whether this Court can as per law re-visit and recall the order dated 03.12.2024?

b. Whether the applicant, being co-accused, has the right to be heard before the order granting a pardon under Section 306 and Section 307 is passed?

19. With respect to Issue No. 1, it is trite law that as per Section 362 CrPC a Criminal Court cannot review or alter its final judgment on merits. However, catena of judgments recognise a distinction between a substantive review and a procedural review. A substantive review, on one hand, involves reconsideration of merits of the dispute and on the other hand a procedural review involves revisiting the final order for the lack of procedural propriety such as violation of Principles of Natural Justice.

20. The very object of Section 482 CrPC is to secure the ends of justice and prevent the abuse of process, but certainly, what is prohibited by Section 362 CrPC cannot be done by the Court under the broad jurisdiction of Section 482 CrPC. At the same time if Section 482 is not being exercised to correct the judgment on merits rather any other procedural lapse, the same to my mind shall be permitted.

21. The learned counsel for the applicant has placed reliance on various judgments including ***Davinder Pal Singh Bhullar***[26] which reiterate the ratio that the Courts have the power to recall any order where there has

[26] Supra N. 3.

been a violation of principles of natural justice or any order has been passed without granting adequate opportunity to a necessary party to be heard.

The relevant paragraphs of ***Davinder Pal Singh Bhullar***[27] read as under:

> ***"III. Bar to review/alter judgment***
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> *44. There is no power of review with the criminal court after the judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 CrPC is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] and Chhanni v. State of U.P. [(2006) 5 SCC 396 : (2006) 2 SCC (Cri) 466])*
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> *45. Moreover, the prohibition contained in Section 362 CrPC is absolute; after the judgment is signed, even the*

[27] Supra N. 3.

High Court in exercise of its inherent power under Section 482 CrPC has no authority or jurisdiction to alter/review the same. (See Moti Lal v. State of M.P. [(2012) 11 SCC 427 : AIR 1994 SC 1544] , Hari Singh Mann [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] and State of Kerala v. M.M. Manikantan Nair [(2001) 4 SCC 752 : 2001 SCC (Cri) 808] .)

46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 CrPC would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide Chitawan v. Mahboob Ilahi [1970 Cri LJ 378 (All)] , Deepak Thanwardas Balwani v. State of Maharashtra [1985 Cri LJ 23 (Bom)] , Habu v. State of Rajasthan [AIR 1987 Raj 83] , Swarth Mahto v. Dharmdeo Narain Singh [(1972) 2 SCC 273 : 1972 SCC (Cri) 676] , Makkapati Nagaswara Sastri v.

S.S. Satyanarayan [(1981) 1 SCC 62 : 1981 SCC (Cri) 111] , Asit Kumar Kar v. State of W.B. [(2009) 2 SCC 703 : (2009) 1 SCC (Cri) 851 : (2009) 1 SCC (L&S) 541] and Vishnu Agarwal v. State of U.P. [(2011) 14 SCC 813])"

22. Therefore, the argument put forth by the learned counsels for the petitioner cannot be accepted. Bar under Section 362 CrPC does not apply in the present case as the recall application has been assailed on the ground of violation of principles of natural justice and *audi alteram partem*. The Court is well within its powers to look into the objections raised by the applicant and decide as to whether any procedural impropriety and/or violation of principle of Natural Justice have occurred in the hearing of the matter. Consequently, the application cannot be rejected at the threshold, on this ground, as the applicant in crux of the matter is not seeking to reopen/reargue the matter on merits.

