



2023:DHC:9239



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision : 21st December, 2023

+ CRL.A. 600/2020

NARESH @ GOGA & ANR.

..... Appellants

Through: Mr.Ajay Kumar (DHCLSC) and
Ms.Muskan Gupta, Advocates.
Mr.Shiv Chopra, Advocate, *Amicus
Curiae* along with Ms.Aadhyaa Khanna
and Mr.Siddharth Arora, Advocates.

Versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr.Ritesh Kumar Bahri, APP for State
with SI Deepika, PS. Paschim Vihar.
Ms.Tanya Agarwal, Advocate for
Respondent no.2

+ CRL.A. 196/2022 & CRL.M.(BAIL) 528/2022 (suspension of sentence),
CRL.M.A. 8617/2022 (delay 76 days in filing)

NARESH @ GOGA

..... Appellant

Through: Mr.Rohan J.Alva, Advocate.
Mr.Shiv Chopra, Advocate, *Amicus
Curiae* along with Ms.Aadhyaa Khanna
and Mr.Siddharth Arora, Advocates.

Versus

STATE (GNCTD)

..... Respondent

Through: Mr.Ritesh Kumar Bahri, APP for State
with SI Deepika, PS. Paschim Vihar.



2023 : DHC : 9239



Ms.Tanya Agarwal, Advocate for
Respondent no.2

+ CRL.A. 70/2022

NARESH @ GOGA

..... Appellant

Through: Mr.Shiv Chopra, Advocate, *Amicus Curiae* along with Ms.Aadhya Khanna and Mr.Siddharth Arora, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Ritesh Kumar Bahri, APP for State with SI Deepika, PS. Paschim Vihar.
Ms.Tanya Agarwal, Advocate for
Respondent no.2

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (ORAL)

CRL.A. 600/2020 & CRL.A. 196/2022 & CRL.A. 70/2022 & CRL.M.A. 21647/2022 in CRL.A. 196/2022 & CRL.M.A. 21910/2022 in CRL.A. 70/2022

1. CRL.M.A. 21647/2022 in CRL.A. 196/2022 and CRL.M.A. 21910/2022 in CRL.A. 70/2022 have been filed by the appellant/applicant under Section 427(1) of the Code of Criminal Procedure, 1973 (CrPC) seeking concurrent running of sentences awarded to the appellant in the above captioned appeals.



2. In CRL.A. 600/2020, *vide* order dated 21st December, 2019 passed by the learned Additional Sessions Judge (ASJ), West, Tis Hazari Courts, Delhi, the appellant was convicted for the offences under Sections 448/354/354C/506 of the Indian Penal Code, 1860 (IPC) and Section 10/12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to undergo imprisonment for a period of five years along with a cumulative fine of Rs. 19,000/- *vide* order on sentence dated 23rd December, 2019.
3. In CRL.A.196/2022, *vide* order dated 21st December, 2019 passed by the learned ASJ, the appellant was convicted for the offences under Section 354 of the IPC and Section 8 of the POCSO Act and sentenced to undergo imprisonment for a period of three years along with a cumulative fine of Rs.10,000/- *vide* order on sentence dated 23rd December, 2019.
4. In CRL.A.70/2022, *vide* order dated 21st December, 2019 the learned ASJ convicted the appellant for the offences punishable under Sections 506/509 of the IPC and Section 12 of the POCSO Act and sentenced him to undergo imprisonment for a period of one year along with a cumulative fine of Rs. 3,000 *vide* order on sentence dated 23rd December, 2019.
5. In all the present appeals, *vide* order dated 18th May, 2023, production warrants were issued for the appellant to be present before this Court to seek instructions from him regarding whether he wishes to contest the present appeals on merits.
6. On 2nd August, 2023, the appellant appeared from jail through video conferencing before this Court and submitted that he was willing to accept his



infractions and agreed to the disposal of the present appeals on the basis of the sentence undergone by him. Further, to examine the socio-economic conditions of the appellant, a probation officer was appointed by the Court.

