

**In the High Court for the States of Punjab and Haryana
AT CHANDIGARH**

CRWP-1779-2019 (O&M)
Date of Decision: 29.7.2022

Ranjit Singh Petitioner
Versus

State of Punjab and others Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vijay Kumar Jindal, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab and
Mr. Tanvir Joshi, AAG, Punjab.

Mr. Rahul Mohan, DAG, Haryana and
Mr. Rajiv Sidhu, DAG, Haryana.

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GURVINDER SINGH GILL, J.

1. The petitioner Ranjit Singh, life convict, has approached this Court seeking issuance of direction/mandamus for releasing him prematurely on the basis of policy dated 8.7.1991 (Annexure P-12) of Government of Punjab, upon completion of 10 years of actual sentence and 14 years of total sentence.
2. The undisputed facts are that the petitioner stands convicted for having committed offences under Section 364 IPC and 302 IPC in a case arising out of FIR No. 47 dated 19.3.1997 under Sections 364, 302 read with Section 34 IPC, lodged at Police Station Kotwali, District Sangrur. He alongwith co-accused Bahadur Singh was sentenced vide judgment dated 7.1.2002 passed by learned Sessions Judge, Sangrur (Annexure P-1) as under :-

Under Section 302 read with Section 34 IPC	Life imprisonment
Under Section 364 IPC	Rigorous imprisonment for 7 years and fine of Rs. 2,000/-. In default of payment of fine, to further undergo imprisonment for six months.

3. There was no specific order as regards concurrent running of sentences in respect of both the offences.
4. The petitioner challenged his conviction by way of filing an appeal in this Court i.e. Criminal Appeal No.94-DB of 2002 but the same was dismissed by the Division Bench of this Court vide judgment dated 13.8.2010 (Annexure P-2) wherein the conviction as well as sentence was upheld. The judgment of this Court i.e. judgment dated 13.8.2010 (Annexure P-2) was challenged in the Supreme Court but was upheld vide judgment dated 25.2.2015 (Annexure P-3).
5. The petitioner had earlier filed a Civil Writ Petition in this Court i.e. CWP No. 7277 of 2018 seeking his pre-mature release *inter-alia* on the ground that sentences in respect of both the offences were to run concurrently in view of law laid down in Muthuramalingam vs. State represented by Inspector of Police 2016 (3) RCR(Criminal) 827, and that as such, he had already completed undergone sentence. However, the petition was dismissed by this Court vide judgement date 3.12.2018 (Annexure P-4).
6. It is the case of the petitioner that the petitioner issued a notice dated 17.1.2019 (Annexure P-5), to respondents no. 2 and 3, wherein while drawing the attention of the jail authorities to various provisions of Punjab Jail Manual, a claim was made that he was entitled to the benefit of setting-

off the undertrial period separately in respect of both the offences i.e. offences under Sections 364 and 302 IPC, but the said relief was not extended. Vide letter dated 7.3.2019 (Annexure P-6), in response to an application submitted by the petitioner under RTI, he was informed that the sentence of 7 years in respect of offence under Section 364 IPC had expired on 6.3.2003 and that the life sentence had commenced w.e.f. 6.3.2003 onwards and that the undertrial period w.e.f. 31.3.1997 to 6.1.2002 had been taken into consideration and had been set off as against the sentence of 7 years imposed for offence under Section 364 IPC and not towards the life sentence. It is further the case of the petitioner that the jail authorities vide their letter dated 13.3.2019 (Annexure P-7) sent a reply to the notice (Annexure P-5) wherein he was informed that the undertrial period had been set off against the sentence imposed for offence under Section 364 IPC only.

7. As per the petitioner, he has undergone the following sentence, as has been described in para 12 of the petition :-

	<u>Years</u>	<u>Months</u>	<u>Days</u>
Undertrial Period from 31.3.1997 to 6.1.2002	04	09	06
Period spent after conviction 6.3.2003 to 15.7.2003 31.1.2011 to 9.9.2019	08	11	21
Total actual sentence undergone till 9.9.2019	13	08	27
Remission earned by convict	02	01	00
Total sentence	15	09	27
Less: Parole availed	01	08	10
Sentence for the purpose of premature release	14	01	17