23. Another argument vehemently raised by the learned counsel for ED and the learned counsel for the petitioner is that the applicant had already approached the Trial Court praying for the relief of being impleaded as a party in the proceedings related to pardon. The broader implication of the prayer made in the instant application, i.e. recall of order dated 03.12.2024 because the applicant has the right to be heard, is the same as that which was prayed before the Trial Court. The application before the Trial Court was dismissed on 30.07.2024. The order of dismissal had not been challenged by the applicant. The applicant has tried his best to justify and put forth adequate reasoning as to why the order of the Trial Court rejecting the applicant for impleadment has not been challenged. The applicant has pointed out that the Trial Court had rejected the

application of the petitioner under Section 306, thereby satisfying the grievance of the applicant. Therefore, the applicant did not see the need to challenge the order of Trial Court rejecting its application.

24. The conduct of the applicant reflects that it had allowed the order dated 30.07.2024 to attain finality. At this stage, the applicant cannot now seek to pursue something indirectly, which it cannot do directly. The same will be barred by principle of *res judicata*. Reliance in this regard is placed on ***S.C. Garg v. State of U.P.***[28] Relevant paragraphs of the same read as under:

> *"13. The question as to the applicability of principle of res judicata in criminal matters have been considered by this Court in several decisions. In the matters of Pritam Singh v. The State of Punjab, Bhagat Ram v. State of Rajasthan & The State of Rajasthan v. Tarachand Jain, this Court has consistently laid down the principle that the principle of res judicata is equally applicable in criminal matters. However, in two later decisions, namely, Devendra v. State of Uttar Pradesh and Muskan Enterprises v. The State of Punjab in which one of us was a member (Justice Prashant Kumar Mishra), this Court observed in the context of maintainability of second petition under Section 482 Cr. P.C. that principle of res judicata has no application in a criminal matter. Considering divergence of opinion, it would be appropriate for us to have deeper examination and reading of the law laid down by this Court in the earlier*

[28] 2025 SCC OnLine SC 791.

decisions.

14. In Pritam Singh (supra), a three Judge Bench of this Court speaking through Natwarlal Harilal Bhagwati, J. placing reliance on Sambasivam v. Public Prosecutor, Federal of Malaya, decided by a Bench of Five Judges of the Judicial Committee, opined that maxim res judicata is no less appliable to criminal than to civil proceedings….”

15. In Bhagat Ram (supra), a two Judge Bench of this Court speaking through H.R. Khanna, J. again applied and approved Sambasivam (supra) and Pritam Singh (supra).

16. Thereafter in Tarachand Jain (supra), this Court referred to Bhagat Ram (supra) and Sambasivam (supra) to hold thus:

> *“13. ……….The question as to what is the binding effect of a decision in subsequent proceedings of the same original matter was considered by this Court in the case of Bhagat Ram v. State of Rajasthan, [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] and it was held that the principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. Reliance in this context was placed upon the observations of the Judicial Committee in the case of Samba Sivam v. Public Prosecutor, Federation of Malaya. [[1950]*

A.C. 458] In Bhagat Ram case [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] a Single Judge of the High Court to whom a limited question had been referred because of a difference of opinion between two Judges of the Division Bench, not only decided the question referred to him, he also interfered with the acquittal of the accused regarding certain offences in respect of which an order for acquittal had already been made earlier by the Division Bench. It was held that it was not within the competence of the Single Judge to reopen the matter and pass the above order of conviction in the face of the earlier order of the Division Bench for acquittal. Although Bhagat Ram case [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] related to acquittal, the principle laid down in that case, in our opinion, holds good in a case like the present wherein the question is about the binding effect of the earlier Division Bench judgment regarding the validity of the sanction for the prosecution of the accused-respondent."

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19. Reading three earlier decisions vis-à-vis the two later decisions parallelly, we do not think that considering the context and the stage of the proceedings in which the matters stood and agitated before this Court, there is any diversion in the applicability of the principle of res judicata. While three earlier decisions in Pritam Singh (Supra),

Bhagat Ram (supra) and Tarachand Jain (supra) were decided basis acquittal in previous trial, the subsequent decision in Devendra (supra) and Muskan Enterprises (supra) have been decided at the stage of quashing petition under Section 482 Cr. P.C., thus, in both the matters, there was no final adjudication of merits. While in Devendra (supra), the first petition was for quashing of the FIR and the second petition was preferred after the Magistrate took cognizance of the matter; in Muskan (supra), the first petition was dismissed as withdrawn whereas the second petition was held not maintainable due to earlier withdrawal without any liberty. Thus, these two cases are totally distinguishable.

