



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1657 OF 2025

Kailas Shankar Navekar (C.No.6774)
Age: Major, Occupation: in jail
Chhatrapati Sambhajinagar Central Prison,
Tq. & Dist, Chhatrapati Sambhajinagar.

...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary Home Department,
Mantralaya, Mumbai-32.
2. The Inspector General of Prisons
Maharashtra State, Pune.
3. The Superintendent,
Central Jail Chhatrapati Sambhajinagar,
Central Prison Chhatrapati Sambhajinagar. ...Respondents

~~*~*

Advocate for Petitioner : Mr. Kiran D. Jadhav
APP for Respondent/State : Mr.P.K. Lakhotiya

~~*~*

CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.

RESERVED ON : 24.02.2026
PRONOUNCED ON : 02.04.2026

JUDGMENT : (*PER : ABASAHEB D. SHINDE, J.*)

. Rule. Rule is made returnable forthwith. With the consent of the parties, heard finally at the admission stage.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner has put forth the following prayers :

“A. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent-authorities to treat the sentences awarded to the petitioner in (i) Sessions Case No. 100/2006, Additional Sessions Judge, Beed and (ii) Sessions Case No. 04/2007 (now confirmed in Criminal Appeal No. 672/2008), as running concurrently in terms of Section 427(2) Cr.P.C. and to give consequential benefits thereto.

B. Direct the respondent-State and the Competent Authority to forthwith decide the petitioner's pending proposal/representation seeking concurrency of sentences and premature release, strictly in accordance with law and within a time-bound period as may be stipulated by this Hon'ble Court.

C. Direct the respondent-authorities to recalculate the petitioner's sentence by applying Section 427(2) Cr.P.C. and upon such recalculation, if the petitioner is found to have undergone the requisite period of imprisonment, to release the petitioner forthwith, unless he is required in any other case.”

3. The issue involved in this Writ Petition is whether the petitioner who has been convicted and directed to undergo a term sentence(s) in previous trial is entitled for a benefit of running the said sentence concurrently with the sentence of life imprisonment awarded in subsequent trial.

FACTUAL MATRIX :—

4. The petitioner was tried before Additional Sessions Judge, Beed for committing offences punishable under Sections 363, 376 and 506 of the Indian Penal Code (in short 'IPC') in Sessions Case No. 100 of 2006 for Kidnapping, committing rape and criminal intimidation. It is

pertinent to note that the prosecutrix was a minor girl.

5. The learned Sessions Judge vide its judgment and order dated 29.04.2008 convicted the petitioner and sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs.3000/- in default of payment of fine, to suffer simple imprisonment for six months each for the offences under Sections 363 and 376 of IPC, whereas for the offence under Section 506 of IPC, the petitioner was sentenced to rigorous imprisonment for one year and to pay fine of Rs.500/- in default of payment of fine, to suffer simple imprisonment for one month. All these sentences were directed to be run concurrently by giving the benefit of set-off under Section 428 of Cr.P.C. for the period undergone by him from 03.08.2006 till 29.04.2008. It is pertinent to note that the petitioner did not prefer any appeal against this conviction and sentence.

6. The petitioner was subsequently tried for the offences punishable under Sections 302,363,364,376 and 201 of IPC before the learned Sessions Judge, Parbhani in Sessions Case No.04 of 2007. Learned Sessions Judge by its judgment and order dated 17.06.2008 convicted the petitioner for the offence under Section 302 of IPC and sentenced him imprisonment for life and to pay fine of Rs.5000/-, in default of which the petitioner was directed to undergo further rigorous imprisonment for three years; similarly he was convicted for the offence under Section 363 of IPC and sentenced rigorous imprisonment for three years and to pay fine of Rs.2000/-, in default of which the petitioner was directed to undergo further rigorous imprisonment for six months; likewise he was convicted for the offence under Section 364 of IPC and sentenced rigorous imprisonment for five years and to pay fine of Rs.3000/-, in default of

which to undergo further rigorous imprisonment for one year; he was even convicted for the offence under Section 376 of IPC and sentenced rigorous imprisonment for 10 years and to pay fine of Rs.5000/–, in default of which to undergo further imprisonment for one year; so also he was convicted for the offence under Section 201 of IPC and sentenced rigorous imprisonment for three years and to pay fine of Rs.2,000/–, in default of which to undergo further rigorous imprisonment for six months respectively.

7. The said judgment and order dated 17.06.2008 in Sessions Case No.04 of 2007 rendered by the learned Sessions Judge, Parbhani was subject matter of challenge before this Court by filing Criminal Appeal No.672 of 2008 wherein, this Court by judgment and order dated 26.08.2010 dismissed the said appeal and confirmed the judgment and order of the learned Sessions Judge, Parbhani.