8. The learned counsel for the petitioner has submitted that as per provisions of Section 428 Cr.P.C, the benefit of set off is required to be given in respect of each of the offence for which he may have been sentenced in 'a case' and that the stand of the State that the undertrial period is to be set off qua only one offence i.e. offence under Section 364 IPC and not qua the life sentence as imposed for offence under Section 302 IPC is absolutely illegal and against the provision of law. The learned counsel, in order to substantiate his aforesaid submissions, places reliance upon the following judgements:

- (i) Boucher Pierre Andre vs. Superintendent Central Jail, Tihar, 1975 (1) SCC 192;
- (ii) K.C. Das versus The State (Delhi) 1979 CriLJ 362;
- (iii) Lalrinfela vs. State of Mizoram 1982 Cr.L.J 1793;
- (iv) Mohd. Yasin vs. State 1986(10) DRJ 320;
- (v) Atul Manubhai Parekh Versus Central Bureau of Investigation, 2010(1) SCC 603.

9. The State, in its reply, has taken a categoric stand that the sentences are to run consecutively and the benefit of set-off of the undertrial period is to be given once only against the sentence imposed for offence under Section 364 IPC, which he had to undergo first, and not against the sentence of life imprisonment as imposed for offence under Section 302 IPC which was to run after having undergone sentence under Section 364 IPC. It is stated therein that since the under-trial period already stands set-off against the sentence of 7 years of imprisonment imposed for offence under Section 364 IPC, the petititioner can not get the same benefit again in respect of sentence of life imprisonment which has to run after expiry of other sentence of 7 years.

10. The State also relies upon judgment dated 3.12.2018 (Annexure P-4) passed by this Court in CWP No. 7277 of 2018, filed by petitioner, wherein it was held as under:

“Now coming to the question as to whether the petitioner is entitled to be considered for pre-mature release or not?. Reply of the State dated 16.1.2018 shows that petitioner has undergone the actual sentence of 13 years 02 months and 14 days including remission of 02 years 09 months and 28 days. In this way, total undergone period is 16 years 0 month and 12 days from which parole period of 1 year 06 months and 21 days is deducted and the total sentence comes to 14 years 05 months and 21 days. Since sentence of 07 years will run first, therefore apparently petitioner has not completed the actual sentence of 10 years and with remission of 14 years required for him to be released on parole, in case he is undergoing life imprisonment.

In any case, State can be directed that whenever the petitioner fulfills the criteria laid down in the policy, his case should be put up before the concerned authority for consideration for pre-mature release.

It being so, present petition is dismissed with a direction that whenever the petitioner completes the requisite period as per the policy of the State, his case for pre-mature release should be put up for consideration before the competent authority.”

11. The State, in its reply, in para 12, has described the period undergone by the petitioner as follows :-

	<u>Years</u>	<u>Months</u>	<u>Days</u>
Undertrial Period	00	00	00
Period spent after conviction 6.3.2003 to 15.7.2003 31.1.2011 to 22.10.2019	09	01	00
Total actual sentence undergone till 22.10.2019	09	01	00

Remission earned by convict	02	00	05
Total sentence	11	01	05
Less: Parole availed	01	09	15
Sentence for the purpose of premature release	09	03	20

12. It is, thus, the specific stand of the State that since the petitioner has undergone a sentence of 9 years, 3 months and 30 days only, therefore he does not fulfil the requirements of the policy for initiation of his case for pre-mature release as he has not undergone 10 years of actual punishment and 14 years of imprisonment with remissions.
13. The learned counsel representing the State of Punjab and also the learned counsel representing State of Haryana, who had also been requested to assist this Court, have submitted that the language of Section 428 Cr.P.C., nowhere suggests that the benefit in respect of set-off of the undertrial period is to be given to the accused separately in respect of all the punishments imposed for each of the offences for which he stands convicted and that the words 'term of imprisonment', as existing in Section 428 Cr.P.C., have essentially to be interpreted, in a case of consecutive sentences, to mean a sum total of all the punishments inflicted for various offences in that 'case' and consequently the under-trial period has to be set-off once only from the sum total of all the punishments of imprisonment and not multiple times.
14. It has, thus, been submitted that since the present case is such where both the sentences imposed upon the petitioner for offences under Section 364 IPC and Section 302 IPC are to run consecutively, with life imprisonment to commence after expiry of sentence of imprisonment for 7 years, the undertrial period certainly cannot be taken into account twice over though in

a case where the sentences are ordered to run concurrently such a relief could be extended. The learned State counsel in support of their submissions have referred to a judgment dated 21.3.2017 of this Court rendered in CRWP 641 of 2015 Baldev Singh versus State of Punjab and others wherein an identical submission had been made on behalf of the convict-petitioner but was turned down.

