

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 30.01.2019

Order Passed on : 15/02/2019

CR.M.P. No. 1266 of 2017

1. Sonu Singh Chouhan, S/o. Chunna Singh Chouhan, Aged About 27 years
 2. Harish Chandra, S/o. Amar Singh Nirmalkar, Aged About 23 Years,
 3. Narottam Soni, S/o. Bhagwat Soni, Aged About 24 Years,
 4. Aganu Nirmalkar, S/o. Bharat Nirmalkar, Aged About 23 Years,
 5. Dayanand Nirmalkar, S/o. Bharat Nirmalkar, Aged About 24 Years,
- All are R/o. Tikarapara, Raipur, District – Raipur (C.G.)

---- Petitioners

Versus

State Of Chhattisgarh, Through : P.S. Gurur, Distt. Balod (C.G.)

-----Respondent

For Appellants	: Mr. Goutam Khetrapal, Advocate
For Respondent/State	: Mr. Arun Shukla, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

15/02/2019

1. This petition has been brought under Section 482 of Cr.P.C. praying for relief of order in favour of the petitioners that the sentences imposed upon them against conviction in different cases be ordered to run concurrently.

2. It is submitted that all the petitioners are commonly arrayed as an accused in three different sessions trial and have been convicted and sentenced as under :-

Sessions Trial/Judgment dated	Offence U/s.	Sentence
S.T. No.30/2012, Judgment dated 05.01.2013	U/s. 395 of I.P.C.	R.I. for 10 years and fine of Rs.50/- and in default of payment of fine 3 months R.I. more
	U/s. 397 of I.P.C.	R.I. for 7 years
S.T. No.28/2012, Judgment dated 01.01.2013	U/s. 395 of I.P.C.	R.I. for 10 years and fine of Rs.50/- and in default of payment of fine 3 months R.I. more
	U/s. 397 I.P.C.	R.I. for 7 years and fine of Rs.50/- with default stipulations
S.T. No.15/2013, Judgment dated 21.01.2014	U/s. 395/397 of I.P.C.	R.I. for 7-7 years and fine of Rs.100- 100/- and in default of payment of fine 20-20 days S.I.

3. Against the said judgments of conviction and orders of sentence, the petitioners have preferred different criminal appeals bearing Cr.A. No.128/2013, Cr.A. No.130/2013 and Cr.A. No.145/2014 & Cr.A. No.354/2017, which have been dismissed by this Court.
4. It is submitted that all the offence alleged to have been committed are within a period of one year. Hence, if the sentences passed against them are executed separately in each cases that will cause great hardship to the appellants. The appellants have already undergone maximum part of the sentence as they are in jail since the date of their arrest. Therefore, it is prayed that order be passed for concurrent

running of sentence in all the conviction standing against the petitioners.

5. State counsel opposes the petition and the grounds raised in this respect and it is submitted that the petitioners are habitual offenders and they have committed series of criminal offences for similar nature, hence, they are not entitled for any benefit by way of relief in this petition.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. The trial Court has power under Section 427 of Cr.P.C. in case that the person already undergoing sentence of imprisonment in previous case of conviction against him, it can be ordered that the sentence passed in the subsequent cases to run concurrently.
8. Petitioners have placed reliance on the judgment passed by the Hon'ble Supreme Court in case of **Anil Kumar Vs. State of Punjab** reported in **(2017) 5 SCC 53**, in which it has been held that normally the sentence of imprisonment in a subsequent conviction shall commence at the expiration of the imprisonment to which he was previously sentenced. Only in appropriate cases, considering the facts and circumstances of the case, the Court can order the sentences to run concurrently with an earlier sentence imposed. Relying on the judgment of Hon'ble Supreme Court in case of **V.K. Bansal Vs. State of Haryana** reported in

(2013) 7 SCC 211 in which it has been observed that exercise of power under Section 427 (1) is discretionary and it is not to be exercised mechanically.

9. Considering the ratio laid down in this respect and the facts and circumstances of the case are taken into consideration, it is a fact that the appellants are of young age, although they have committed such series of incidents, but it appears that apart from these cases, there is no previous records against them of being habitual offenders since long standing. Further for the reasons that, if the, sentences against the petitioners are to run consecutively, they will have to remain in jail for the most part of their life and that would be denial to the chance of their reformation. Hence, after due consideration I am of this opinion that it is a appropriate case, in which the sentence against the petitioners for conviction in three cases against them can be ordered to run concurrently. Hence after due consideration, this petition is allowed and it is ordered that the sentence imposed upon the appellants in S.T. No. 30/12, S.T. No.28/2012 & S.T. No.15/2013 confirmed in Criminal Appeal No. 128/2013, Cr.A. No.130/2013 and Cr.A. No.145/2014 & Cr.A. No.354/2017 respectively, shall run concurrently.
10. This petition has not been filed on behalf of one of the accused – Golu @ Dayaram, S/o. Rahul Yadav, who has been convicted and sentenced by the learned trial Court in S.T. No. 30/12, S.T. No.28/2012 & S.T. No.15/2013 as aforementioned and the

conviction and sentences has been upheld in Cr.A. No.128/2013, Cr.A. No.130/2013 and Cr.A. No.145/2014, however, on the ground of parity, this accused/appellant namely Golu @ Dayaram, S/o. Rahul Yadav is also entitled for the same benefit, which is being extended to the other co-accused/appellants, who are petitioners in this case. Hence, this order be made applicable to all the accused/appellants in Criminal Appeal No. 128/2013, Cr.A. No.130/2013 and Cr.A. No.145/2014 & Cr.A. No.354/2017

11. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge