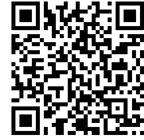


* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 11.10.2023
Judgment pronounced on: 31.10.2023

\+ CRL.A. 159/2016 & CRL.M.(BAIL) 11/2022

AJAY KUMAR ..... Appellant

versus

THE STATE NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. M.L. Yadav, Advocate

For the Respondent : Mr. Shoaib Haider, APP with Insp. Kusum Dhama, PS- Women Cell/ South Distt. and Insp. Asha, PS- Kapashera.

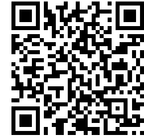
CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. By way of an oral application the applicant/appellant seeks conversion of the sentences as imposed by the learned Trial Court in respect of offences under section 376 of Indian Penal Code, 1860 (hereinafter referred to as "IPC") of RI for 10 years with fine of Rs. 1,00,000/-, in default whereof, to undergo further SI of 1 year and offence under section 306 IPC of RI for 7 years and with fine of Rs.



50,000/-, in default whereof, to undergo a further SI of 6 months. These were directed to run consecutively.

2. According to the Nominal Roll, the applicant/appellant has already undergone a total punishment of 7 years 7 months and 25 days. It is the submission of the applicant/appellant that in case this Court converts the sentence of consecutive punishment to one of concurrent, he would abide by the punishment and not pursue the appeal.

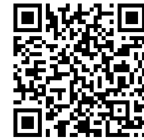
3. Though no formal application seeking the relief of conversion of the sentences from one being "consecutive" to one being "concurrent" has not been filed by the applicant/appellant, however, Mr. M.L. Yadav, learned counsel has made an oral prayer and argued at length. On instructions from the applicant/appellant, learned counsel submits that in case, if this Court is inclined to allow such prayers, the applicant/appellant would not further pursue his appeal bearing Criminal Appeal No. 159 of 2016.

4. Keeping in view that there is nothing in the Code requiring that convicts ought to file any formal application seeking such prayers, this Court is of the opinion that the oral prayers can be considered. As such, the said oral application is being considered.

5. Mr. M.L. Yadav, learned counsel had argued for the applicant/appellant whereas, Mr. Haider, learned APP had argued extensively for the State.'

6. In order to appreciate the arguments, it would be relevant to consider the facts arising therein, the same is being extracted from the impugned judgement dated 02.12.2015, as under:

> *"The present case concerns the unfortunate and untimely demise of a young lady namely 'P' (real name withheld in*



order to conceal her identity), who is stated to have committed suicide at her residence in SN Farm House, Telephone Exchange Road, Samalka, Kapashera, New Delhi, in the morning of 30.5.2015. The prosecution alleges that the accused had committed forcible sexual intercourse with the deceased on several occasions during the period November, 2014 to May, 2015 and upon feeling unable to narrate the rape incident to anybody on account of shame and also upon the instigation and threats of the accused that he would show her obscene video to everybody, if she did not oblige her, she committed suicide by hanging.

It is not in dispute that the prosecutrix, her husband and the accused were working in M/s. SN Farm House. The family of the deceased was residing in one of the servant quarters in the farm house whereas the accused was residing alone in the adjacent servant quarter.

It is the case of the prosecution that the information was received in P.S. Kapashera on 30.5.2015 at 11.35 a.m. from the Duty Constable at Safdarjung Hospital that a lady named 'P' aged 30 years from SN Farm House, Samalka, Kapashera, was brought to the hospital by her husband in unconscious state and upon check up, she was declared brought dead by the doctor. The information was recorded as DD No. 18A and was entrusted to SI Yogender for necessary action. Accordingly, SI Yogender alongwith Const. Anil Dutt reached Safdarjung Hospital and collected the MLC of the deceased. He inspected the dead body and found a ligature mark around its neck. He met the deceased's husband Manual Kujur as well as accused Ajay. They apprised him about the occurrence. He accompanied them to SN Farm House where he inspected the room, in which the family of the deceased resided. He found that a Chunni of white and red colour was tied around the beam over the almirah and half portion of the Chunni was lying upon the mattress on the floor. Upon cursory inspection of the room, he found a diary on the almirah near the place where suicide had taken place and upon checking

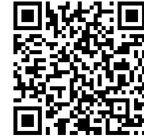
> *the diary, he found a suicide note written therein. A yellow colour pen having blue colour ink was found inside the diary. SI Yogender recorded the statement of Manual Kujur, prepared rukka and got the FIR registered. After the registration of the FIR, the investigation was entrusted to Inspector Kusum Dhama."*