7. Mr. Rohan J. Alva, counsel for the appellant submits that in the present case discretion should be exercised by the Court under Section 427 of the CrPC and the various sentences awarded to the appellant should run concurrently. It is submitted that the offences in the present case should be taken to be a part of one transaction since the same offence of a sexual nature has been committed on the same victim on different dates. Furthermore, the convicting and sentencing court in the present case are the same. In this regard, reliance has been placed on the judgment of the Co-ordinate Bench in *Ajay Kumar v. State NCT of Delhi*, 2023 SCC OnLine Del 962.

8. *Per contra*, learned APP appearing for the State submits that in view of the fact that the appellant has been convicted for three separate offences under the POCSO Act, discretion under Section 427 of the CrPC should not be exercised in his favour. He submits that the POCSO Act is a special legislation for protection of children against sexual offences. In this regard, reliance is placed on the judgment of the Supreme Court in *Nawabuddin v. State of Uttarakhand*, (2022) 5 SCC 419.

9. Considering the legal and factual issues at hand, this Court had appointed Mr. Shiv Chopra as *Amicus Curiae* to assist the Court *vide* order dated 9th October, 2023.



10. The learned *Amicus Curiae* has prepared a detailed note with regard to the present cases and has also filed a compilation of judgments with regard to exercise of jurisdiction by this Court under Section 427 of the CrPC.

11. I have heard the counsels for the parties and the learned *Amicus Curiae*.

12. At the outset, reference may be made to Section 427(1) of the CrPC, which is set out below:

“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.”

13. The Supreme Court in ***Mohd. Zahid v. Union of India***, (2022) 12 SCC 426, as relied upon by the learned *Amicus Curiae*, has laid down the principles of law for exercising jurisdiction under Section 427 of the CrPC, which are set out below:

“17. Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:

17.1. If a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced.

17.2. Ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence.



17.3. The general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427CrPC.

17.4. Under Section 427(1) CrPC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.”

14. In ***Ajay Kumar*** (supra), a Co-ordinate Bench was seized of a similar request, wherein the applicant therein was convicted under Sections 376 and 306 of the IPC and sentenced to undergo imprisonment for a period of 10 years and 7 years, consecutively. The Court while allowing concurrent sentencing, opined that though the act of rape and the resultant suicide were separated in time, they arose out of the same transaction. The relevant observations are set out below:

“20. On an overall consideration of the ratio laid down in the aforesaid judgments, it is apparent that the Court can exercise its jurisdiction under the provisions of section 427 Cr. P.C., 1973, carefully and on sound legal principles and factual foundation therefore being laid properly by the parties. The exercise is purely discretionary and applied only on case to case basis with no straight jacket formula. The foremost of those principles being that whether the two offences are intertwined and interconnected with the facts obtaining in a particular case, interspersed in such manner that the Court can possibly reach a conclusion that they form one single unitary aspect, though



the offences by themselves, are distinct. This again may not be the only aspect to be considered during examination of the facts of a case while considering the application under section 427 Cr. P.C., 1973.

...

22. Having said that, the said principles may now be applied on the facts obtaining in the present case. As per the prosecution, the applicant/appellant, the husband of the deceased and the deceased herself were working in the same place. It appears from the narration of the prosecution that the applicant/appellant had committed forcible sexual intercourse upon the deceased commencing from the month of November 2014 till May 2015 and as a consequence thereof, unable to take this humiliation and not being able to express herself coupled with the instigation and threats of the applicant/appellant that he would show her obscene video to everybody, if she did not oblige him, she committed suicide by hanging.

...