15. I have considered rival submissions addressed before this Court.
16. It is not in dispute that the petitioner stands convicted for two separate offences. While for offence under Section 364 IPC, he has been sentenced to undergo rigorous imprisonment for 7 years, he has been sentenced to undergo imprisonment for life in respect of offence under Section 302 IPC. Admittedly, there is no order as regards concurrent running of the said sentences. It is also not in dispute that the petitioner had undergone a period of 4 years 9 months and 6 days in custody during trial. It is under these circumstances that the learned counsel stresses upon his contention that the petitioner is entitled to get the under-trial period of 4 years 9 months and 6 days set-off against both the sentences imposed on him i.e against sentence of R.I. for 7 years as regards offence punishable under section 364 IPC and also separately against sentence of Life Imprisonment as regards offence punishable under Section 302 IPC. Thus, the issue that this Court is called upon to adjudicate may be crystallised as under:

“ Whether, the period of pre-conviction detention can be set-off separately qua each of the separate sentence of imprisonment imposed upon convict for commission of several offences in the “same” case, even though the sentences are to run “consecutively”? ”

17. The aforesaid issue would essentially required to be examined keeping in view the manner in which both the sentences have been ordered to run. The manner may be discerned by getting answers to the following questions which are being discussed and answered before taking up the real issue in hand:

- (i) Whether, in a case where one of the sentence is life-imprisonment, the other sentence for a specified “term” has 'essentially' to run concurrently?
- (ii) Whether, in the present case, both the sentences i.e sentence of R.I. for 7 years as regards offence punishable under section 364 IPC and sentence of Life Imprisonment as regards offence punishable under section 302 IPC, are to run concurrently or consecutively?
- (iii) In case, the aforesaid two sentences are to run consecutively in the present case, then in which order are they to run?

18. In order to look for answers to the questions stated above, it is imperative to refer to the relevant provisions pertaining to the manner of running of sentences when more than one sentence is imposed on a convict. Section 31, Section 427 and Section 428 Cr.P.C., dealing with concurrency and set-off of sentences are reproduced hereinunder:

31. Sentences in cases of conviction of several offences at one trial

- (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.
- (2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that-

- (a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;
 - (b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.
- (3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

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, while 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.

428. Period of detention undergone by the accused to be set off against the sentence or imprisonment.

Where an accused person has, on conviction, been sentenced to imprisonment for a term not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, any, of the term of imprisonment imposed on him.”

19. The gist of aforesaid provisions, relevant to this case, may be extracted as under:

- (1) Section 31 Cr.PC., lays down that multiple sentences imposed in a single trial are to run one after expiration of other and in an order as may be directed by Court, unless specifically ordered to run concurrently.

(2) Section 427 deals with a situation where a person who already stands convicted in some case and is undergoing sentence of imprisonment, gets convicted subsequently for another offence and is imposed sentence of imprisonment. It is provided as under:

- (i) If such convict is undergoing imprisonment for a defined term in respect of his previous conviction, and for his subsequent conviction he is again sentenced to undergo imprisonment for another defined term or is sentenced to life imprisonment, such subsequent sentence shall start only after expiry of sentence in respect of previous conviction, unless the subsequent sentence has specifically been ordered to run concurrently by the Court.
- (ii) If such convict is undergoing imprisonment for a defined term in respect of his previous conviction, and for his subsequent conviction he is sentenced to undergo life imprisonment, such subsequent sentence shall start after expiry of sentence in respect of previous conviction, unless the subsequent sentence has specifically been ordered to run concurrently by the Court.
- (iii) If such convict is undergoing imprisonment for life in respect of his previous conviction, and for his subsequent conviction he is sentenced to undergo imprisonment for a defined term or is sentenced to life imprisonment, such subsequent sentence shall start concurrently.

(3) Section 428 provides that when a convict is sentenced to imprisonment for a defined term, the inquiry or under-trial period of such convict, pertaining to same case, shall be set-off(adjusted) against the term of imprisonment imposed on him.

20. Bearing the above reproduced provisions in mind, the three questions formulated above are being discussed individually hereinafter.

