

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1930 of 2017

Arising Out of PS.Case No. -192 Year- 1988 Thana –Mansi (Chautham) District- KHAGARIA

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Ranveer Yadav, son of Late Hari Ballabh Yadav, resident of village Chukti, P.S. Mansi, District Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar, Through The Secretary, Department of Home (police), Government of Bihar, Patna.
2. Inspector General (Prison), Bihar, Patna.
3. Superintendent of Divisional Jail, Khagaria.
4. Superintendent of Divisional Jail, Munger.
5. Savitri Devi, wife of late Madan Yadav, resident of village-Chukti, P.S.-Mansi, District-Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.

For the State : Mr. P.K. Verma, AAG-3

For the Respondent no.5: Mr. Shivendra Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 02-05-2018

Heard learned counsel for the petitioner, learned counsel representing the State as also the learned counsel representing the private respondent no.5.

2. Petitioner has moved this Court for a writ in the nature of certiorari to quash the letter no.1917 dated 19.09.2017 issued by the Superintendent of Divisional Jail, Khagaria in connection with Mansi (Chautham) P.S. Case No.192 of 1988 by which he has informed to the learned court below that the calculation done by the Superintendent of Divisional Jail, Munger regarding the



period spent by the petitioner in custody in connection with this case is not correct and that the petitioner has not completed 10 years of custody and accordingly he cannot be released.

CASE OF THE PETITIONER

3. Mr. Ajay Kumar Thakur, learned counsel representing the petitioner submits that the petitioner in the present case was convicted by the learned trial court in this case vide Session Trial No.184/89 vide judgment and order dated 24.12.2016, he was sentenced to undergo life imprisonment under Section 302 I.P.C. and also to pay a fine, but the said judgment of the learned trial court was later on set aside by a Division Bench of this Court in Cr. Appeal (DB) No.60 of 2017 and the Hon'ble High Court vide judgment and order dated 29.08.2017 was pleased to convert the conviction from under Section 302 of the I.P.C. to Section 304 (Part II) of the I.P.C. and accordingly directed to suffer rigorous imprisonment for ten years and to pay a fine of Rs.50,000/- and in default of payment of fine to suffer rigorous imprisonment for two years.

4. It is his submission that when a fresh warrant of conviction was issued in this case, the petitioner filed an application in the trial court claiming that he had completed ten years in custody and therefore he should be released, a report was called for by the learned trial court from the Superintendent, Divisional Jail, Munger.



The Divisional Jail Superintendent, Munger vide memo no.2322 dated 10.09.2017 informed that the period spent by the petitioner in custody in connection with this case is 9 months 9 days. Thereafter, the period spent by the petitioner in Khagaria Jail was also called for. On the basis of the letter no.2297 dated 07.09.2017 sent by the Superintendent, Munger Jail, learned counsel claims that accused had spent in custody ten years twenty-five days and therefore from the order dated 13.09.2017 passed by the learned trial court, it would appear that he was directed to be released in the light of the judgment of the Hon'ble Court, but when the petitioner was not released, he had to again move the court and thereafter the Superintendent, Divisional jail, Khagaria vide letter no.1917 dated 19.09.2017 informed that there was some defect in the earlier report and the convict has not completed ten years and the period shown to have spent in Khagaria Jail for 7 months 4 days cannot be calculated in completing the period of custody.

5. It is the claim of the petitioner that the Superintendent, Divisional Prison, Munger vide his letter as contained in Annexure-4 to the application, had initially informed the learned court that the petitioner has remained in custody now for a total period of 9 months 9 days, thereafter when the learned trial court directed to calculate the entire period of custody of the petitioner in the present



case, the Superintendent, Divisional Jail, Munger had submitted a report vide Annexure-5 to the writ application stating that the total period of custody of the petitioner is 10 years 25 days. On the same date, vide letter no.2296 dated 07.09.2017 as contained in Annexure-6 to the writ application, the Superintendent of Divisional Jail, Munger informed the Superintendent of Divisional Jail, Khagaria that in Munger Jail the total period spent by the petitioner in connection with this case was 9 months 9 days.

