

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1515 of 2023

Arising Out of PS. Case No.-44 Year-2015 Thana- BANKA District- Banka

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1. Nagmani Mandal @ Manish Mandal Son of Bateshwar Mandal Resident of Village- Vijay Nagar, PS- Banka, Distt- Banka
 2. Angad Mandal Son of Bateshwar Mandal Resident of Village- Vijay Nagar, PS- Banka, Distt- Banka

... .. Petitioners

Versus

1. The State of Bihar through The Chief Secretary, Govt. of Bihar Patna Bihar
2. The Home Secretary, Govt. of Bihar Patna Bihar
3. The I.G. Prison, Govt. of Bihar Patna Bihar
4. The District Magistrate Banka, Dist- Banka Bihar
5. The Jail Superintendent of Sahid Jubba Sahni, Central Jail Bhagalpur Bihar
6. The Jail Superintendent Divisional Jail Banka Bihar

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Dharendra Kumar, Advocate
For the Respondent/s	:	Mr. Sheo Shankar Prasad, SC-8
		Mr. Anil Kumar, AC to SC-8

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 18-10-2024

Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners in the present writ application are seeking the following reliefs:-

“(i) For setting aside the Letter No. 3752 dated 23.8.2022 issued under the signature of Jail Superintendent of Sahid Jubba Sahni, Central Jail Bhagalpur addressed to the Jail Superintendent, Divisional Jail Banka, holding therein that petitioners who have been convicted for 10 years in Session Trial No.141/2015 and 4 years in Session Trial No.

190/2015 has to serve the sentence separately and not concurrently. And further direct the authorities' respondents to treat both the sentence of petitioners to run concurrently.

(ii) For holding that having being remanded from S.T No. 141/2015 to S.T No. 190/2015 the petitioners are entitled to have the sentences to be treated as concurrently and not consecutively.

(iii) For direction to respondents authorities to release the petitioners from jail as they have served the sentences as awarded in both trial (S.T Case No. 141/15 and S.T. Case No. 190/15) on 04.02.2022 concurrently.

(iv) And for any other relief, relief's for which the petitioners may be found entitled."

3. From perusal of the records it appears that Banka P.S.

Case No. 44 of 2015 dated 23.01.2015 was registered for the offences under Sections 395, 397 and 412/34 of the Indian Penal Code (in short 'IPC') and Sections 3 and 4 of the Explosive Substances Act. Both the petitioners were chargesheeted in the said case and they faced trial in Session Trial No. 141 of 2015. In Sessions Trial No. 141 of 2015, the petitioners were found guilty for the offences under Sections 395, 397 and 412 read with Section 34 IPC. Accordingly, the petitioners were ordered to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 5,000/- for committing the offence punishable under Section 395 IPC, in default of payment of fine, they shall be liable to suffer simple imprisonment for a period of two years and six months in

addition to the substantial punishment of the imprisonment of ten years. They were further sentenced for a period of seven years for committing offence punishable under Section 397 IPC and for the offence under Section 412 IPC, they have been ordered to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 4,000/- and in default of payment of fine, they shall further suffer simple imprisonment for a period of two years. These sentences are to run concurrently.

4. It further appears that the petitioners were also made accused in Banka P.S. Case No. 53 of 2015 in which they faced trial in Sessions Trial No. 190 of 2015. In the said trial *vide* judgment dated 12.06.2019, the learned trial court convicted the petitioners for the offences under Sections 25(1-B)a, 26 read with Section 35 of the Arms Act. They have been ordered to undergo rigorous imprisonment for three years and fine of Rs. 5,000/- each for the offence under Section 25(1-B)a of the Arms Act and in default of payment of fine, both the petitioners shall further undergo simple imprisonment for one month each. The petitioners were further directed to undergo rigorous imprisonment for four years and fine Rs. 5,000/- each for the offence under Section 26 of the Arms Act and in default of payment of fine, both the

petitioners shall undergo simple imprisonment of one month each.
Both the sentences were to run concurrently.

5. It is submitted before this Court that the petitioners were arrested in connection with Banka P.S. Case No. 53 of 2015 on 28.01.2015 and they were remanded in Banka P.S. Case No. 44 of 2015 on 29.01.2015. The petitioners have deposited the fine amount of Rs. 5,000/- each.

