

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

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DATED THIS THE 23RD DAY OF DECEMBER 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRL.RP.No.200077/2021

BETWEEN:

BANDENAWAJ
S/O. ABDULSAB JAMADAR
AGE: 36 YEARS
OCC: MECHANIC
R/O. BALAGNUR VILLAGE
TQ: SINDAGI
DIST: VIJAYAPURA-586128.

... PETITIONER

(BY SRI R.S.LAGALI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH SHO.,
ADARSH NAGAR POLICE STATION
VIJAYAPURA
REP. BY THE ADDL. PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585102

... RESPONDENT

(BY SRI GURURAJ V. HASILKAR, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF CRIMINAL PROCEDURE CODE, PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 15.03.2021 PASSED BY THE HON'BLE III ADDL. SESSIONS JUDGE, VIJAYAPURA IN CRIMINAL APPEAL NO.24/2020 IN DISMISSING THE APPEAL PREFERRED BY THE

PETITIONER ON THE COUNT OF DELAY AND THEREBY CONFIRMING THE JUDGMENT AND ORDER OF CONVICTION DATED 20.11.2017 PASSED BY THE HON'BLE V ADDL. CIVIL JUDGE AND JMFC-IV COURT, VIJAYAPURA IN C.C.NO.1793/2014 FOR THE OFFENCES PUNISHABLE U/SEC.58 OF KARNATAKA PRISONS ACT, 1963 AND ACQUIT THE PETITIONER OF THE SAME.

THIS PETITION HAVING BEEN HEARD ON 15.12.2021 AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed under Section 397 read with Section 401 of Cr.P.C., praying this Court to set aside the judgment and order dated 15.03.2021 passed in Criminal Appeal No.24/2020 by the III Additional Sessions Judge, Vijayapura in dismissing the appeal preferred by the petitioner on the count of delay and thereby confirming the judgment and order of conviction dated 20.11.2017 passed in C.C.No.1793/2014 by the V Additional Civil Judge & JMFC - IV Court, Vijayapura, for an offence punishable under Section 58 of the Karnataka Prisons Act, 1963 and acquit the petitioner and grant such other relief as deemed fit in the facts and circumstances of the case.

2. The factual matrix of the case is that this petitioner along with accused Nos.2 and 3 were tried and convicted in Sessions Case No.206/2005 by the I Additional Sessions Judge, Vijayapura for the offences punishable under Sections 302, 304 Part II of IPC and this petitioner was sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- in default of payment of the fine amount to further undergo simple imprisonment for six months. The petitioner had preferred Criminal Appeal No.664/2007 before this Court and vide order dated 28.06.2011 was pleased to confirm the conviction of the petitioner. Being dissatisfied, the petitioner preferred Special Leave Petition (Criminal) Diary No.3798/2018 before the Apex Court and the same also came to be dismissed vide order dated 12.04.2019.

3. When he was undergoing the sentence, the jail authorities have considered his request for release him on parole and he was released on parole for 15 days from 05.11.2011 to 21.11.2011. But this petitioner did not

return to the prison as per his parole order and thereafter he was arrested and remanded to custody on 28.09.2017 and a criminal case was registered against him for an offence punishable under Section 58 of the Karnataka Prisons Act, 1963. The petitioner pleaded guilty of the charges levelled against him. Hence, he was ordered to undergo simple imprisonment for a period of 6 months and clarified that the said period of imprisonment would commence after the petitioner would have completed his sentence of life imprisonment imposed in Sessions Case No.206/2005. The said order was challenged before the Sessions Judge and while filing the appeal, there was a delay of 960 days and the appeal was dismissed and confirmed the sentence. Hence, the present petition is filed.

4. The main contention of the learned counsel appearing for the revision petitioner is that the order passed by the trial Judge is against the settled proposition of law and both the Courts order has resulted in

miscarriage of justice and the same was suffered from non-application of mind ordering to undergo sentence after completion of the imprisonment for life is harsh. The petitioner would undergo imprisonment for life subject to his remission. But with such sentence the petitioner after remission of sentence will have to further undergo simple imprisonment for 6 months and he has already been sentenced to undergo rigorous imprisonment for life and now he is subjected to further imprisonment for a period of 6 months is against the settled principles of law. The delay also not properly considered by the Sessions Judge. The trial Court as well as the appellate Court failed to take note of the fact that the conduct of the petitioner, who treated guilty for his non-returning to undergo imprisonment.

