

CRM-M-26302-2014

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-26302-2014 (O&M)
Date of decision: 17.7.2015

Malkiat Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Sukhmeet Singh, Advocate for the petitioner

Ms.Mahima, AAG, Haryana

SNEH PRASHAR, J.

1. By filing the present petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner has prayed for issuance of directions that the sentences awarded to him by the learned Judge, Special Court, Sri Muktsar Sahib vide judgment and order dated 24.4.2013 (Annexure P-1) and by learned Additional Sessions Judge, Sirsa vide judgment and order dated 23/26.11.2013 (Annexure P-3), be ordered to run concurrently with the sentence awarded by learned Judge, Special Court, Sri Muktsar Sahib vide judgment and order dated 22.4.2013 (Annexure P-2).

2. The facts relevant are that in First Information Report No.34 dated 15.3.2007, learned Judge, Special Court, Sri Muktsar Sahib vide judgment and order dated 24.4.2013 convicted the petitioner under

Section 18 of the Narcotic Drugs & Psychotropic Substances Act (for short 'the Act') and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.50,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. Against the said judgment of conviction, petitioner filed CRA-S-1712-SB-2013 before this Court. In First Information Report 139 dated 28.6.2006, the petitioner again vide judgment and order dated 23/26.11.2013 was convicted under Section 18 of the Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month. Feeling aggrieved, the petitioner filed CRA-S-4520-SB-2013. Later, in First Information Report No.279 dated 28.9.2010, the petitioner was convicted under Section 18 of the Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.One lac and in default of payment of fine to further undergo rigorous imprisonment for two years. Against the judgment of conviction and order of sentence, the petitioner filed CRA-S-202-SB-2014. All the three appeals filed by the petitioner were admitted by this Court and the same are pending for hearing.

3. The submissions made by learned counsel for the petitioner have been heard.

4. Learned counsel for the petitioner contended that Section 427 Cr.P.C. provides for ample powers to the Courts to direct subsequent sentence to run concurrently with the previous sentence. He submits that the case of the petitioner is covered by the provisions of Section 427

Cr.P.C. and therefore, this Court in exercise of its extra ordinary jurisdiction under Section 482 Cr.P.C. and in the interest of justice, may issue direction as has been prayed for in the present petition. He further submitted that the petitioner is a poor person. He is having minor children and there is no male member in the family to look after them. The parents of the petitioner are old aged.

5. In **Jang Singh vs. State of Punjab 2008(1) RCR (Criminal), 323**, the Three Judges Bench of this Court in para No. 18 has held as under:-

“18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Cr.P.C., is that a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application

under Section 482/427 Cr.P.C. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Cr.P.C. would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in *M.R.Kudva'* case (Supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Section 482 or 427 Cr.P.C. What principle and consideration will govern the exercise of this discretion, as already noted above, can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Cr.P.C., as observed by Hon'ble Supreme Court, is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

Same is view taken by this Court in **Amar Singh Versus State of Punjab and others , 2009 (3) R.C.R. (Criminal), 199.**

6. In the present case, the petitioner has sought direction to run the sentences concurrently. In all the three cases mentioned above, the petitioner had been awarded sentences in different cases under Narcotic Drugs & Psychotropic Substances Act, by the different courts at different times and about different occurrences. Appeal against the said judgments are lying admitted before this Court. As held above, a direction to make the sentences to run concurrently can be exercised by the trial Court or by the appellate court or a revisional court at the time of exercising appellate or revisional jurisdiction. It is not open for a person to seek such direction for making the sentences to run concurrently by making a separate petition under Sections 482 and 427 of the Code.

7. Thus, in view of the law laid down by this Court in **Jang Singh's case (supra)**, the present petition being not maintainable, is dismissed.

17.7.2015
gsv

(SNEH PRASHAR)
JUDGE