

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 129 OF 2024

Dipak Shankar Malla
v/s.
State Of Maharashtra

.. Petitioner

.. Respondent

Mr. R.P.Khobragade a/w. Ms.Gayatri Nayak, a/w. Mr.Rahul Yadav a/w.
Mr.Raj Gupta a/w. Mr.Akash Tayade a/w. Ms.Ayesha Qureshi for the
Petitioner.

Ms. A.A. Takalkar, APP for the Respondent-State.

Mr. Sharad U.Malshikare Jailor Gr.II, Talaja Central Prison, present.

Mr.Ravikumar S.Patil, PSI of Bandra Railway Police Station, present.

**CORAM : A. S. GADKARI &
SHYAM C. CHANDAK, JJ.**

DATE : 8th MARCH, 2024.

PC. :

1) The Petitioner has invoked jurisdiction of this Court under Article 226 of Constitution of India, for a direction to run sentences imposed upon him by the trial Court in six different cases, concurrently than consecutively.

2) Heard Mr. Khobragade learned Advocate for the Petitioner and Ms. Takalkar, APP for State. Perused the record and Affidavit of Mr.Pramod D.Wagh, Superintendent, Talaja Central Prison dated 2nd February 2024.

3) It is an admitted fact on record and as has been specifically mentioned by the Respondent No.2 in his Affidavit dated 2nd February 2024, the Petitioner is convicted in six different cases and is sentenced to suffer

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rigorous imprisonment for 9 months in each case and to pay a fine of Rs.5000/- in each case. The trial Court has directed that, all the sentences to run consecutively.

4) The table mentioning details of C.R.Number, Case Number and quantum of punishment is reproduced hereinbelow for the sake of brevity.

Sr. No.	C.R.No.	Police Station	Offence Convicted u/secs	Case No.	Quantum of Punishment	Fine Status
1.	3195/2018	Bandra Railway Mumbai	392 of IPC	CC No. 314/PW/2019	Nine (09) Months R.I. with Fine of Rs.5000/- (ID 1 Month)	Not Paid
2	04/2019	Bandra Railway Mumbai	379 of IPC	CC No. 312/PW/2019	Nine (09) Months R.I. with Fine of Rs.5000/- (ID 1 Month)	Not Paid
3	11/2019	Bandra Railway Mumbai	379 of IPC	CC No. 313/PW/2019	Nine (09) Months R.I. with Fine of Rs.5000/- (ID 1 Month)	Not Paid
4	395/2021	Bandra Railway Mumbai	379 of IPC	CC No. 572/PW/2021	Nine (09) Months R.I. with Fine of Rs.5000/- (ID 1 Month)	Not Paid
5	17/2021	Bandra Railway Mumbai	392 of IPC	CC No. 323/PW/2021	Nine (09) Months R.I. with Fine of Rs.5000/- (ID 1 Month)	Not Paid
6	209/2021	Bandra Railway Mumbai	142 OF M.P.Act	CC No. 31/PS/2021	Nine (09) Months R.I. with Fine of Rs.5000/- (ID 1 Month)	Not Paid

5) Mr. Khobragade learned Advocate for the Petitioner submitted that, as the trial Court has directed that the sentences imposed upon the

Petitioner to run consecutively, the Petitioner will have to undergo 54 months of actual imprisonment and in default of payment of fine, he will have to further undergo sentence of six months. He submitted that the trial Court has committed an error in directing to run the sentences consecutively and has not shown any leniency to the Petitioner. He submitted that in case of *Ammavasai and another Vs. Inspector of Police, Valliyanur, and others reported in 2000(9) SCC 749 :AIR 2000 SC 3544* the Hon'ble Supreme Court has adopted the principle of via media and had given benefit to the said Appellant of undergoing lesser sentence than prescribed by the trial Court in different cases. He submitted that, in the said case the Appellant was convicted for 4 different offences and was sentenced to undergo 7 years of imprisonment in each offence, directing the Appellant therein to undergo a total period of 28 years in jail. The Hon'ble Supreme Court while adopting the principle of via media has directed the said Appellant to undergo 14 years of imprisonment. He submitted that, the said principle be applied to the Petitioner herein and appropriate directions in the interest of justice may be issued, by allowing the Petition.

6) As noted earlier it is admitted fact on record that, the trial Court has directed the Petitioner to undergo consecutive sentences in all the said six cases. Record indicates that, the Petitioner till date has not paid fine therefore he will have to further undergo in default sentence of six months.

After giving benefit of set off the jail authorities have calculated his period to be undergone in jail and the probable date of his release as 8th July 2024. The Petitioner as of today has completed his substantive sentence of three years, 8 months and 23 days after getting benefit of necessary remission and set off. The Petitioner is presently undergoing his in default sentence.

7) After applying the principle enunciated by the Hon'ble Supreme Court in the case of Amavasai (Supra) we are of the view that, the balance sentence which the Petitioner is undergoing, as in default sentence, can be waived and he can be released from jail as he has undergone the entire substantive sentence.

8) In view of the above, we are inclined to release the Petitioner from jail by holding that, the Petitioner has completed the sentence by waiving the balance of 'in default' sentence as noted above.

8.1) Petitioner be released from jail immediately on production of authenticated copy of this Order, if not required in any other case/cases than mentioned in the table in para No.4 above.

9) Petition is partly allowed in the aforesaid terms.

10) All concerned to act on the basis of authenticated copy of this Order by the Registry.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)