

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-21934-2015 (O&M)
Date of decision :- 17.03.2016

Tejinder Singh @ Teja Petitioner

Vs.

State of Punjab and others Respondents

2. CRM-M-37741-2015 (O&M)

Mandeep Singh @ Seepa Petitioner

Vs.

State of Punjab and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.K. Samyal, Advocate
for the petitioner in CRM-M-21934-2015.
Mr. Vijay Lath, Advocate
for the petitioner in CRM-M-37741-2015.
Mr. N.S.Shekhawat, Amicus Curiae.
Ms. Amarjit Kaur Khurana, Addl.AG, Punjab.
Mr. Surinder Singh Pannu, DAG, Haryana.
Mr. Sukant Gupta, Standing Counsel for U.T., Chandigarh.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

These petitions for regular bail have all been filed by persons who are accused/convicted in more than one case. Both these petitions are decided by this common order.

The primary ground is that they have now been in detention for a long period; there is no prospect of early conclusion of the trial; their custody is no longer required for investigation purposes and consequently they deserve to be released on bail.

In the case of Tejinder Singh @ Teja in CRM-M-21934-2015 the following order was passed on 14.07.2015:-

“In the order of the Additional Sessions Judge, Shaheed Bhagat Singh Nagar, it has been mentioned that the petitioner is involved in 14 other cases.

Learned counsel for the petitioner seeks time to file written information about the status of those cases and as to whether the petitioner is in custody or on bail.

Adjourned to 14.08.2015.”

Thereafter custody certificate dated 17.11.2015 was filed which reflected that in FIR No. 18 dated 18.05.2012 under Sections 148, 149, 307, 323 and 326 IPC, Police Station Pojewal (in which bail had been sought) the petitioner had undergone 2 years 02 months and 25 days of custody from 22.08.2013 to 17.11.2015. Further details of other pending cases alongwith period undergone therein were as follows:-

1. *FIR No. 43 of 2011, under Section 25 Arms Act, P.S. City Nawan Shahar period undergone w.e.f. 18.03.2015 to 17.11.2015 = 7 months and 29 days.*

2. *FIR No. 28 dated 23.01.2013, under Section 397, 34 IPC(Police), P.S. Phillaur period undergone w.e.f. 03.08.2013 to 06.04.2015 = 1 year 8 months and 3 days.*

3. *FIR No. 173 dated 24.06.2013, under Section 395 IPC(Police), and Sections 25/54/59 of Arms Act, P.S. Phillaur period undergone w.e.f. 03.08.2013 to 06.04.2015 = 1 year 8 months and 3 days.*

4. *FIR No. 114 dated 08.12.2011, under Sections 324, 323, 326, 447, 427, 506 IPC, P.S. Balachaur period undergone w.e.f. 23.08.2013 to 17.11.2015 = 2 years 2 months and 24 days.*

5. *FIR No. 116 dated 22.06.2013, under Sections 307, 392, 353, 186, 323, 34 IPC, P.S. Division No.5, Ludhiana period undergone w.e.f. 13.07.2013 to 13.03.2015 = 1 year and 8 months.*

6. *FIR No.46 dated 24.06.2013, under Sections 307, 382, 511, 120-B, 148, 149 IPC and Sections 25/54/59 of Arms Act, P.S. Rajpura period undergone w.e.f. 28.07.2013 to 24.01.2015 = 1 year 5 months and 26 days.”*

The custody certificate also mentioned the details of his conviction in other cases which were as follows:-

1. *Convicted and sentenced on 22.05.2014 to undergo R.I. for 1½ year in case FIR No.49 dated 27.05.2012 under Section 392 IPC P.S. Balachaur. He has completed his sentence on 01.10.2015 and remained as under trial w.e.f. 23.08.2013 to 21.05.2014 = 272 days.*

2. *Convicted and sentenced on 22.05.2014 in case FIR No.48 dated 19.05.2012 P.S. Balachaur to undergo R.I. for 1 ½ years under Section 148 IPC, R.I. for one month under Section 341 IPC, R.I. for 6 months under Section 323 IPC and R.I. for one year under section 325 IPC (all the sentences shall run concurrently). He has completed his sentence on 01.10.2015 and remained as under trial w.e.f. 23.08.2013 to 21.05.2014 = 272 days.*

