

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 4474 OF 2024
WITH
INTERIM APPLICATION NO. 4165 OF 2025**

Mr.Hashim Basheer

Age: 41 years, Occupation: Business,
Residing at 939- Peeramedu, Darul,
Najad House, Peermedu, District: Idukki,
Kerala- 685531.

... Petitioner.

V/s.

1. The State of Maharashtra
(Through the office of the Public
Prosecutor, Mumbai)
2. Ms.Moorsalin Sayed,
Age: Adult, Occupation: Nil.
3. Mr.Faizan Sayed s/o Sayyed Riyaz Darvesh,
Age: 26 years, Occupation: Business.
4. Mr.Sayyed Riyaz Darvesh,
Aged: 67 years, Occupation: Retired,
All residing at: 241/2, Adarsh Nagar,
New Link Road, Near Zuben Wines,
Jogeshwari (West), Mumbai- 102.

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Mr.Aditya Sharma with Mr.Siddharth Jaiswal i/b. Ms.Priya Maurya
for the Petitioner.

Ms.Madhavi H. Mhatre, APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE , JJ.**

RESERVED ON : 24th NOVEMBER 2025.

PRONOUNCED ON : 24th DECEMBER 2025.

JUDGMENT: (Per Ranjitsinha Raja Bhonsale, J.)

1) Rule.

Rule made returnable forthwith. Heard finally by consent of parties.

2) By the present Petition, under Articles 226 and 227 of the Constitution of India, the Petitioner seeks a direction that, the sentences imposed upon the Petitioner by the Metropolitan Magistrate (48th Court), Andheri, Mumbai in C.C.No.4268/SS/2014, C.C.No.4269/SS/2014 and C.C.No.4270/SS/2014 by separate Judgment and Orders all dated 4th January 2019, run concurrently. The Petitioner further prays that, he has been in custody since 27th September 2023, in the Sindhudurg Prison, and he may be released on bail.

3) Respondent No. 2 is the Complainant in C.C. No. 4270/SS/2014. Respondent No.3 is the complaint is C.C.No.4269/SS/2014. Respondent No 4 is the complainant in C.C.No.4268/SS/2014. All the complaints were filed, under section 138 of the Negotiable Instruments Act, 1881, before the Metropolitan Magistrate (48th Court), Andheri, Mumbai including

C.C.No.4263/SS/2014. The Metropolitan Magistrate (48th Court), Andheri, Mumbai, by its judgment and order dated 4th January 2019, passed in each of the complaints, was pleased to sentence the Petitioner to suffer simple imprisonment of 8 months and to pay within 1 month of the order compensation to Complainant as stated therein, and in default, to undergo simple imprisonment for 2 months.

3.1) In C.C.No.4268/2014, the sentence is of simple imprisonment of 8 months with a direction to pay compensation of Rs.15,00,000/- to the Complainant therein within 1 month of conviction, in default, the Petitioner has to undergo simple imprisonment for 2 months. In C.C.No.4269/SS/2014, the sentence is of simple imprisonment of 8 months with a direction to pay compensation of Rs.14,00,000/- to the Complainant therein within 1 month of conviction, in default, the Petitioner has to undergo simple imprisonment for 2 months. In C.C.No.4270/SS/2014, the sentence is of simple imprisonment of 8 months with a direction to pay compensation of Rs.4,50,000/- to the Complainant therein within 1 month of conviction, in default, Petitioner has to undergo simple imprisonment for 2 months. Mr.Arsan Sayed had filed C.C.No.4263/SS/2014 before the Metropolitan Magistrate (48th Court), Andheri, Mumbai, wherein learned Court by its Judgment and Order dated 4th June 2019 has sentenced the Petitioner to undergo simple

imprisonment for 8 months with a direction to pay compensation of Rs.6,50,000/- to the Complainant therein within 1 month of the conviction. In default, the Petitioner has to undergo simple imprisonment for 2 months.

4) Heard Mr.Sharma, learned Advocate for the Petitioner and Ms.Mhatre learned A.P.P. for the Respondent-State. Perused the papers and the entire record.

5) Learned Advocate for the Petitioner submitted that, the said complaints arise out of the same transaction and pertain to dishonour of different cheques which were issued by the Petitioner in respect of the same loan transaction to members of a family. That, the Petitioner had taken a loan of Rs 27,00,000/- in total from the Respondent Nos 2 to 4, and issued cheques to them for the repayment of the said loan. The Respondent Nos 2 to 4 filed complaints when the said cheques were dishonoured. That, the Petitioner, is undergoing the sentence from 27th September 2023 and till today i.e. 24th December 2025, the Petitioner has undergone more than 26 months of imprisonment. That, the total period of punishment including imprisonment for non-payment of fine would be 40 months.

6) Considering the facts of the present case, a useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of

Ammavasai and another v. Inspector of Police, Valliyanur and others reported in (2000) 9 SCC 749, by adopting the rule of via-media, the Hon'ble Supreme Court has permitted the sentences passed against the Appellants therein to run concurrently. In the said case, the Appellant No. 1 was convicted for in 4 different cases, the incident of which took place between 27th March 1990 and 7th May 1990. The Appellant No 1 was found guilty of the offence under section 395 of the Indian Penal Code, convicted and directed to undergo a rigorous imprisonment for 7 years, and for four cases for a total period of 28 years, without the benefit of section 427 of the Criminal Procedure Code. The Appellant No. 2 was convicted for in 5 different cases, the incident of which took place between 21st October 1989 and 7th May 1990. The Appellant No.2 was found guilty of the offence under section 395 of the Indian Penal Code, convicted and directed to undergo a rigorous imprisonment for 7 years, and for four cases for a total period of 35 years without the benefit of section 427 of the Criminal Procedure Code. The Supreme Court, after considering the facts in paragraph 4 observed that:

4. On the other hand, we allow the appellants to have the benefit of all the sentences to run concurrently, they would be out by now after serving only imprisonment for a period of 7 years awarded in one case. Both courses are unacceptable to us and, therefore, we thought of a via media which would be consistent with the administration of criminal justice. After bestowing our anxious consideration, we thought that if the appellants would undergo a total

period of 14 years of imprisonment in respect of all the convictions passed against them, that will be sufficient to meet the ends of justice.