24. This Court has considered the facts obtaining in the present case very minutely and tends to agree with the submissions of Mr. M.L. Yadav, learned Counsel for the applicant/appellant. **The reason and rationale behind the same is that though the two offences by themselves are distinct and may have occurred at different points in time however, the causal facts giving rise to the said offences are intrinsically intertwined with each other and interspersed in a manner that both cannot be segregated to conclude that the offences are based on two different and distinct set of facts. This of course is not to say that the offences alleged and proved against the applicant/appellant are less heinous or are condonable. To this Court, it appears that the committing of suicide by the deceased was as a consequence and result of the trauma, humiliation, shame that the deceased felt during the interregnum when the applicant/appellant was committing the offence under section 376 IPC over a period of**



time. It is not the case of the prosecution that the deceased committed suicide on any independent or unconnected factor having no relation either to the applicant/appellant or to the offence under section 376 IPC. Rather, it appears from the case of the prosecution that its thrust was predicated upon the rape having been committed over a period of time by the applicant/appellant that resulted in the deceased taking the sad but extreme step of taking her own life.

25. Viewing from the above angle, this Court is of the considered opinion that both the offences form part of the same transaction having intertwined and intrinsic facts, interspersed in such manner that the causal factor cannot be held to be so distinct as to conclude that the offences are unrelated, for the purposes of applying the principles of section 427 Cr. P.C., 1973.”

15. Similarly, another Co-ordinate Bench of this Court in **Suraj v. State**, 2023 SCC OnLine Del 669, wherein the appellant therein was convicted in two separate FIRs under Sections 395/170 of the IPC read with Section 395 of the IPC and awarded sentence of imprisonment of seven years and two years respectively, the Court granted benefit of concurrent running of sentences under Section 427 of the CrPC. The relevant factors considered by the Court are set out below:

“11. On appreciation of above facts and circumstances of this case, firstly what is to be ascertained is the nature of offences for which the appellant has been punished for. In FIR 1, the complaint was of dacoity of Rs. 4,000/- from the pocket of the complainant on the road for which he was sentenced to 7 years RI. The other two FIRs were also for abduction and robbery of cartons of cigarette packets from a vehicle and a person on the road besides a mobile phone and Rs. 5,000/-.



12. Secondly, as per the Social Investigation report, it has been reported that the appellant is a matured married man of 29 years, belongs to a lower class family, has studied up to 2nd standard and has reflected non-toxicant habits and normal social behaviour, bore an extrovert personality, physically and mentally fit and was working earlier in a seat cover making factory. Thirdly, during incarceration, he was working as a cook 'langar sahayak' in Central Jail, Tihar on a remuneration of Rs. 8,300/- per month. Fourthly, he has one daughter aged 7 years and his family gave a positive and favourable report about his behaviour and conduct, however the parents of the appellant have passed away.

13. In this view he had been recommended for the benefit of probation under section 4 (3) of Probation of Offenders' Act by the report dated 25th May, 2022.

14. In light of these facts and circumstances, this Court is of the considered opinion that it would be a fit case for exercise of powers under Section 427 (1)Cr. P.C. to have the sentence awarded in FIR No. 7/2017 to run concurrently with sentences awarded in FIR No. 815/2016 and FIR No. 711/2016. Since the appellant has already served sentences of imprisonment awarded in FIR No. 815/2016 and FIR No. 711/2016, he may serve the remaining sentence in FIR No. 7/2017, subject of course to any other relief granted to him by the competent authorities in respect of probation, remission etc. In these peculiar facts that the appellant is ultimately serving a larger sentence of 7 years and would otherwise have to serve 13 years if the sentences were to run consequently, has merited this opinion of the Court. This view is based on an appreciation of various factors as noted above and does not serve as a precedent."



16. In **Nawabuddin** (supra), the Supreme Court observed that cases under the POCSO Act should be dealt in a stringent manner. The relevant observations of the Court are set out below:

“17. Keeping in mind the aforesaid objects and to achieve what has been provided under Articles 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the Pocso Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the Pocso Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the Pocso Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.”

