

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

CRWP No.641 of 2015

Date of Decision: March 21, 2017

Baldev Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CRWP No.643 of 2015

Balwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. V.K. Jindal, Advocate
for the petitioners (in both the petitions)

Mr. Jasjeet Dhaliwal, DAG, Punjab.

FATEH DEEP SINGH, J.

Since the above detailed two Criminal Writ Petitions though by different set of convicts but pertaining to the same very criminal case/final judgment having consanguinity of facts and law points are being thus taken up and decided together.

Upon hearing learned counsel for the parties and perusing the records of the case. The background of the present case which is very much essential for better understanding and appreciation of the case of the petitioners and for its judicious adjudication is that both the petitioners Baldev Singh (hereinafter referred as first petitioner) and Balwinder Singh (hereinafter referred as second petitioner) were jointly

tried along with their co-accused in all numbering 09 in Sessions case No.350 of 1994, Sessions trial No.81 of 1995 regarding FIR No.13/94, Police Station Kathu Nangal, under Section 302 etc. on the allegations that petitioner Baldev Singh, then posted as DSP along with his brother co-accused petitioner Balwinder Singh @ Sabbu and others some of whom also happened to be the subordinate Police officials abducted Sadhu Singh father of the complainant, Inder Singh, who was at that time aged around 80 years along with his son Hardev Singh (aged 25 years), Gurdip Singh (aged 42 years) Amanjit Singh son of Gurdip Singh (aged 18 years), Sharanjit Singh son of Sajjan Singh (aged 17 years) Davinder Singh (aged 26 years) and Sukhdev Singh (aged 22 years) both sons of Khazan Singh in all numbering seven from the revenue estate of village Begga, Police Station Kathu Nangal. When the persons could not be traced inspite of best endeavours an application dated 19.1.1992 was moved apprehending that either these persons might be killed or involved in false cases leading to registration of the present FIR under Section 364 IPC Police Station, Kathu Nangal. The Court of learned Sessions Judge, Amritsar through judgment dated 30.03.1998 held the petitioners-accused Baldev Singh, DSP and Balwinder Singh guilty for commission of offences under Sections 120-B,452,364 (on seven counts) and 302 read with Section 120-B (on seven counts), whereas, other accused stood acquitted and as a consequence of which the convicts were awarded maximum sentence of life imprisonment with fine on seven counts, besides, other sentences under different heads. The same was subject matter of challenge by way of criminal appeal No.221-DB of 1998 by the present petitioners and this Court vide judgment dated 06.04.2005 upheld

the conviction and dismissed their appeal. Still the petitioners impugned these findings before the Hon'ble Apex Court of India through separate Criminal appeals No. (a) 1303 of 2005 and No.1380 of 2005 and the Hon'ble Apex Court through common judgment dated 20.09.2013 dismissed both the appeals, whereby, conviction of the appellants under Sections 302 and 120-B IPC was set aside but maintained their conviction under Sections 364 and 452 IPC and held that the appellants were guilty of seven offences under Section 364 IPC and punished them for each of these offences under Section 364 IPC directing that the fine amount as imposed by the trial Court would be Rs.3000/- each of the seven offences of abduction and period of imprisonment of 05 years for each of the offences for abduction and, thus, 05 years rigorous imprisonment for each of the seven offences for abduction will not run concurrently but consecutively and in case of failure to pay fine will have to undergo rigorous imprisonment for 01 year.

Through the present invocation under Article 226 and 227 of Constitution of India both the petitioners have sought quashment of orders dated 10.03.2015, Annexure P/8 seeking prayer that the petitioners are entitled to claim benefit of under trial period of 03 years, 06 months and 27 days against all the seven counts of sentence of 05 years awarded under Section 364 IPC as per Section 428 Cr.P.C individually.

Appreciating the submissions of the learned counsel for the petitioners as well as learned State counsel and perusing the records of the case. It is undisputed stand of the State as well as in the light of the contentions raised by the petitioner's counsel that the period spent by the petitioners in detention during trial from 2.9.1994 to 29.03.1998 comes to

03 years, 06 months and 27 days and period spent in detention upon conviction from 30.03.1998 to 14.02.2006 is 07 years, 10 months and 15 days and w.e.f. period 15.02.2006 to 01.11.2013 had remained on bail and w.e.f 2.11.2013 to 10.04.2015 remained in jail i.e. for period of 01 year, 05 months and 08 days and, thus, totalling in all have undergone 12 years, 10 months and 20 days out of which under Article 161 Constitution of India they were awarded remissions as per Punjab Jail Manuals for 11 years and 10 days and, therefore, claimed to have undergone total sentence including remissions for period of 23 years, 11 months and deducting period of parole of 01 year, 11 months and 22 days, it is the claim of the petitioners that they had undergone total sentence including remissions and excluding parole till 10.04.2015 at the time of filing of petition equalling to 21 years 11 months and 08 days.

