

Court No. - 78

Case :- HABEAS CORPUS WRIT PETITION No. - 1067 of 2022

Petitioner :- Smt. Gulshan Jahan @ Bhabhi And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Prayogendra Pal Singh, Dr. Rajesh Kumar Srivastav

Counsel for Respondent :- G.A., Sanjay Kumar Yadav

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the petitioner and Sri Gyan Prakash, learned Senior Advocate/ Deputy Solicitor General of India, assisted by Sri Sanjay Kumar Yadav, learned counsel for the C.B.I, learned A.G.A. for the State and perused the record.

2. This habeas corpus has been filed seeking following relief:

"(a) Issue a writ, order or direction in the nature of Habeas Corpus (Detenue) namely, Smt. Gulshan Jahan @ Bhabhi on specific date at prescribed and dated fixed by this Hon'ble Court to set at aliberty before this Hon'ble Court and releas the illegal custody/detention from the respondent No.3 forthwith.

(b) Issue a writ, order or direction to release the petitioner no.1 from jail immediately.

(c) Award the cost in favor of the petitioner of her illegal detention under the respondent No.2.

(d) Award the cost of the petition to the petitioner".

3. Perusal of record shows that the petitioner has been convicted in Session Case No.80 of 2013 (C.B.I. vs. Smt. Gulshanjahan and others) in R.C. No. 2202012 E0021, under Section 120B, 489B, 489C IPC by the Court of Special Judge C.B.I. Court No.4, Lucknow, vide judgment and order dated 28.01.2016 and she was sentenced to seven years R.I. along with fine of Rs.40,000/- under Section 120B IPC, seven years R.I. along with fine of Rs.50,000/- under Section 489B IPC, and five years R.I. along with fine of

Rs.40,000/- under Section 489C IPC, and in default of payment of said fines, she has to undergo additional R.I. of six months and three months respectively. All the substantial sentences were to run concurrently.

4. In another case S.T. No. 2144 of 2012 (RC-220 2012 E0018), the petitioner was convicted under Section 120B/489B, 120B/489C IPC and she was sentenced to rigorous imprisonment of seven years and five years along with fine of Rs.50,000/- and Rs.30,000/- respectively and in default of payment of said fines, she has to undergo R.I. of eight months and four months respectively. Both the substantial sentences were to run concurrently.

5. The appellant is stated in jail serving the sentences.

6. The main contention of learned counsel for the petitioner is that both the cases are inter-connected and that in view of law laid down by Hon'ble Apex Court in case Ikram Vs. State of U.P. 2022 0 Supreme (SC) 1261, the petitioner has already served the sentence of more than seven years and she has already been undergone the sentence awarded in default of payment of fine and thus, the custody of petitioner in jail is illegal.

7. Learned Dy.S.G. submits that the petitioner has been convicted and sentenced in aforesaid two separate cases and after conviction in second case, the sentence of second case shall commence after the sentence of first case is served by the petitioner. As per the detention certificate sent by the Superintendent District Jail Ghaziabad, the sentence of the petitioner in second case has not been completed yet and she is still undergoing the remaining sentence in second case and thus, the custody of petitioner cannot be said illegal and the instant petition for habeas corpus is not

maintainable.

8. I have considered rival submissions and perused the record.

9. In case of Ikram (supra), Hon'ble Apex Court has referred the provisions of Section 427 Cr.P.C. and case of Mohd. Zahid vs. State through N.C.B. 2021 SCC OnLine SC 1183 and held as under:-

"10 Section 427 provides that 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. In other words, sub-section (1) of Section 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.

11 In Mohd Zahid Vs State through NCB3, this Court interpreted the provisions of Section 427 of CrPC after duly considering the precedents in the following terms:

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

(i) 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;

(ii) 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;

(iii) 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 Cr.P.C.;

(iv) under Section 427(1) of Cr.PC 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."

10. From aforesaid pronouncement, it is apparent that if a person undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would commence at the expiration of imprisonment to which he was previously sentenced, unless the Court directs that subsequent sentence to run concurrently with previous sentence. In the instant matter, the petitioner was first convicted by court of Special Judge C.B.I. Court No.4, Lucknow vide judgment and order dated 28.01.2016 and she was sentenced to seven years R.I.

along with fine of Rs.40,000/- under Section 120B IPC, seven years R.I. along with fine of Rs.50,000/- under Section 489B IPC and five years R.I. along with fine of Rs.40,000/- under Section 489C IPC, and in default of payment of said fines, she has to undergo additional R.I. of six months and three months respectively. Subsequently, she was sentenced by the Court of Special Judge Prevention of Corruption Act, Court No.1 Ghaziabad vide judgment and order dated 30.11.2016 in S.T. No. 2144 of 2012 (RC-220 2012 E0018) under Section 120B/489B, 120B/489C IPC and she was sentenced to rigorous imprisonment of seven years and five years along with fine of Rs.50,000/- and Rs.30,000/- respectively and in default of payment of said fines, she has to undergo R.I. of eight months and four months respectively.

11. As per detention certificate sent by the Superintendent of District Jail Ghaziabad, where, the petitioner is undergoing sentence, in S.T. No. 80/2013, the petitioner has served entire sentence of imprisonment on 01.01.2019 and that after staying her sentence awarded in default of payment of fine, she is undergoing the sentence awarded in S.T. No. 2144 of 2013 and in that case her sentence would complete on 06.08.2025. The petitioner has not paid fine amount imposed by the trial court. In view of these facts, the custody of petitioner in jail cannot be termed as illegal. It is well settled that exercise of extra-ordinary jurisdiction for issuance of writ of habeas corpus is dependent on the jurisdictional fact whether the petitioner establishes a prima facie case that the detention of detinue is unlawful. It is correct that in appropriate cases, the court may direct that the sentences of the two or more cases shall run concurrently but in the instant writ petition seeking writ of habeas corpus, such a direction to public authorities is not

permissible. The issuance of direction to jail authorities that the sentences of imprisonment of both the cases shall run concurrently would amount to issuance of writ of mandamus, which is not permissible in the present writ petition. The petitioner is free to file appropriate writ petition seeking direction for jail authorities that the sentences of both the cases shall run concurrently.

12. In view of aforesaid observations, the instant habeas writ petition is not maintainable and thus, liable to be dismissed.

13. With aforesaid observations, the writ petition is **dismissed**.

Order Date :- 17.11.2023

Neeraj