In addition, it is important to bear that Sambasivam (supra) was decided by Five Judges of the Judicial Committee and Pritam Singh (supra) was decided by a three Judge Bench, whereas all subsequent decisions have been rendered by the two Judges Bench. Therefore, Pritam Singh (supra) is binding insofar as the issue concerning the applicability of principle of res judicata in a criminal proceeding is concerned.

25. In the present case on 30.07.2024 the Trial Court examined the issue on merits and gave detailed and categorical findings as to how the applicant did not have the required locus standi to be heard nor any legal right. Findings are not merely procedural but have been rendered after a reasoned adjudication and the operative portion read as under:

"9. At the outset it is observed that the reliance of the Ld. Counsel for the applicant company on the orders dated 06/05/2015 and 11/07/2016 of the coordinate benches is not tenable for the reasons that in those cases there was no objection by the opposite side that coaccused cannot be heard in the proceedings. There is nothing contained in the said orders that the right of co accused to be heard in the proceedings under sec 306 Cr. P. C has been adjudicated upon. In fact the same was not even agitated before the Ld. concerned courts. Just because the submissions made by Ld. Counsels for co accused persons have been mentioned in the said orders, when the issue to be adjudicated in the present application was not an issue therein, in my humble opinion it has no binding effect.

10. The concern of the applicant Company, as mentioned in para 4 and 5 of the application are TWO fold , firstly that if the application moved by accused no. 3 for turning approver is allowed by the court, then he will become a person of different class as compared to other co accused and would be protected by proviso to Sec 132 Indian Evidence Act ,1872 and secondly that for the plea of accused no. 3 to be accepted, it would require him to make a full disclosure of his role. Except this, in the entire application it is not mentioned as to how the applicant company, if not the other co accused persons shall be affected if they are not heard by the court while deciding the

application of tendering pardon. So far as arguments concerning changing of 'class' of an accused if he is granted pardon is concerned, it is open to any of the accused to move such application for changing his 'class' and is not restricted to a particular one. After moving such application, it is for the court to see if the same is to be allowed or not provided that the accused making such application u/s 306 Cr. P.C satisfies the ingredients thereof i.e. make a full and true disclosure of the whole of the circumstances within his knowledge related to the offence and to every other person concerned and that the same is in order to obtain evidence.

11. It cannot be the case that unless co accused are heard, the Court is not capable of making the decision whether to tender pardon to the applicant/accused or not. The interests of the co accused are well protected by the scheme of things that he gets an opportunity to cross examine the approver but a co accused cannot be allowed to say that one should not be allowed to turn an approver at all. It is for the Court to decide as per the circumstances of the case after getting the prosecution join the proceedings. 12. The judgments relied upon buy the Ld. Counsel for the applicant Company are not directly on the facts which are before the court in the present case i.e Right of co accused(s) to be heard AFTER filing of the chargesheet and taking cognizance thereof. By relying upon these cases, inferences have been

sought to be drawn that during investigation the co accused may not have right to be heard thus he should be heard at other stages.

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17. Further, In the case of ***Ashok Kumar Aggarwal v CBI and Anr. (Supra)*** *which is interestingly relied upon by either side, it was categorically held that that the right of co accused in respect of an approver arises only at the stage of trial. Relevant para is reproduced as under:*

> *"15………. At the stage of investigation, if the accused applies for pardon and the prosecution also supports him, normally the matter is between the Court and the accused and other co -accused have no right whatsoever to intervene or ask for the hearing.* ***The right of a co-accused in respect of an approver arises only at the stage of trial…………………….****"*

In the present case, the stage of trial is yet to come.