6. One of the submissions of the learned counsel representing the petitioner is that in the present Sessions Trial No.184/89 the petitioner was not being produced from Khagaria Jail and for this purpose he had filed an application before the learned trial court that he is in Khagaria jail and, therefore, production warrant be issued for producing him in the present case and only thereafter the learned trial court vide its order dated 10.06.2010 directed the office to issue production warrant for producing the petitioner in the present case. It is further stated that the production warrant was received at Khagaria jail on 30.06.2010, but still the petitioner was not produced before the learned trial court in Sessions Trial No.184/89. He was finally released from custody on 04.02.2011 from Khagaria jail. The grievance of the petitioner is that when the production warrant was issued by the learned trial court in connection with Sessions Trial



No.184/89 and the same was received in Divisional jail, Khagaria on 30.06.2010 and from Khagaria petitioner was released on 04.02.2011, it would not be just and proper on the part of the Superintendent, Khagaria Jail to opine that the period spent in Khagaria jail i.e. 7 months 4 days (between 30.06.2010 to 04.02.2011) be treated as zero period. Learned counsel submits that the view taken by the Superintendent of Khagaria jail vide letter no.1917 dated 19.09.2017 saying that the petitioner has not completed 10 years in custody is not a correct view and, therefore, the petitioner has prayed for setting aside of the said communication.

7. With reference to the pleadings available on record, Mr. Thakur, learned counsel representing the petitioner has further submitted that the issue which has arisen for consideration in the present case is based on the fact that the petitioner in the present case had remained in custody also in connection with another Session Trial bearing no.10/86 and in the said Session Trial No.10/86 he was convicted on 27.02.1989 and was awarded life sentence. He had completed sentence in the said case on 19.09.1997, but because he was required in another case also therefore, he had been released on 06.10.1997. According to him in terms of sub-section (2) of Section 427 of the Code of Criminal Procedure the period spent by the petitioner in jail in connection with Session Trial No.10/86 would also



be liable to be calculated for the purpose of computing the total period of sentence completed by the petitioner in connection with the present case. He has read out Section 427(2) Cr.P.C. and Section 428 Cr.P.C. in order to submit that the petitioner would be entitled for the benefit of counting the period spent by him as a life prisoner even after his conviction in connection with the Session Trial No.10/86. In course of argument, reliance has also been placed on the judgments of the Hon'ble Apex Court in the case of **Kartar Singh & Ors. V. State of Haryana** reported in **AIR 1982 SC 1439 (Para 8 & 9)**, **Butan Sah Vs. The State of Bihar & Ors.** reported in **(2015) 4 PLJR HC 396 (Para 12 & 18)**, **Raghubir Singh Vs. State of Haryana** reported in **(1984) 4 SCC 348**, **Government of Andhra Pradesh & Anr. Vs. Anne Venkatesware & Ors.** reported in **(1977) 3 SCC 298**, **State of Maharashtra & Anr. Vs. Najakat Alia Mubarak Ali** reported in **(2001) 6 SCC 311** and in the case of **Mathuramalingam & Ors. Vs. State represented by Inspector of Police** reported in **(2016) 8 SCC 313**.

STAND OF THE STATE

8. On the other hand, learned counsel representing the State and the private respondent no.5 have vehemently opposed the application. A counter affidavit has been filed on behalf of the respondent no.3 sworn by Deputy Superintendent, District Jail,



Khagaria. A stand has been taken therein that the petitioner has not completed 10 years of sentence in connection with Session Trial No.184/89 and, therefore, he is not entitled for release in connection with the present case. Placing reliance upon a Division Bench judgment of this Hon'ble Court in Cr.W.J.C. No.816 of 2017, as contained in Annexure-B to the counter affidavit, learned counsel submits that in view of several judicial pronouncements on the subject it is now well settled that the provision of set off contained in Section 428 of the Code of Criminal Procedure would apply only to the period which a convict might have undergone during investigation, enquiry or trial of the case in which he comes to be subsequently convicted. It is their stand that the period spent by the petitioner as an under-trial prisoner i.e. during investigation, enquiry or trial in connection with the Session Trial No.10/86 and the period spent after awarding of sentence in the said trial would not be counted for the purpose of counting the sentence awarded to the petitioner in the present case. It is submitted that the period of sentence which the petitioner spent as a life convict in Session Trial No.10/86 would not be available to him for the purpose of set off against the period of imprisonment in the subsequent case i.e. Session Trial No.184/89.