CONTENTIONS OF THE APPLICANT/APPELLANT

7. The short and concise submissions of Mr.Yadav, learned counsel, are that the offences stated to have been committed by the applicant/appellant, even if assumed to be true, are part of the same transaction. In that, according to learned counsel, the committing of suicide by the deceased is directly related to the offence under section 376 IPC, which the applicant/appellant is stated to have committed many times over period of time. Though, according to the prosecution, he submits, the offence of rape was committed over a period of time which is separate offence or offences, whereas the act of committing suicide by the deceased and the abetment thereof by the applicant/appellant is composite and a separate offence.

8. However, according to learned counsel for the applicant/appellant, the committing of suicide by the deceased could be a result of, or consequence of the offence of rape, which is stated to have occurred over a period of time. He submits that the two offences are thus, part of one transaction. On that basis, learned counsel submits that the sentences can be directed to run concurrently and not consecutively.

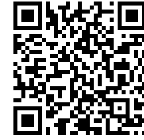
9. Mr. Yadav relies upon the following judgements, both on law as well as on facts:



a. ***Vicky @ Vikas Vs. State (NCT of Delhi)***, reported in **(2020) 11 SCC 540**
b. ***Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (prevention), Ahmedabad & Anr***, reported in **(1988) 4 SCC 183**
c. ***V.K. Bansal Vs. State of Haryana & Anr***, reported in **(2013) 7 SCC 211**
d. ***Bihari Lal Vs. State NCT of Delhi***, reported in **2015 SCC OnLine Del 11828**
e. ***Yamin Vs. The State (Govt. of NCT of Delhi)***, reported in **2021 SCC OnLine Del 33**

CONTENTIONS OF STATE

10. *Per contra*, Mr. Shoaib Haider, learned APP for the State vehemently opposes the said prayers by pointing out the seriousness and the gravity and magnitude of the offences committed by the applicant/appellant. Learned APP submits that the applicant/appellant firstly committed rape upon the deceased and then blackmailed her subsequently again and again to establish physical relations with him despite the deceased being opposed to the same. He submits that the deceased was a married lady and the applicant/appellant was the friend of the deceased and they used to work together and taking undue advantage of his friendship, he committed such brutal act of rape upon the deceased, not satisfied with that, the applicant/appellant forced the poor lady and ravished her at every opportunity he got. According to the learned APP, it is clear from the records and evidence that unable to



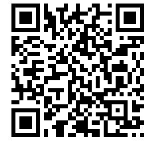
take this forceful onslaught of her being ravished by the applicant/appellant, being unable to disclose the truth to her husband and in all probability feeling ashamed of such acts, deceased victim was constrained to end her life abruptly by taking her own life, to release herself of this savage assault on her body and soul which must have scarred her and traumatized her endlessly.

11. In other words, according to Mr. Haider, many instances of rape by the applicant/appellant upon the deceased may have some bearing upon the reason for committing suicide, yet it appears to have been a case of unbearable trauma, humiliation, sense of helplessness, and the sub-human feeling the deceased may have torturously passed through, day and night, that must have propelled the deceased to take such extreme step.

12. Thus, according to Mr. Haider, learned APP, the offences are distinct in their nature and consequence and, as such, are not part of the same or single transaction. Moreover, the offences are dastardly and even otherwise on merits, the applicant/appellant does not deserve any leniency or mercy and the sentences ought to run consecutively. Even otherwise there is nothing to show that the applicant/appellant has reformed in the meanwhile. To substantiate his aforesaid arguments, Mr. Haider, learned APP relies upon the following judgements:

a. ***O.M. Cherian Vs. State of Kerela***, reported in **(2015) 2 SCC 501**

b. ***V.K. Bansal Vs. State of Haryana & Anr***, reported in **(2013) 7 SCC 211**



c. ***Ramesh Chilwal Vs. State of Uttarkhand***, reported in **(2012) 11 SCC 629**

d. ***Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (prevention), Ahmedabad & Anr***, reported in **(1988) 4 SCC 183**

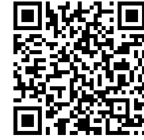
Mr. Haider, referred to ***O.M. Cherian (Supra)*** & ***Ramesh Chilwal (Supra)***, particularly the following paragraphs:-