3. *Convicted and sentenced on 22.05.2014 in case FIR No.51 dated 15.06.2010 P.S. Balachaur to undergo R.I. for 6 months under Section 148 IPC, R.I. for one year under Section 326 IPC and R.I. for 6 months under Section 324 IPC (All the sentences shall run concurrently). He has completed his sentence on 01.10.2015 and remained as under trial w.e.f. 23.08.2013 to 21.05.2014 = 272 days.*

4. *Convicted and sentenced on 22.05.2014 in case FIR No.84 dated 12.10.2010 P.S. Balachaur to undergo R.I. for 6 months under Section 148 IPC, R.I. for one year under Section 324 IPC and R.I. for 1 year under Section 326 IPC, R.I. for 6 months under Section 323 IPC and R.I. for 6 months under Section 427 IPC (All*

the sentences shall run concurrently). He has completed his sentence on 01.10.2015 and remained as under trial w.e.f. 23.08.2013 to 21.05.2014 = 272 days.

5. *Convicted and sentenced on 14.05.2015 in case FIR No.47 dated 16.05.2012 P.S. Balachaur to pay a fine of Rs.1,000/- under Sections 323/34 IPC and in default R.I. for one month, R.I. for 1 year and fine of Rs.500/- under Section 324/34 IPC and in default R.I. for one month, R.I. for 2 years and fine of Rs.1,000/- under Section 326/34 IPC (All the sentences shall run concurrently). He has completed his sentence on 01.10.2015 and remained as under trial w.e.f. 23.08.2013 to 13.05.2015 = 629 days.*

6. *Convicted and sentenced on 14.10.2014 in case FIR No.63 dated 20.03.2013 under Sections 382, 411, 201, 506, 342/34 IPC P.S. Phase-I Mohali. He has remained as under trial w.e.f. 06.08.2013 to 13.10.2014 = 1 year 2 months and 7 days. Sentenced to imprisonment already undergone.*

7. *Convicted and sentenced on 14.05.2015 in case FIR No.103 dated 02.01.2011 PS Balachaur to pay a fine of Rs.1,000/- under Section 323 IPC and in default R.I. for one month, R.I. for one year and fine of Rs.500/- under Section 452 IPC and in default R.I. for 1 month, R.I. for 1 year and fine of Rs.500/- under Section 325 IPC and in default R.I. for 1 month (All the sentences shall run concurrently). He was released on 14.05.2015 after completion of sentence. He remained as under trial w.e.f. 25.08.2013 to 13.05.2015 = 1 year 8 months and 18 days.*

8. *Convicted and sentenced on 25.10.2013 in case FIR No.120 dated 10.07.2013 PS Division No.5, Ludhiana and has been released on probation for 6 months with personal bond of Rs.5000/- under Sections 25, 54, 59 Arms Act. He remained as under trial w.e.f. 11.07.2013 to 24.10.2013 = 3 months and 13 days.*

9. *Convicted and sentenced on 08.05.2015 in case FIR No.14 dated 23.02.2012 PS Sadar Ropar as already undergone with fine of Rs.1000/- and in default R.I. for one week under Sections 392/34 IPC. He paid the fine on 08.05.2015 and remained as under trial w.e.f. 10.11.2013 to 07.05.2015 = 1 year 5 months and 27 days.*

10. *Convicted and sentenced on 05.11.2015 in case FIR No.32 dated 22.04.2009 PS Balachaur to undergo R.I. for 3 years and fine of Rs.2000/- under Sections 302/34 IPC. He was released on bail on 05.11.2015 after depositing the fine since he remained as an under-trial in this case w.e.f. 26.08.2013 to 10.10.2015 = 2 years, 1 month and 14 days.*

An analysis of the above details shows that the petitioner was detained for the first time on 11.07.2013 in FIR No.120 dated 10.07.2013, PS Division No.5, Ludhiana at Sr.No.8 above. In that case he remained in custody and was convicted on 25.10.2013 but was released on probation for 6 months. He was thereafter convicted on 22.05.2014 in as many as 4 cases and was sentenced to varying terms of imprisonment upto 1 ½ years R.I. and though the custody certificate does not mention the details it is apparent that all his sentences were ordered to run concurrently since he has completed his sentence in all the cases in which he has been convicted.

