

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 994 of 2018

Shiv Kumar Patwari	---	---	---	Petitioner
	Versus			
The Union of India through C.B.I.	---	---	---	Opp. Party
	With			

Cr. M.P. No. 1075 of 2018

Md. Sayeed	---	---	---	Petitioner
	Versus			
The Union of India through C.B.I.	---	---	---	Opp. Party
	With			

Cr. M.P. No. 1312 of 2018

Naresh Prasad	---	---	---	Petitioner
	Versus			
The Union of India through C.B.I.	---	---	---	Opp. Party
	With			

Cr. M.P. No. 1885 of 2018

Rameshwar Prasad Chaudhary	---	---	---	Petitioner
	Versus			
The Union of India through C.B.I.	---	---	---	Opp. Party
	With			

Cr. M.P. No. 1907 of 2018

Shailesh Prasad Singh	---	---	---	Petitioner
	Versus			
The Union of India through C.B.I.	---	---	---	Opp. Party

Coram: Hon'ble Mr. Justice Aparesh Kumar Singh

For the Petitioners: Mr. Vishnu Kumar Sharma, Advocate
[in Cr. M. P. Nos. 994/18, 1312/18, 1075/18, 1907/18]
Mr. Mukesh Kumar, Advocate
[in Cr.M.P. No. 1885/18]
For the O.P.-CBI : Mr. Rajiv Sinha, ASGI
Rajiv Nandan Prasad, Advocate
Amicus Curiae: M/s Ashutosh Anand, Nipun Bakshi

07/29/03/2019 Heard learned counsel for the petitioner, learned CBI and learned Amicus Curie.

2. All these petitions are being heard together as the common order dated 31st May, 2018 passed in R.C. Case No. 45(A)/96-Pat by learned Court of A.J.C.-I-cum-Special Judge-VII, CBI (AHD Scam), Ranchi is under challenge in all these petitions, whereby the order granting pardon has been

revoked and the petitioners have been directed to appear for framing of charge on 14th June, 2018. It is pertinent to point out here that except Cr.M.P. No. 1885 of 2018 and Cr. M. P. No. 1907 of 2018, in rest of the petitions, petitioners had initially assailed the order dated 9th March, 2018 passed by learned C.B.I Court asking them to show cause as to why pardon granted to them earlier be not cancelled. During pendency of these three petitions, learned C.B.I Court on consideration of the show cause of these petitioners has passed the order cancelling pardon on 31st May, 2018.

3. Petitioners in Cr.M.P. Nos. 1885 of 2018 and 1907 of 2018 have straightway challenged the cancellation of his pardon by the common impugned order dated 31.05.2018.

4. All these petitioners claim to stand on similar footing as they were earlier made accused in the instant R.C. Case and after acceptance of their disclosure statements under Section 306 Cr.P.C were granted pardon by learned C.B.I. Court on different dates without objection of C.B.I. Thereafter all these petitioners have deposed on behalf of C.B.I in support of the prosecution and according to them, learned Trial Court has considered their evidence while recording conviction in the instant R.C. Case vide its judgment dated 9th April, 2018. It is also submitted on behalf of these petitioners that neither have they violated the condition of pardon during their deposition as prosecution witnesses in the instant trial nor any certification to that effect has been given by learned Special Public Prosecutor of the CBI in terms of Section 308 Cr.P.C. These petitioners have made truthful and complete disclosure of all incriminating materials in connection with the offence and the accused persons involved while deposing as prosecution witnesses in compliance of the condition of pardon granted to them. These petitioners also enjoy the protection under Section 20(3) of the Constitution of India read with Section 132(1) of the Evidence Act. It is also submitted that their testimony even if self incriminating could not be used to arraign them as an accused in the light of the constitutional and statutory protection as above. In support, reliance has been placed upon the judgment in the case of *R. Dineshkumar @ Deena vs. State reported in (2015) 7 SCC 497, paragraphs 44 and 45*. Reliance has also been placed upon the judgment in the cases of *State of Maharashtra Vs. Abu Salem Abdul Kayyum Ansari and others* reported in *(2010)10 SCC 179* and *Central Bureau of Investigation Vs. Ashok Kumar Aggarwal and another* reported in *(2013) 15 SCC 222*, paragraphs 17, 32, 33 and 35, where the ratio

rendered in the case of *State (Delhi Administration) Vs. Jagjit Singh* reported in *AIR 1989 SC 598; 1989 Supp(2)SCC770* has also been relied upon. The Apex Court has defined the scope of the powers under Sections 306 to 308 Cr.P.C in the aforesaid judgments.