5. The learned counsel also in his arguments vehemently contended that both the Courts have failed to consider the factual aspects of the case. The learned

counsel also brought to the notice of this Court Section 427(2) of Cr.P.C.

6. The learned counsel in support of his contentions has relied upon the judgment of the Apex Court in the case of ***Ranjit Singh v. Union Territory of Chandigarh and another*** reported in **1991 SCC (Cri) 965**, wherein, the Apex Court also discussed with regard to Section 427(2) of Cr.P.C., is in the nature of an exception to sub-section (1) - Person already serving sentence of life imprisonment again sentenced to life imprisonment on a subsequent conviction - In such a situation, the subsequent sentence will run concurrently even in absence of any specific direction of Court to that effect. The learned counsel also brought to the notice of this Court paragraph No.8 of the judgment, wherein, discussed with regard to sub-section (2), which denotes "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life. This being so at the

stage of sentencing by the Court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in sub-section (1) of Section 427.

7. The learned counsel also relied upon the judgment of the Apex Court in the case of ***Jitendra Alias Kalla v. State of Govt. of NCT of Delhi*** reported in ***AIR 2018 SC 5253***, wherein, the Apex Court held that when the sentence of life imprisonment was ordered in respect of two offences of murder, no question of awarding consecutive sentence and sentences directed to run concurrently.

8. Per contra, the learned High Court Government Pleader appearing for the State would submit that Section 427(2) of Cr.P.C., is not applicable since he has been escaped from undergoing sentence and that too he was

absconded for a period of 5½ years when he was released on parole. The learned High Court Government Pleader would submit that Section 426 applies and not Section 427(2) of Cr.P.C., as contended by the learned counsel for the petitioner.

9. In reply to the arguments of the learned High Court Government Pleader for the respondent - State, the learned counsel for the petitioner would submit that Section 426(1) also clarifies with regard to an escaped convict, such sentence shall, subject to the provisions contained in clause(2) of Section 426, which take effect immediately. The learned counsel for the petitioner also would submit that there is no scope for discretion regarding conduct of the petitioner and Section 427(2) of Cr.P.C., has to be attracted.

10. Having heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the respondent-State, the points

that would arise for consideration of this Court in this revision petition are:

- (1) Whether the escaped convict can seek the benefit under Section 427(2) of Cr.P.C.?
- (2) What order?

Point No.1:

11. Before considering this aspect, I would like to make it clear that this petitioner was convicted for the offence punishable under Section 302 of IPC and he was sentenced to undergo rigorous imprisonment for life. This fact is not in dispute. The petitioner was also released on parole for a period of 15 days in 2011 is also not in dispute and this petitioner was arrested and sent to custody in the year 2017 after 5½ years is also not in dispute. The petitioner also admitted the guilt and as a result, he was sentenced for a period of 6 months for an offence punishable under Section 58 of the Karnataka Prisons Act, 1963, is also not in dispute.

12. The only contention of the learned counsel appearing for the petitioner is that the sentence imposed by the Trial Court for an offence punishable under Section 58 of the Karnataka Prisons Act, 1963 should be concurrent not consecutive as ordered by the Trial Court.

13. This Court would like to refer Section 427 of Cr.P.C., which has been relied upon by the learned counsel for the petitioner, which reads as follows:-

"427. Sentence on offender already sentenced for another offence.- (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the

making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

14. The learned High Court Government Pleader appearing for the respondent/State also relied upon Section 426 of Cr.P.C., i.e., in respect of sentence on escaped convict when to take effect and this Court would like to extract Section 426 of Cr.P.C., which reads as follows:-

"426. Sentence on escaped convict when to take effect.-

(1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict,-

(a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the

new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment."

15. Having read both the Sections in conjointly, Section 427 of Cr.P.C., discloses with regard to sentence on offender already sentenced for another offence. But in the case on hand, it has to be noted that he was already been convicted for an offence punishable under Section 302 of IPC and admittedly he was undergoing sentence and no doubt Section 427(2) says that, when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

Having read Section 427(2) of Cr.P.C., it is clear that the subsequent conviction and sentence shall run concurrently with such previous sentence. But there is a separate proviso under Section 426 of Cr.P.C., with regard to sentence on escaped convict when to take effect.