18. The order of the Ld. Trial Court that granted pardon to an accused was assailed before the Hon'ble High Court in the case of ***Gurvinder Singh Bhatia Vs. CBI, 2015 SCC OnLine Del 13078****. Hon'ble High Court of Delhi while relying upon the judgment of* ***Ashok Kumar Aggarwal V. CBI (supra)*** *observed as under:*

> *"14. After having considered the submissions advanced, impugned order, the material on record and the decisions cited, this Court finds that co-accused*

have no legal right to raise any grievance against order granting pardon."

19. The said petition was dismissed. Notably, Ld. Counsel for the applicant company was representing respondent No.8 in the abovesaid matter.

*20. Ld. Counsel for the applicant/company has argued that the ratio of **Gurvinder Singh Bhatia (supra)** is not applicable here since the same deals with the right of accused to challenge/raise grievance against order granting pardon and not his right to be heard by the Ld. Trial Court, at the stage of grant of pardon once charge sheet has been filed. Similarly, it was argued for the judgment titled **CBI Vs. Ashok Kumar Aggarwal (supra)** as well.*

21. This Court is of the opinion that if a co-accused cannot challenge/raise grievance against the order of grant of pardon then even the question of hearing him during the consideration of the application of grant of pardon does not arise.

22. It is for the Court to see while adjudicating whether the pardon is to be granted to the applicant/accused or not, if there is anything gainful for the prosecution or not or whether his evidence is at all required for successful prosecution. The veracity of the evidence of the accused turned approver can only be challenged by the co-accused at the time of trial during his cross-examination.

23. Lastly it is worth noting that the application for

impleadment has been moved only on behalf of accused no. 4/M/s NKG Infrastructure only and none other including accused no. 2/Sh. Anil Kumar Aggarwal whom also the Ld. Counsel for the applicant Company is representing. Mere presence during the proceedings does not per se make the applicant eligible for hearing in a matter in which he does not have locus standi. The proceedings u/s 306 Cr. P. C is between the court, the accused/applicant (who wish to be an approver) and the prosecution and none other. If the application is allowed then the other accused persons shall, as a matter of procedure gets the right to cross examine the approver.

24. In view of the above discussions, observations and cited case laws, I am of the opinion that there is no merits in the application moved by the applicant Company. The same is accordingly disposed of as dismissed."

26. The Trial Court has considered every aspect of the argument posed by the applicant and has given a well-reasoned order. Significantly, aforesaid order was never challenged by the applicant and being on merits has attained finality and is binding on the parties. The same point cannot be reagitated in a different proceeding. Thus, the applicant is estopped from again reopening an issue which has been finally decided by a court, under the guise of present proceedings.

27. Issue No. 2, being the central issue with respect to the controversy at hand, relates to whether a co-accused has a right to be heard at the stage of consideration of an application for tender of pardon under Section 306

of CrPC.

28. Section 306 of CrPC empowers the Court to grant a pardon to any accused privy to an offence, while imposing a condition of full and true disclosure of the whole offence within the knowledge of the accused.

29. To my mind, the scheme of Section 306 CrPC does not confer a right to be heard on every co-accused. The Court at the stage of granting a pardon, either before the filing of chargesheet or after the chargesheet has been filed and stage of inquiry has commenced but before the trial, does not adjudicate upon the guilt of the other co-accused. The grant of pardon is not an act which itself causes prejudice to the co-accused and does not by itself lead to their conviction. The approver is rather to be examined at the stage of trial and then further cross examined, before his/her testimony can become an admissible evidence. The opportunity at the stage of trial to cross examine the approver and impeach his/her credibility is sufficiently afforded to the co-accused. Thus, the only effective opportunity to the co-accused to question the reliability of the approver can be granted at the stage of trial.