6.1) This Court in the case of *Rajan Mohanlal Thakur v. The State of Maharashtra* in *Criminal Application No.2474/2004* decided on 22nd December 2004 had considered the said issue. The Court in paragraph-2, has observed as under:

“..... In other words, as both the offences committed by the Applicant were independent and not arising from one transaction as such, the Applicant ought to suffer consecutive sentences and not concurrent. However, Mr. Saste, learned A.P.P., has in all fairness drawn my attention to recent decision of the Apex Court in the case of *Ammavasai and another v. Inspector of Police, Valliyanur and others*, reported in (2000) S.C.C. 749. In that case, the Apex Court has adopted via media having regard to the fact situation of that case. In that case, the concerned accused was convicted in five different cases, the occurrences in all of which had taken place at different points of time. Even in that case the accused was convicted for offence under section 395 of the Indian Penal Code, as in the present case. The lower Court had sentenced the accused to undergo rigorous imprisonment for a the period of 7 years in each case. As a result, the accused in that case would have been required to undergo imprisonment for a total period of 35 years in jail, which also, according to the Apex Court, would be inappropriate. In that situation, the Apex Court directed that sentence in respect of first offence will run untelescoped by any other sentence imposed upon the accused subsequently and insofar as remaining four out of five cases are concerned, the sentences shall run concurrently. In other words, the accused in that case was directed to undergo imprisonment for a total period of 14 years in respect of the convictions and sentences ordered against him in five different cases arising from different occurrences, so as to meet the ends of justice.”

6.2) In the case of *V.K.Bansal v. State of Haryana and another* reported in *(2013) 7 SCC 211*, while referring to the single transaction rule, the Hon'ble Supreme Court observed that where there is single transaction constituting offence, even if different complaints are filed in relation thereof, the sentences can run concurrently. It was observed that where different cheques were issued by a borrower company through the accused which were subsequently dishonoured and consequently the accused were sentenced for an offence punishable under section 138 of the Negotiable Instruments Act, the same can be regarded as arising of the same loan transaction justifying a direction for concurrent running of sentences but in case where the borrower company is different, transaction would be separate and independent and the sentences cannot be directed to run concurrently. The Hon'ble Supreme Court observed as under:

7. Section 427 of the Code of Criminal Procedure deals with situations where an offender who is already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life. It provides that 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.

8. Section 427 may at this stage be extracted:

“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.”

.....

10. We are in the case at hand concerned more with the nature of power available to the Court under Section 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations: one falling under the proviso to sub-section (1) to Section 427; the second falling under sub-section (2) thereof; and the third where the court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.

.....

13. There are also cases where the High Courts have depending upon whether facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other directed that the sentences awarded should run concurrently. As for instance the High Court of Allahabad has in *Mulaim Singh v. State* directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other. Suffice it to say that the discretion vested in the Court for a direction in terms of Section 427 can and ought to be exercised having regard to the nature of the offence committed and the facts situation, in which the question arises.

14. We may at this stage refer to the decision of this Court in *Mohd. Akhtar Hussain v. Collector of Customs* in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard apposite: (SCC p. 187, para 10)

“10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

15. In *Madan Lal case* [*State of Punjab v. Madan Lal*, this Court relied upon the decision in *Akhtar Hussain case* and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

16. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single

transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

7) We have considered the aforesaid pronouncements and the same are squarely applicable to the present case. In the present case, the Petitioner has been convicted by four different Orders of the same date by the same Court in respect of four complaints filed under section 138 of the Negotiable Instruments Act, in respect of the same loan transaction. The complaints are by persons of the same family in respect of different cheques given in respect of a loan transaction. We have also noted that the Orders are passed on the same date. The Petitioner has been in custody from 27th September 2023 and till today i.e. 24th December 2025 he has already undergone an imprisonment for more than 26 months. The total period of punishment for all the convictions would be 40 months.

8) Considering the facts of the case and the law as laid down by the Hon'ble Supreme Court, we are inclined to direct that the sentences imposed by the Judgment and Orders dated 4th January 2019 shall run concurrently. We direct that the sentence imposed on the Petitioner pursuant to the conviction by Judgment and Orders dated 4th January 2019 in C.C.No.4263/SS/2014 passed by the Metropolitan Magistrate (48th Court), Andheri, Mumbai will run its course unaffected by any other

sentence imposed upon the Petitioner. We direct that the sentences imposed upon the Petitioner by the Judgment and Orders dated 4th January 2019 by the Metropolitan Magistrate (48th Court), Andheri, Mumbai in C.C.No.4268/SS/2014, C.C.No.4269/SS/2014 and C.C.No.4270/SS/2014 shall run concurrently. The Petitioner has not paid fine. Therefore, for non-payment of fine, the Petitioner will undergo imprisonment for a period of 8 months.

9) In view thereof, we pass the following Order:

- (i) Petition is allowed and as the Petitioner has already undergone an imprisonment of 26 months, the Petitioner is directed to be released from custody forthwith and set free.
- (ii) Rule is accordingly made absolute.
- (ii) In view of disposal of Petition, Interim Application does not survive and is accordingly disposed off.

(RANJITSINHA RAJA BHONSALE, J.)

(A. S. GADKARI, J.)