The contentions of the learned counsel for the petitioners who has placed heavily on the statutory provisions of Sections 427 and 428 Cr.P.C as has been contended by the learned State counsel provisions of Section 427 Cr.P.C is applicable to only those persons who have already undergone sentence of imprisonment are sentenced on a subsequent conviction to imprisonment which is not the situation in the present case as both the petitioners have been found guilty for the same very case for similar offences on different seven counts and which sentences have been ordered to run consecutively and which findings have since attained finality. Neither the case is covered under the provisions of Section 438A Cr.PC as Section 364 IPC does not invites death penalty, thus, it is only by virtue of Section 428 Cr.P.C which as claimed covers the case of the

petitioners the same is reproduced as below to lay emphasis:-

“428. Period of detention undergone by the accused to be set off against the sentence or imprisonment. Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine], the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, any, of the term of imprisonment imposed on him.”

A close look at this statutory provisions leaves nothing to doubt that though each of the petitioners have been convicted under Section 364 IPC to undergo rigorous imprisonment for 05 years but the same is on seven counts and each sentence of imprisonment is to run consecutively and, therefore, the total sentence of imprisonment to which they have been awarded comes to 35 years. As has been contended by the learned State counsel which could not be legitimately refuted by learned counsel for the petitioners that the period of remissions would be counted only once singly for all these counts of conviction and cannot be legitimately considered in case of each of these counts and it is the own case of the petitioners that as per the jail record maintained by the Jail Authorities each of the petitioners have undergone 22 years, 09 months and 14 days sentence up to 12.2.2015 and it is not tenable as has been sought to be reiterated on behalf of the petitioners that the principle enshrined in Section 428 Cr.P.C in setting off pre-conviction detention period of an accused applies in all cases of each of the counts separately, even though,

the sentences have been ordered to run concurrently or consecutively as that would be contrary to the very aim and object of enacting of such a provisions for concurrent and consecutive running of sentences and cannot by any means such a benefit would run simultaneously on all the counts and that cannot by any means by aggregation of all these terms as has been put forth in the submissions of the petitioners's counsel and, therefore, cannot derive any benefit of setting off period of detention of 03 years, 06 months and 27 days on each of the counts individually and separately and, thus, nullifying the purpose for which the consecutive running of the sentences have been imposed. Thus, this submission certainly becomes untenable and the claim of the petitioners who are supposed to undergo maximum sentence of 13 years, 06 months and 18 days needs to be outrightly brushed aside. Admittedly, till date the petitioners have undergone almost 21 years, 11 months and 08 days and, thus, needs to undergo remaining part of the sentence in the light of the conclusive findings of the Hon'ble Apex Court. The Principal Secretary to Government of Punjab, Department of Home, (Jails) had passed a speaking order dated 10.03.2015 as a consequence of directions issued by this Court on the petition of the petitioners bearing CRWP No.2185 of 2013 Annexure P/6.

Besides, what has been discussed above and drawing analogy from a Full Bench view of this Court in the case of **Jang Singh vs. State of Punjab 2008(1) RCR (Cri) 323** where a Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against such a decision is also decided than it may not be open for a person to seek such a direction as is being sought in the present case for the

sentences to run concurrently by moving such a prayer thus, the very maintainability of the present petitions that too at this belated stage goes against the petitioners. The petitioners are guilty of a very extreme case of heinous crime, whereby, an entire family most of whom are young and males have been wiped out. One of the petitioner happened to be a high ranking Police official and has thus to take revenge has misused his power and position when the State was under turmoil and such factors which are ghastly and to ensure due justice to the family of the victims and to ensure setting up an example for such Police officials who take the law in their hands that such a discretion cannot even otherwise be given to the petitioners.

Thus, in the light of what has been detailed and discussed above, this Court does not find any fault, illegality or perversity in the orders dated 10.03.2015 Annexure P/8 passed by the respondent No.1/Principal Secretary to Government of Punjab, Department of Home (Jails). Thus, the petitioners are bound to undergo sentences under each of the counts so awarded to them and the period of under trial would be counted only once and not aggregating for each of the counts by taking that separately and compounding it.

Petitions stand disposed off.

(FATEH DEEP SINGH)
JUDGE

March 21, 2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No