It is the contention of learned counsel for the petitioner that since as per the custody certificate dated 17.11.2015 he has undergone 2 years, 2 months 25 days of custody and the trial was nowhere near conclusion he was entitled to be released on bail drawing strength from the provisions of Section 436 A Cr.P.C. Per contra, learned Addl. Advocate General, Punjab had argued that actually for a large part of this time the petitioner was deemed to be undergoing sentence in the above cases and, therefore, he could not claim that he had been in detention in this case and seek bail on this ground. It was in these circumstances that the following order was passed on 06.01.2016:-

“Taking into account the importance of the case, the registry is directed to implead the State of Haryana and the State of U.T., Chandigarh as respondents.

Notice of motion qua Advocate General, Haryana and the State of U.T. Chandigarh.

On the asking of the Court, Mr. S.S. Pannu, Deputy Advocate General, Haryana, accepts notice on behalf of the State of Haryana and Mr. Sukant Gupta, Standing Counsel for the U.T. Chandigarh, accepts notice on behalf of the State of U.T. Chandigarh.

Registry is directed to give photocopy of the petitions to the learned DAG, Haryana and the learned Standing Counsel for the U.T. Chandigarh.

To come up on 20.01.2016.

A photocopy of this order be placed on files of the connected cases.”

This Court appointed Shri N.S.Shekhawat, Advocate as Amicus Curiae and consequently the matter was heard on various dates i.e. on 17.12.2015, 18.12.2015, 06.01.2016, 20.01.2016, 01.02.2016, 03.02.2016, 10.02.2016, 17.02.2016 and 24.02.2016.

The question which arises is whether an accused can claim as of right that the period mentioned in the custody certificate has to be taken as the detention suffered in that case notwithstanding the fact that during that time he was either in under-trial detention in another case or undergoing sentence or deemed sentence in some other matter; or in other words, whether an accused can claim concurrence of under-trial detention and post conviction sentence.

Learned counsel on both sides submit that there is no direct judgment on the issue of concurrence of under-trial detention in one case with under-trial detention/post conviction sentence for the purpose of bail.

The first step to navigate these uncharted waters would be to reproduce the Sections dealing with regular bail and with concurrence :-

“436. In what cases bail to be taken.

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, [may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

[Explanation.- Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.]

Provided further that nothing in this section shall be deemed to affect the provisions of sub- section (3) of section 116 or section 446A].

(2) Notwithstanding anything contained in sub- section (1), where a person has failed to comply with the conditions of the bail- bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

436 A. Maximum period for which an undertrial prisoner can be detained.- *Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:*

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties :

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.- In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

The ground on which learned counsel for the petitioners are seeking bail in the present case can be traced to Section 436-A (supra) which mandates the grant of bail on the completion of a certain portion of the prescribed punishment; the principle behind it being that under under-trial detention can itself be a ground for bail.

437. When bail may be taken in case of non- bailable offence.¹

(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years] :

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that It is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court :]

[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor :]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are no reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt, [the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven

years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub- section (1), [the Court shall impose the conditions, -

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.]

(4) An officer or a Court releasing any person on bail under sub-section (1), or sub- section (2), shall record in writing his or its ² [reasons or special reasons] for so doing.

(5) Any Court which has released a person on bail under sub-section (1), or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non- bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

437-A. Bail to require accused to appear before next appellate Court.- *(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the*

judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under Section 446 shall apply.

439. Special powers of High Court or Court of Session regarding bail.-

(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

As regards concurrence the Sections which deal with it in our Criminal law are Section 71 IPC, Section 31 Cr.P.C. and Section 427 Cr.P.C.

Section 71 IPC is as under :-

“71. Limit of punishment of offence made up of several offences.—*Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.*

1[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]”

Section 31 Cr.P.C is as under :-

31. Sentences 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.

Section 427 Cr.P.C is as under :-

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.

The concept of bail is of hoary antiquity. Back in 1215 after the signing of the Magna Carta in England some system of criminal justice had developed. Judges would hold circuits/sessions at various places to try accused persons. The problem was that sometimes it could take months before a trial Judge could come on circuit. At that time there was no prison department, no jails and the issue was what was to be done with the accused. A practice developed that the accused person was given on bail to another person who would be his custodian in law and would undertake to produce him before the Court. Even now the accused is handed over to the custody of his sureties who are responsible for producing him for his trial but the contours have changed and the original concept of bail has been infused with the subsequent developments in the criminal justice system as well as constitutional mandates.

