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

***Reserved on: 02.06.2020***

***Pronounced on: 12.06.2020***

+ CRL.A. 611/2018 (URGENT) & Crl.M.A.40714/2019 &  
Crl.M.B.5926/2020

PANKAJ VERMA alias NIKHIL ..... Appellant  
Represented by: Mr.Kanhaiya Singhal, Adv.

Versus

STATE ..... Respondent  
Represented by: Mr.Hirein Sharma, APP for  
State.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T**

**Crl.M.A.40714/2019 in Crl.A.611/2018**

1. The present application has been filed by the applicant/appellant under section 427 read with section 482 Cr.P.C. to dispose of the present appeal bearing Crl.A.611/2018 by directing the sentence of 5 years under section 392/34 IPC awarded vide judgment and order on sentence dated 18.12.2017 and 22.12.2017 respectively passed by Sh.Deepak Garg, ASJ-02 (North-West), Rohini Courts, Delhi in case bearing SC No.52085/16 titled as State vs. Pankaj Verma arising out of FIR

No.74/2013 registered at Police Station North Rohini for the offences punishable under section 392/34 IPC and the substantive sentence of 7 years under section 392 IPC & 5 years under section 392 IPC awarded vide judgment and order on sentence dated 25.07.2016 and 28.07.2016 respectively passed by Sh. Naresh Kumar Malhotra, Ld. ASJ, Tis Hazari Court, Delhi in SC No. 119/14 arising out of FIR No. 263/2014 u/s 392/397/34 of IPC at P.S. Miawali Nagar or in alternative to reduce the sentence to the period already undergone by the appellant.

2. The appellant has challenged his conviction u/s 392/34 of IPC recorded in terms of judgment dated 22.12.2017 and order of sentence dated 22.12.2017 passed by Sh. Deepak Garg, Ld. ASJ-02, North-West, Rohini in SC No. 52085/2016 arising out of FIR No. 74/2013 U/s 392/34 of IPC at PS North Rohini, whereby the learned Judge sentenced the appellant to undergo RI for a period of 5 years with a fine of ₹5,000/- for the offence punishable under section 392 IPC and in default of payment of fine, he has to undergo SI for 15 days. However, the appellant has already undergone about 1 year 5 months out of the total sentence of 5 years awarded by the Trial Court.

3. The Appellant had also challenged his conviction by way of filing

an appeal bearing Crl.A. No. 1018/2016 before this Court against the judgment and orders dated 25.07.2016 & 28.07.2016 respectively passed by Sh. Naresh Kumar Malhotra, Ld. ASJ, Tis Hazari Court, Delhi in SC No. 119/14 arising out of FIR No. 263/2014 u/s 392/397/34 of IPC at P.S. Miawali Nagar and whereby the appellant was convicted u/s 392/397/34 of IPC and sentenced to undergo rigorous imprisonment for a period of five years with a fine of ₹10,000/- for the offence committed under Sections 392/34 of the IPC and in default of payment of fine, to serve simple imprisonment for a further period of six months and further sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 397/34 of the IPC. However, the said appeal has already been dismissed in terms of judgment dated 13.05.2020 passed by this Court.

4. The present application is an application u/s 427 of Cr.P.C. whereby the appellant is praying that the sentences awarded in FIR No. 74/2013, PS North Rohini and FIR No. 263/14 PS Miawali Nagar may be directed to run concurrently. However, he does not dispute the conviction and order on sentence.

5. Learned counsel for the appellant/applicant submitted that the

appellant is a young boy and fell into bad company which resulted into his involvements in number of cases. The police also found the appellant as easy play and implicated him in number of cases to solve those cases whereas the appellant has nothing to do with the said cases. The appellant belongs to a very poor strata of the society and his involvements were a result of mis-guidance, illiteracy and misery of poverty. The appellant has already reached to the age of maturity and the crimes were committed as an adolescent person. He has reformed himself and undertakes to behave properly in the society as and when he is released from the jail.

6. Further submitted that appellant was merely 24 years old at the time of alleged offence. Now, he is married and having two minor girl children aged about 8 years and 7 years. The appellant's mother-in-law aged about 70 years is residing with him. There is no source of income of the family and they are at the verge of poverty. The girl children are school going but due to financial stress, they are not getting proper education. The wife of appellant is managing the affairs of the family with great difficulty. So far as the previous involvements and convictions of appellant are concerned, the appellant has already

undergone those sentences and have paid the fine.

7. On the other hand, learned APP for State submitted that the present application ought to have been dismissed solely for the reason that the applicant is a habitual offender and does not deserve the benefit of section 427 of the Cr.P.C. The applicant besides the present case under section 392/34 IPC PS North Rohini bearing FIR No. 74/13 is facing trial/conviction in various other cases. As per the latest Nominal Roll, the applicant is facing conviction in as good as four cases bearing FIR No. 263/14 u/s 392/397/34 IPC PS Miyawali Nagar; FIR bearing No. 1202/15 u/s 392/411 IPC PS Mukharji Nagar; FIR bearing No. 583/16 u/s 392/365/34 IPC PS Shakar Pur; FIR bearing No. 176/12 u/s 382/411 IPC PS Preet Vihar; FIR bearing No. 204/05 u/s 392/394 IPC PS Mandawali; FIR bearing No. 303/08 u/s 392/411/34 IPC PS Mandawali and FIR bearing No. 234/05 u/s 384/34 IPC PS Preet Vihar.

