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

+ **CRL.A. 487/2014**

IZRAFUL SANFUI @ RAJU Appellant
Through: Mr. Harsh Prabhakar and
Mr. Dhruv Chaudhary,
Advs.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Utkarsh, APP for the
State with SI Bharti Singh,
PS Burari.

+ **CRL.A. 893/2015**

ISHRAFUL @ RAJ @ RAJU Appellant
Through: Mr. Ajay Verma, Mr.
Krishna Sharma and Mr.
Vaishnav Kriti Singh,
Advs.

versus

STATE Respondent
Through: Mr. Utkarsh, APP for the
State with SI Gaurav, PS
Kamla Market.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
20.03.2024

CRL.M.A. 14638/2020 in CRL.A. 893/2015

1. The present application is filed under Section 427 read with Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeking concurrent running of sentences awarded to the appellant in two separate FIRs being FIR No. 67/2012, registered
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at police station Kamla Market for offences under Sections 366A/372/376/342/373/34 IPC & Sections 3/4/5/6 of the ITP Act, registered at police station Kamla Market and FIR No. 163/2012, under Sections 366/373/376/343/34 of the Indian Penal Code, 1860 (IPC) and Section 23 of the Juvenile Justice Act 2000 ('**JJ Act**') registered at police Station Burari .

2. By judgement dated 31.10.2013 passed by the learned Additional Sessions Judge (ASJ), Tis Hazari Courts, Delhi, the appellant was convicted in FIR No. 163/2012 for the offences under Sections 366/373/376/343/34 of the Indian Penal Code, 1860 (IPC) and Section 23 of the JJ Act and sentenced to undergo rigorous imprisonment for a period of 10 years along with a cumulative fine of Rs. 20,000/- *vide* order on sentence dated 07.11.2013. This led to filing of CRL.A. 487/2014.

3. By order dated 31.01.2015 passed by the learned ASJ, the appellant was convicted in FIR No. 67/2012 for the offence under Section 366 of the IPC and was sentenced to undergo rigorous imprisonment for a period of ten years along with a payment fine of Rs.5,000/- *vide* order on sentence dated 18.02.2015. This led to filing of CRL.A.893/2015.

4. The learned Counsel for the appellant submits that the appellant is willing to accept infractions and has agreed to the disposal of the present appeals on the basis of the sentence undergone by him. It is submitted that the offences in the present cases should be taken to be a part of one transaction since the similar offences are been alleged to have been committed on the same victims. 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 of this Court in



Ajay Kumar v. State NCT of Delhi : 2023 SCC OnLine Del 962.

5. Per contra, learned Additional Public Prosecutor appearing for the State submits that in view of the fact that the appellant has been convicted for offences under Sections 366 and 376 of the IPC, discretion under Section 427 of the CrPC should not be exercised in his favour, since the allegations levelled against the appellant are of grave nature that he was involved in the human trafficking of women for the purposes of prostitution. He further submits that the appellant was convicted for offence under the 23 of the JJ Act as well, which is the offences against the society.

6. 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.”

7. The Hon’ble Supreme Court in ***Mohd. Zahid v. Union of India : (2022) 12 SCC 426***, 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.”

(Emphasis Supplied)

8. In *Ajay Kumar v. State NCT of Delhi* (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 incident. 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.”

9. 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 was 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.”

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

11. I am in agreement with the submissions made by the learned APP that the allegations alleged against the appellant are heinous in nature and the power under Section 427 should not be used in a routine manner.

12. 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 intertwined and interconnected facts; and other aggravating and mitigating circumstances.

13. The brief facts with respect to both the FIRs are as follows:



13.1. The FIR No.163/2012, was registered on 25.06.2012, on the complainant given by one of the rescued girls, who on 24.06.2012 at around 05:00 p.m. saw a police gypsy and called the police. It was stated by the complainant that she and the other girls were resident of Kolkata and the petitioner brought them to Delhi on the pretext of getting them better work with higher pay, and kept them at a house of other co-accused persons in Sangam Vihar, Delhi. It was alleged that instead of getting them any work the petitioner had sold them to the other accused persons and they were forced to do '*Galat kaam*'. The petitioner was apprehended from the spot whereas co-accused Bilal had managed to run away.

13.2. The FIR No.67/2012 was registered on 26.06.2012, on a complaint given by one J.R. Saran who is stated to be a co-ordinator of Delhi based Rescue Foundation, alleging that two girls from West Bengal are missing and he has information that they might be present at Kotha No. 58, G.B. Road, Delhi.

13.3. On the basis on the said information a raid was conducted at Kotha No. 58, G.B. Road, Delhi and besides one of the missing girls nine more girls were recovered who levelled similar allegations against the petitioner for kidnapping and selling them.

14. In the present case, in respect of all the offences, the date of incident / information on which the FIRs were registered were same and part of the same transaction. Further, all the cases were tried by the same Court and the appellant was convicted in both cases *vide* separate judgments of conviction dated 31.10.2013



and 31.01.2015. Further, the orders on sentence were also passed separately on 17.11.2013 and 18.02.2015 respectively. This shows that despite the fact that the cases were heard in close proximity, but not parallel to each other, by the same judge, 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.

15. The petitioner as per the nominal roll has spent more than nine years in custody. He was arrested on 25.06.2012 in FIR No. 163/2012 and was taken in custody on 09.10.2013, in FIR 67/2012.

16. From the facts as narrated above, the two offences though are distinct but the facts giving rise to the offences are intrinsically intertwined with each other. The FIR No. 163/2012 was registered on a complaint given by one of the girls who on seeing a police gypsy called them and stated that she had been brought there on the pretext of work and forced into prostitution. FIR No. 67/2012 was registered alleging that two girls from West Bengal were missing. Those girls pursuant to a raid were found at Kotha No. 58, G. B. Road, Delhi.

17. The allegations, thus, in both the cases relate to the act of the petitioner of forcing the girls into prostitution. The offence, no doubt, is heinous and ought not to be pardoned under any circumstances, however, the Court also cannot ignore the provisions of Section 427(1) of the CrPC. The petitioner has also undergone more than nine years in custody. He was first arrested on 25.06.2012.

18. The trial in the FIRs culminated into the final judgments on 31.10.2013 and 31.01.2015. It can, thus, be assumed that at least upto 31.01.2015, the applicant is in custody in both the FIRs



and has thereafter, spent more than 9 years in one FIR. The present appeals filed by the appellant for the reason of high pendency of cases before this Court are also not likely to be heard in near future. The appellant has accepted the offence.

19. In view of the aforesaid facts and circumstances, this Court of the opinion that it would be a fit case for exercise of power under Section 427(1) of the CrPC and it is directed that the sentence awarded to the appellant in CRL.A. 487/2014 shall run concurrently with the sentence awarded to the appellant in CRL.A. 893/2015.

20. Considering the fact that the appellant belongs to the poor strata of society and has been in cumulative imprisonment for a period of more than nine years approximately, the fines imposed upon the appellant are reduced, the appellant shall pay a fine of ₹1,000/- in each appeal. In case of default in payment of fine, the appellant shall further undergo simple imprisonment for a period of fifteen days in each appeal.

21. In view of the above, the present application is allowed.

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22. In view of the aforesaid, the present appeals are disposed of.

23. Pending application(s) also stand disposed of.

24. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

MARCH 20, 2024