Concurrence on the other hand is of recent origin and to the best of my research and of that of learned counsel appearing, it made a modest appearance in 1860 in the IPC with the enactment of Section 71 IPC. The Code of Criminal Procedure, 1869 had no provision therefor and it was only in the Code of 1898 that Section 35 was enacted (which corresponds to Section 31 of the 1973 Code). The power to grant concurrence for different offences tried in different trials was conferred on the Courts only by the amendment Act of 1923. For a lucid exposition of the law prior to 1923 reference may be made to a Division Bench decision of the Madras High Court in ***Re: Ponniah Lopes and others Vs. Unknown, (1934) 66 MLJ 572.***

It is against the backdrop of the above facts and the legislation on the subject that the arguments of learned counsel have to be considered.

One line of argument is that the matter of bail being discretionary, in non-bailable offences the Court would strike an equitable balance in every case between the competing rights of society and of the accused. This line of argument does not commend itself to me. It is the duty of every lawyer to try

and recognize the principle which would apply in all cases rather than leave matters to the 'Chancellor's foot'.

The next contention raised by the learned counsel for the petitioner is that it is a long standing practice to grant bail on the certification of the bail authorities regarding the period of custody which an accused had undergone. This argument has to be rejected because in the first place there can be no such practice and secondly the details given regarding the petitioner clearly bear out that the period of detention mentioned in the custody certificate does not give the full picture.

The third contention of learned counsel is that it is well known that bail is the rule and jail is the exception and the basic postulate of criminal law in this country is that a person is presumed to be innocent till proved guilty and, therefore, the right for bail has to be liberally construed. I am afraid this argument is too extreme. As can be seen, Section 437 (1) Cr.P.C. (supra) imposes a bar on the grant of bail to a person if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life and similarly there are limitations on the grant of bail to the persons who have had previous convictions. If the two arguments which have been pressed by learned counsel for the petitioner had to be applied uniformly provisions of Section 437 (1) Cr.P.C. above could not have been incorporated and every accused person could claim of right that he should be released on bail pending trial after the investigation is over. Learned counsel for the petitioner then point out that Section 439 Cr.P.C. overrides Section 437 Cr.P.C. but a perusal thereof also reveals that it deals with special powers conferred upon Courts of Sessions and the High Court and even after considering this Section it has to be held that even though the Superior Courts may have overriding power yet they can not be totally oblivious to the conditions imposed by Section 437 Cr.P.C. Thus the argument that bail is the rule and jail is the exception has to be taken with the pinch of salt and accused can not claim that he should be released on bail since the investigation is over and final report has been filed.

The next argument of the learned counsel is that once the Courts grant concurrence of sentence, that benefit has to be granted to the accused. On the other hand, learned counsel for the States have argued that grant of concurrence became possible only when the statute permitted it and before this was incorporated no Court could grant concurrence of sentence and only successive/consecutive sentences could have been imposed and since there is no statutory sanction for the same, there can be no question of granting concurrence of under-trial detention. They have argued that it is only professional criminals who seek and obtain the benefit of the concept of concurrence. As per them the petitioner who has been involved in so many acts of criminality can not be granted the concession of bail. They have rather gone to the extent of arguing that the trial Courts while granting him concurrence in various cases have acted with material irregularity. They assert that the petitioner has been involved in offences right from 2009 (FIR No.32 dated 22.04.2009) and was arrested for the first time on 11.07.2013 in FIR No.120 and during these four years he was involved in as many as 15 different cases as shown above and it would be a signal disservice to society if such a man is allowed to walk free within less than three years in a mindless manner.

There can be no gainsaying that the real life history of the present petitioner does tend to bear out the apprehension of the learned State counsel. Though this Court can not consider the individual merits of each sentence which have been granted to the petitioner, yet it can not be denied that sentencing was probably done either in ignorance of the proclivities of the petitioner or with cavalier disregard for his previous conduct. It is trite to say that while sentencing a convict a Court has to consider in some measure the prospect of reforming him, the retributive aspect and the deterrent effect which the punishment may have.