In ***O.M. Cherian (Supra)***

"***14.*** *The opening words "in the case of consecutive sentences" in subsection (2) of Section 31 Cr P C make it clear that this sub-section refers to a case in which "consecutive sentences" are ordered. The provision says that if an aggregate punishment for several offences is found to be in excess of punishment which the court is competent to inflict on a conviction of single offence, it shall not be necessary for the court to send the offender for trial before a higher court. Proviso (a) is added to sub-section (2) of Section 31 CrPC to limit the aggregate of sentences—that in no case, the aggregate of consecutive sentences passed against an accused shall exceed fourteen years. "Fourteen years' rule" contained in clause (a) of the proviso to Section 31(2) CrPC may not be applicable in relation to sentence of imprisonment for life, since imprisonment for life means the convict will remain in jail till the end of his normal life."*

In ***Ramesh Chilwal (Supra)***

"***4.*** *Since this Court issued notice only to clarify the sentence awarded by the trial Judge, there is no need to go into all the factual details. We are not inclined to modify the sentence. However, considering the fact that the trial Judge has awarded life sentence for an offence Under Section 302, in view of Section 31 of the Code of Criminal*



Procedure, 1973, we make it clear that all the sentences imposed under the Indian Penal Code, the Gangsters Act and the Arms Act are to run concurrently.
***5.** While confirming the conviction, we clarify that all the sentences are to run concurrently. To this extent, the judgment of the trial Court as affirmed by the High Court is modified."*

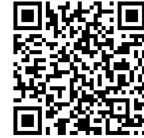
Learned APP, relies upon the aforesaid judgements to buttress his argument that in the facts of the present case, the benefit of section 427 Cr.P.C., 1973 to the applicant/appellant should not be granted considering the gravity and nature of the offences established against the applicant/appellant.

ANALYSIS OF THE COURT:-

13. This Court has heard at length, the arguments of Mr. Yadav, learned counsel for the applicant/appellant and Mr. Haider, learned APP for State and also perused the record carefully and the judgements relied upon by both sides.

14. At the outset, this Court considers it pertinent to delve into the scope and powers of the Court to exercise its jurisdiction under section 427 Cr.P.C., 1973. For such consideration, it would be relevant to consider judgements rendered by the Supreme Court and High Courts. However, before that, it would be apposite to extract section 427 Cr.P.C., 1973 hereunder:

***"Section 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.

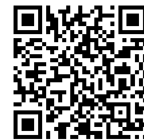
(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

15. Before this Court proceeds to consider as to whether the provisions of section 427 Cr.P.C., 1973 are applicable to the facts obtaining in this case, it would be appropriate to examine as to how the aforesaid provision has been considered by Supreme Court and other High Courts.

a) ***Vicky @ Vikas Vs. State (NCT of Delhi),*** reported in (2020) 11 SCC 540:-

*"**10.** We may refer to the decision of the Supreme Court in Mohd. Akhtar Hussain v. Collector of Customs[4], wherein the Supreme Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. Mohd. Akhtar Hussain[4], it was held as under: (SCC p. 187, paras 10 & 12)*

"10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to



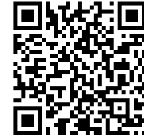
have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

12. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act relates to possession of 7000 tolas of primary gold prohibited under Section 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of gold worth Rs 12.5 crores and export of silver worth Rs 11.5 crores. On these facts, the courts are not unjustified in directing that the sentences should be consecutive and not concurrent."

***11.** After referring to Mohd. Akhtar Hussain[4] and other cases, in V.K. Bansal v. State of Haryana[5], the Supreme Court held that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints may have been filed. In V.K. Bansal[5], it was held as under: (V.K. Bansal case[5], SCC p. 217, paras 14-16)*

"14. We may at this stage refer to the decision of this Court in Mohd. Akhtar Hussain v. Collector of Customs4 in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences ...."

***13.** Following the decision in V.K. Bansal[5], in Benson v. State of Kerala[7], the Supreme Court directed that the sentences imposed in each of the cases shall run concurrently with the sentence imposed in Crime No. 8 which was then currently operative. However, the Court held that the benefit of "concurrent running of sentences" is granted only with respect of substantive sentences; but*



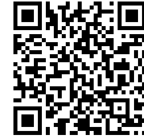
the sentences of fine and default sentences shall not be affected by the direction. The Supreme Court observed that the provisions of Section 427 CrPC do not permit a direction for the concurrent running of the default sentence for nonpayment of fine."