6. The petitioners claim that they have served the sentence and completed the punishment on 04.02.2022 but they have not been released. The wife of the petitioner no.2 filed an application before the Superintendent of Jail, Banka and requested him to release the petitioner, however, the application filed on behalf of the petitioners did not find favour with the competent authority and the Jail Superintendent of the Central Jail, Bhagalpur has informed the Jail Superintendent of Banka that after completion of punishment of ten years in first case the punishment awarded in the second case will start. The copy of the letter No. 3752 dated 23.08.2022 has been brought on record as Annexure 'P/5' to the writ application.

7. It is this communication by which the petitioners are aggrieved.

8. Learned counsel for the petitioners submits that in the facts and circumstances of the present case, this Court may issue an appropriate direction to the competent authority to treat both the sentences of the petitioners to run concurrently and not consecutively.

9. On the other hand, learned counsel for the State has contested the submissions of learned counsel for the petitioners. Referring to the stand taken by the Opposite Party Nos. 3, 5 and 6 in their counter affidavit, learned counsel submits that law on the subject is well settled and the two judgments of this Court in **CrWJC No. 816 of 2017** in the case of **Harishchandra Prasad Vs. The State of Bihar and Ors.** and in the case of **Ranveer Yadav Vs. The State of Bihar and Ors.** reported in **2018 (3) PLJR 101** have settled that the period undergone after conviction in first case shall not be treated as under trial for subsequent conviction.

10. Learned counsel has referred Section 427 of the Code of Criminal Procedure (in short 'CrPC') which provides that when a person is undergoing a sentence of imprisonment, on a subsequent conviction to imprisonment or imprisonment for life or 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.

11. Learned counsel has also referred Section 444 and 447 of the Bihar Prison Manual, 2012 to submit that when a prisoner is already undergoing a sentence, on a subsequent conviction to imprisonment unless the court directs that the subsequent sentence shall run concurrently, he will have to undergo the subsequent sentence only after expiration of the first sentence.

12. It is submitted that as per the report of the Superintendent of District Jail, Banka, the probable date of release of petitioner no.1 would be 08.12.2025 if he deposits the fine. Regarding petitioner no.2, it is stated that his date of probable release is 21.07.2025, if he deposits the fine.

13. Having heard learned counsel for the petitioners, learned counsel for the State and on perusal of the records this Court finds substance in the submissions of learned counsel for the State. At the outset, this Court would take note of the relevant provisions of the CrPC as well as the Jail Manual. Section 427 CrPC reads as under:-

“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.”

14. Rule 444 and 447 of the Bihar Prison Manual, 2012

are being extracted hereunder for a ready reference:-

“444. When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, the sentences shall be served consecutively, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence.

447. Calculation of date of release of a prisoner sentenced to two or more sentences.—

When a prisoner is sentenced, either on the same day or on the following dates, to two or more sentences to be served consecutively, the date of release shall be calculated considering both terms as one. For example: A prisoner sentenced on 21st March 2010 to two substantive terms of imprisonment of one year each

shall be released on 20th March 2012 and not on 19th March 2012.

15. This Court had occasion to consider an identical issue in the case of **Ranveer Yadav** (supra). In the said case, this Court has referred paragraphs '12' and '18' of the judgment in the case of **Butan Sah Vs. The State of Bihar & Ors.** reported in **(2015) 4 PLJR HC 396**. Paragraphs '12' and '18' of **Butan Sah** (supra) are being referred hereunder for a ready reference:-

"12. What, in substance, Section 427 of the Code of Criminal Procedure conveys is that when a person, already undergoing a sentence of imprisonment, is further sentenced, on subsequent conviction, to imprisonment for a term or to imprisonment for life, such imprisonment for a term or such imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced unless the Court directs that subsequent sentence shall run 'concurrently' with his previous sentence. When, however, such a person is already undergoing a sentence of imprisonment for life, then, his further sentence of imprisonment for a term or imprisonment for life, which may be passed against him (following his subsequent conviction), shall run 'concurrently' with his previous sentence of imprisonment for life irrespective of the fact whether the Court directs or not that subsequent sentence of imprisonment for a term or imprisonment for life would run 'concurrently'.