The learned counsel for the petitioner has then based reliance on the judgment of the Hon'ble Supreme Court in the matter of ***CBI Vs. Anupam J.Kulkarni 1992 (2) RCR Criminal 147 SC***. As per the learned counsel in that case their Lordships held that a person who was involved in two separate cases arising out of two separate occurrences would be entitled to bail if charge-sheet

was not filed within the 90 days of arrest in each of those cases notwithstanding the fact that the period of detention overlapped. Their Lordships held as follows in para 13 :-

“13. Whenever any person is arrested under [Section 57](#), Criminal Procedure Code he should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under [Section 167\(2\)](#) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to [Section 167\(2\)](#). The period of ninety days or sixty days has to be computed from the date of detention as per

the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody.” (emphasis supplied).

As per the learned counsel for the petitioner, the above judgment clearly shows that even though the accused was in detention in the first case and was taken therefrom for interrogation in the second case his detention in that case would start from the date of his production before the competent Magistrate and would have to be counted for computing the period of 90 days mentioned in Section 167 Cr.P.C. Developing this argument further he has argued that if for the purpose of bail under Section 167 Cr.P.C. concurrence of under-trial detention is to be granted then it can not be denied for the purpose of bail under Section 437 Cr.P.C. read with Section 439 Cr.P.C.

Learned counsel appearing on behalf of the States are not in a position to cite any contrary judgment but have argued that the issue before the Hon'ble Supreme Court in the case of ***CBI Vs. Anupam J.Kulkarni (supra)*** was limited to the issue of computation of the period prescribed under Section 167 Cr.P.C. and therefore, the principle can not be extended for bail under Sections 436, 437 and 439 Cr.P.C. They have further argued that even if concurrence of custody/under-trial has to be taken for the purpose of bail under Section 437/439 Cr.P.C. the Court can still pierce the veil and is not bound to grant bail notwithstanding the fact that the ostensible custody of the accused is quite long. As per them the petitioner is a professional criminal who is now seeking the benefit of counting not only custody as under-trial in more than one case but even imprisonment in cases where he has been convicted as under-trial detention in the present case.

In my opinion, the arguments of the learned counsel for the petitioner carry more weight. In ***Anupam J.Kulkarni's case*** the Hon'ble Supreme Court clearly laid down that the purposes of computing the period of 60/90 days under Section 167 Cr.P.C., concurrence of under-trial detention has to be given to the accused person. Once that is so it can not be said that the

same would be limited to bail for the purpose of Section 167 Cr.P.C only and would not extend for the grant of bail under Sections 436, 437 and 439 Cr.P.C. This is so because even if a person may be an accused in many cases yet as long he remains only an accused he is the 'spoilt child of the criminal justice system' and entitled to the benefit of presumption of innocence (and the attendant benefits) and, therefore, his under-trial detention in one case has to be counted as under-trial detention in any other case when the period over-laps. To hold otherwise may give a license to the prosecution to keep involving an accused person in case after case just to stall his bail. Thus it has to be held that when a person is accused and is in custody in more than one case then that period of custody which over-laps with the period of custody in any other case would be counted towards his under trial detention in all cases. To illustrate :- If a person is arrested in 4 cases on the same day and the trial is not concluded for two years then he can claim that he has under gone two years custody in each of the cases for the purpose of bail and it would not be open to the prosecution to argue that infact his custody was only in the first case in which he was arrested.

However, the position entirely changes when such a person is convicted. He is then no longer merely an accused but his status has changed to that of a convict undergoing sentence and therefore, he would have to be held to be serving out his sentence and can not be said to be simultaneously undergoing under-trial detention. It may always be borne in mind that though a crime may have an individual victim yet it also transcends into an offence against the State and the criminal jurisprudence of every age strives to strike a balance between the rights of the accused and those of society. Sections 31 and 427 Cr.P.C. permit the Court to grant concurrence of sentence but there is neither any statutory mechanism nor any jurisprudential principle which lays down that a sentence of imprisonment can run concurrently with under-trial detention for the purpose of seeking bail in the pending case.

Though not directly on this point, yet the Hon'ble Supreme Court has considered and given judgment on a related issue viz. that of Section 428 Cr.P.C. As per Section 428 Cr.P.C. the period of detention which an accused has under gone pending trial has to be set-off against the term of imprisonment.