SUBMISSIONS:–

8. Learned counsel for the petitioner submits that the petitioner initially was convicted in Sessions Case No.100 of 2006 for the offences punishable under Sections 363,376 and 506 of IPC and sentenced to suffer rigorous imprisonment for seven years each for the offences under Sections 363 and 376 of IPC and rigorous imprisonment for one year for offence under Section 506 of IPC, directing all these sentences to run concurrently. He would further submit that in another Sessions Case No.04 of 2007, the petitioner was convicted for the offences punishable under Sections 302,363,364,376 and 201 of IPC for which in addition to the term sentence(s), he was also sentenced to undergo life imprisonment. He therefore, submit that, considering the fact that the petitioner having

already undergone more than 19 years of imprisonment and is languishing in jail, he is entitled to run both the earlier term sentence(s) as well as the subsequent sentence of life imprisonment concurrently as per the provisions of Section 427(2) of Criminal Procedure Code, 1973 (for short 'the Cr.P.C.').

9. He further submit that the petitioner has approached this Court by invoking the jurisdiction under Article 226 of the Constitution of India and this Court is empowered to direct the earlier term sentences as well as the subsequent sentence of life imprisonment imposed on the petitioner to run concurrently. According to learned counsel for the petitioner, if the petitioner is allowed to run both the sentences concurrently, the same would definitely be beneficial to the petitioner for his early release. He would further submit that, the petitioner has infact approached the competent authority who in turn has forwarded the proposal for pre-mature release of petitioner to the State Government in the year 2018. However, the State Government has not taken any decision on the said proposal. He therefore, submit that the Writ Petition be allowed thereby giving benefit of Section 427(2) of Cr.PC by directing both the above sentences awarded to run concurrently.

10. In support of his submissions, learned counsel for the petitioner has relied on the following judgments :

- i) *Benson vs. State of Kerala*; (2016) 10 SCC 307.
- ii) *Vicky Alias Vikas vs. State (NCT of Delhi)*; (2020) 11 SCC 540.
- iii) *Mahadev Asaram Sillode Nagpur Central Prison, Nagpur vs. The State of Maharashtra, Through the Secretary Home Department*; 2022 ALLMR (Cri.) 2877.
- iv) *Rajesh vs. State of Haryana*; Criminal Appeal No.4079/2025 @

Special Leave Petition (Criminal) No.9085 of 2025.

11. *Per contra*, learned APP appearing on behalf of the respondent/State would submit that, the petitioner is not entitled to derive the benefit of Section 427(2) of Cr.P.C. as the case of petitioner would fall under Section 427 (1) of Cr.P.C. The petitioner therefore, will have to undergo the earlier term sentence(s) and thereafter, the subsequent sentence of life imprisonment. In support of his contention that the case of petitioner would fall under Section 427 (1) and not under Section 427(2) of Cr.P.C., learned APP has relied on the judgment of the Hon'ble Apex Court in the case of *Mutthuramlingam and others vs. State* reported in 2016 (8) SCC313.

ANALYSIS:-

12. The relevant provision of Cr.P.C. that falls for consideration before this Court reads thus :

“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.”

13. Perusal of above provision makes it abundantly clear that sub-section (1) of Section 427 of Cr.P.C. provides for a situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In short, sub-section (1) of Section 427 of Cr.P.C. deals with a person convicted who while undergoing sentence for fixed term is subsequently convicted to imprisonment for a fixed term or for life meaning thereby, the first sentence being for a fixed term expires on the definite date which is known when the subsequent conviction is made. Sub-section (1) also provides that in this scenario the date of expiry of first sentence which the convict is undergoing being known ordinarily, the subsequent sentence would commence on expiry of first term of imprisonment unless, the Court directs the subsequent sentence to run concurrently with the previous sentence. Whereas, sub-section (2) of Section 427 of Cr.P.C. provides for a convict who is already undergoing sentence of imprisonment for life and is sentenced on a subsequent conviction to imprisonment for a term or for life, where the subsequent sentence shall run concurrently with the previous sentence.

14. In light of the above provisions, so far as judgment relied upon by the learned counsel for the petitioner in the case of **Benson** (supra) is concerned, the Hon'ble Apex Court was dealing with a situation where the appellant who was already undergoing imprisonment for term sentence was subsequently convicted in another offence by awarding imprisonment for term sentence only. It is in that context, the Hon'ble Apex Court in paragraph Nos.6 and 7 observed thus :

“6. In terms of Sub-section (1) of Section 427, 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. Going by this normal principle, the sentence chart indicated in the communication dated 27.05.2016 is quite correct. However this normal Rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.