14. *Further, in Anil Kumar v. State of Punjab[8], it was held by this Court that: (SCC p. 55, para 5)*

> *"5. In terms of sub-section (1) of Section 427, 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. Only in appropriate cases, considering the facts of the case, the court can make the sentence run concurrently with an earlier sentence imposed. The investiture of such discretion, presupposes that such discretion be exercised by the court on sound judicial principles and not in a mechanical manner. Whether or not the discretion is to be exercised in directing sentences to run concurrently would depend upon the nature of the offence/offences and the facts and circumstances of each case."*

b) ***Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (prevention), Ahmedabad & Anr***, reported in **(1988) 4 SCC 183**:-

*"**10.** The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."*



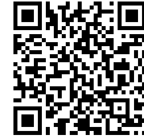
c) ***V.K. Bansal Vs. State of Haryana & Anr***, reported in **(2013) 7 SCC 211**:-

*"**14.** We may at this stage refer to the decision of this Court in Mohd. Akhtar Hussain v. Collector of Customs;*[5] *in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard apposite : (SCC p. 187, para 10)*

> *"10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."*

15. *In Madan Lal case*[1] *this Court relied upon the decision in Akhtar Hussain case*[5] *and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.*

16. *In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor."*



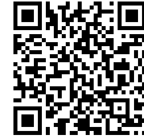
d) ***Bihari Lal Vs. State NCT of Delhi***, reported in **2015 SCC OnLine Del 11828**:-

*"**11.** On the other hand, Ms. Meenakshi Chauhan, learned Additional Public Prosecutor appearing on behalf of the State submitted that though there is only one FIR, however, incidents are different. Since the appeals, as noted above, filed by the petitioner have also been dismissed by this Court, therefore, at this stage, this Court has no power to interfere with the sentences awarded to the petitioner.*

***12.** Learned Additional Public Prosecutor further submitted that generally where several sentences are passed, such sentences should run consecutively, that is, one after the other, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.*

***13.** In support of her submissions, learned Additional Public Prosecutor has relied upon the case of Gopal Dass v. The State, wherein the Full Bench of this Court held as under:-*

> *"7. In order to determine the question under consideration as to what is the scope of the inherent powers of the High Court becomes relevant. The Inherent powers of the High Court inhere in it because of its being at, the apex of the judicial setup in a State. The inherent powers of the High Court, preserved by S. 482 of the Code, are to be exercised In making orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. S. 482 envisages that nothing in, Code shall be deemed to Limit or affect the inherent powers of the High Court exercised by it with the object of achieving the above said three results. It is for this reason that S. 482 does not prescribe the contours of the inherent powers of the High Court which are wide enough to be exercised in suitable cases to afford relief to an aggrieved party. While exercising inherent powers it has to be borne in*



mind that this power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. (See, R.P. Kapur. v. State of Punjab, 1960 CriLJ 1239). This principle of law had been reiterated succinctly by the Supreme Court recently in Palaniappa Gounder v. State of Tamil Nadu, 1977 Cri LJ 992. Therein examining the scope of S. 482 it was observed' that a provision which saves the inherent powers of a Court cannot override any express provision in the statute which saves that power. Putting it in another form the Court observed that if there is an express provision in a statute governing a particular subject there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject-matter.

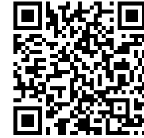
8. This question having been settled authoritatively it is not open to the petitioners to invoke the inherent powers of this Court having failed to avail of their right of appeal or revision. Inherent powers of the Court preserved in S. 482 of the Code and as held in a catena of cases are to be exercised, namely, (1) for giving effect to any order passed under the Code, or (2) to prevent abuse of the process of any Court or (3) otherwise to secure the ends of justice."

e) ***Yamin Vs. The State (Govt. of NCT of Delhi)***, reported in **2021 SCC OnLine Del 33**:-

*"**21**. It is settled position of the law that the direction to run the sentence concurrently may be passed by the Trial Court, Appellate Court and the Revisional Court.*

22. *The issue of concurrent running of the sentences awarded in different cases came up before the Full Bench of Bombay High Court, in the case of Satnam Singh Puran Singh Gill v. State of Maharashtra : 2009 SCC OnLine Bom 52. The objection of State was as under:*

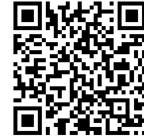
"2. The objection raised by the learned APP to the application is on the ground that the conviction the



