

**Dev Kishan Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jul-21-1983

**Reported in :** 1984CriLJ1142

**Judge :** S.S. Byas, J.

**Appellant :** Dev Kishan

**Respondent :** State of Rajasthan

**Judgement :**

ORDER

**S.S. Byas, J.**

1. By this application, purporting to have filed under Section 439 of the Criminal P.C. the petitioner Dev Kishan seeks his enlargement on bail.

2. The facts sainted at the bar are that a Criminal Case No. 37 of 1982 State v. Bherusingh for offences under 395, 342. 307 and 120B, I.P.C. is pending trial in the court of learned Addl. Sessions Judge, Rajsamand. The petitioner accepted a tender of pardon and became an approver. He was examined as a witness in the trial court on 12.10.1982. He now prays that he may toe released on bail. It was pointed out by the learned Public Prosecutor that during trial, the petitioner turned hostile and failed to make a compliance of the conditions on which, the tender of pardon was made to him.

3. Learned Counsel for the petitioner contends that the accused-persons facing trial, have been released on bail. The trial is to take long time. The applicant was arrested on May 27, 1982 and since then, he is in custody. It would be, therefore, unjust and improper to detain him, in custody any more. The submission made by the learned Public Prosecutor is that the applicant cannot be released and is to remain in detention till the termination of the trial in view of the provisions of Section 306(4)(b) of the Criminal P.C.

4. Having given my thoughtful consideration to the respective arguments. I am of the opinion that the contention raised on behalf of the petitioner is barren and devoid of force in view of the mandate contained in Section 306(4)(b) of the Criminal P.C. It speaks in unambiguous words that every person accepting a tender of pardon shall, unless he is already, on bail be detained in custody until the termination of the trial.

5. Section 439. Cr.P.C. cannot be called in aid by the petitioner. The provisions of Section 306(4)(b) are independent. They are not ancillary or subordinate to the provisions of Section 439. Cr.P.C. The provisions of Section 306(4)(b) are of special nature and override the general provision of bail contained in Section 439, Cr.P.C. It is a well-settled principle of law that general provisions will give way and bow before the special provisions. In other words, Section 306(4)(b) acts as an exception to Section 439.

6. The position, which thus emerges out is that an approver, if he is not on bail at the time of accepting the tender of pardon, shall be detained in custody until the termination of the trial. During trial, there is no provision to release him on bail or otherwise.

7. It is true that the accused-persons facing the trial, have been released on bail. But that can hardly be taken as a valid ground to subvert or circumvent the mandatory provisions of Section 306(4)(b).

8. For the reasons stated above, this application for bail by the approver is not maintainable and it is hereby dismissed. The learned Addl. Sessions Judge, Rajsamand will expedite the trial of the case.

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