The issue before the Hon'ble Supreme Court was as mentioned in the following paragraphs of judgment passed in *Atul Manubhai Parekh Vs. Central Bureau of Investigation, 2010 (1) SCC 603:-*

“2. The short point involved in this application is whether a person, who has been convicted in several cases and has suffered detention or imprisonment in connection therewith, would be entitled to the benefit of set-off in a separate case for the period of detention or imprisonment undergone by him in the other cases.

5. Ms. Jaiswal, therefore, submitted that in the light of the aforesaid decisions the petitioner was entitled to set off of all periods of detention unconnected with the case in which he has been convicted and sentenced. It was urged that the High Court had erred in rejecting the petitioner's prayer for grant of set-off against periods of imprisonment already undergone by him in connection with other cases.

Their Lordships considered the entire law on the subject and held as follows :-

6. Ms. Jaiswal's submissions were opposed on behalf of the Central Bureau of Investigation by the learned Additional Solicitor General who contended that the question involved in these appeals had fallen for consideration before this Court earlier, also by a Three-Judge Bench in [Champalal Punjaji Shah vs. State of Maharashtra](#) [(1982) 1 SCC 507], where this Court was called upon to decide as to whether the period of detention under the Preventive Detention Act could be set-off under [Section 428](#) of the Code. In the said context, this Court held that the period of detention under preventive detention laws could not be counted for the purposes of [Section 428](#) Cr.P.C. It was further contended that the question of applicability of [Section 428](#) in respect of a period which had lapsed in an earlier case, could not be set-off against the term of imprisonment imposed in the latter case. It was held that in order to secure the benefit of [Section 428](#) of the Code, the prisoner has to show that he had been detained in prison for the purpose of investigation, enquiry or trial of the case for which he is later on convicted and sentenced, but he cannot claim a double benefit under [Section 428](#), i.e., the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set-off against the period of imprisonment imposed for committing the latter offence as well. Their Lordships further held that if a person is undergoing a sentence of imprisonment on being convicted of an offence in one case during the period of investigation, enquiry or trial of some other case, he

cannot claim that the period occupied by such investigation, enquiry or trial should be set-off against the sentence of imprisonment to be imposed in the latter case, even though he was under detention during such period. In such a case, the period of detention is really a part of the period of imprisonment which he is undergoing on being sentenced for another offence. It was submitted that the subsequent judgments of the Three-Judge Benches of this Court reveals that there were misgivings regarding the law sought to be explained in the said cases. It was submitted that the High Court did not commit any error in sentencing the appellant to undergo rigorous imprisonment for a period of 15 days under [Section 120-B](#) of the Indian Penal Code and to also pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for a further period of 15 days.

*8. From the wording of [Section 428](#) it is clear that what is to be set-off is the period of detention, if any, undergone by the convict during the investigation, enquiry or trial of the same case and before the date of such conviction. What has fallen for the interpretation of the courts is the expression "the same case". While in one set of judgments it has been held that periods of detention undergone in connection with other cases can be counted towards set-off under [Section 428](#) Cr.P.C. in respect of the conviction in another case, in the other set of cases it has been held that it cannot. However, even in Najakat Alia's case, one of the three Hon'ble Judges took a dissenting view that set-off under [Section 428](#) of the Code would have to be in respect of the detention undergone in respect of the same case. It is the said view which had earlier been accepted in [Raghubir Singh v. State of Haryana](#) [(1984) 4 SCC 348] and in the case of Champalal Punjaji Shah's case (*supra*).*

9. The wording of [Section 428](#) is, in our view, clear and unambiguous. The heading of the Section itself indicates that the period of detention undergone by the accused is to be set off against the sentence of imprisonment. The Section makes it clear that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. It is quite clear that the period to be set off relates only to pre conviction detention and not to imprisonment on conviction."

Thus their Lordships clearly held that for the purpose of set-off the period of post conviction imprisonment in one case could not be counted as under-trial detention in another case. To my mind this principle can be extended

to the facts in the present case also. In that case the petitioner was seeking concurrence of under-trial detention in one case with post conviction sentence in another case for the purpose of set-off, while in the present case he is seeking the same benefit for the purpose of bail. The judgment of *Atul Manubhai Parekh Vs. Central Bureau of Investigation, 2010 (1) SCC 603* has been followed by Hon'ble High Court of Patna in *Butan Sah Vs. The State of Bihar and others, 2015 CriLJ 1078* stating that if a person is convicted of more than one case, the remand period of each case would be set off against the sentence passed in the case concerned and not in every case. Even though the judgments may not clearly address the issue which is before this Court yet it has been unequivocally laid down that there is an essential difference in the nature of the custody when a person is in under-trial detention in one case and then happens to be convicted and is undergoing sentence in another case. Borrowing from their Lordships interpretation I, therefore, hold that when a person in under-trial detention in one case is convicted and sentenced in another case his detention in the first case ceases and the clock stops till such time as he is released in the second case and his period of under-trial detention in the first case would again start only after he is released (either on bail or on acquittal in appeal) in the second case. Thus there can be no concurrence of under-trial detention in one case with post-conviction sentence in another case for the purpose of bail.