21. Question no. (i) :

- (i) *Whether, in a case where one of the sentence is life-imprisonment, the other sentence for a specified "term" has 'essentially' to run concurrently?*

In terms of Section 31 of Cr.P.C., as noticed above, the sentences can run consecutively. Section 31 Cr.P.C. casts an obligation on the Courts to state the order(sequence) in which different sentences are to be executed. As such, the trial Court in order to ensure proper execution of all the sentences as imposed upon the convict, can specifically order that the 'term' sentence shall run first and that the 'life sentence' shall commence after expiry of the term sentence. Such a position can also be discerned from the observations made by Hon'ble Supreme Court in, Muthuramalingam & Ors. vs. State Rep. By Insp. of Police, 2016(3) RCR (Crl.) 827 which are reproduced herein under :

“32. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence..... ”

22. The aforesaid observations make it apparent that there is no such mandate of law or precedent that in a case where a 'term sentence' as well as 'life sentence' have been imposed on a convict in a case, the said sentences are 'essentially' to run concurrently. Question no.(i) stands answered accordingly.

23. Question no. (ii) :

(ii) Whether, in the present case, both the sentences i.e sentence of R.I. for 7 years as regards offence punishable under section 364 IPC and sentence of Life Imprisonment as regards offence punishable under section 302 IPC, are to run concurrently or consecutively?

As per provisions of Section 31 Cr.PC., the multiple sentences have to run consecutively unless specified to run concurrently by the Court. Since, in the present case, as already noticed above, no order as regards concurrent running of sentences was passed by trial Court and the same stands upheld upto Hon'ble Supreme Court, it has to be taken that the sentence has to run consecutively. It also needs to be mentioned that the petitioner had earlier filed a Civil Writ Petition in this Court i.e. CWP No. 7277 of 2018 seeking his pre-mature release *inter-alia* on the ground that sentences in respect of both the offences were to run concurrently but the petition was dismissed by this Court vide judgment dated 3.12.2018 (Annexure P-4), holding therein that the sentences were to run consecutively. As such, the said issue already stands settled. Question no. (ii) is answered accordingly to the effect that both sentences imposed upon petitioner i.e sentence of R.I. for 7 years for offence punishable under Section 364 IPC and sentence of Life Imprisonment for offence punishable under Section 302 IPC, are to run consecutively.

24. Question no. (iii) :

(iii) In case, the aforesaid two sentences are to run consecutively in the present case, then in which order are they to run?

In order to fetch an answer to the aforesaid question, a reference needs to be made to Section 31(1) of Cr.P.C. which holds key to the said issue. Section 31(1) Cr.P.C. reads as under:

31. Sentences in cases of conviction of several offences at one trial.

- (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(Emphasis supplied)

The aforesaid provisions show that in the case of consecutive running of sentences, the Court may prescribe the order in which the said sentences are to run. In a case where all the sentences as imposed in respect of various offences for which an accused stands convicted in a trial, are 'term sentences' i.e. for a defined period of time and are to run concurrently, the order in which such sentences are to run, may not really matter and may not really work to any disadvantage to the convict.

25. However, in a case where one of the consecutive sentence is a 'term sentence' and the other a 'life sentence', the order in which the consecutive sentences are to run, could have different consequential effects. Academically speaking, a person who is sentenced to life imprisonment is to spend the rest of his life behind bars. A Constitution bench of Hon'ble Supreme Court held way back in 1961 in Gopal Vinayak Godse v. State of Maharashtra, (1961) 3 SCR 440 that a prisoner sentenced to life imprisonment was bound to serve the remainder of his life in prison unless the sentence is commuted or remitted by the appropriate authority and that such a sentence could not be equated with a fixed term. Another Constitution

Bench of Hon'ble Supreme Court in Union of India v. Sriharan, 2016(1) RCR (Criminal) 234 reviewed the case law on the subject and while relying upon the its earlier decisions in Sambha Ji Krishna Ji Vs. State of Maharashtra AIR 1974 Supreme Court 147; State of Madhya Pradesh vs. Ratan Singh (1976)3 SCC 470; Maru Ram vs. Union of India (1981)1 SCC 107; and Ranjit Singh @ Roda vs. Union Territory of Chandigarh (1984)1 SCC 31, it was observed by Hon'ble Supreme Court as under :

"It is quite apparent that this Court by stating as above has affirmed the legal position that the life imprisonment only means the entirety of the life unless it is curtailed by remissions validly granted under the Code of Criminal Procedure by the Appropriate Government or Under Articles 72 and 161 of the Constitution by the Executive Head viz., the President or the Governor of the State, respectively."