STAND OF PRIVATE RESPONDENT NO.5

9. A counter affidavit has also been filed in the present



case on behalf of the respondent no.5 who has intervened in the present case. She happens to be the mother of the deceased and wife of the informant. The informant is said to have died and therefore she has moved this Court by filing interlocutory application which was earlier allowed and she was impleaded as party respondent in the present case. In her counter affidavit, the private respondent no.5 has reiterated the stand of the State authorities. It is submitted that the petitioner surrendered in connection with the present case being Chautam (Mansi) P.S. Case No.192/88 on 17.12.1988, he was granted bail by this Court in Cr.Misc.No.8226 of 1992. He furnished the bail bond on 18.05.1994 in the present case and thereafter a release order was also issued by the trial court on the same date, therefore it is submitted that the petitioner remained in custody in connection with the present case for about five years five months and one day prior to his conviction in the present case. In support of her submissions she has brought on record the order-sheet of learned trial court dated 18.05.1994 as Annexure-R/A to her counter affidavit. It is her submission that the period spent by the petitioner after the order of release on 18.05.1994 and his further custody while undergoing sentence as life convict due to his involvement in another case i.e. Session Trial No.10/86 cannot be counted for the purpose of completion of sentence in the present case. Referring to the letter



no.3583 dated 27.06.2009 as contained in Annexure-R/B to the counter affidavit, which was issued by the Superintendent of Beur Jail, learned counsel representing the private respondent submits that the letter would reveal that the petitioner was brought from Bhagalpur jail on 03.07.1997 because he had been convicted in Session Trial No.10/86 on 27.02.1989 and had completed sentence on 19.09.1997 but was required in another case, therefore he was released on 6.10.1997. It is, thus, submitted that the petitioner was brought at Beur Jail as convict of Session Trial No.10/86 and not in connection with the present case. Therefore, the period spent by him in Beur Jail cannot be counted in connection with the present case. It has been reiterated that the petitioner had been ordered to be released in connection with the present case on 18.05.1994.

10. It is submitted that in the present case cognizance was taken on 30.01.1989 and the judgment has been pronounced on 24.11.2016. In sum and substance the submission of learned counsel for the private respondent is that the writ petitioner cannot take advantage of Section 427(2) Cr.P.C. because he had not serve the sentence concurrently, rather he had been sentenced separately in two different trials which is evident from the records. It is also submitted that if the petitioner was languishing in jail as a life convict and the learned trial court in this case had to issue production warrant to



produce him in connection with this case, the delay in producing him would not entitle him to count the said period of delay to complete the sentence awarded to him in the present case.

CONSIDERATION

11. Having heard learned counsel for the petitioner, learned counsel representing the State as also the learned counsel representing the private respondent no.5 and upon perusal of the records this Court would first discuss the provisions contained under Section 427(2) and Section 428 Cr.P.C. which read as under:-

“427. 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.

428. Period of detention undergone by the accused to be set off against the sentence of 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.”

12. According to sub-section (2) of Section 427 Cr.P.C. 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.

13. Mr. Thakur, learned counsel representing the petitioner has heavily relied upon sub-section (2) of Section 427 Cr.P.C. to contend that in present case even though the petitioner was undergoing a sentence of imprisonment for life the period spent by him as a prisoner during the period he was in undergoing life imprisonment in connection with Session Trial No.10/86 would also be available for counting the sentence awarded to him on 24.11.2016 in connection with Session Trial No.184/89. The judgments relied upon by Mr. Thakur have been taken note of hereinabove. In the case of **Government of Andhra Pradesh & Anr. Vs. Anne Venkatesware & Ors** reported in (1977) 3 SCC 298 in paragraph 5 and 6 on which reliance has been placed by Mr. Thakur reads as under:-

“5. We do not consider the view taken by the High Court on this point as correct. Section 428 of the Code of Criminal Procedure, 1973 is in these terms:

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.- Where an accused person has, on conviction, been sentenced to imprisonment for a term, 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, if any, of the term of imprisonment imposed on him.

Section 428 provides that the period of detention of an accused as an undertrial prisoner shall be set off against the term of imprisonment imposed on him on conviction. The section only provides for a "set off", it does not equate an "undertrial detention or remand detention with imprisonment on conviction". The provision as to set off expresses a legislative policy, this does not mean that it does away with the difference in the two kinds of detention and puts them on the same footing for all purposes. The basis of the High Court's decision does not, therefore, seem to be right.