> *applicant is not based only on one incident but the conviction is based on two totally independent incidents or transactions. The submission is that in view of the decision of the Division Bench of this Court the case of Ramesh Krishna Sawant v. State of Maharashtra (1994 Maharashtra Law Journal 825) power under section 427 cannot be exercised in the present case for directing that the sentence shall run concurrently. Reliance was also placed on judgment and order dated 04 June 2007 in Criminal Application No. 3959 of 2006 (Sanjeev Kumar Sadanandan Pillai v. The State of Maharashtra)."*

23. *However, while taking into consideration the legislative intent,*
interpretation of penal statute and the objections of the State, the
Court observed as under:

> *"21. The provisions of Section 427 of the Code are titled to provide a benefit in favour of a convict. Whether the sentence awarded earlier or the sentence awarded on subsequent conviction to run consecutive or concurrent is a matter of importance not only from the point of view of the accused but even administration of criminal justice. The Court has been vested with this power and is expected to apply this provision in every case at the time of awarding the sentence. The obligation cast upon the Court is of a mandatory nature as it has the impact of granting or declining to grant a benefit to a convict. Thus, it may not be appropriate to read into the provisions of Section 427 any restriction or limitation on the discretion of the Court which has not been specifically imposed by the Legislature.*
>
> *22. As we have already noticed, the Legislature in its wisdom has not imposed any bar or limitation on the basis of which case of any subsequent conviction would fall outside the ambit or scope of Section 427. On the contrary, to apply these provisions to different cases is the very intent behind this provision. Sub-section (2) of Section 427 requires mandatorily that life imprisonment in two different cases shall run*



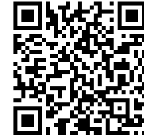
concurrently. To hold that the provisions of Section 427(1) would not apply to any case would be an interpretation which would neither be permissible on any principles or any accepted canons of interpretation of statutes nor with reference to the legislative intent behind this provision.

23. We are unable to see any statutory restriction on the powers of the Court or legislative mandate to exclude any class of cases from the provisions of Section 427 of the Code once the ingredients of the provision are satisfied. It is not for the Court to read into the provisions what is not stated unless it becomes imperative due to the rule of implied construction. On its plain reading, the language of the provision does not admit any direct or implied restriction. Of course, the Court has to exercise its discretion guided by law and legal principles. It must be governed by rules, not by humour and cannot be arbitrary, vague and fanciful. It essentially has to be legal, regular and according to the rules of reason and justice. (See Ramji Dayawala & Sons (P) Ltd. v. Invest Import, (1981) 1 SCC 80).”

f) Mohd Zahid Vs. State Through NCB, reported in (2022) 12 SCC 426:-

“***11.1.*** *In Mohd. Akhtar Hussain, this Court observed that the broad expanse of discretion left by legislation to sentencing courts should not be narrowed only to the seriousness of the offence. No single consideration can definitively determine the proper sentence. In arriving at an appropriate sentence, the court must consider, and sometimes reject, many factors. The court must “recognise, learn to control and exclude” many diverse data. It is a balancing act and tortuous process to ensure reasoned sentence. In consecutive sentences, in particular, the Court cannot afford to be blind to imprisonment which the accused is already undergoing.*

14. *In Neera Yadav while interpreting/considering Section 427 CrPC it is observed and held that Section 427 CrPC deals with sentence passed on an offender who is already*



sentenced for another offence and the power conferred on the Court under Section 427 to order concurrent sentence is discretionary. It is further observed that the policy of the legislature is that normally the sentencing should be done consecutively. It is further observed that only in appropriate cases, considering the facts of the case, the court can make the sentence concurrently with an earlier sentence imposed. It is further observed that the discretion exercised by the sentencing court to direct the concurrency will have to be exercised on sound principles and not on whims. Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed. It is further observed and held in the said decision that it is well settled that where there are different transactions, different crime numbers and the cases have been decided by the different judgments, concurrent sentences cannot be awarded under Section 427 CrPC. It is further observed that however, the general rule that there cannot be concurrency of sentences if conviction relates to two different transactions, can be changed by an order of the court.

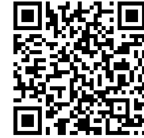
***17.** Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:*

***17.1.** 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.*

***17.2.** 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.*

***17.3.** 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 CrPC.*

***17.4.** Under Section 427(1) CrPC the court has the power and discretion to issue a direction that all the subsequent sentences 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.