5. Learned counsel for the petitioners have also placed reliance upon a judgment of this Court dated 8th March, 2019 passed in *Cr. M.P. No. 175 of 2018 [Shiv Kumar Patwari Vs. The Union of India through C.B.I] with Cr.M.P. No. 177 of 2018 [Shailesh Prasad Singh Vs. The Union of India through C.B.I]*, where a similar order of learned C.B.I. Court passed in R. C. Case No. 64(A)/96 cancelling the pardon granted to the said petitioners under Section 306 Cr.P.C was under challenge. They submit that those petitioners after grant of pardon had supported the case of C.B.I as prosecution witnesses and based on their deposition together with the statement of other prosecution witnesses conviction was recorded by the same learned C.B.I Court.

6. The facts situation in the case of the present petitioners as also the legal position are same and similar. Therefore, the ratio of the said case should apply in the case of the present petitioners also.

7. Learned counsel for the petitioners Shiv Kumar Patwari (hereinafter referred to as 'Shiv' for short), Md. Sayeed, Naresh Prasad, Shailesh Prasad Singh ('Shailesh' for short) and learned counsel for the petitioner representing the petitioner, Rameshwar Prasad Chaudhary (hereinafter referred to as 'Rameshwar' for short) have placed the relevant factual details of the individual petitioners in support of the legal grounds urged above.

8. Petitioner Shiv Kumar Patwari, who was accused in the instant R.C. Case was granted pardon vide order dated 14th July, 2003 (Annexure-2) by learned CBI Court on being satisfied that his statement revealed facts showing his involvement in the case being privy to the offences covered in this case and had knowledge of entire circumstances relating to the offences and certain persons concerned in commission thereof. Prosecution had filed petition and did not object to the grant of pardon. Pardon was granted with the condition that he will support the prosecution case in all stages of trial and whenever he is called upon in support of it. This petitioner thereafter made complete and truthful disclosure of all the relevant incriminating material facts in connection with the offence and the accused persons

deposing as P.W.-81 during trial in this case. Learned Trial Court has relied upon his statement at paragraph 16.

9. Similar is the case of petitioner Md. Sayeed, who was made an accused in the instant R. C. Case and was posted as Staff Veterinary Officer, Dumka during the period of fraudulent withdrawal i.e., 1991-92 to 1995-96 under A.H.D. Department from Dumka Treasury. Learned Trial Court granted him pardon by order dated 19th May, 2003 (Annexure-2) on similar condition after acceptance of his approver statement and support from the prosecution as well. He has deposed as P.W.-16 in the instant R.C. Case and fully supported the case of the C.B.I. during trial. Learned Trial Court has relied upon his testimony as discussed in the same paragraph-16 of the impugned judgment for recording the conviction against so many accused persons facing trial.

10. Petitioner Naresh Prasad was also granted pardon by learned C.B.I. Court on 2nd April, 2004 (Annexure-2) an accused in the instant R.C. Case, after acceptance of his statement made under Section 164 Cr.P.C and under Section 306 Cr.P.C as also under Section 5(2) of Prevention of Corruption Act as the prosecution had no objection to it. He was granted pardon on the same condition that he will support the prosecution case in all stages of trial. During course of his deposition he has made complete and truthful disclosure of all the incriminating material circumstances relating to the commission of offence and the person concerned as P.W. 11 in support of C.B.I. discussed at same paragraph-16 of the final judgment dated 9th April, 2018 rendered by C.B.I. Court.

11. Learned counsel for the petitioner, Mr. Mukesh Kumar has also adverted to the case of the petitioner, 'Rameshwar' who was granted pardon by order dated 5th January, 2004 (Annexure-1) on being satisfied that he had disclosed the facts and circumstances of the case under Section 164 Cr.P.C and also made statement about his involvement and involvement of other accused in commission of the offence and that the prosecution had no objection if he was made approver and tendered pardon. Similar conditions were imposed upon this petitioner also while granting pardon. This petitioner has supported the case of the C.B.I as prosecution witness no. 178 and made complete and truthful disclosure of all the incriminating material circumstances relating to the commission of offence and the accused persons in the same paragraph-16 of the final judgment.

12. Petitioner, Shailesh Prasad Singh, who was implicated as an accused by C.B.I in the instant R.C. Case also volunteered to make disclosure statement before learned C.B.I. Court. On acceptance of his disclosure statement made under Section 164 Cr.P.C and also in the Court disclosing the facts and circumstances of the case and his involvement in the matter as also involvement of other accused persons in the commission of the offence, he was granted pardon on 9th July, 2003 (Annexure-1) by the learned C.B.I. Court since the prosecution had also no objection if he was made approver and tendered pardon after making his statement with similar statement. This petitioner supported the case of the C.B.I. as prosecution witness no. 14 in the instant R.C. Case and made complete and truthful disclosure of all the incriminating material circumstances relating to the commission of offence and the accused persons as discussed in the same paragraph-16 of the final judgment.