6. Apart from that, the Prisons Act does not confer any right upon the prisoner to claim remission. It was pointed out in G.V. Godse v. State of Maharashtra¹ that "..... the Prisons Act does not confer on any authority a power to commute or remit sentences, it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act." It was explained that the rules under the Prisons Act do not substitute a lesser sentence for a sentence awarded by the court. The rules enable a prisoner to earn remissions but, as held in G.V. Godse's case, the question of remission is exclusively within the province of the appropriate Government. If the Government decides to remit the punishment to which a person has been sentenced, the remission may be worked out according to the rules framed under the Prisons Act. This being the position, appeals 418 and 419 of 1976 must succeed."

14. Paragraph 8 and 9 of the judgment rendered in the case of Kartar Singh & Ors. V. State of Haryana reported in AIR 1982 SC 1439 reads as under:-

1.(1961)3 SCR 440, 446: AIR 1961 SC 600: (1961) 1 Cri LJ 736



“8. The last submission has been that if convicts other than life-convicts are entitled to the benefit of the set off under Sec.428, there is no reason why life convicts should be denied the advantage of this beneficial provision and in this behalf it was pointed out that such an argument has found favour with the Gujarat High Court in Kalidas Vanmalibhai’s case (1980-21 Guj LR 7) (supra). In our view the question is not whether the beneficent provision should be extended to life-convicts on a priori reasoning or equitable consideration but whether on true construction the section comprises life convicts within its purview and on construction it is not possible to hold that they do. Moreover, if the objects and reasons for introducing Sec.428 anew in the Code, as set out by the Joint Committee in its Report are taken into account, it will appear clear that cases of life convicts were never intended to be covered by the provision. The Joint Committee has stated the objects and reasons for introducing this provision in the Code thus:

“The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as undertrial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in Jail as undertrial prisoner. Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as undertrial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in many cases, the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs.”

It is obvious that the mischief sought to be remedied has no relevance where gravity of offence requires the imposition of imprisonment for life.

9. Having regard to the above discussion, it is clear that the benefit of the set off contemplated by Sec.428 Cr.P.C. would not be available to life convicts. In our view, the decision of the Gujarat High Court in the case of Kalidas Vanmalibhai (1980-21 Guj LR 7) is erroneous and the contrary view taken by Kerala High Court in Kanthalot Karunan v. State of Kerala, 1975 Ker LT 147 by Bombay High Court in Rajahusein Gulamhusein Lakhani v. State of Maharashtra, 1976 Cri LJ 1294, Rafiq Abdul Rehman v. State of Maharashtra, 1978 Cri LJ 214 (Bom) and by Rajasthan



High Court in Bhimsen v. State of Rajasthan, 1977 Cri LJ 696 is correct. In this view of the matter, the impugned order dated 2nd February, 1982 passed by the Respondent-State, being in conformity with Sec.428, Cr.P.C., is perfectly legal and valid.”

15. Paragraph 10 to 14 and 21 of the judgment in the case of **State of Maharashtra & Anr. Vs. Najakat Alia Mubarak Ali** reported in (2001) 6 SCC 311 on which reliance has been placed by Mr. Thakur reads as under:-

“10.In Raghbir Singh v. State of Haryana¹ learned Judges considered a case in which an accused was convicted and sentenced to imprisonment for 7 years on 1.2.1980 as per the judgment rendered by a Sessions Judge, Karnal. That accused was in judicial custody from 11.1.1980 in connection with another case which was pending before a Metropolitan Magistrate, Delhi. That second case also ended in conviction and the Metropolitan Magistrate sentenced him to rigorous imprisonment for one year on 16.2.1981. That accused claimed set off from 11.1.1980 till the dates of conviction in each cases. In that case the State conceded the claim of the accused in respect of the period between 11.1.1980 to 1.2.1980. But the State contended that the accused could not get set off from 1.2.1980 till 16.2.1981 for the second case. The said contention was based on a departmental instructions issued by a State Government on 29.11.1975 to the effect that the period of detention undergone by a convict in execution of a sentence in one case should not be set off against the term of imprisonment imposed on him in another case. This Court upheld the said contention and the two Judge Bench made the following observation (SCC p.351, para 6)

“In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. It is not the period of detention undergone by him during the investigation, inquiry or trial of the same case in which he is later on convicted and sentenced to undergo imprisonment. He cannot claim a double benefit under Section 428 of the Code 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”.

11. As the said view is now sought to be reconsidered we shall examine the position by reading Section 428 of the Code once again. The Section is extracted below:

“428. Period of detention undergone by the accused to be set off against the sentence of 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, if any, of the term of imprisonment imposed on him.”