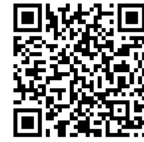
***18.** Applying the law laid down by this Court in the aforesaid decisions and the principles of law enumerated hereinabove to the facts of the case on hand, the submissions on behalf of the appellant-accused that his subsequent sentence to run concurrently with the previous sentence is to be rejected 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 CrPC. 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."*

On an overall consideration of the ratio laid down in the aforesaid judgments, it is apparent that the Court can exercise its jurisdiction under the provisions of section 427 Cr.P.C., 1973, carefully and on sound legal principles and factual foundation therefore being laid properly by the parties. The exercise is purely discretionary and applied only on case to case basis with no straight jacket formula. The foremost of those principles being that whether the two offences are intertwined and interconnected with the facts obtaining in a particular case, interspersed in such manner that the Court can possibly reach a conclusion that they form one single unitary aspect, though the offences by themselves, are distinct. This again may not be the only aspect to be considered during examination of the facts of a case while considering the application under section 427 Cr.P.C., 1973.

16. So far as the reliance of Mr. Haider, learned APP on the judgements on ***O.M. Cherian (Supra)*** and ***Ramesh Chilwal (Supra)*** is concerned the factual distinction in those cases in comparison to the present case is that the Supreme Court was examining an issue which arose from the first offence entailing the punishment of life sentence and then considering as to whether for the other offences the sentences should run consecutively or concurrently in the light of section 31 Cr.P.C., 1973. So far as the judgement of the Supreme Court in ***Mohd. Akthar (Supra)*** and ***V.K. Bansal (Supra)*** as concerned this Court has considered the same and applied the ratio in favour of the applicant/appellant and as such do not enure to the benefit of the prosecution.

17. Having said that, the said principles may now be applied on the facts obtaining in the present case. As per the prosecution, the applicant/appellant, the husband of the deceased and the deceased herself were working in the same place. It appears from the narration of the prosecution that the applicant/appellant had committed forcible sexual intercourse upon the deceased commencing from the month of November 2014 till May 2015 and as a consequence thereof, unable to take this humiliation and not being able to express herself coupled with the instigation and threats of the applicant/appellant that he would show her obscene video to everybody, if she did not oblige him, she committed suicide by hanging.

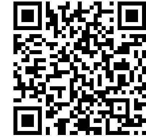
18. During the course of trial, the prosecution was able to establish its charges and accordingly, the learned Trial Court imposed the aforesaid



punishment of RI for 10 years for offence of rape and RI for 7 years for the offence of section 306 IPC.

19. This Court has considered the facts obtaining in the present case very minutely and tends to agree with the submissions of Mr. M.L. Yadav, learned Counsel for the applicant/appellant. The reason and rationale behind the same is that though the two offences by themselves are distinct and may have occurred at different points in time however, the causal facts giving rise to the said offences are intrinsically intertwined with each other and interspersed in a manner that both cannot be segregated to conclude that the offences are based on two different and distinct set of facts. This of course is not to say that the offences alleged and proved against the applicant/appellant are less heinous or are condonable. To this Court, it appears that the committing of suicide by the deceased was as a consequence and result of the trauma, humiliation, shame that the deceased felt during the interregnum when the applicant/appellant was committing the offence under section 376 IPC over a period of time. It is not the case of the prosecution that the deceased committed suicide on any independent or unconnected factor having no relation either to the applicant/appellant or to the offence under section 376 IPC. Rather, it appears from the case of the prosecution that its thrust was predicated upon the rape having been committed over a period of time by the applicant/appellant that resulted in the deceased taking the sad but extreme step of taking her own life.

20. Viewing from the above angle, this Court is of the considered opinion that both the offences form part of the same transaction having



intertwined and intrinsic facts, interspersed in such manner that the causal factor cannot be held to be so distinct as to conclude that the offences are unrelated, for the purposes of applying the principles of section 427 Cr.P.C., 1973.

21. The upshot of the above analysis leads this Court to apply the provisions of section 427 Cr.P.C., 1973 to the present case and conclude that the benefit thereof can and is granted to the applicant/appellant and consequently the sentences under section 376 and section 306 IPC imposed by the learned Trial Court to run *"consecutively*", are directed to now run *"concurrently"*.

22. Having regard to the undertaking given by the applicant/appellant through Mr. M L Yadav, learned counsel, the appeal is dismissed as not pursued/pressed.

23. The appeal and pending applications, if any, are disposed of accordingly.

24. Copy of this order be sent to the concerned Jail Superintendent.

TUSHAR RAO GEDELA, J.

OCTOBER 31, 2023/*rl*