

2024:PHHC:074773



2024:PHHC:074774



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

I.

CRM-M-24559-2024

RAJENDER SINGH

. . . . Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

. . . . Respondents

II.

CRM-M-26528-2024

RAJENDER SINGH

. . . . Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

. . . . Respondents

Decided on 24.05.2024

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. V.S. Rana, Advocate, for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

In CRM-M-24559-2024, filed under Section 482 CrPC read with Section 428 CrPC, petitioner prays for setting off the sentence undergone by him as under trial prisoner in case FIR No.305 dated 13.06.2020 under Section 8 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1998 [for short 'the Act'] registered at Police Station Civil Lines, Hisar, claiming that sentence undergone by him in this case as under trial is more than awarded sentence of 6 months imprisonment.

2. In second petition - CRM-M-26528-2024, filed under Section 482 CrPC read with Section 427(1) CrPC, petitioner prays that sentence awarded in

FIR No.305 dated 13.06.2020 under Section 8/9 of the Act (supra) may be ordered to be run concurrently with sentence of case FIR No.8 dated 09.01.1996, under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act'] registered at Police Station Bhuna, Fatehabad.

3.1 Petitioner was convicted in FIR No.8 of 1996 under Sections 21/29 of the NDPS Act registered at Police Station Bhuna Fatehabad vide judgment dated 17.03.1997 and was sentenced to undergo imprisonment for a period of 20 years with fine of ₹2 lakh with default sentence of 5 years. According to ld. counsel for the petitioner, while undergoing sentence in the aforesaid case, petitioner was granted parole and was to surrender on 02.06.2000. He could not surrender due to some personal reasons, due to which FIR No.305 dated 13.06.2000 under Sections 8/9 of the Act was registered against him at Police Station Civil Lines, Hisar. After trial, petitioner was sentenced to undergo 1 year imprisonment in that case, which was reduced to six months by this Court vide order dated 23.10.2008 in CRR-2234-2007.

3.2 Ld. counsel has then drawn attention towards the custody certificate in order to contend that petitioner remained in custody as under trial w.e.f. 31.01.2023 to 21.02.2004 i.e. for the period of 1 year and 21 days in case FIR No.305 (supra). Contention of ld. counsel is that sentence awarded in this case is only 6 months. Since the under trial period is more than the sentence awarded, so the benefit of set off under Section 428 CrPC is liable to be given to the petitioner. Still further, it is contended that the sentence in the two cases should be directed to be run concurrently as per Section 427 CrPC.

3.3 Ld. counsel has referred to a decision of Hon'ble Supreme Court rendered in *State of Maharashtra and another Vs. Najakat Alia Mubarak Ali*, 2001(2) RCR (Criminal) 778, which was later on also referred in *Atul Manubhai*

Parekh Vs. Central Bureau of Investigation, 2010 (1) SCC 603, in order to contend that when a convict is undergoing imprisonment in two cases, in which he had been convicted, then he was entitled to set off under trial period in respect of both the cases.

4. Ld. State counsel has opposed both the petitions by pointing out that under trial period of the petitioner in FIR No.305 (supra) is included in the post-conviction period in case FIR No.8 of 1996 under Sections 21/29 of the NDPS Act. Ld. State counsel also points out that no appeal or revision against any of the two convictions is now pending and therefore, petition for seeking benefit under Section 427 CrPC to make the two sentences concurrently, is not maintainable.

5. I have considered submissions of both the sides and have appraised the record.

6. The custody certificate as issued by the Superintendent, Central Jail Hisar, would reveal that under trial custody period of the petitioner in case FIR No.305 (supra) is w.e.f. 31.01.2003 to 21.02.2004. It is revealed further that this period is in fact part of the post conviction period of the petitioner in case FIR No.8 (supra), in which petitioner has been sentenced for 20 years imprisonment. Thus, this period of 1 year and 21 days w.e.f. 31.03.2003 to 21.01.2004 cannot be considered as under trial period of the petitioner in case FIR No.8 of 1996 (supra) and therefore, petitioner cannot claim set off of this period. The facts of the present case are quite distinguishable from the facts of ***Najakat Alia Mubarak Ali's case (Supra)*** and as such, no advantage of cited authority can be given to the petitioner.

7. Consequently, petition bearing ***CRM-M-24559-2024*** is hereby dismissed.

8. Proceeding further, it is conceded by ld. counsel that as of now, no appeal or revision etc. against any of the two convictions recorded against the petitioner, is pending before this Court and that CRM-M-26528-2024, seeking concurrency of the two sentences, has been filed independently. The said issue has been considered by Hon’ble Supreme Court in *M.R. Kudva Vs. State of Andhra Pradesh, 2007(1) RCR (Criminal) 868*, wherein it has been held by that inherent powers of the High Court under Section 482 CrPC cannot be invoked in isolation so as to entertain the application for making the sentences recorded in different cases, to run concurrently. Similar view has been taken by a Full Bench of this High Court in *Jang Singh Vs. State of Punjab, 2008(1) RCR (Criminal) 323*.

9. In view of the aforesaid legal position, the petition bearing **CRM-M-26528-2024** is hereby dismissed being not maintainable.

Pending application(s), if any, also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

24.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes
No