12. The placement of that section just below Section 427 of the Code tempts us to have a peep into the preceding section, which deals with instances wherein one person is sentenced in a case when he has already been undergoing the sentence in another case. The first sub-section of Section 427 says that the sentence in the second conviction shall commence at the expiration of the imprisonment to which the accused has been previously sentenced, “unless the court directs that the subsequent sentence shall run concurrently with such previous sentence”. The second sub-section to Section 427 of the Code says that 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.

13. Thus, the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. Even if the sentence in one of those two cases is not imprisonment life but only a lessor term the convergence will take place and the post convergence flow would be through the same channel. In all other cases, it is left to the court to decide whether the sentences in two different convictions should merge into one period or not. If no order is passed by the court the two sentences would run one after the other. No doubt Section 427 is intended to



provide amelioration to the prisoner. When such amelioration is a statutory operation in cases falling under the second sub-section it is a matter of choice for the court when the cases fall within the first sub-section. Nonetheless, the entire section is aimed at providing amelioration to a prisoner. Thus a penumbra of the succeeding section can be glimpsed through the former provision.

14. The purpose of Section 428 of the Code is also for advancing amelioration to the prisoner. We may point out that the section does not contain any indication that if the prisoner was in jail as an under-trial prisoner in a second case the benefit envisaged in the section would be denied to him in respect of the second case. However, learned counsel for the appellant contended that the words of the same case in the section would afford sufficient indication that the benefit is intended to cover only for one case and not more than that. It must be remembered that the ideology enshrined in Section 428 was introduced for the first time only in the Code of Criminal Procedure, 1973. For understanding the contours of the legislative measure involved in that section, it is advantageous to have a look at the Objects and Reasons for bringing the above legislative provision. We therefore extract the same here:

“The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as under-trial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as under-trial prisoner. Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs. The new clause provides for the setting off of the period of detention as an under-trial prisoner against the sentence of imprisonment imposed on him. The Committee trusts that the provision contained in the new clause would go a long way to mitigate the evil. (emphasis supplied)



21. We have no reason to think that the High Courts mentioned above have gone wrong in taking the view that Section 428 of the Code permits the accused to have the period undergone by him in jail as an under-trial prisoner set off against the period of sentence imposed on him irrespective of whether he was in jail in connection with the same case during that period. We therefore, respectfully dissent from the view expressed by the two Judge Bench of this Court in Raghbir Singh v. State of Haryana¹.

16. Mr. Thakur has also placed reliance on a recent judgment of the Hon'ble Apex Court rendered by the Constitution Bench in the case of **Mathuramalingam & Ors. Vs. State represented by Inspector of Police** reported in **(2016) 8 SCC 313**. Paragraph 19 and 33 of the said judgment reads as under:-

"19. A somewhat similar question fell for consideration before a three- Judge Bench of this Court in Ranjit Singh v. UT of Chandigarh²⁰, (1991) 4 SCC 304. The prisoner was in that case convicted for murder and sentenced to undergo life imprisonment. He was released on parole while undergoing the life sentence when he committed a second offence of murder for which also he was convicted and sentenced to undergo imprisonment for life. In an appeal filed against the second conviction and sentence, this Court by an order dated 30th September, 1983 directed that the imprisonment for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. The Court directed that in the event of remission or commutation of the earlier sentence awarded to the prisoner, the second imprisonment for life awarded for the second murder committed by him shall commence. Aggrieved by the said direction which made the second life sentence awarded to him consecutive, the prisoner filed a writ petition under Article 32 of the Constitution primarily on the ground that this Court's order dated 30th September, 1983 was contrary to Section 427 (2) of the CrPC., according to which any person already undergoing sentence of imprisonment for life if sentenced to undergo imprisonment for life, the subsequent sentence so awarded to him shall run concurrently with such

20. (1991) 4 SCC 304:1991 SCC (Cri) 965



previous sentence.

33. We are not unmindful of the fact that this Court has in several other cases directed sentences of imprisonment for life to run consecutively having regard to the gruesome and brutal nature of the offence committed by the prisoner. For instance, this Court has in *Ravindra Trimbak Chouthmal v. State of Maharashtra*²⁵, while commuting death sentence penalty to one of imprisonment for life directed that the sentence of seven years rigorous imprisonment under Section 207 IPC shall start running after life imprisonment has run its due course. So also in *Ronny v. State of Maharashtra*²⁶ this Court has while altering the death sentence to that of imprisonment for life directed that while the sentence for all other offences shall run concurrently, the sentence under Section 376 (2)(g) shall run consecutively after running of sentences for other offences. To the extent these decisions may be understood to hold that life sentence can also run consecutively do not lay down the correct law and shall stand overruled.”

