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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1472-2014 (O&M)

Decided on:-23.02.2023

Ajay

....Petitioner..

vs.

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sunil Garg, Advocate,
for the petitioner.

Mr. Ashok Kumar, Sehrawat, DAG, Haryana.

HARKESH MANUJA J. (Oral)

Present revision petition has been filed against the judgment dated 13.12.2013 passed by the court of learned Additional Sessions Judge, Jhajjar, whereby an appeal filed by the petitioner was dismissed, thereby, upholding the judgment and order dated 04.07.2013 passed by the Court of learned Judicial Magistrate Ist Class, Jhajjar, vide which, the petitioner was ordered to be convicted under Section 9 of the Parole Act, 1988 and sentenced to undergo simple imprisonment for a period of two years with fine of Rs.2000/- and in default of payment of fine, to further undergo simple imprisonment for three months.

The facts of the present case are that the petitioner being an accused in FIR No.27, dated 29.04.2006, registered under Sections 302/449 IPC and Sections 25/54/59 of the Arms Act, Police Station Salhawas, District Jhajjar, was convicted and sentenced for life imprisonment with fine of Rs.21,000/- and in default of payment of fine to further undergo rigorous

imprisonment for 2 years and 6 months, vide judgment dated 30.08.2010 passed by the court of learned Additional Sessions Judge, Jhajjar. Being in custody in pursuance to the aforesaid conviction, the petitioner was granted the benefit of parole for a period of 6 weeks w.e.f. 21.06.2012 to 03.08.2012, however, allegedly on account of medical reasons, the petitioner could not surrender before the Jail Authorities on time.

As per the case setup by the prosecution, the petitioner was later arrested on 04.09.2012, in pursuance to registration of FIR No.193 dated 03.09.2012, under Section 8/9 of Parole Act, 1988, Police Station Salhawas, District Jhajjar.

Upon trial, the petitioner was found guilty vide judgment dated 04.07.2013 passed by the court of learned Judicial Magistrate Ist Class, Jhajjar followed by order of sentence. The relevant portion thereof reads as under:-

“Therefore, he is sentenced to undergo simple imprisonment for a period of two years and is also sentenced to pay a fine of Rs.2000/- and in default of payment of fine, he shall have to undergo simple imprisonment for three months. Fine not paid. The accused is already undergoing sentence of imprisonment in case FIR No.27 dated 29.04.2006 under Sections 302/449 IPC and Arms Act. The punishment awarded in this case shall be in addition to the punishment awarded to the prisoner for the offence for which he was convicted in case FIR No.27 dated 29.04.2006 and shall commence after expiry of period of sentence awarded in the above mentioned FIR. Warrant of imprisonment be prepared accordingly. File be consigned to the record room after due compliance.”

Aggrieved thereof, the petitioner filed first appeal, however, the same was also dismissed vide judgment dated 13.12.2013 passed by the court of learned Additional Sessions Judge, Jhajjar.

It is the aforesaid two judgments, which have been impugned

by way of present revision petition.

At the very outset, instead of making his submission on merits of his conviction, learned counsel for the petitioner restricts himself on the point of sentence.

Learned counsel for the petitioner submits that out of total sentence of two years as awarded in the present case, the petitioner has already undergone a period of 1 year, 2 months and 24 days. Relying upon sub-Section 2 of Section 427 of the Code of Criminal Procedure, learned counsel further submits that the petitioner having been sentenced for life imprisonment vide judgment dated 30.08.2010, the subsequent conviction followed by imprisonment for a term of two years as awarded under the impugned judgments was to run concurrently with the sentence already awarded. In view thereof, learned counsel submits that the petitioner remained in custody against his conviction/order of sentence dated 30.08.2010 till 06.11.2017 and thus, prays for grant of benefit of sub-Section 2 of Section 427 Cr.P.C. by submitting that the sentence awarded to him under the impugned judgments already stands undergone. Learned counsel also submits that the non-appearance of petitioner before the Jail authorities, despite completion of parole was never intentional but on medical grounds.

Learned counsel further submits that the benefit of Section 427(2) Cr.P.C. was thus wrongly denied to the petitioner by both the courts below.

On the other hand, learned State counsel submits that in the facts and circumstances of the present case, wherein, the petitioner misused the concession of parole, he does not deserve any concession on the point of

sentence while invoking Section 427(2) of the Code of Criminal Procedure.

I have heard learned counsel for the parties and gone through the paper book as well as records supplied by learned counsel for the petitioner. I find substance in the submissions made on behalf of the petitioner.

The petitioner having been convicted under Sections 302/449 IPC and Section 25/54/59 of the Arms Act, 1959, awarded sentence of life imprisonment vide judgment dated 30.08.2010, remained in custody thereafter till 06.11.2017 and thus two years of his conviction in the present case ordered vide judgment dated 04.07.2013 passed by the court of Judicial Magistrate Ist Class, Jhajjar, which was later confirmed by the court of learned Additional District Judge, Jhajjar vide judgment dated 13.12.2013 was required to run concurrently, in the facts of the present case.

Sub-Section 2 to Section 427 Cr.P.C. clearly stipulates that in case of any person/individual, who has already been undergoing sentence of imprisonment for life and in case, during its currency he is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence has to run concurrently with such previous sentence.

Keeping in view the nature of accusation in the present facts which is non-surrendering of petitioner in time upon completion of parole and the fact that he has already undergone sentence of one year, two months and 24 days out of total sentence of two years, the trial court committed an error while recording that the sentence awarded in favour of the petitioner in pursuance to his conviction relating to present FIR No.193 dated 03.09.2012 shall commence after the expiry of period of sentence awarded to him in

pursuance to his conviction pertaining to FIR No.27 dated 29.04.2006.

In view of the discussion made hereinabove, upholding the conviction order against the petitioner for commission of offence under Section 8/9 of the Parole Act, 1988, the judgments passed by the courts below are modified to the extent that the period of sentence awarded to the petitioner shall run concurrently with the previous imprisonment of life awarded vide judgment dated 30.08.2010 by granting him the benefit of Sub-Section 2 of Section 427 Cr.P.C.

With the above modification in sentence, revision petition stands disposed of.

23.02.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No