30. The law in this regard has been considered and settled by this Court. In ***Ashok Kumar Aggarwal*[29]*,*** even though the prayer of the petitioner for pardon was rejected, the Coordinate Bench of this Court categorically held that the right of co-accused arises only at the stage of trial and the co-accused has no right to ask for a hearing in the proceedings of pardon. The judgment was affirmed by the Hon'ble Supreme Court in ***CBI v. Ashok Kumar Aggarwal.*[30]** The relevant portion of the judgment of this

[29] Supra N. 10.
[30] (2013) 15 SCC 222.

Court reads as under:

"15. Section 307, likewise, gives power to the Court to direct tender of pardon after committal, but before the judgment is pronounced. The object underlying these provisions is to allow pardon in the cases where a grave offence is alleged to have been committed by several persons, so that with the aid of the evidence of the person pardoned, the offence could be brought to home as against the rest. The basis of tender of pardon is not the extent of the culpability of the person to whom the pardon is granted. The principle is to prevent the scape of the offender from punishment in the heinous offences for lack of evidence. The principle, which are to govern the cases granting pardon by the court are well settled. There is no bar in granting pardon before the stage of charge-sheet. At the stage of investigation, if the accused applies for pardon and the prosecution also supports him, normally the matter is between the Court and the accused and other co-accused have no right whatsoever to intervene or ask for hearing. The right of a co-accused in respect of an approver arises only at the stage of trial. It is also well-settled that once prosecution agrees to tender of pardon, the Special Judge would not take upon himself the task of considering the possible weight of the approver's evidence or to determine the propriety of tendering pardon. The law is eloquently explained by the Supreme Court in the case of Lt. Cdr.

Pascal Fernandes's case (supra) in the following words:

"(11) It follows that the powers of the Special Judge are not circumscribed by any condition except one, namely, that the action must be with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to an offence. The pardon so tendered is also a 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. The disclosure must be complete as to himself and as to any other person concerned as principal or abettor. There is no provision for the recording of reasons for so doing, nor is the Special Judge required to furnish a copy to the accused. There is no provision for recording a preliminary statement of the person.

(12) There can be no doubt that the section is enabling and its terms are wide enough to enable the Special Judge to tender a pardon to any person who is supposed to have been directly or indirectly concerned in, or privy to, an offence. This must necessarily include a person arraigned before him. But it may be possible to tender pardon to a person not so arraigned. The power so conferred can also be exercised at any time after the case is received for trial and before its

conclusion. There is nothing in the language of the section to show that the Special Judge must be moved by the prosecution. He may consider an offence by an accused as in this case. The offer by an accused as in this case. The action, therefore, was not outside the jurisdiction of the Special Judge in this case."

31. Further in ***Gurvinder Singh Bhatia***[31]**,** Coordinate Bench of this Court while relying on ***Ashok Kumar Agarwal***[32] held that the co-accused has no legal right against the order granting pardon. The relevant paragraphs read as under:

> *"14. After having considered the submissions advanced, impugned order, the material on record and the decisions cited, this Court finds that co-accused have no legal right to raise any grievance against order granting pardon. It has been so reiterated by Apex Court in C.B.I. v. Ashok Kumar Aggarwal (2013) 15 SCC 222 with a rider that in exercise of revisional/inherent powers, correctness, legality or proprietary of an order granting pardon can nevertheless be suo moto examined. The grounds of interference with an order of pardon, as highlighted by Apex Court in C.B.I. v. Ashok Kumar Aggarwal (supra), are as under : -*
>
> > *"The grounds of interference may be, where the facts admitted or approved, do not disclose any offence or the court may interfere where the facts do not disclose*

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[31] Supra N. 12.
[32] Supra N. 30.

any offence or where the material effects of the party are not considered or where judicial discretion is exercised arbitrarily or perversely."