26. Going strictly by the aforesaid interpretation of 'life imprisonment', it would be immaterial as to whether the 'term sentence' as imposed along with 'life sentence' runs concurrently or consecutively inasmuch as a life convict would be expected to be behind bars till his last breath. It is apparently for this very reason that Section 428 Cr.P.C. which pertains to running of sentences as imposed in different cases, a specific provision has been incorporated that while a 'life sentence' imposed subsequently is to run consecutively with an earlier 'term sentence' but a subsequent 'term sentence' is to run concurrently with an earlier 'term sentence' or 'life sentence'. The rationale, obviously, is that once the life is over there would be no occasion for a convict to serve a 'term sentence' in respect of any other offence which remains unserved/executed, in case any such 'term sentence' was supposed to consecutively, after expiry of the 'life sentence'.

27. However, practically, the position is different inasmuch as a life convict would normally get entitled to his premature release on the basis of policies framed by the Government, pertaining to premature release, in exercise of powers under Section 433 Cr.P.C. or by the Governor in exercise of his powers under Article 161 of Constitution of India or by the President in exercise of his powers under Article 72 of Constitution of India. As such, in case the various sentences as imposed including the life sentence are to run consecutively, the same would certainly be prejudicial to the convict as there would be a situation where a convict despite having undergone the 'life sentence' on the basis of his remissions/commutation, he would be required to undergo the 'term sentence' thereafter, in case any such consecutive 'term sentence' is to run consecutively after the 'life sentence'. Thus, a direction from the Courts pertaining to the order in which the consecutive sentences are to run, particularly when one of the sentences is life sentence, is of prime importance. The observation of Hon'ble Supreme Court in Muthuramalingam's case (supra) are very relevant in this regard which are reproduced herein under :

“32. We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can,

therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs.”

28. Hon'ble the Supreme Court, in its recent judgement in Sunil Kumar v. State of U.P. : (2021) 5 SCC 560, has stressed upon the requirement of passing specific orders as regards running of sentences while observing as under:

“12. As noticed, if the Court of first instance does not specify the concurrent running of sentences, the inference, primarily, is that the Court intended such sentences to run consecutively, though, as aforesaid, the Court of first instance ought not to leave this matter for deduction at the later stage. Moreover, if the Court of first instance is intending consecutive running of sentences, there is yet another obligation on it to state the order (i.e., the sequence) in which they are to be executed. The disturbing part of the matter herein is that not only the Trial Court omitted to state the requisite specifications, even the High Court missed out such flaws in the order of the Trial Court.”

(emphasis supplied)

29. It, thus, follows that in a case where a 'life sentence' as well as 'term sentence' as imposed upon a convict and which are to run consecutively, it is the 'term sentence' which ought to be undergone in the first instance followed by the 'life sentence' as the converse would not hold any meaning inasmuch as once a person's life has ended, there would be no question of his undergoing any further sentence. In other words the 'term sentence'

would remain unexecuted, though of course practically in every case the convict would get entitled to his release pre-maturely after having earned remissions or commutations.

30. Having dwelled on the importance of an order by the Court as regards the order in which the consecutive sentences in respect of various offences are to run, the factual position in the present case would show that it is a case where no specific order was passed by the trial Court at the time of imposing the 'life sentence' as well as the 'term sentence' upon the convict vide judgement dated 7.1.2002(Annexure P-1), which has been upheld by this Court as well as by Hon'ble Supreme Court. As such, the sentences were to run consecutively by default in terms of Section 31 Cr.P.C. Upon the petitioner himself having filed a petition in this Court seeking concurrent running of sentences, it has been clarified by this Court that the sentences are to run consecutively and that it is the 'term sentence' of 7 years which would run in the first instance followed by the 'life sentence'. The relevant extract from the said judgement dated 3.12.2018 (Annexure P-4) reads as follows:

“Now coming to the question as to whether the petitioner is entitled to be considered for pre-mature release or not?. Reply of the State dated 16.1.2018 shows that petitioner has undergone the actual sentence of 13 years 02 months and 14 days including remission of 02 years 09 months and 28 days. In this way, total undergone period is 16 years 0 month and 12 days from which parole period of 1 year 06 months and 21 days is deducted and the total sentence comes to 14 years 05 months and 21 days. **Since sentence of 07 years will run first,** therefore apparently petitioner has not completed the actual sentence of 10 years and with remission of 14 years required for him to be released on parole, in case he is undergoing life imprisonment.