8. Further submitted that the parallel Appeal bearing Crl.A. 1018/2016 has also been dismissed by this Court vide order dated 13.03.2020.

9. Learned APP further submitted that it is a well settled position of

law that the lenient view of running sentence concurrently must be given to the petty offenders and not to the desperate habitual offender who had committed such gruesome crimes and is undergoing sentences in numerous cases. So, in the light of the same, the direction to run the sentence which was awarded in both the said cases/FIR's should not be passed concurrently, in the interest of justice, as the nature of the offences is different and the victims in both the cases are different. The acts which were committed by the applicant/accused are heinous and gruesome in the eyes of law which led to the sufferings of the victims. Therefore, such type of offenders should not be given any sort of liberty to get released from the judicial custody.

10. To strengthen his arguments, learned APP has relied upon the case decided in CWP No.789/13 by High Court of Bombay in case titled as ***“Subhash Devidas Deshmukh vs. The State of Maharashtra”*** whereby dismissed the petition on 03.10.2013 on the same grounds. Thus, this discretion should be used by courts in cases where there is a genuine need, not in the cases where there is a person who is habitual offender and have no respect of law. Thus, present application deserves to be dismissed.

11. I have heard learned counsel for the parties through video conferencing and perused the material available on record.

12. It is settled position of the law that the direction to run the sentence concurrently may be passed by the Trial Court, Appellate Court and the Revisional Court.

13. Full Bench of Kerala High Court in ***Mani & Anr. vs. State of Kerala: 1983 SCC Online Ker 255***, has held that “*when no direction is given by the trial court that the sentences were to run concurrently, direction can be issued by the High Court under inherent powers even if the stage of exercising discretion under section 427(1) of the Code is over, in circumstances which would serve the purposes mentioned in Section 482*”.

14. Division Bench of the Andhra Pradesh High Court in ***V. Venkateswarlu vs. State of A.P.: 1987 SCC Online AP 60*** has held that “*when two convictions and sentences are passed against accused by two different courts and orders have become final on an application by accused under Section 482 that those sentences may be run concurrently, the High Court is competent to issue such direction.*”

15. In the case of ***Benson vs. State of Kerala: (2016) 10 SCC 307*** the Hon'ble Supreme Court has considered the question of conviction of an accused in separate trials and the fact that whether the sentences would run concurrently or consecutively in exercise of powers under Section 427(1) of Cr.P.C. In the said case, the petitioner before the Hon'ble Supreme Court was convicted in four different cases and prayed for running of sentences concurrently in all those four cases. The petitioner of said case was having previous involvements in as many as 12 cases (cases involving 392/457/205/379/414/120-B of IPC). Despite the Hon'ble Supreme Court in terms of its judgment directed the running of substantive sentences concurrently.

16. Moreover, the case of ***Vicky @ Vikas vs. State: 2020 SCC Online SC 116*** the Hon'ble Supreme Court considered the issue of running the sentences concurrently and the petitioner in said case was convicted in 5 cases (including NDPS/Kidnapping/assault on public servant/ robbery). The petitioner therein had undergone only 1 year 6 months out of 7 years sentence. However, directed the running of sentence in three different cases concurrently.

17. The purpose of imprisonment is not only to incarcerate the

accused person within four walls of the jail; the purpose is to reform the convict. The aim of imprisoning a person is not merely to dump him in a jail. The aim is equally to reform him during the period of incarceration so that he may be brought back into the society as a peace- loving and law-abiding citizen. The appellant herein has been in judicial custody for more than Seven years which is long enough time to reform a person. Therefore, further incarceration of the petitioner beyond seven years would not serve any fruitful purpose. The appellant has already undergone about 1 year 5 months actual sentence of 5 years. The appellant is otherwise in judicial custody from 19.06.2013 and has already been in jail for about 7 years. Thus, present case falls under four corners of cases discussed above. Therefore, it would be in the interest of justice as well as in the interest of family member of appellant who are stated to be in very bad financial condition, this Court is of the opinion that justice would be met if directed to run the sentences concurrently as prayed for.

18. Accordingly, in view of the above facts and law discussed above, I hereby direct that sentence awarded in SC No.52085/2016, while maintaining conviction and sentence, shall run concurrently with the

sentence awarded in SC No.119/2014 which has been affirmed by this Court in Crl.A. No.1018/2016.

19. In view of above order, while maintaining order on sentence and conviction passed in SC No.52085/2016 by the Trial Court, I hereby allow the present application.

**Crl.A.611/2018**

20. In view of the order passed in Crl.M.A.40714/2019, present appeal is dismissed.

**Crl.M.B.5926/2020**

21. In view of the order passed in Crl.M.A.40714/2019 & Crl.A.611/2018, present application has become infructuous and the same is, accordingly, dismissed.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**JUNE 12, 2020**  
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