



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 16 OF 2025

Shaikh Samad Shaikh Gafoor,
Age : 37 Years, Occu. : At present in Jail,
R/o Madaani Nagar, Reglu Road,
District Nanded. **... Petitioner.**

Versus

1. The State of Maharashtra,
Through the Office of Public Prosecutor,
2. The Superintendent,
Nashik Road Central Prison. **... Respondents.**

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Advocate for the Petitioner : Ms. Tanvi Jadhav (appointed
Through Legal Aid).
APP for Respondent/s-State : Mrs. Chaitali Choudhari Kutti.

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CORAM : SHAILESH P. BRAHME, J.
DATE : 16.04.2025

ORAL JUDGMENT :-

1. Heard this matter finally by consent of the parties.
2. A life convict has approached this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure challenging the clause No.(3) of award of sentence passed by Judicial Magistrate First Class on 02.05.2023 in SCC.No.427 of 2018 as well as order dated 18.09.2023 passed by jurisdictional Magistrate rejecting his

application seeking direction to modify the clause in operative part.

3. Petitioner was earlier convicted for offence under Section 302 by Additional Sessions Judge, Nanded in Sessions Case No.95 of 2013 for imprisonment of life and fine of Rs.1,000/-. Being aggrieved, he had preferred Criminal Appeal No.734 of 2014, but it was dismissed on merits. While undergoing the sentence, he was prosecuted for offence under Section 224 of the IPC in SCC.No.427 of 2018.

4. Petitioner was convicted and sentenced vide judgment dated 02.05.2023 imposing sentence of one year with fine of Rs.1,000/- with default clause. It was directed that substantive sentence shall be in addition to the punishment for which he is already convicted. After suffering the judgment and conviction, he made application to the jurisdictional Magistrate which was rejected by order dated 18.09.2023. Thereafter, petitioner approached High Court vide application dated 24.11.2023 Ms. Tanvi Jadhav, advocate on the panel of Legal Aid Services Committee was appointed to file petition. Accordingly, present writ petition is filed.

5. Learned counsel for petitioner submits that in view of settled legal position handed down by Supreme Court in the matter of *Gopal Vinayak Godse Vs. State of Maharashtra and others ; AIR 1961 SC 600* which has been consistently followed and further judgment of Division Bench in the matter of *Mahadev Asaram Sillode Vs. State of Maharashtra and others ; 2022 SCC OnLine Bom. 752*, it would be illegality to direct the sentence of subsequent conviction to run concurrently. She would submit that the imposition of the sentence by Judicial Magistrate First Class in SCC.No.427 of 2018 is violative of Article 21 and 226 of the Constitution of India. Impugned order dated 18.09.2023 is against Section 427 and the law laid down by the Supreme Court and High Court referred above.

6. Learned APP supports impugned order. She would submit that it is impermissible to maintain writ petition. It is further submitted that the remedy for the petitioner is to prefer appeal against conviction and sentence.

7. Learned counsel for the petitioner has tendered on record a copy of judgment and order dated 02.05.2023 which is marked at Exh.X. It's operative part is as follows :

“1. Accused Shaikh Samad Shaikh Gafur is hereby convicted for the offence punishable under Section 224 of

the Indian Penal Code vide section 255(2) of Code of Criminal Procedure.

2. *Accused is sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1000/- in default to suffer simple imprisonment for 10 days in respect of offence punishable under Section 224 of Indian Penal Code.*

3. *The substantive sentence shall be in addition to the punishment for which the accused is already convicted.*

4. *Set off, if any, be granted to the accused vide Section 428 of Code of Criminal Procedure.*

5. *Issue letter to Jail Authority accordingly.”*

8. There is no dispute that petitioner is already undergoing imprisonment for life imposed by judgment and order dated 28.08.2014 in SC.No.95 of 2013. Appeal against that conviction was dismissed. The subsequent prosecution and the conviction was during the subsistence of and sufferance of imprisonment for life.

9. Learned counsel for the petitioner is right in contending that it is a settled legal position that the subsequent conviction should run concurrently is a rule as prescribed by Section 427. It would be relevant to refer to the judgment of Division Bench in case of *Mahadev Asaram Sillode (supra)* which is rendered considering Supreme Court judgment in the matter of *Gopal*

Vinayak Godse Vs. State of Maharashtra and others. It's relevant part is as follows :

“23. In the facts of the present case, the case squarely falls within the ambit of the provision of sub-section (2) of Section 427 of Cr.PC. In terms of the general rule enunciated in sub-section (1) of Section 427 of Cr.PC., without the court's direction, the subsequent sentence will not run concurrently, but consecutively. However, the only situation in which no direction of the court is needed to make the subsequent sentence to run concurrently with the previous sentence is provided for in sub-Section (2) which has been enacted to avoid any possible controversy based on sub-section (1) of Section 427 of Cr.PC.. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427. Thus, the meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is therefore clear. The Supreme Court has held in the case of Gopal Vinayak Godse v. State of Maharashtra [AIR 1961 SC 600] and reiterated in Maru Ram that imprisonment for life is a sentence for the remainder of the life of the offender. In terms of provisions of Section 427(2) of Cr.PC., if the earlier sentence of imprisonment for life is imposed, then there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively.”

10. In view of the above legal position, order dated 18.09.2023 is unsustainable. The operative part of the judgment and order dated 02.05.2023 passed by Judicial

Magistrate First Class, Court No.8, Nanded, in SCC.No.427 of 2018 needs modification.

11. It would be hyper technical to reject the petition when petitioner's life and liberty is at stake. He is unable to approach the forum challenging judgment and order dated 02.05.2023 especially when he is aggrieved by only operative part No.3 of the judgment. Therefore, I overrule the objection of learned APP.

12. For the reasons stated above, writ petition is allowed by quashing clause No.3 of the operative part of judgment and order dated 02.05.2023 passed in SCC.No.427 of 2018.

13. It shall be substituted that the substantive sentence referred in Clause No.2 of operative part of judgment and order dated 02.05.2023 shall run concurrently.

14. Consequently, order dated 18.09.2023 passed by 8th Judicial Magistrate First Class, Nanded is also quashed and set aside.

15. Respondents are directed to treat the subsequent sentence of the petitioner/prisoner No.C/9594, Inmate of

Nashik Road Central Prison of one (1) year and payment of fine of Rs.1,000/- with default clause to be run concurrently.

16. For the assistance rendered by the learned counsel for the petitioner, High Court Legal Services Sub Committee shall quantify her fees according to law.

17. Writ petition is disposed of accordingly.

18. Rule is made absolute in the above terms.

(SHAILESH P. BRAHME, J.)

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vmk/-