In any case, State can be directed that whenever the petitioner fulfills the criteria laid down in the policy, his case should be put up before the concerned authority for consideration for pre-mature release.

It being so, present petition is dismissed with a direction that whenever the petitioner completes the requisite period as per the policy of the State, his case for pre-mature release should be put up for consideration before the competent authority.”

(emphasis supplied)

31. The aforesaid judgement, though stated to be under challenge, has neither been stayed by the Hon'ble Supreme Court nor has been set aside till date. As such, the order of running of sentences having been clarified by this Court vide judgement dated 3.12.2018(Annexure P-4), Question no. 3 is answered to the effect that it is the term sentence of 7 years which the petitioner will have to undergo first followed by the 'life sentence'.
32. The three questions as regards the manner of running of sentences having been answered above, this Court reverts back to the main issue as to whether the under-trial detention period is to be set-off against both the sentences of imprisonment separately irrespective of the fact that the sentences are to run consecutively. It is Section 428 Cr.P.C. which provides for set-off of under-trial detention period wherein it is specifically provided that the period of detention during the course of inquiry or trial is required to be set-off against the 'term of imprisonment' imposed on the convict. Although Hon'ble Supreme Court in Kartar Singh and others versus State of Haryana, 1982(3) SCC 1, had held that benefit of set-off is not available to life convicts while referring to the word term as existing in Section 428 Cr.P.C, but subsequently the said judgement was over-ruled by a Constitution Bench of

Hon'ble Supreme Court in Bhagirath versus Delhi Administration, 1985(2) RCR (Criminal) 85, wherein it was held as under:

“13. We have considered with great care the reasoning upon which the decision in Kartar Singh proceeds. With respect, we are unable to agree with the decision. We have already discussed why 'imprisonment for life' is imprisonment for a term, within the meaning of section 428.”

33. As far as setting-off the inquiry or under-trial detention period in a case where different sentences have been ordered to run concurrently is concerned, such period would be set-off against the total period of imprisonment a convict has to undergo. In other words, since the sentences would be over-lapping while running concurrently, the effect of set-off may be said to be against all the sentences though it is not a very appropriate way to describe it. To illustrate - if a convict is sentenced to 3 years for one offence, 5 years for second offence and 7 years for the third offence committed in the same transaction and which all have been ordered to run concurrently, the convict would be required to undergo a total of 7 years, being the maximim sentence of all the three sentences. Assuming, the convict had been behind bars during inquiry or trial period for 4 years, the said period of 4 years would be subtracted from the total sentence of 7 years and the convict will be required to undergo a total of 3 years imprisonment, post his conviction in respect of all the 3 offences.

34. On the other hand, in a case where multiple punishments are to run consecutively, the words '*term of imprisonment*' as existing in Section 428 Cr.PC. will assume much more significance while computing the period of imprisonment that a convict is required to undergo after availing benefit of

set-off. While in section 31 Cr.P.C. the usage of words “sentences” and “punishments” denotes plurality, but in section 428 Cr.P.C. the word “sentence” has been used. The words '*term of imprisonment*' as existing in Section 428 Cr.P.C. has not specifically been defined therein but a cue may be had from language of Section 31(3) Cr.P.C., wherein it has been clarified that the aggregate of consecutive sentences is to be treated as a single sentence for the purpose of filing appeal. Section 31(3) Cr.P.C. reads as follows:

31. Sentence in cases of conviction of several offences at one trial-

(1) x x x

(2) x x x

(3) for the purpose of appeal by a convicted person, the aggregate of the consecutive of sentences passed against him under this section shall be deemed to be a **single sentence**.

(emphasis supplied)

35. Though, of course, the aforesaid provisions pertain to the matter of filing of appeal by convicted persons but such like interpretation of word “*sentence*” being the aggregate of the punishments of imprisonments directed to run consecutively can safely be imported while interpreting the words “*term of imprisonment*” for the purpose of computing the total period of imprisonment against which a convict is to be extended the benefit of set-off in terms of Section 428 Cr.P.C.
36. Examining the case from another angle, in case the benefit of set-off was to be extended separately for each offence despite consecutive running of sentences, the same would virtually mean that an accused is being granted the benefit of set-off period twice or thrice over or even more number of times, much more than what he may have actually spent behind bars during

inquiry or trial of the case which certainly can not be said to be the intent of the legislation for prescribing consecutive sentences. It is only when the court specifically orders that multiple sentences are to run concurrently that the multiple sentences would run concurrently and not consecutively. In the absence of any such specific order the general rule is that the sentences have to run consecutively. The object obviously was to ensure that the punishments do not ordinarily lose the penal effect and purpose for which the same are imposed. Extending the benefit of set-off of the period spent behind bars during enquiry and trial multiple times could rather encourage seasoned criminals to commit multiple offences in one go and could result in increase in crime. The very purpose of sentencing itself would be lost. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. Hon'ble Supreme Court, while dwelling on the proportionment of sentence in State of Karnataka v. Puttaraja, (2004) 1 SCC 475, held as under:

