

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7277-2018 (O&M)

Date of decision : 03.12.2018

Ranjit Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vijay K. Jindal, Advocate for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J.

Reply by way of short affidavit of Manjit Singh Tiwana, Superintendent, District Jail, Sangur filed in Court today is taken on record.

Heard.

Petitioner-Ranjit Singh has invoked the jurisdiction of this Court under Article 226/227 of the Constitution of India for issuing of writ in the nature of Habeas Corpus claiming that petitioner is entitled to be released having completed the requisite term of sentence.

Further prayer is for grant of pre-mature release under Article 161 of the Constitution of India as per the policy of the State. Further prayer has been made that his sentence of 07 years awarded under Section 364 read with Section 34 of the Indian Penal Code has to run concurrently with life imprisonment awarded under Section 302 read with Section 34 of the Indian Penal Code in view of the law as laid down by Constitutional Bench of Five Judges of Hon'ble Supreme Court in the case of 'Muthuramalingapa versus

State Rep. By Insp. Of Police' 2016(3) RCR (Criminal) 827.

Petitioner (along with his co-accused) was convicted and sentenced by learned Sessions Judge, Sangrur vide its order dated 7.1.2002 (Annexure P-1) to undergo rigorous imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code and further to undergo rigorous imprisonment for 07 years and to pay a fine of Rs. 2,000/- under Section 364 of the Indian Penal Code. In default of payment of fine, petitioner was to undergo rigorous imprisonment for six months. The aforesaid order was silent as to whether both of the sentences are to run concurrently or consecutively. Therefore, by virtue of Section 31 of the Code of Criminal Procedure, both are presumed to run consecutively.

Appeal against the said judgment dated 7.1.2002 (Annexure P-1) was dismissed by a Division Bench this Court on 13.8.2010 (Annexure P-2), which was challenged before the Apex Court by filing a Special Leave to appeal. But the same was affirmed as such by Apex Court vide its judgment dated 25.2.2015 (Annexure P-3).

There is two fold prayer of the petitioner. *First* prayer is that the sentence of life imprisonment under Section 302 read with Section 34 of the Indian Penal Code and sentence of 07 years under Section 364 of the Indian Penal Code have to run concurrently in view of the law as laid down in **Muthuramalingapa case** (*supra*). *Second* prayer is that even if the sentences are to run consecutively, petitioner is entitled to be considered for pre-mature release as he has undergone the actual sentence of 13 years 02 months and 14 days with remission of 13 years.

State in its reply dated 16.1.2018 has taken the view that the sentence of rigorous imprisonment of 07 years under Section 364 of the

Indian Penal Code shall run first and the sentence of rigorous imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code shall run later. Same opinion has been expressed by Additional Director General of Police Prisons, Punjab vide its letter dated 11.10.2017 (Annexure R-1). Therefore, the case of the petitioner for pre-mature release is not liable to be considered as he has not completed 10 years of actual sentence and 14 years of total sentence with remission.

It is clear from the judgment of conviction and order of sentence dated 7.1.2002 passed by learned District and Sessions Judge, Sangrur that the trial Court did not specifically ordered that both the sentences should run concurrently. Therefore, by virtue of Section 31 of the Code of Criminal Procedure, the sentences will run consecutively.

Now the question is as to whether the life imprisonment will run first or the sentence for rigorous imprisonment for 07 years will run first?

Learned counsel for the petitioner has heavily relied upon the judgment of Constitution Bench of the Apex Court in **Muthuramalingapa case** (*supra*). A perusal of the said authority shows that three Judges' Bench referred the following question to the Constitution Bench for consideration: -

"Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial".

The Constitution Bench of the Apex Court while considering Section 31 of the Code of Criminal Procedure took the view that the Court has the jurisdiction to order that separate sentences should run concurrently

or consecutively. In case of one of the sentence(s) is term sentence and other is life imprisonment, the Apex Court in **Muthuramalingapa case** (*supra*) observed as under:-

32. We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 of the Cr. P.C. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have

said in the foregoing paragraphs.

The observation of the Apex Court reproduced as above shows that it is not that if the imprisonment of life and term sentence are awarded, these will automatically run concurrently. It will run as per the order of the Court. However, the Apex Court has taken the view that if the life imprisonment is ordered to run first then the term sentence will run concurrently for the apparent reason that once one has spent the life in jail, there is no question of undergoing any further sentence.

In the present case, the case is different. No specific order was passed by the convicting Court as to whether the sentences are to run concurrently. Therefore, these will run consecutively.

Learned counsel for the petitioner has heavily relied upon the observations of the Apex Court in **Muthuramalingapa case** (*supra*) in para No. 20 which are reproduced as under: -

“20.The provisions of Section 427(2) apart, in Ranjit Singh's case (supra), this Court has in terms held that since life sentence implies imprisonment for the remainder of the life of the convict, consecutive life sentences cannot be awarded as humans have only one life. That logic, in our view, must extend to Section 31 of the Cr. P.C. also no matter Section 31 does not in terms make a provision analogous irrationality. So interpreted Section 31 (1) must mean that sentences awarded by the Court for several offences include imprisonment for life which can and must run concurrently. We are also inclined to hold that if more than one life sentences are awarded to the prisoner, the same would get super imposed over each other. This will imply that in case the prisoner is granted the benefit of any remission or commutation qua one such sentence, the benefit of such

remission would not ipso facto extend to the other”.

I am of the view that the only question referred to the Constitution Bench was whether the consecutive life sentence can be awarded to a convict being found guilty of series of murder for which he has been tried in a single trial, though the argument was also raised regarding the fact of term sentence and the life imprisonment being awarded in a single trial?

I am of the view that the Apex court never meant that in case there is no specific order, the life imprisonment will run first and the term imprisonment will run later. Meaning thereby that, both the sentences shall run concurrently. Section 31 of the Code of Criminal Procedure gives discretion to the Court to order that both the sentences should run concurrently. Since no such order was passed, both the sentences in the present case are to run separately. Therefore, the Government is justified in taking the view that 07 years sentence will run first and thereafter, the life imprisonment will start. Prayer of the petitioner in this regard is declined.

Now coming to the question as to whether the petitioner is entitled to be considered for pre-mature release or not?. Reply of the State dated 16.1.2018 shows that petitioner has undergone the actual sentence of 13 years 02 months and 14 days including remission of 02 years 09 months and 28 days. In this way, total undergone period is 16 years 0 month and 12 days from which parole period of 1 year 06 months and 21 days is deducted and the total sentence comes to 14 years 05 months and 21 days. Since sentence of 07 years will run first, therefore apparently petitioner has not completed the actual sentence of 10 years and with remission of 14 years required for him to be released on parole, in case he is undergoing life

imprisonment.

In any case, State can be directed that whenever the petitioner fulfills the criteria laid down in the policy, his case should be put up before the concerned authority for consideration for pre-mature release.

It being so, present petition is dismissed with a direction that whenever the petitioner completes the requisite period as per the policy of the State, his case for pre-mature release should be put up for consideration before the competent authority.

Dismissed accordingly.

(KULDIP SINGH)
JUDGE

3.12.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No