16. Having read Section 426(1) of Cr.P.C., it is clear that when a person is on sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions contained, take effect immediately. But subsection (2) of Section 426 of Cr.P.C., is clear that when a sentence of imprisonment for a term is passed under this Code on an escaped convict, if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately. But here is a case that sentence is simple imprisonment and it is sentenced to undergo imprisonment for six months, which is clearly mentioned it should run separately and also he has to undergo the unexpired

portion of remaining sentence which he had already been convicted. Hence, the Trial Court has made it clear that it should be separate sentence other than the sentence which he has to undergo in respect of the earlier sentence. When a sentence of imprisonment for a term is passed under the code on an escaped convict, Section 426(2)(a) Cr.P.C., is applicable and the Court has to take note of explicit provisions made in respect of sentence on escaped convict and made it clear which has to take effect immediately and also Section 426(2)(b) is clear that if such sentence is not severer in kind than the sentence which shall convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence. In the case on hand, the imprisonment is for a period of six months for the offence under Section 58 of the Karnataka Prisons Act, 1963 and the earlier sentence is rigorous imprisonment for life. Hence, Section 426(2)(b) is applicable to the facts of the case on hand.

17. This Court would like to refer to the recent judgment of the Apex Court in the case of ***Mohd. Zahid v. State Through NCB*** reported in ***2021 SCC OnLine SC 1183***, wherein, the same issue of sentencing the accused to run the sentence concurrently or consecutively in detail discussed Section 427 of Cr.P.C., both Section 427(1) of Cr.P.C., and also falling under Section 427(2) of Cr.P.C.

18. The Apex Court also relied upon the following judgments of the Apex Court: -

- (i) ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and another, (1988) 4 SCC 183;***
- (ii) ***Ranjit Singh v. Union Territory of Chandigarh, 1991(4) SCC 304;***
- (iii) ***V.K.Bansal v. State of Haryana and another, (2013) 7 SCC 211;***
- (iv) ***Neera Yadav v. Central Bureau of Investigation (2017) 8 SCC 757,***
- (v) ***Vicky @ Vikas v. State (NCT of Delhi), (2020) 11 SCC 540;***

(vi) *Gurdev Singh v. State of Punjab, (2021) 6 SCC 558;*

(vii) *Sharad Hiru Kolambe v. State of Maharashtra and others, (2018) 18 SCC 718 and*

(viii) *Rajpal v. Om Prakash and another, (2019) 17 SCC 809.*

19. The Apex Court taking into consideration of the principles laid down in the judgments referred supra and also considering the proviso of Section 427 of Cr.P.C., comes to a conclusion that if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced; it is also observed that ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the Court directs the subsequent sentence to run concurrently with the previous sentence and it is also observed that the general rule is that where there are different transactions, different crime

numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 of Cr.P.C.

20. It is further observed that under Section 427(1) of Cr.P.C., the Court has the power and discretion to issue a direction that all the subsequent sentences shall run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the Court that the subsequent sentence to run concurrently with the previous sentence.

21. Having discussed in detail, the scope of Section 427 of Cr.P.C., the Apex Court in paragraph No.34 of the Judgment held as follows:-

"34. Applying the law laid down by this Court in the aforesaid decisions and the principles of law enumerated hereinabove to the facts of the case on hand, the submissions on behalf of the appellant - accused that his subsequent sentence

to run concurrently with the previous sentence is to be rejected outright. In the present case the appellant has been convicted with respect to two different transactions, there are different crime numbers and the cases have been decided by the different judgments. Therefore, the appellant is not entitled to any benefit of concurrent sentence under Section 427 of Cr.P.C. As observed hereinabove, there is no specific order or direction issued by the Court while imposing the subsequent sentence that the subsequent sentence to run concurrently with the previous sentence."

