

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

CRWP-1866-2014 (O&M)

Date of decision : 08.10.2015

Shankar Lal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Manish Soni, Advocate,
for the petitioner.

Ms. Neelam Kashyap, AAG, Haryana.

JITENDRA CHAUHAN, J. (Oral)

1. This criminal writ petition under Articles 226/227 of the Constitution of India has been filed seeking release of the petitioner from the illegal custody/confinement in FIR No.212 dated 01.07.1996 under Section 18 of the NDPS Act, registered at P.S. Sadar Dabwali, District Sirsa, having undergone the entire period of sentence.

2. The sole prayer of the petitioner is that the period of 02 years and 07 months spent by him in custody in the State of Rajasthan, has not been credited towards the undergone period. It is contended that it was on the writing of the Superintendent, District Jail, Sirsa, that the competent authority in the State of Rajasthan were requested to

send back the petitioner to the jail at Sirsa after the disposal of the pending cases in the State of Rajasthan or by seeking permission of the learned trial Court. It is submitted that the petitioner was lodged in Rajasthan Jail in the case FIR No.638/2004, in which he has already been acquitted vide judgment dated 20.05.2009. The learned counsel states that it was on account of the writing by the State authorities, the petitioner was not brought back to the State of Haryana. As the petitioner was kept in the State of Rajasthan on the request of the State of Haryana, the State of Haryana cannot deprive him of the benefit of the custody. Therefore, he seeks that period spent by him in Rajasthan jail, i.e. 02 years and 07 months, which is deducted by the State of Haryana as reflected in the custody certificate, deserves to be added and the petitioner be released.

3. On the other hand, the learned State counsel submits that the petitioner was released on parole on 20.08.1999 and he was to surrender back on 20.10.1999. The petitioner, instead of surrendering, jumped parole and was subsequently arrested by the Rajasthan Police, wherein, admittedly he has been acquitted.

4. Heard.

5. In *Baldev Singh Vs. State of Punjab, 1988(2) R.C.R. (Criminal) 634*, it has been observed as under:-

“10. Even if the contention of the learned

counsel for the State is correct, the petitioner would be entitled to the set off claimed by him because the petitioner was initially arrested in connection with the same case in which he was ultimately convicted (sic.). He was granted bail in that case but was arrested in connection with another case. As soon as he was arrested the bail stood cancelled. Hence, the petitioner had to be deemed to be in custody in connection with the case in which he was initially arrested. Taking from any angle, the petitioner who was in custody from 8-4-1987 to 26-9-1987 shall be entitled to claim set off under Section 428 of the Code for the period from 8-4-1987 to 26-9-1987 and this period be taken as the period undergone in case FIR No.23 dated 28-1-1983.”

6. In ***Gurdial Singh Vs. State of Punjab, 1995(1) R.C.R. (Criminal) 729***, this Court has held as under:-

“4. On behalf of the petitioner, the attention has been invited to Onkar Singh v. Police Officers, Prashasan and others, 1979(2) Cr.L.J. 1098, wherein, a Division Bench of the Allahabad High Court held

that if the petitioner was arrested on the basis of the warrants issued in connection with another case, the petitioner was entitled to get the period spent by him in jail counted as the petitioner could not be deemed to be in jail with a sentence against him and not serving out that sentence. In the case now in hand, the period spent by the petitioner in the second case in respect of which no challan has ever been presented so far is to be considered and should be set off by the respondent State. The conclusion is that the present petition succeeds and the Central Jail Authorities should work out the period indicated above which the petitioner spent in judicial custody to complete the period of 7 years sentence awarded to him and release the petitioner accordingly.”

7. From the perusal of Annexure P-4, the communication sent by the Superintendent, District Jail Sirsa to the Superintendent, District Jail, Hanumangarh (Rajasthan), the authorities of Rajasthan were requested to send the petitioner back at District Jail, Sirsa, after the disposal of the pending cases against him or after seeking the permission of the concerned Court. As the petitioner was kept in the

State of Rajasthan at the asking of the authorities of the District Jail, Sirsa, the petitioner deserves to be granted the benefit of the said period. Though, the petitioner was in Jail in the State of Rajasthan, but he is also deemed to be in constructive custody of the State of Haryana in FIR No.212 (supra) for the same period.

8. In view of the above admitted position on record, it is ordered that the petitioner's custody of 2 years and 07 months be counted towards the total sentence and his case be reconsidered by giving the benefit of this period.

Disposed of.

08.10.2015
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(JITENDRA CHAUHAN)
JUDGE