13. It is the common submission of all the petitioners that there is no allegation or complaint or finding recorded by learned Trial Court that these petitioners while deposing as prosecution witnesses had failed to make complete and truthful disclosure of all the incriminating material circumstances relating to the commission of offence and the accused persons during trial. In none of the cases of these petitioners there was any certification of Special Public Prosecutor, CBI to the effect that these petitioners had violated the condition of pardon and failed to make complete and truthful disclosure of all the incriminating material circumstances relating to the commission of offence and the accused persons involved therein. All these petitioners submitted their reply to the show cause and categorically pleaded that no condition of pardon has been violated by them and no certification in terms of Section 308 Cr.P. C was made by learned Special Public Prosecutor that these petitioners have willfully concealed anything essential or had given false evidence and not complied with the condition of pardon, which is a mandatory pre-requisite for revocation of pardon. Petitioners had also relied upon the judgment of the Apex Court in the case of *Jagjit Singh (Supra)* in support of their contention. It is contended that learned CBI Court, however, by impugned order dated 31st May, 2018 revoked the pardon granted to them. It observed that the accused persons were equally liable to commit fraud in conspiracy with other co-accused and without any reason they were granted pardon and were enjoying the ill-gotten money. They never tendered to deposit such money received by

them in the Treasury. Therefore, it was necessary to call them to face the trial on the basis of evidence on record. Cognizance had already been taken against above accused by the previous Court, hence, all these accused persons were ordered to be present for framing of charge against them.

14. On the basis of this factual delineation, learned counsel for the petitioners have assailed the impugned order on the ground that it is in teeth of the provisions of Sections 306 to 308 Cr.P.C. Learned Trial Court has also not recorded any finding to that effect. On the contrary, learned Court has relied upon the evidence of these approver witnesses and recorded conviction against several accused persons in the final judgment dated 9th April, 2018. It was not proper for the learned Court to make observations against its predecessor court that these petitioners were granted pardon without recording any reason and were allowed to retain ill-gotten money. Relying upon the judgments of the Apex Court and of this Court in the case of Shiv Kumar Patwari and Shailesh Prasad Singh (*supra*), it has been prayed that the order impugned deserves to be quashed, lest it may lead to grave miscarriage of justice.

15. Learned Counsel for the C.B.I, though has not filed counter affidavit in these petitions, but has supported the case of the petitioners stating that these petitioners, who were charge-sheeted as accused in the instant R.C. Case, were granted pardon by the learned CBI Court after consent and approval of the competent authority of the CBI. They have been examined as prosecution witnesses and have supported the case of the C.B.I as P.Ws.-81, 16, 11, 178, 14.

A total of 197 prosecution witnesses were examined in this case and on conclusion of trial, learned Court delivered final judgment on 9th April, 2018 convicting 37 accused persons and acquitted 5 accused persons.

16. Learned counsel for the C.B.I has also made reference in particular to para-16 of the final judgment dated 9th April, 2018 rendered by learned C.B.I Court, wherein the statement of these approver witnesses have been discussed and has not made any indictment against them. Rather, the submissions of C.B.I taken note of at para-24 of the final judgment indicates that all these five prosecution witnesses/approver witnesses have fully supported the case of the prosecution. At no stage, learned C.B.I Court has felt that these petitioners had violated the conditions of pardon and failed to make complete and truthful disclosures of all the materials circumstances relating to the offence and the persons involved in the offence. Learned

Court has also not recorded any finding that these persons had failed to make complete and truthful disclosures in such manner as required under the condition of pardon. It is also pointed out that no such application was moved by the prosecution/C.B.I for cancellation of pardon of these petitioners. The case of the prosecution was largely dependent upon and supported by the testimony of these approver witnesses and learned Trial Court has also recorded its findings on conviction/acquittal based upon their statement in the final judgment.

17. Learned Amicus Curiae has referred to the legal principles involved in respect of grant of pardon and the required conditions prescribed under Section 308 Cr.P.C for its revocation.