There are two subsidiary matters which I must address. It has been brought to my notice that there is no provision or practice of submitting custody certificates before the Courts of Magistrates/Superior Judiciary at the time of consideration of prayer for bail or at the time of sentencing. Where the accused/convict is not involved in any case outside the jurisdiction of the Police Station in which the bail is being sought or sentence has to be awarded, it may not prove to be a difficulty but where the persons is involved in cases under different Police Stations/Districts the local police may not even have the information about the other cases and this would definitely hamper the concerned Court in considering in the correct perspective the prayer for bail or sentence. I see no reason why custody certificates are not submitted in the

Courts below once they are submitted as a rule in this Court. I consequently direct that in every case where prayer for bail is made or where the Court is considering the sentence to be imposed it would be the duty of the prosecution to submit a proper custody certificate.

During the hearing of this matter it has also been brought to my notice that the custody certificates which were being produced were deficient in information. By order dated 21.08.2014 passed by this Court in CRR-2129-2014, the following details had to be mentioned in custody certificates :-

- i. Details of pending cases against the convict;*
- ii. Details of decided cases against the convict;*
- iii. Details of conviction in other cases;*
- iv. Details of cases in which accused earned acquittal;*
- v. Details of cases in which accused earned remissions, if any;*
- vi. Period of undergone as under-trial, if any;*
- vii. Period of custody after conviction;*
- viii. Period of parole/furlough, if availed;*
- ix. Details of over-stay/absconding from parole;*
- x. Actual sentence undergone;*
- xi. Sentence undergone including period of remissions, if any*

In my opinion, wherever the word convict or the word accused is mentioned they should be mentioned interchangeably as accused/convict. Further under item No.(i) above it must also be clarified as to whether convict has obtained bail in any of the other pending cases.

Learned counsel appearing for the States state that they would now jointly workout the format of the custody certificate and would circulate it to all the jails in the 3 States within the period of 15 days. It is directed that in future all custody certificate must contain each of the above details.

Learned State Counsel have also pointed out that all the 3 States are now in the process of computerizing the crime records and pray that sometime may be granted for putting into place this new system i.e. the format of the custody certificate and the practice of producing custody certificate before all the Subordinate Courts as directed above.

I find merit in this prayer and consequently grant 30 days time from today to comply with these directions. I also direct the Registry to circulate a copy of this order to all the Courts, to all the Jails and to all the public prosecutors in the States of Punjab, Haryana and Union Territory, Chandigarh. This exercise must also be completed within a period of 30 days.

Now coming to the prayer for bail in both these cases :-

The petition bearing **No.CRM-M-21934-2015** has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.18 dated 18.05.2012 registered under Sections 148, 149, 307, 323 and 326 IPC at Police Station Pojewal, District Shaheed Bhagat Singh Nagar.

The petitioner would be deemed to be in under-trial detention from 22.08.2013 to 22.05.2014 in FIR No.18 dated 18.05.2012 and, w.e.f. 23.05.2014 his status would change to that of convict undergoing sentence because on that date he was convicted and sentenced in as many as 4 cases as detailed above and till 01.10.2015 he was actually undergoing sentence in those cases. Thereafter on 05.11.2015 he was convicted and sentenced in FIR No. 32 dated 22.04.2009 registered under Sections 302, 34 IPC at P.S.Balachaur. It has been brought to my notice that the petitioner had been taken in custody in that case in the year 2009, and since he was a juvenile, had been released on bail after almost 3 years and, therefore, on his conviction as a juvenile his sentence was set-off against the period of detention that he had undergone in the said case. Thus as regards his under-trial detention the clock would stop running on 23.05.2014 and would again start running on 02.10.2015 and consequently period of under-trial detention in the instant FIR would be approximately 15 months as on 16.03.2016.

