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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision : April 26, 2018***

+ **W.P.(CRL.) 2771/2017**

RAJESH @ PREM @ PAWAN Petitioner
Represented by: Mr.Jitendra Sethi and Mr.Hemant
Gulati, Advocates

versus

STATE & ANR. Respondents
Represented by: Mr.Sanjay Lao, ASC for State with
SI Virender Kumar, PS Keshav
Puram

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (Oral)

1. By the present petition, the petitioner seeks the following prayers:-

“ In view of the submissions made above, it is, therefore, most respectfully prayed that this Hon’ble Court may kindly issue writ of mandamus or any other writ or directions/orders to the respondents directing them that the sentence of 7 years awarded to the petitioner in case FIR No. 270/2010, P.S. Keshav Puram under Section 392/397/34 IPC and the sentence of 10 years awarded to the petitioner in case and in case FIR No. 535/2009, P.S. Maurya Enclave under Section 392/397 IPC should run concurrently.

Such other or further order(s) which this Hon’ble Court deems fit and proper in the facts and circumstances of the present case may also kindly be passed in favour of the petitioner.”

2. Learned counsel for the petitioner contends that since the petitioner has been convicted in two FIRs i.e. FIR No.535/2009 under Sections 392/397 IPC and directed to under rigorous imprisonment for a period of 10 years vide judgment and order on sentence dated 17th November, 2011 and also in FIR No.270/2010 under Sections 392/397/34 IPC and directed to undergo rigorous imprisonment for a period of 7 years vide order on sentence dated 22nd October, 2013, it would be too harsh on the petitioner to undergo consecutive sentences and he would have to be in custody for 17 years plus sentence in default of payment of fine. It is thus prayed that the sentences be directed to run concurrently. Learned counsel for the petitioner relies upon the decision of the Supreme Court in AIR 2000 SC 3544 Ammavasai & Anr. Vs. Inspector of Police, Valliyanur & Ors and of this Court in 1989 (4) Delhi Lawyers 303 Azad Singh Vs. State. In Ammavasai's case (supra), the Supreme Court was dealing with a case where the appellant had been convicted in four different cases, the occurrence in all of which took place between 27th March, 2010 and 7th May, 1990. In each of the case, the appellant No.1 was convicted for offence punishable under Section 395 IPC and directed to undergo rigorous imprisonment of 7 years. The second appellant therein was convicted in five different cases and thus had to undergo 7 years imprisonment in each case which would have thus meant a total period of 35 years in jail. Thus, the Supreme Court held that since the appellant may have to undergo a very long period of imprisonment of 28 years and 35 years respectively. Considering the fact that the cumulative period of sentence was too high, the Supreme Court held that the interest of justice would met if appellants therein were directed to undergo a total period of 14 years of imprisonment in respect of all the allegations passed

against them.

3. In Azad Singh (supra) this Court was dealing with a case where the petitioner had been convicted in three cases for offences punishable under Sections 397/411 IPC, 397/34 IPC and 379 IPC and awarded rigorous imprisonment for eighteen months, seven years and two years respectively. Thus, exercising its inherent power, the High Court directed that the substantive sentences should run concurrently.

4. Section 427 Cr.P.C. reads 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.”

5. Thus as per Section 427 Cr.P.C. the Court has jurisdiction to direct concurrent running of sentences in subsequent conviction. However, this

provision is required to be used sparingly to meet the situation where due to the consequent running of the sentences, the imprisonment becomes unduly harsh. As noted above, in the present case, appellant has been convicted in two cases for 397 IPC and the total sentence for the two offences is 7 years + 10 years is 17 years rigorous imprisonment with the petitioner entitled to all the other benefits of remissions etc.

6. Considering the nature of allegations and that the term of imprisonment required to be undergone is for the nature of offences committed, this Court finds no round to direct that the sentences awarded to the appellant in the two FIRs i.e. FIR No. 535/2009 under Sections 392/397 IPC and FIR No. 270/2010 under Sections 392/397/34 IPC should run concurrently.

7. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 26, 2018

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