18. A combined reading of the provisions embodied in Sections 31(1), 427 and 428 of the Code of Criminal Procedure and Section 64 of the Indian Penal Code

gives out a completed scheme of calculating the period of imprisonment passed as sentence, the ordinary rule being that the sentences awarded shall run consecutively unless the Court directs that the sentences passed, in more than one case, shall run concurrently. When the sentences of imprisonment are passed consequent upon an offender's conviction in more than one offence at one trial, it is Section 31 of the Code of Criminal Procedure, which applies, and when the sentences of imprisonment are passed consequent upon his conviction in different trials, it is Section 427 of the Code of Criminal Procedure, which would apply. Subsection (2) of Section 427 of the Code of Criminal Procedure makes an exception, the exception being that when a person, already undergoing a sentence of imprisonment for life, is sentenced, on subsequent conviction, to imprisonment for a term or to imprisonment for life, his subsequent sentence shall run 'concurrently' with his previous sentence of imprisonment for life, even if the Court does not direct that the subsequent sentence of imprisonment would run concurrently and not consecutively with his previous sentence of imprisonment for life."

16. This Court has after taking note of paragraphs '19' and '33' of the judgment of the Hon'ble Apex Court in the case of **Mathuramalingam & Ors. Vs. State represented by Inspector of Police** reported in **(2016) 8 SCC 313** found that Section 427(2) and Section 428 Cr.P.C. had come up for consideration before the Hon'ble Apex Court in the said case. The Constitution Bench in the case of **Mathuramalingam** (supra) has reviewed almost all the

previous case laws on the subject and concluded 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 concurrently. It has been observed that such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other

17. Paragraphs '19' and '33' of the Hon'ble Supreme Court judgment in **Mathuramalingam** (supra) are being reproduced hereunder for a ready reference:-

“19. A somewhat similar question fell for consideration before a three- Judge Bench of this Court in Ranjit Singh v. UT of Chandigarh²⁰, (1991) 4 SCC 304. The prisoner was in that case convicted for murder and sentenced to undergo life imprisonment. He was released on parole while undergoing the life sentence when he committed a second offence of murder for which also he was convicted and sentenced to undergo imprisonment for life. In an appeal filed against the second conviction and sentence, this Court by an order dated 30th September, 1983 directed that the imprisonment for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. The Court directed that in the event of remission or commutation of the earlier sentence

20. (1991) 4 SCC 304: 1991 SCC (Cri) 965

awarded to the prisoner, the second imprisonment for life awarded for the second murder committed by him shall commence. Aggrieved by the said direction which made the second life sentence awarded to him consecutive, the prisoner filed a writ petition under Article 32 of the Constitution primarily on the ground that this Court's order dated 30th September, 1983 was contrary to Section 427 (2) of the CrPC., according to which any person already undergoing sentence of imprisonment for life if sentenced to undergo imprisonment for life, the subsequent sentence so awarded to him shall run concurrently with such previous sentence.

33. We are not unmindful of the fact that this Court has in several other cases directed sentences of imprisonment for life to run consecutively having regard to the gruesome and brutal nature of the offence committed by the prisoner. For instance, this Court has in *Ravindra Trimbak Chouthmal v. State of Maharashtra*²⁵, while commuting death sentence penalty to one of imprisonment for life directed that the sentence of seven years rigorous imprisonment under Section 207 IPC shall start running after life imprisonment has run its due course. So also in *Ronny v. State of Maharashtra*²⁶ this Court has while altering the death sentence to that of imprisonment for life directed that while the sentence for all other offences shall run concurrently, the sentence under Section 376 (2)(g) shall run consecutively after running of sentences for other offences. To the extent these decisions may be understood to hold that life sentence can also run consecutively do not lay down the correct law and shall stand overruled.”

25. (1996) 4 SCC 148: 1996 SCC (Cri) 608

26. (1998) 3 SCC 625: 1998 SCC (Cri) 859

18. The judgment of this Court in **Ranveer Yadav** (supra) was challenged before the Hon’ble Supreme Court in Special Leave to Appeal (Crl.) No(s).5514 oif 2018 which was dismissed vide order dated 30.10.2018

19. In the background of the aforesaid statutory provisions and the judgments on the subject, this Court has no iota of doubt that the decision of the competent authority that the second sentence of the petitioners shall start running only after completion of the sentence in the first trial is correct. No interference would be required with the order of the competent authority.

20. This writ application is dismissed.

(Rajeev Ranjan Prasad, J)

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