17. The Division Bench judgment of this Hon’ble Court in the case of **Butan Sah Vs. The State of Bihar & Ors.** reported in **(2015) 4 PLJR HC 396** has also been relied upon specifically with reference to paragraph 12 and 18 of the said judgment which I would quote hereunder:-

“12.What, in substance, Section 427 of the Code of Criminal Procedure conveys is that when a person, already undergoing a sentence of imprisonment, is further sentenced, on subsequent conviction, to imprisonment for a term or to imprisonment for life, such imprisonment for a term or such imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced unless the Court directs that subsequent sentence shall run ‘concurrently’ with his previous sentence. When, however, such a person is already

25. (1996) 4 SCC 148:1996 SCC (Cri) 608

26. (1998) 3 SCC 625: 1998 SCC (Cri) 859



undergoing a sentence of imprisonment for life, then, his further sentence of imprisonment for a term or imprisonment for life, which may be passed against him (following his subsequent conviction), shall run 'concurrently' with his previous sentence of imprisonment for life irrespective of the fact whether the Court directs or not that subsequent sentence of imprisonment for a term or imprisonment for life would run 'concurrently'.

18. A combined reading of the provisions embodied in Sections 31(1), 427 and 428 of the Code of Criminal Procedure and Section 64 of the Indian Penal Code gives out a completed scheme of calculating the period of imprisonment passed as sentence, the ordinary rule being that the sentences awarded shall run consecutively unless the Court directs that the sentences passed, in more than one case, shall run concurrently. When the sentences of imprisonment are passed consequent upon an offender's conviction in more than one offence at one trial, it is Section 31 of the Code of Criminal Procedure, which applies, and when the sentences of imprisonment are passed consequent upon his conviction in different trials, it is Section 427 of the Code of Criminal Procedure, which would apply. Sub-section (2) of Section 427 of the Code of Criminal Procedure makes an exception, the exception being that when a person, already undergoing a sentence of imprisonment for life, is sentenced, on subsequent conviction, to imprisonment for a term or to imprisonment for life, his subsequent sentence shall run 'concurrently' with his previous sentence of imprisonment for life, even if the Court does not direct that the subsequent sentence of imprisonment would run concurrently and not consecutively with his previous sentence of imprisonment for life."



18. On a cumulative reading of aforesaid judgments of the Hon'ble Apex Court, I find that Section 427(2) and Section 428 Cr.P.C. have come up for consideration before the Hon'ble Apex Court on several occasions. The Constitution Bench in the case of **Mathuramalingam** (supra) has reviewed almost all the previous case laws on the subject and concluded that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run concurrently. It has been held that such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.

19. In the present case, the question which has fallen for consideration is as to whether or not for purpose of this case the petitioner would be entitled to count period after 18.05.1994 spent by him as a life convict while he was undergoing the life sentence in connection with Session Trial No.10/86.

20. At this stage, before reaching to a conclusion, I would also take note of the Division Bench judgment of this Hon'ble Court in the case of **Harishchandra Prasad Vs. The State of Bihar** decided on 17.08.2017 in **Criminal Writ Jurisdiction Case No.816**



of 2017 reported in 2017(4) PLJR 836, a copy of which has been annexed as Annexure-B to the counter affidavit filed on behalf of the State. In the said case, the petitioner had approached this Court for a direction to the respondent authorities for premature release of his son in terms of sentencing policy of the State Government. The son of the petitioner was convicted in Sessions Trial No.545/2001 arising out of Silao (Chabilapur) P.S. Case No.88 of 2001 and was sentenced to undergo life imprisonment vide judgment and order dated 26.02.2005 and 4.03.2005 respectively. Thereafter, he was also convicted in Sessions Trial No.499/2001 and was sentenced to undergo life imprisonment vide judgment and order dated 16.04.2007 and 23.04.2007 respectively. It was urged on behalf of the petitioner that his son had completed 14 years of actual conviction and more than 20 years with remission in both the cases and hence he should be directed to be released prematurely as per the Bihar State Sentence Remission Policy. Case of the petitioner was contested by the State authorities and it was submitted that so far as conviction in Sessions Trial No.545/2001 is concerned, son of the petitioner had completed 14 years of actual imprisonment and 20 years of imprisonment with remission and, thus, he was entitled for his premature release but only after consideration of the opinion of the Presiding Officer as per the requirement under Section 432 of the Code of Criminal Procedure



