

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL WRIT PETITION NO. 512/2022

Babarao Vishram Solanke
Aged 63 years, occu: nil
R/o Jambh Bk, Tq.Murtizapur
Dist. Akola
(Presently in Central Prison, Amravati). ..**Petitioner**

versus

State of Maharashtra
Through its Secretary,
Home Department
Mantralaya, Mumbai ..**Respondent**

Mrs.Sonali Saware-Gadhawe, Advocate (appointed) for the
petitioner
Mrs. N.R.Tripathi, APP for the respondent

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CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ
DATED : 28th September, 2022.

ORAL JUDGMENT: (Per: ANIL L.PANSARE, J.)

Rule. Rule made returnable forthwith. Heard
finally.

2. The petitioner has put forth the following prayer :

“ (i) This Hon’ble Court be pleased to issue appropriate writ and direct the respondent that the life imprisonment imposed by the Add. Sessions Court in S.T. No. 104/1994 confirmed by this Hon’ble Court and sentence of 7 years’ rigorous imprisonment imposed by Add. Sessions

Court, Akola in S.T. No.56/1999 to run concurrently in terms of provisions of Section 427(2) of Cr.P.C.”

3. The learned Additional Sessions Judge, Akola in Sessions Trial No. 104/1994 vide judgment and order dated 3rd April, 1995 has convicted the petitioner for offences punishable under sections 302 read with section 34 of the Indian Penal Code and sentenced him to suffer life imprisonment with fine. The judgment was unsuccessfully challenged before this Court. Thus, the punishment has been upheld. In the year 1998 when the petitioner was released on parole, he committed another offence punishable under section 376 of the IPC. He was tried in Sessions Trial No. 56/1999 and was convicted for the said offence and sentenced to suffer rigorous imprisonment for seven years with fine. The petitioner is undergoing life imprisonment, so also the sentence of seven years and is presently lodged in Central Prison, Amravati.

4. According to the learned counsel for the

petitioner, the subsequent sentence ought to run concurrently with the previous sentence, in terms of Section 427 of the Cr.P.C.

5. The learned APP submits that the provision is unambiguous and, therefore, the sentence shall run concurrently. Section 427 of the Cr.P.C. reads thus :

“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.”

6. Sub-section (2) of Section 427 clearly provides

that when a person already undergoing 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 the previous sentence. In the present case, the petitioner is already undergoing sentence of imprisonment for life. The subsequent sentence of imprisonment for seven years shall run concurrently in terms of the aforesaid provision.

7. In view of the above. The petition is allowed. Rule is made absolute in terms of prayer clause (i).

8. The professional fees of Ms.Sonali Saware, learned Advocate (appointed) for the petitioner, be quantified and paid as per the Rules.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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