

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Writ Petition No.1067 of 2026

Devendra Singh Petitioner

Versus

State of Uttarakhand and another Respondents

Present:- Mr. Pankaj Tangwan, Advocate for the petitioner.
Mr. B.N. Molakhi, Deputy Advocate General for the State/
respondents.

JUDGMENT

Coram : Hon'ble Ravindra Maithani. J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

The petitioner claims that he has already undergone the sentence imposed upon him. Therefore, he should be released immediately from the custody.

2. The factual narration briefly stated is as follows:- The petitioner went on trial in Sessions Trial No.18 of 2008, State Vs. Devendra Singh and others, by the court of District and Sessions Judge, Rudraprayag ("the Sessions Trial") and he was acquitted of the charge under Sections 498-A, 304-B, 120-B IPC. The judgment and order dated 17.04.2010, passed in the Sessions Trial was challenged in Government Appeal No.57 of 2010, State of Uttarakhand Vs. Devendra Singh and others before this Court ("the appeal"), which was decided on 14.09.2017/05.10.2027 and the Court convicted the petitioner and others for the offences under

Sections 498-A, 304-B and 120-B IPC and sentenced him as follows:-

“(i) Under Section 304-B IPC :- rigorous imprisonment for a period of seven years and to pay fine of Rs. 10,000/- and in default of payment of fine to undergo three months’ simple imprisonment

(ii) Under Section 120-B IPC :- one year rigorous imprisonment.

(iii) Under Section 498-A IPC :- two years’ rigorous imprisonment.”

3. The judgment and order dated 05.10.2017, passed in the appeal by this Court was challenged by the petitioner before the Hon’ble Supreme Court, where the co-convicts were acquitted, but the conviction and sentence of the petitioner was affirmed. On 21.04.2022, in Criminal Appeal No.383 of 2018, Devender Singh and others Vs. The State of Uttarakhand. Now, the petitioner claims that he has already undergone more than 07 years of sentence. Therefore, in view of Section 31 of the Code of Criminal Procedure, 1973 (“the Code”), he may be released.

4. State has filed its response. According to it, the judgment and order convicting the petitioner does not specify, as to whether the sentences shall run one after other or they shall run concurrently. Therefore, in view of Section 31 of the Code, the sentences shall run one after another.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner submits that in the appeal, this Court has convicted and sentenced the petitioner, but the order does not record, as to whether the sentences shall run

one after other or concurrently. Therefore, in view of Section 31 of the Code, the sentences should run concurrently and he deserves to be released from custody now.

7. In fact, when the matter was taken up in the appeal and before the Hon'ble Supreme Court, there also the conviction and sentence of the petitioner was confirmed, but the order did not specify, as to whether the sentence shall run concurrently or consecutively?

8. On the other hand, learned State Counsel submits that in view of Section 31 of the Code, since the court had not directed to run the sentences concurrently, they should run consecutively.

9. In order to appreciate the controversy, it is apt to reproduce Section 31 of the Code, which is as under:-

“31. Sentence in cases of conviction of several offences at one trial.—(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”

10. A bare perusal of Section 31 of the Act reveals that for different offences punishment may be prescribed by the court and, **“such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently”**. A bare perusal of these words as incorporated under Section 31 of the Code makes it abundantly clear that it is the duty of the Court sentencing an accused to specify in both the cases, as to how the sentences could run. In case of consecutive also, it is the obligation of the court concerned to direct that as to in which order the sentences shall run consecutively and if it is not so, it is obligatory on the court concerned, to direct that the sentences should run concurrently. In the instant case, the courts have not issued such directions.

11. Learned counsel for the petitioner has relied on the principle of law as laid down in the case of Gagan Kumar Vs. State of Punjab, (2019)5 SCC 154, in which case, while sentencing the appellant, it was not specified, as to whether the sentences should run concurrently or consecutively. The Hon’ble Supreme Court keeping in view the facts and circumstances of the case held that the sentences should run concurrently. The Hon’ble Supreme Court observed as under:-

“15. In our considered opinion, it was necessary for the Magistrate to have ensured compliance with Section 31 of the Code when she convicted and sentenced the appellant for two offences in a trial and inflicted two punishments for each offence, namely, Section 279 and Section 304-A IPC.

16. In such a situation, it was necessary for the Magistrate to have specified in the order by taking recourse to Section 31 of the Code as

to whether the punishment of sentence of imprisonment so awarded by her for each offence would run concurrently or consecutively.

17. Indeed, it being a legal requirement contemplated under Section 31 of the Code, the Magistrate erred in not ensuring its compliance while inflicting the two punishments to the appellant.

18. If the Magistrate failed in her duty, the Additional Sessions Judge and the High Court should have noticed this error committed by the Magistrate and accordingly should have corrected it. It was, however, not done and hence interference is called for to that extent.

19. As mentioned above, the appellant was convicted and accordingly punished with a sentence to undergo two years' rigorous imprisonment with a fine amount of Rs 1000 and in default of payment of fine amount to further undergo one month's simple imprisonment under Section 304-A and 6 months' rigorous imprisonment with a fine amount of Rs 1000 and in default of payment of fine amount to further undergo 15 days' simple imprisonment under Section 279 IPC.

20. In our view, having regard to the facts and circumstances of the case and keeping in view the nature of controversy involved in the case, both the aforementioned sentences awarded by the Magistrate to the appellant would run "concurrently".

12. In fact, the directions in the case of Gagan Kumar (*Supra*) was issued by the Hon'ble Supreme Court when the conviction and sentence was challenged before the Hon'ble Supreme Court. Instant is not such case.

13. In the instant case, the court sentencing the petitioner has neither given the order in which the sentences should run consecutively nor did it specify that the sentences should run concurrently. It is a position of vacuum.

14. It is a case that the petitioner is the husband of the deceased Sushila and they were married on 21.10.2007. On 24.04.2008, it was revealed that the deceased was missing. Subsequently, her dead body was recovered. She was pregnant for

4-5 months. It is in this case when the petitioner has been convicted.

15. Having considered the facts and circumstances of the case, we are of the view that the sentences imposed upon the petitioner would run “concurrently”.

16. Accordingly, the writ petition is disposed of. The In-charge of the jail concerned is directed to count the term of imprisonment as if the sentences are to run concurrently.

(Siddhartha Sah, J.) (Ravindra Maithani, J.)
01.07.2026

Sanjay

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KANOJIA

Digitally signed by SANJAY KANOJIA
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