which was still awaited. So far as the second case is concerned, the stand of the State authorities was that the petitioner's son had completed merely 13 years 5 months and 22 days of actual imprisonment as on 4.07.2017 and 17 years 2 months and 2 days of imprisonment along with earned remission and, thus, the aforesaid period is much less than the mandatory actual custody of 14 years without remission and 20 years with remission. So his case so far as the Sessions Trial No.499/2001 is concerned, cannot be considered. The Hon'ble Division Bench was called upon to consider the various judgments of the Hon'ble Apex Court such as judgment rendered in the case of **Najakat Alia Mubarak Ali (supra) and Atul Manubhai Parekh Vs. Central Bureau of Investigation [2010 AIR SCW 399]**. Attempt was made to impress upon this Court that once the son of the petitioner was convicted in the earlier case he cannot be considered as under-trial prisoner in any case as he started serving his sentence as a convict in the concerned case and, thus, that period cannot be treated for counting the set off in the subsequent case. The Hon'ble Division Bench in the case of **Harischandra Prasad (supra)** accepted the submissions of the State and referring to the earlier Division Bench judgment of this Court in the case of **Butan Sah (supra)** held that period between conviction in one case and conviction in another sentencing for life cannot be treated as under-trial prisoner in the



second case for the purpose of set off and as such the petitioner's son would have to wait for his premature release in the second case in which he has been convicted for life. Paragraph 39, 43 and 44 of the judgment rendered in the case of **Butan Sah** (supra) has been taken note of by the Hon'ble Division Bench and do the same hereunder:-

“39. Clearly, therefore, the period, which a person spent, while serving a sentence of imprisonment as a convict in one case, would not be taken into account, and be treated, as a remand period or as a period undergone by him as an under-trial prisoner in the other case, wherein he comes to be subsequently convicted.

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43. As far as the provision of set off, embodied in Section 428 Code of Criminal Procedure, are concerned, these provisions apply only to the period, which a convict might have undergone during investigation, enquiry or trial of the case in which he comes to be subsequently convicted. Thus, the period, spent by a person as an under-trial prisoner, i.e., during investigation, enquiry or trial in one case, would not be available to him for set off against the sentence of imprisonment, which may be subsequently passed against him in another case.

44. More-over, the period of sentence, which a person spends as a convict, would not be available to him, for the purpose of set off against the period of imprisonment to which he may be sentenced following his subsequent conviction in a different case. The period of imprisonment, which a person spends as an under-trial prisoner is entirely different from the period, which a person suffer, while serving out sentence of imprisonment as a convict.”



21. Upon considering the judicial pronouncements on the subject and going through the pleadings available on the record, I find that the averments made by the private respondent in the counter affidavit that the petitioner was ordered to be released on bail and he had submitted bail bond on 18.05.1994 in connection with the present case is not in dispute. The submission of Mr. Thakur is that the period being spent by petitioner as a life convict in connection with Sessions Trial No.10/86 be allowed to be counted or should be counted in connection with the subsequent sentence awarded to the petitioner in present case because the petitioner as an under-trial prisoner remained in custody in the present case as the release order was never communicated to the authorities, in the opinion of this Court, cannot be accepted. The petitioner was convicted in connection with Sessions Trial No.10/86 much before he furnished the bail bond on 18.05.1994 in connection with the present case and therefore he being a life convict undergoing the sentence of life imprisonment could not have been released. The above discussed judgments of the Hon'ble Apex Court as well as our own Division Bench have made it crystal clear that the period spent by the petitioner as a life convict in connection with one case cannot be counted as a period spent in the capacity of an under-trial prisoner in connection with another case. Paragraph 43 and 44 of the judgment of the Hon'ble Division Bench in the case of



Butan Sah (supra) make it clear that the period of sentence which a person spent as a life convict would not be available to him for the purpose of set off against the period of imprisonment to which he may be sentenced following his subsequent conviction in a different case. The Division Bench of this Court in the case of **Harishchandra Prasad** (supra) has also dealt with that aspect of the matter.

22. In result, I do not find any merit in the writ application. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

Arvind/-

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