



Crl.O.P.No.1256 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.No.1256 of 2025

Varadarajan

S/o.Meenakshi Sundaram

.. Petitioner

VS.

1.The Superintendent of Prison,
Central Prison, Coimbatore.

2.The State represented by
The Inspector of Police,
Sulur Police Station,
Coimbatore.
Crime No.594 of 2014

.. Respondents

Prayer: Criminal Original Petition under Section 528 of B.N.S.S. equivalent to Section 482 of Cr.P.C. praying to direct the first respondent to set off the petitioner's remand period from 28.11.2014 to 07.01.2015 as an under-trial prisoner in connection with the case in C.C.No.546 of 2017 on the file of Judicial Magistrate, Sulur, Coimbatore.

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.S.Vinoth Kumar

Government Advocate [Crl.side]



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ORDER

Heard the learned counsel on either side.

2. The petitioner was convicted for the offence under Section 392 IPC and sentenced to three years rigorous imprisonment vide judgment dated 27.07.2018 in C.C.No.546 of 2017 on the file of Judicial Magistrate, Sulur, Coimbatore. Questioning the same, the petitioner filed C.A.No.335 of 2018 before the I Additional District and Sessions Judge, Coimbatore, which was dismissed vide judgment dated 17.12.2018. Challenging the same, the petitioner filed Crl.R.C.No.101 of 2019 before this Court and the same was dismissed by order dated 02.02.2021. Aggrieved by the same, the petitioner filed Special Leave Appeal (Crl.) No.6950 of 2023 before the Honourable Supreme Court of India, which was also dismissed vide judgment dated 09.10.2023. The only request made by the petitioner in this petition is that the pre-trial incarceration suffered by him should be set-off.



3. Learned counsel for the petitioner draws my attention to

Section 428 of the Code of Criminal Procedure, which reads as follows:

"428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.

Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him."

As rightly pointed by the learned counsel for the petitioner, it is mandatory in nature.

4. It is further submitted by the learned counsel for the petitioner that this provision can be invoked even by filing a miscellaneous petition before the Court at any time. In support of his contention, the judgment in *Suraj Bhan v. Om Prakash and another [(1976) 1 SCC 886]* is pressed into service. This decision was followed by a learned Judge of this Court vide order dated 11.09.2020 in Crl.O.P.No.5814 of 2020.



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rka/gm

5. In the instant case, the petitioner was arrested on 28.11.2014 and he was granted bail on 07.01.2015. This period from 28.11.2014 to 07.01.2015 is directed to be set off in terms of Section 428 Cr.P.C.

Accordingly, this Criminal Original Petition is allowed.

17.01.2025

Note: Issue order copy by 21.01.2025

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order

rka/gm

To

1.The Judicial Magistrate,
Sulur, Coimbatore.

2.The Superintendent of Prison,
Central Prison, Coimbatore.

3.The Inspector of Police,
Sulur Police Station,
Coimbatore. Crime No.594 of 2014

4.The Public Prosecutor,
High Court, Madras.

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