15. In the light of the afore-noted legal position, I have minutely scrutinized the impugned order and I find that role of the Approver alone is not the paramount consideration for deciding as to whether pardon is to be granted or not….

xxxx

17. In this considered opinion of this Court, petitioner or his co-accused do not suffer any prejudice nor any bias can be inferred as the evidence of the Approver certainly advances the prosecution's case. In view of the dictum of the Apex Court in C.B.I. v. Ashok Kumar Aggarwal (supra), implicit reliance placed upon Pascal Fernandes (supra) and Ashok Kumar (supra) is of no avail. It would be premature to say that no case is made out against petitioner and his co-accused. Neither it can be said that the discretion has been arbitrarily or perversely exercised by the trial court because in the facts of the instant case, petitioner had portrayed himself to be a victim of circumstance and had not come forward to give a true disclosure and in any case, second respondent appears to be best suited to become an Approver. There is no basis whatsoever to reasonably conclude that pardon has been granted to second respondent at the cost of petitioner and his co-accused."

32. The judgments of other High Courts in ***Yadav Singh (Supra)***[33]***; Central Bureau of Investigation v. N K Amin***[34]***; Senthamarai (Supra)***[35] have directly considered the issue in controversy and the same have also been relied upon by the Trial Judge. The judgments have categorically held that the co-accused has no right to be heard when a Section 306/Section 307 CrPC application is being considered, only arises at the stage of Trial. His only right is to cross examine the approver at the time of trial.

33. The judgments above also make it clear the co-accused has no right to oppose the application for granting pardon. He has no legal right to raise a grievance against an order granting pardon, though the Court may, in an appropriate case, examine the legality or propriety of such order in exercise of Revisional or Inherent Jurisdiction. Hence, the apprehensions raised by the applicant are premature. The applicant and the other co-accused will have ample opportunity during the trial to challenge and cross examine the approver, petitioner herein, and shake the credibility of his testimony.

34. The learned counsel of the applicant has sought to heavily rely upon ***Sunil Batra***[36] and ***P.R. Sarkar***[37] to contend that after the filing of chargesheet the pardon cannot be granted without granting an opportunity of hearing to the co-accused. The above judgments were based on the scheme of CrPC, 1898 and the applications for pardon in these judgments were filed under Section 337 of CrPC, 1898 which is already a repealed

[33] Supra N. 18. Refer paragraph Nos. 8-9.
[34] 2010 SCC OnLine Guj 11728. Refer paragraph No. 55.
[35]Supra N. 19. Refer paragraph Nos. 13-15.
[36] Supra N. 25.
[37] Supra N. 24.

enactment. The judgments of ***Gurvinder Singh Bhatia***[38] and ***Ashok Kumar Aggarwal***[39]***,*** which was affirmed by the Hon'ble Supreme Court, categorically analyse the scheme under Section 306/307 of CrPC and are binding upon this Court. Thus, the reliance is misplaced.

35. The applicant pleads that there has been gross violation of Principles of Natural Justice as he has not been heard before passing the order of pardon. Principles of Natural Justice cannot be construed as a rigid and abstract framework that has a straitjacket application in every scenario. The application of Principles of Natural Justice also has to be in consonance with the legal statutes. A criminal procedure code permits locus of different parties to a trial at different stages.

CONCLUSION

36. Section 482 CrPC does not override Section 362 CrPC to revisit its final judgment on merits, however, the same can be so done if there are any procedural lapses or violation the Principles of Natural Justice. In the present case even though, this Court has the power to revisit its judgment dated 03.12.2024 granting pardon to the petitioner, the application for the same cannot be allowed as the applicant (co-accused) does not have the statutory or legal right to be heard at this stage. Hence, there is no procedural lapse or violation of the Principles of Natural Justice while passing the impugned Judgment.

37. For the said reasons, the application is dismissed.

CRL. M.A. 17146/2025

38. In view of the order passed in CRL. M.A. 17144/2025, the present

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[38] Supra N. 12.
[39] Supra N. 10.

application does not survive for consideration and is accordingly dismissed.

JASMEET SINGH, J.

JULY 04th, 2026/(MU)