22. This Court also would like to refer to paragraph No.35, wherein, the Apex Court discussed the proviso under Section 427(1) of Cr.P.C., and also the factual aspects of that case, which reads as under:

"35. Even otherwise as observed hereinabove under Section 427(1) of Cr.P.C., the Court has the power and discretion to issue a direction that the subsequent sentence to run concurrently with the previous sentence in that case also, the discretion has to be exercised judiciously depending upon the nature of offence or the offences committed. In the present case the appellant - accused has been convicted for the offences under the NDPS Act. He has been

convicted in one case for recovery of 4 kg heroin and sentenced to undergo 12 years RI and in another case there is a recovery of 750 grams of heroin and considering the Section 31(ii) of the NDPS Act, he has been sentenced to undergo 15 years RI. No leniency should be shown to an accused who is found to be guilty for the offence under the NDPS Act. Those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death b/w to a number of innocent young victims who are vulnerable. Such accused causes deleterious effects and deadly impact on the society. They are hazard to the society. Such organized activities of clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have a deadly impact on the society as a whole. Therefore, while awarding the sentence or punishment in case of NDPS Act, the interest of the society as a whole is required to be taken into consideration. Therefore, even while applying discretion under Section 427 of Cr.P.C., the discretion shall not be in favour of the accused who is found to be indulging in illegal trafficking in the narcotic drugs and psychotropic substances. As observed hereinabove, even while exercising discretion under Section 427 of Cr.P.C., to run subsequent sentence concurrently with the previous sentence, the discretion is to be exercised

judiciously and depending upon the offence/offences committed. Therefore, considering the offences under the NDPS Act which are very serious in nature and against the society at large, no discretion shall be exercised in favour of such accused who is indulging into the offence under the NDPS Act."

23. In keeping the principles laid down in the judgments referred supra by the Apex Court and also the factual aspects of this case and also the judgments referred by the learned counsel for the petitioner, this Court has to examine the facts of the case on hand.

24. It is important to note that when he was imprisoned for a life for the offence of murder and the said punishment was rigorous imprisonment instead of returning after the parole period of 15 days he escaped for a period of 5½ years and the period of 5½ years is not a short period. When he was escaped he was re-arrested after 5½ years and when such being the conduct of the petitioner herein, the proviso of Section 427(2) of Cr.P.C., cannot be invoked as contended by the learned counsel for

the petitioner and the conduct of the petitioner has to be taken note of while considering the case on hand.

25. The very contention of the learned counsel for the petitioner is that the conduct cannot be looked into and the discretion also cannot be exercised by the Court, cannot be accepted. If a person, who was convicted for rigorous imprisonment for life and when he was released on parole and if he did not turn up and the said sentence cannot be considered to run as concurrent as contended by the learned counsel for the petitioner and the petitioner has not obeyed the order of releasing him on parole and he has mis-used his release on parole and that too for a period of 5½ years and question of taking lenience in respect of the said petitioner cannot be entertained. If such lenience is shown for the accused/petitioner, who did not turn up for a period of 5½ years to undergo sentence of rigorous imprisonment is considered for lenience that would be mockery of justice.

26. The Apex Court in ***Mohd. Zahid***'s case (supra), held that the discretion has to be exercised judiciously depending upon the nature of offence or the offences committed and facts in situation. In the case on hand, the petitioner herein committed heinous offence of murder and undergoing the rigorous life imprisonment. Both the offences are distinct and cases have been decided by the different judgments. Hence, the petitioner cannot get the benefit under Section 427 of Cr.P.C. Further, the Apex Court in paragraph No.35 discussed the nature of offence under the NDPS Act as the offence against the society at large and also held that no discretion shall be exercised in favour of such accused. In the case on hand also committed the murder which is against the society at large. Apart from that, he escaped from the punishment when he was on parole. Hence, the petitioner is not entitled for the relief as contended in the petition to make the sentence as concurrent instead of consecutive and there is an explicit proviso under Section 426 of Cr.P.C.,

with regard to the sentence on escaped convict when to take effect.

27. The principles laid down in the judgments referred supra by the learned counsel for the petitioner are not applicable to the facts of the case on hand and those cases are not in respect of the penal provisions under Section 58 of the Karnataka Prisons Act, 1963 and no doubt in **Ranjit Singh**'s case (supra), is in respect of the same offence under Section 302 of IPC and wherein it is made it as concurrent and the same is not mis-using of the parole period and in **Jitendra**'s case (supra), wherein also accused convicted and sentenced for life imprisonment for two offences of murder, wherein, the Apex Court held that sentences directed to run concurrently and both the cases tried together. But not in the case on hand, the offences are distinct as well as the conduct of the petitioner also to be taken note of. Hence, I do not find any merit in the contention of the learned counsel for the petitioner. Hence, I answered point No.1 as 'negative'.

Point No.2:

28. In view of the observations made above, I pass the following:

ORDER

The revision petition is rejected.

**Sd/-
JUDGE**

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