

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.43 /2020

Mr. Keshav Kishan Meshram
C-7765, Detained in Central
Prison, Nagpur.

..... PETITIONER

// VERSUS //

1. State of Maharashtra through
Secretary Department of Home
Mantralaya, Mumbai – 400 032.
2. The Superintendent,
Nagpur Central Prison,
Nagpur.

.... RESPONDENTS

Mrs. Mayuri J. Kulkarni, Appointed Advocate for petitioner.
Mrs. H. N. Jaipurkar, APP for the respondents.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 12/01/2021

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

- 1] Heard. **Rule.** Rule made returnable forthwith.
- 2] Heard finally by consent of the learned counsel appearing for the parties.
- 3] The admitted facts are that the present petitioner was

convicted and sentenced to suffer life imprisonment for an offence punishable under Section 302 of Indian Penal Code on 31.01.2009 by learned Ad-hoc Additional Sessions Judge, Nagpur in Sessions Trial No.45 of 2007 and that the petitioner was subsequently convicted for an offence punishable under Section 224 of Indian Penal Code and sentenced to suffer one month simple imprisonment on 29.04.2017 by Judicial Magistrate First Class, Umred in RCC No. 764 of 2016.

4] The admitted facts thus show that the the sentence of life imposed upon the petitioner was prior in point of time and the sentence of imprisonment for a term, term of one month, was subsequent in point of time. In such a fact situation, provision made under Sub-Section 2 of Section 427 of the Code of Criminal Procedure gets squarely attracted which reads as follows:

“(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] It is clear that when a person is subsequently convicted for sentence of imprisonment for a term at a time when he is already undergoing sentence of life imprisonment, his subsequent sentence must be directed to run concurrently by the subsequent Court. This is also the view

taken by this Court in the case of *Hanuman Vs. State of Maharashtra through Police Station Officer*, **2019 SCC OnLine Bom 826**. However, by the impugned judgment and order dated 29.04.2017, the subsequent sentence has been directed to run consecutively, contrary to the mandate of Section 427 (2) and the view taken by this Court in the case of *Hanuman Vs. State of Maharashtra through Police Station Officer*.

6] The Writ Petition is allowed. The direction that the petitioner shall suffer sentence of one month simple imprisonment for an offence punishable under Section 224 of Indian Penal Code consecutively after the sentence of life under Section 302 of Indian Penal Code is served stands modified and it is directed that now the subsequent sentence imposed upon the petitioner under Section 224 of Indian Penal Code shall run concurrently alongwith the sentence of life already imposed upon him.

7] Legal remuneration of Rs.2500/- be paid to the learned appointed counsel.

Rule is made absolute accordingly.

JUDGE

JUDGE