18. Considered the submission of learned counsel for the petitioner, C.B.I and learned Amicus Curiae.

The Apex Court in the case of *State of Maharashtra Vs. Abu Salem Abdul Kayyum Ansari and others* reported in (2010)10 SCC 179 has dealt with the salutatory principles of tendering a pardon to an accomplice in terms of Section 306 Cr.P.C. It has been laid down that tendering a pardon to an accomplice is meant to unravel the truth in a grave offence so that guilt of other accused persons concerned in commission of crime could be brought home. The object of Section 306 is to allow pardon in cases where heinous offences is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon, the offence may be brought home to the rest. Section 306 Cr.P.C empowers the Magistrate or the learned Trial Court to tender a pardon to a person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, at any stage of the investigation or inquiry or trial of the offence on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence. The Magistrate of the 1st Class is also empowered to tender pardon to an accomplice at any stage of inquiry or trial but not at the stage of investigation on condition of his making full and true disclosure of the entire circumstances within his knowledge relative to the crime. Section 307 vests the Court to which the commitment is made, with power to tender a pardon to an accomplice. The expression, “on the same condition” occurring in Section 307, refers to the condition indicated in sub-section (1) of Section 306, namely, on the accused making a full and true disclosure of the whole of the circumstances within

his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

An Accomplice who has been granted pardon under Section 306 or 307 Cr.P.C gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and if he suppresses anything material and essential within his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which the tender was made and the Public Prosecutor gives his certificate under Section 308 Cr.P.C to that effect, the protection given to him is lifted. (See paragraphs 15 to 17; *Abu Salem Abdul Kayyum Ansari* (supra). It is apposite to quote the provisions relating to pardon and its revocation as also dealt with at paragraphs 12 to 14 of the same judgment as prescribed under Sections 306, 307 and 308 Cr.P.C. hereunder:

12. Section 306 CrPC makes a provision for tender of pardon to accomplice. It reads as follows:

“306. *Tender of pardon to accomplice.*—(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the First Class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

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

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

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

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

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

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

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

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that court;

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

13. Section 307 CrPC provides that:

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

14. Section 308 provides for the trial of the approver who has accepted tender of pardon but fails to comply with the condition of pardon. The said provision reads as under:

"308. *Trial of person not complying with conditions of pardon.*—(1) Where, in regard to a person who has accepted a tender of pardon made under Section 306 or Section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

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

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in Section 195 or Section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under Section 164 or by a court under sub-section (4) of Section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the court shall—

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

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

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

19. In the case of ***Central Bureau of Investigation Vs. Ashok Kumar Aggarwal and another*** reported in (2013) 15 SCC 222, paragraphs 17, 32, 33 and 35, the Apex Court has dealt with the principles regarding grant of pardon and also relied upon the ratio rendered in the case of **Jagjit Singh(supra)** quoted as under:

" 35. Once the immunity extends to the accused and the accused is made an approver, he stands discharged whereupon he ceases to be an accused and would be examined only as a witness unless the said privilege is revoked on violation of the condition of disclosing complete truth. [See State (Delhi Admn.) v. Jagjit Singh and Jasbir Singh.]"

20. In order to examine the contentions raised by the petitioners, it is considered proper to reproduce the extracts of the operative portion of the impugned order dated 31st May 2018 hereunder :

"From perusal of records, it is clear that case was registered in pursuance of order by Hon'ble Supreme Court and by Hon'ble High Court, Patna. The I.O. submitted charge-sheet against accused persons including the petitioners accused named above. The learned court already took cognizance against these petitioners accused namely 1. Shiv Kumar Patwari, 2. Shailesh Prasad Singh, 3. Naresh Prasad, 4. Md. Sayeed and 5. Rameshwar Prasad Chaudhary. Suddenly, without any recording reason above accused persons granted pardon and they also allowed to retain such money which fraudulently withdrawn from Dumka Treasury in furtherance of criminal conspiracy. Above accused petitioners in explanation dated 28.03.2018 simply wrote that they supported the prosecution story and prosecution has not given any petition to withdraw the grant pardon U/s 306 of Cr.P.C. but in the ends of justice, after perusal of records court found that the pardon granted to above accused petitioners on different dates after cognizance of offence against above accused petitioners. It is also found by the court that the fraudulent money which withdrawn from Dumka Treasury was also remain in the possession of above accused petitioners which never ordered to deposit in the favour of State Government, who is the real custodian of

money. It is also found that no any active role of I.O. after submission of chargesheet and prosecution never objected on grant of pardon in favour of accused petitioners. But ethics of justice demand that guilty person never provide the benefit of misuse of process and accused persons must come in the court and face the trial according to law without prejudice previous order in the case. As a judge who presided the proceeding of case found that it is necessary to call all above accused persons for facing the trial in the ends of justice, so above accused namely 1. Shiv Kumar Patwari, 2. Shailesh Prasad Singh, 3. Naresh Prasad, 4. Md. Sayeed and 5. Rameshwar Prasad Chaudhary came in the court on fixed date and face the trial in impartial way.