Learned counsel for the petitioner has argued that in the present case only a simple injury has been attributed to the petitioner and, therefore, keeping in view the period of custody he should be released on bail. Learned Additional Advocate General has, however, pointed out that the petitioner along with 8 or 9 persons brutally attacked the victim and as many as 11 injuries were caused to him.

A perusal of Section 437 (1) (ii) stipulates that normally a person who was convicted of the various offences classified therein would not be released on bail. This Section gives the statutory basis for considering the issue of bail on the anvil of previous convictions and is one of the exceptions to the doctrine 'bail is the rule and jail the exception'. In the present case the petitioner was convicted for murder under Section 302 in FIR No. 32 dated 22.04.2009 but being a juvenile was sentenced to only 3 years. Apart therefrom he stands convicted in 10 cases all involving physical violence against another person. Likewise in the present case also he can be sentenced for life if it is proved that he had aimed the *gandasa* at the head of the victim and the victim was able to stave it off only by raising his hand. Thus he is completely covered by the prohibition under Section 437 (1) Cr.P.C. It may have been argued that under Section 439 Cr.P.C. this Court should have over looked that one juvenile transgression but his subsequent conduct can not be ignored. He was released in that FIR in 2012 and embarked on a concerted criminal campaign as the details of his convictions and pending trials would show.

In the circumstances, I do not deem it appropriate to grant the concession of bail to the petitioner and consequently the petition bearing No.**CRM-M-21934-2015** is dismissed.

The petition bearing **CRM-M-37741-2015** has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.153 dated 23.12.2014 registered under Sections 392, 395 IPC and Section 25 of the Arms Act at Police Station Bhogpur, Tehsil and District Jalandhar, Punjab.

Learned counsel for the petitioner has argued that the petitioner was originally arrested in one FIR No.155 dated 31.12.2014 registered under Sections 21, 61, 85 of NDPS Act at Police Station Bhogpur, Jalandhar on 31.12.2014 and thereafter all these blind cases have been foisted upon him. In the present case also no person has been named and all the other co-accused have been granted bail. He has further argued that since he has not been

convicted in any case he has to be given concurrence of under-trial detention and as per custody certificate he has been in under-trial detention in this case from 02.01.2015.

The custody certificate further reveals that he is in under-trial detention in the following other cases :-

S.No	Case detail	D.O.A. in jail	Bail/Not on bail
1	FIR No.64, dated 18.04.2014, u/s 382 IPC, P.S.Maqsudan, Jalandhar	16.01.2015 with custody warrant	Not on bail
2	FIR No.106, dated 07.08.2014 u/s 392/395 IPC and 25, 54, 59 Arms Act, P.S. Bhogpur, Jalandhar	02.01.2015 with custody warrant	Not on bail
3	FIR No.61, dated 06.11.2014 u/s 382, 392, 399, 395, 447, 353, 482, 108, 506, 420, 465, 447, 467 IPC and 25, 27, 54, 59 of Arms Act and 15, 18, 21, 22, 61, 85 NDPS Act, P.S. Garhdiwala, Hoshiarpur	31.01.2015 with custody warrant	Not on bail
4	FIR No.155, dated 31.12.2014 u/s 21, 61, 85 NDPS Act, P.S. Bhogpur, Jalandhar	31.12.2014 with custody warrant	Not on bail
5	FIR No.116, dated 21.05.2014 u/s 15, 18, 21, 22, 61, 85 NDPS Act, P.S. Tanda, Hoshiarpur	25.01.2015 with custody warrant	Not on bail

A perusal thereof reveals that he was first arrested on 31.12.2014 in FIR No.155 (supra) and after giving him the benefit of concurrence of under-trial detention it transpires that he has undergone 01 year and more than 02 months detention as on 16.03.2016. The alleged recovery is of non-commercial quantity i.e. 2 k.g. Opium. These facts have not been denied by the learned Additional Advocate General.

Keeping in view the facts and circumstance of this case, I do not deem it appropriate to deny him the concession of regular bail. Bail to the satisfaction of the trial Court/Duty Magistrate.

Consequently, the petition bearing **CRM-M-37741-2015** is allowed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

March 17, 2016

Pooja sharma-I

(AJAY TEWARI)
JUDGE