“12. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women like the case at hand, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact and serious repercussions on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time or considerations personal to the accused only in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by the required string of deterrence inbuilt in the sentencing system.”

37. A three Judges Bench of Hon'ble Supreme Court in Mofil Khan v. State of Jharkhand, (2015) 1 SCC 67 while highlighting the purpose of sentencing stressed on justice to incidental victims and held as under:

“It would be the paramount duty of the court to provide justice to the incidental victims of the crime—the family members of the deceased persons. Therefore, appropriate and proportional sentence requires to be imposed. On one hand, such sentencing would demonstrate respect to those most personally affected by the grief and horror of murder, on the other it would also be in accordance with the goals of the victims’ rights and the principles of restorative justice.”

38. This Court would go to the extent of saying that concurrent or consecutive running of sentences is an integral part of sentence and consecutive running of sentence is with a specific purpose of making the sentence more severe. Though, of-course, there are no set guidelines or principles and each case is to be decided depending upon its facts which includes the nature and gravity of the offence apart from antecedents, age, sex etc. but purpose underlying is to make sentence severe in fit cases.

39. Baldev Singh's case(supra) is a perfect example of how the imposition of consecutive sentences would lose its purpose even in crimes of most heinous nature in case the benefit of set-off is to be extended separately for each offence committed during the course of the same transaction. In Baldev Singh's case, the convict was alleged to have abducted and killed 7 persons of a family. The trial Court held him guilty of having committed offence under Section 302 IPC (on 7 counts qua 7 victims) as well as of other offences and sentenced him to undergo life imprisonment. The judgement was upheld by this Court. However, Hon'ble Supreme Court while setting

aside conviction for offence under Section 302 IPC, held him guilty for offence punishable under Section 364 IPC on 7 counts qua the 7 victims and directed that the said convict shall undergo rigorous imprisonment for 5 years in respect of each of the 7 offences(i.e qua each of the victim) and further ordered that the sentences were to run consecutively. The said accused had spent more than 3 years and 6 months as an undertrial and had approached this Court with a prayer that the said undertrial period of 3 years and 6 months be set off qua each of the 7 sentences imposed individually qua the 7 victims. The said contention was, however, turned down and the petition was dismissed. Imagining a situation where such contention had been accepted, the person who had abducted 7 persons would be left off after about having undergone 8 to 10 years even though the 7 victims who had been abducted remained missing forever.

40. During the course of arguments, a submission on the basis of Section 427 Cr.P.C., was also made so as to contend that the sentences of life imprisonment and term sentence are to run concurrently but this Court is unable to agree with the same inasmuch as Section 427 Cr.P.C. applies to a case where a person is already undergoing life imprisonment is subsequently sentenced to a term imprisonment in another case whereas the position in the present case is distinct inasmuch as both the sentences i.e. sentence of life imprisonment and term sentence were imposed simultaneously in the same case vide same judgment. Later, this Court has also clarified that the said sentences are to run consecutively with life sentence to follow the term sentence. Thus, the petitioner can not seek any advantage from Section 427 Cr.P.C.

41. The judgments cited by learned counsel for petitioner are being discussed herein under:

(i) Boucher Pierre Andre vs. Supdt. Jail, Tihar, 1975 (1) SCC 192:

The said case though dealing with Section 428 Cr.P.C., basically pertains to retrospective operation of Section 428 Cr.P.C., wherein it was held that a convict sentenced prior to the coming into force of new Code was also entitled to benefit of set-off of pre-conviction detention period if sentence was still running.. It was further held therein that such benefit of Section 428 Cr.P.C. is available to accused not only in relation to a substantive sentence but also in relation to a sentence of imprisonment in default of payment of fine. The said judgement never dealt with the issue of set-off of pre-conviction detention period qua punishments imposed for different offences, which are to run consecutively. As such, the said judgement has no application to present case.