Put up on 14.06.2018 for framing of charge. Accused namely 1. Shiv Kumar Patwari, 2. Shailesh Prasad Singh, 3. Naresh Prasad, 4. Md. Sayeed and 5. Rameshwar Prasad Chaudhary directed to remain physically present on fixed date.”

21. On the aforesaid legal principles delineated by the Apex Court when the case of these petitioners is examined, this Court finds that these five accused persons/petitioners were granted pardon after acceptance of their disclosures made under Section 306 Cr.P.C by learned C.B.I. Court vide orders dated 14th July, 2003 (Annexure-2); 19th May, 2003 (Annexure- 2); 2nd April, 2004 (Annexure-2); 5th January, 2004 (Annexure-1) and 9th July, 2003 (Annexure-1) respectively in the individual cases on being satisfied that they had made complete and truthful disclosures of all the material circumstances relating to the offence and the persons involved. Learned Court granting pardon had also imposed a condition that they would support the case of the prosecution and make such full and truthful disclosure of the material circumstances relating to the offence and the persons involved during trial and at any time on being called upon to do so. At no stage of the trial, the CBI or learned Special Public Prosecutor, CBI had moved an application for revocation of their pardon nor the Special Public Prosecutor, CBI has certified in terms of Section 308 Cr.P.C that these persons had concealed anything or failed to make truthful and complete disclosures of all the material circumstances relating to the case and the persons involved while deposing before the CBI Court as prosecution witnesses. Certification by the Public Prosecutor has been held to be a pre-requisite mandatory condition as per the ratio rendered by the Apex Court in the case of **Jagjit Singh(supra)**. On the other hand, learned trial Court has also referred to the deposition of these prosecution witnesses in the final judgment dated 9th April, 2018 and taken note of the submission of the C.B.I that all these five

prosecution witnesses have fully supported the case of the prosecution. At no stage, learned CBI Court has rendered a finding to the contrary. In fact, even in the impugned order dated 31st May, 2018, learned CBI Court has not recorded a finding that these petitioners were found violating the conditions of pardon and had failed to make complete and truthful disclosure of all the material circumstances relating to the offence and the persons involved while deposing as prosecution witnesses in support of the CBI. The only observation which the learned Court has made while passing the impugned order is to the effect that these persons were equally liable to commit fraud in conspiracy with other co-accused persons and were enjoying the ill-gotten money but without any reason they were granted pardon at this stage. It is apposite to rely upon the observations of Apex Court in the case of ***Ashok Kumar Aggrawal (supra)*** at para 35 quoted above. It has been held therein that once the immunity extends to the accused and the accused is made an approver, he stands discharged, whereupon he ceases to be an accused and would be examined only as a witness unless the said privilege is revoked on violation of the condition of disclosing complete truth. Learned CBI Court appears to have completely misdirected itself while passing the impugned order revoking the pardon granted to the petitioners. None of the ingredients necessary for exercise of the powers under Section 308 Cr.P.C stood fulfilled or satisfied for the learned Court to revoke the pardon granted to these petitioners. As a matter of fact, observations made by learned C.B.I. Court in the impugned order against the predecessor court granting pardon were wholly uncalled for. Learned Court apparently has misconstrued the provisions of Section 308 Cr.P.C and being guided by wholly irrelevant and alien consideration revoked the pardon granted to these petitioners calling upon them to appear for framing of charge.

22. The legal and factual grounds urged in the case of the petitioners appear to be same and similar to that of ***Shiv Kumar Patwari in Cr. M. P. No. 175 of 2018 and Shailesh Prasad Singh in Cr. M.P. No. 177 of 2018***. Therefore, the legal principles laid down in the case of Shiv Kumar Patwari & Shailesh Prasad Singh (supra) should apply to the facts of the present cases as well.

23. In the light of the aforesaid facts and circumstances, the detailed discussions and the reasons recorded hereinabove, this Court is of the considered opinion that learned CBI Court went beyond the jurisdiction as conferred under the Criminal Procedure Code and fell in serious error of law

and on facts while passing the impugned order. In such circumstances, if the order impugned is not set aside, it would cause grave miscarriage of justice and would also amount to an abuse of process of the Court. As such, the impugned order dated 31st May, 2018 as against these petitioners is quashed. Petitions are allowed.

(Aparesh Kumar Singh, J)

jk/