

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3630 OF 2022

Bharadwaj @ Bala Kishor Londhe ... Petitioner

Versus

The State of Maharashtra and another. ... Respondents

Mr. N.N. Gawankar i/by Mr. Manas Gawankar for the Petitioner.

Mr. V.B. Konde-Deshmukh, APP for the Respondent–State.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : APRIL 24, 2023

ORDER (Per Sharmila U Deshmukh, J.):

1. By this petition, the Petitioner seeks direction to the Respondent No.2-Superintendent of Kolhapur, Central Prison, Kolhapur to treat the sentence imposed in Sessions Case No. 159 of 2015 concurrently with the sentence imposed upon the Petitioner in Sessions Case No.108 of 2014 and to amend the present record accordingly.

2. The facts of this case are that C.R.No.I-110 of 2013 came to be registered against the Petitioner in respect of an offence committed on 8th November, 2013. In connection with the aforesaid C.R, the Petitioner was convicted in Sessions Case No. 108 of 2014 vide judgment and order dated 12th December, 2018 for offence under Section 302 read with Section 34 of Indian Penal Code, 1860 (for short, “IPC”) and sentenced to imprisonment for life and fine of Rs 500/-. Subsequently another C.R. being C.R. No.I-233 of 2014 was registered against the Petitioner for an offence committed on 8th June, 2014. In connection with the said C.R.No.I-233 of 2014, in Sessions Case No.159 of 2015, the Petitioner, vide judgment and order dated 4th December, 2020 was convicted for offences under Section 307 read with Section 149 of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs.7000/-.

3. Heard Mr. N.N. Gawankar, learned counsel appearing for the Petitioner and Mr. V.B. Konde-Deshmukh, APP appearing for the Respondent–State.

4. Learned counsel appearing for the Petitioner submits

that considering the provisions of Section 427 (2) of the IPC, as the Petitioner is undergoing sentence of imprisonment for life in Sessions Case No.108 of 2014, the subsequent conviction of imprisonment for 7 years will run concurrently with such previous sentence. He would further submit that the direction is sought as the convicted prisoner undergoing the sentence of imprisonment is entitled to certain privileges, if the subsequent sentence is treated to run concurrently with the previous sentence. In support of his submissions, he has tendered a compilation of judgments as under:

- (i) **Dilubhai vs. State of Gujarat [Laws (SC) 2015 1 129];**
- (ii) **Sunil Bhima Kurhade vs. State of Maharashtra [Laws (Bom) 2022 4 286];**
- (iii) **Hanuman s/o. Anandrao Pendam vs. State of Maharashtra [Laws (Bom) 2019 4 138];**
- (iv) **Vasudeo Shankar Rajput Alias Kanjarbhat vs. State of Maharashtra [Laws (BOM) 20138 173];**
- (v) **Rambhau Pandurang Wankhede vs. State of Maharashtra through Superintendent of Jail [Laws (Bom) 1999 8 96];**

5. Per contra, learned APP relies upon the decision in the case of **Muthuramalingam and others vs. State represented by Inspector of Police, (2016) 8 SCC 313**, and would submit that the

said decision lays down the guidelines as to when the multiple sentences awarded are to run consecutively or concurrently.

6. Considered the submissions of the parties.

7. It is not disputed that the Petitioner was convicted and sentenced to suffer imprisonment for life in connection with Sessions Case No.108 of 2014, *vide* judgment and order dated 12th December, 2018 and subsequently, was convicted and sentenced to undergo imprisonment for 7 years in connection with Sessions Case No.157 of 2017, *vide* judgment and order dated 4th December, 2020. The issue to be considered in the present case, is whether the sentences are to run concurrently or consecutively. In this regard, it will be beneficial to refer the provisions of Section 427 of the Code of Criminal Procedure, 1973, (for short, “the Code”) which 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.”

8. Considering the provisions of Section 427 (2), it is clear that in case of a person undergoing sentence of imprisonment for life and sentenced on a subsequent conviction to imprisonment or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. The provisions of the sub-section (2) of Section 427 of the Code are clearly applicable to the facts of the present case, as the first conviction sentences the Petitioner to imprisonment for life and the second conviction is imprisonment for a period of 7 years. The decisions relied upon by the learned counsel for the Petitioner are squarely applicable of the

facts of the case. Perusal of the aforesaid decisions indicates the settled position of law that the section has been worded in imperative terms and admits of no discretion or exception in the matter of directing the subsequent sentence to run concurrently. The decision of the Apex Court in the case of **Muthuramalingam and others vs State represented by Inspector of Police (supra)**, relied upon by the learned APP is not applicable to the facts of the present case in as much in that case the question which arose for determination was whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial. In context of the said issue, the Apex Court held that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. No such question arises in the present cases, and as such, the decision is not applicable to the facts of the present case.

9. Upon a plain reading of the provisions of Section 427(2) of the Code and considering the judicial pronouncements relied

upon by the learned counsel for the Petitioner, we are of the opinion that the provisions of Section 427(w) of the Code is applicable to the facts of the present case and the sentences imposed upon the Petitioner in Sessions Case No.108 of 2014 and in Sessions Case No.159 of 2014 shall run concurrently.

10. In view of the above, we allow the Petition and direct that the sentence imposed upon the Petitioner in Sessions Case No.159 of 2014 shall run concurrently with the sentence imposed upon the Petitioner in Sessions Case No.108 of 2014.

11. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.