(ii) K.C. Das vs. The State 1979 CriLJ 362 (Delhi High Court) :

The said case also pertained to a different issue inasmuch as the question involved therein was as to whether set-off of pre-conviction detention can be claimed towards two different cases if the accused happens to be in custody simultaneously in respect of two cases which were being investigated or tried. The present case is not where the convict is seeking benefit of pre-detention qua two different cases and as such, the cited case being distinct on facts and issue involved would have no application.

(iii) Lalrinfela vs. State Mizoram, 1982 Cr.L.J 1793(Gauhati High Court):

The said case also pertains to extending benefit of set-off of under-trial period in two cases, where the accused had been in custody during trial in respect of two different cases and thus has no bearing on the case in hand.

(iv) Mohd. Yasin vs. State, 1986(10) DRJ 320 (Delhi High Court) :

The said case, like the above discussed 2 cases also pertained to an accused who stood convicted in 5 different cases and where he sought benefit of set-off of the under-trial period which was common in respect of the said cases. The convict was held entitled to the said benefit. There is no dispute as regards the said broad proposition of law. However, the matter in issue in the present case is different as the convict claims the benefit of set-off individually in respect of different offences in the same case despite consecutive running of sentences. The cited judgement has no application to the present case.

(v) Atul Manubhai Parekh Versus CBI, 2010(1) SCC 603 :

This is what that has been held by Hon'ble Supreme Court in this judgement:

- “8. From the wording of Section 428 it is clear that what is to be set-off is the period of detention, if any, undergone by the convict during the investigation, enquiry or trial of the same case and before the date of such conviction. What has fallen for the interpretation of the courts is the expression "the same case". While in one set of judgments it has been held that periods of detention undergone in connection with other cases can be counted towards set-off under Section 428 Criminal Procedure Code in respect of the conviction in another case, in the other set of cases it has been held that it cannot. However, even in Najakat Alia's case, one of the three Hon'ble Judges took a dissenting view that set-off under Section 428 of the Code would have to be in respect of the detention undergone in respect of the same case. It is the said view which had earlier been accepted in *Raghubir Singh v. State of Haryana, 1986(1) RCR (Criminal) 103 : [(1984)4 SCC 348]* and in the case of Champalal Punjaji Shah's case (*supra*).
9. The wording of Section 428 is, in our view, clear and unambiguous. The heading of the Section itself indicates that the period of detention undergone by the accused is to be set off against the sentence of imprisonment. The Section makes it clear that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. It is quite clear that the period to be set off relates only to pre conviction detention and not to imprisonment on conviction

10. The philosophy of Section 428 Criminal Procedure Code has been very aptly commented upon by this Court in ***Government of A.P. v. Anne Venkateswara Rao (1977)3 SCC 298***, in the following terms :

"Section 428 provides that the period of detention of an accused as an under-trial prisoner shall be set off against the term of imprisonment imposed on him on conviction."..."

A perusal of the above reproduced relevant paragraphs from Atul Manubhai Parekh's judgement shows that the same also does not pertain to the issue in hand and thus the said judgement does not advance the case of the petitioner in any manner.

42. As noticed above, the judgments pressed into service by learned counsel for the petitioner do not advance the case of the petitioner in any manner. None of the cited judgements has dealt with the matter pertaining to set-off of the under-trial detention period in a case of multiple sentences which have been ordered to run consecutively. In case the contention of the petitioner that under-trial period is to be set-off qua both the offences, is accepted, the same would mean that double the actual under-trial detention period of 4 years 9 months and 6 days (i.e. 9 year 6 months and 12 days) is set-off, which would rather be a mockery of the Courts. It will be rather a dangerous proposition to hold that even in case of consecutive sentences, the benefit of set-off of period of custody during enquiry and trial, in terms of Section 428 Cr.P.C. is to be extendend separately qua each of the offence for which he may have been sentenced in that case.

43. As a sequel to discussion made above, particularly in view of the findings returned on the three questions framed in Para 17, it is held that in a case where a convict is held guilty of having committed several offences in the same FIR and sentences so imposed are to run consecutively, the period of

pre-conviction detention i.e. the undertrial period is to be set-off only once against the cumulative sentence of all the offences i.e. against the total period of imprisonment by adding up all the sentences and the undertrial period is not to be set-off separately qua each of the sentences imposed qua different offences.

44. Having held so, the petition cannot be accepted and the same is hereby dismissed.

29.7.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No