17. Now I proceed to apply the principles laid down in the judgments above to the facts of the present case.

18. I am in agreement with the submissions made by the learned APP that the POCSO Act is a special legislation for the protection of children from sexual offences. Therefore, in cases involving the POCSO Act, the Court should not exercise jurisdiction in a routine manner under Section 427 of the CrPC without proper application of mind. In view thereof, the judgments relied upon by the appellant as well as by the learned *Amicus Curiae*, which relate to



offences under the IPC may not be strictly applicable to the facts and circumstances of the present case.

19. In order to exercise jurisdiction under Section 427 of the CrPC, various factors would have to be kept in mind, including but not limited to, the nature and gravity of the offences committed; period undergone in custody; whether the offences arise out of the same transaction; and other aggravating and mitigating circumstances.

20. In the present case, in respect of all the three offences, the date of incidents were separate though the child victim was the same. Further, all the cases were tried by the same Court and the appellant was convicted in all three cases *vide* separate judgments of conviction dated 21st December, 2019. Further, the orders on sentence were also passed in the three appeals separately on 23rd December, 2019. This shows that despite the fact that the cases were heard in close proximity to each other and the judgments were pronounced on the same date, the learned Sessions Court has not deemed it appropriate to exercise jurisdiction under Section 427 of the CrPC and therefore, did not order concurrent running of all the sentences.

21. As far as CRL.A. 600/2020 is concerned, considering that the conviction of the appellant is for a heinous offence of 'aggravated sexual assault', I do not deem it appropriate to exercise jurisdiction under Section 427 of the CrPC and grant benefit to the appellant. It is pertinent to note that as per the Nominal Roll on record, the appellant has served the substantive sentence awarded to him.



22. Insofar as CRL.A.196/2022 and CRL.A.70/2022 are concerned, the following mitigating circumstances are relevant:

- I. Though both the incidents are separate in time, the allegations made against the appellant are similar in nature. Notwithstanding the fact that two separate FIRs were filed by the victim in the two incidents, it is not improbable to conceive a situation where the victim could have approached the police after the second incident and a common FIR would have been registered in respect of the two offences. In that scenario, the appellant would have been tried and sentenced for the two incidents together. Therefore, there is a certain degree of overlap between the two offences.
- II. The appellant has been sentenced to undergo imprisonment of three years and one year respectively. As per the Nominal Rolls on record, the appellant has already served the sentence of nine and a half months, with approximately two years and two months remaining in CRL.A. 196/2022. Further, in CRL.A. 70/2022, the appellant has served four months with an unexpired sentence of eight months.
- III. The conduct of the appellant in jail has been satisfactory and he has been working as a *Safai Punja Sahayak*.
- IV. There are no previous involvements of the appellant apart from the FIRs in the present appeals.
- V. The probation officer has filed his report dated 4th October, 2023, wherein it has been stated that the appellant is in mental agony due to the



present case and would not repeat such an offence in the future. The appellant's parents and neighbours also have a positive report towards the behaviour of the appellant. Further, the appellant's wife and minor daughter would be the ultimate sufferers of the punishments inflicted. Keeping in view of the aforesaid, it is stated that there may be a good chance of reformation if the appellant is kept under proper supervision and guidance.

23. In light of the aforesaid facts and circumstances, this Court is of the considered opinion that it would be a fit case for exercise of powers under Section 427(1) of the CrPC and it is directed that the sentence awarded to the appellant in CRL.A. 70/2022 shall run concurrently with the sentence awarded to the appellant in CRL.A. 196/2022.

24. Considering the fact that the appellant comes from a poor economic background and that the appellant would have served a cumulative total imprisonment for a period of 8 years, the fines imposed upon the appellant are reduced. The appellant shall pay a fine of Rs.1,000/- in each of the three appeals. In case of default in payment of fine, the appellant shall further undergo simple imprisonment for a period of 15 days in each of the three appeals.

25. In view thereof, the present appeals/applications stand partially allowed to the extent stated above.

26. This Court appreciates the assistance rendered by Mr. Shiv Chopra, learned *Amicus Curiae*.



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27. All pending applications stand disposed of.

DECEMBER 21, 2023

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AMIT BANSAL, J.