7. In *V.K. Bansal v. State of Haryana and Anr.* (2013) 7 SCC 211 it was stated by this Court:

“10.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.”

15. So far as the judgment of **Vicky Alias Vikas** (supra) relied upon by the learned counsel for the petitioner is concerned, even in that case the Hon'ble Apex Court while dealing with the provisions of Section 427 of Cr.P.C. has considered the term sentence being undergone by the appellant therein. In the said case, the appellant was not sentenced to undergo life imprisonment in either of the case and therefore, with due respect the said judgment may not be applicable in the present case. Similarly, as far as the judgment of this Court relied upon by learned counsel for the petitioner in the case of **Mahadev Asaram Sillode** (supra) is concerned, even in that case the facts were different as in the said case the petitioner therein, was initially convicted and sentenced to suffer imprisonment

for life and to pay a fine of Rs.5000/-. The said petitioner thereafter, was further convicted and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5000/-.

16. We thus find that it was in that context this Court directed the sentence of life imprisonment previously awarded and the term sentence awarded later on, to run concurrently. For better appreciation, we reproduce the relevant observations of this Court in the case of *Mahadev Asaram Sillode (supra)* and more particularly paragraph Nos. 18 and 19 which reads thus :

“18. In the instant case, so far as the subsequent conviction of the petitioner in Sessions Case No. 305 of 2011 for the offence punishable under Sections 307 and 333 of I.P.C. sentencing him to suffer 10 years Imprisonment for each of the offences is concerned, the trial court has failed to consider the provisions of Section 427 (2) of Cr.P.C. despite the earlier conviction of life imprisonment brought to the notice of the Court. In fact, the petitioner has committed offence, which is subject matter of the second trial, in jail premises while undergoing the life imprisonment in connection with the earlier sentence. So far as the subsequent sentence of the petitioner under the aforesaid sections is concerned, the petitioner has not preferred any appeal against the said judgment and order of conviction. Thus, the said judgment and order of conviction passed without following the mandate of Section 427(2) of Cr.P.C. is required to be corrected to secure the ends of justice.

19. 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.P.C. In terms of the general rule enunciated in sub-section (1) of Section 427 of Cr.P.C., 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.P.C.. 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.P.C., 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.”

. We thus find that even this judgment is clearly distinguishable.

17. Similarly, so far as reliance placed by the learned counsel for the petitioner on the order passed by the Hon’ble Apex Court in the case of *Rajesh vs. State of Haryana; Criminal Appeal No.4079/2025 @ Special Leave Petition (Criminal) No.9085 of 2025* is concerned, even in that case the appellant therein was sentenced to undergo life imprisonment in both the offences and it is in that context the Hon’ble Apex Court have directed both the sentences of life imprisonment to run concurrently. We thus find that the reliance placed even on the said order of the Hon’ble Apex Court is completely misplaced.

18. On the contrary it would be apposite to rely on the observations of the Hon’ble Apex Court in the case of *Mutthuramlingam (supra)* and more particularly paragraph Nos.33 and 35 which reads thus :

“33.We are not unmindful of the fact that this Court has in several other cases directed sentences of imprisonment for life to run consecutively having regard to the gruesome and brutal nature of the offence committed by the prisoner. For instance,

this Court has in *Ravindra Trimbak Chouthmal v. State of Maharashtra* (1996) 4 SCC 148, while commuting death sentence penalty to one of imprisonment for life directed that the sentence of seven years rigorous imprisonment Under Section 207 Indian Penal Code shall start running after life imprisonment has run its due course. So also in *Ronny v. State of Maharashtra* (1998) 3 SCC 625 this Court has while altering the death sentence to that of imprisonment for life directed that while the sentence for all other offences shall run concurrently, the sentence Under Section 376(2)(g) shall run consecutively after running of sentences for other offences. To the extent these decisions may be understood to hold that life sentence can also run consecutively do not lay down the correct law and shall stand overruled.

35. We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the Appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the Appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Code of Criminal Procedure. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench

hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs.”

19. In the light of above observations of the Hon’ble Apex Court we find that the Hon’ble Apex Court has observed that whether a prisoner is entitled to run the term sentences as well as the sentence of imprisonment for life concurrently depends on the gruesome and brutal nature of the offence committed by the prisoner. We find that as far as the present petitioner is concerned, the record depicts that the petitioner in the previous crime was convicted for having kidnapped a minor girl and thereafter committing rape on her whereas, in the subsequent crime the petitioner was held guilty for having forcible sexual intercourse with a minor girl of age 6 years and 9 months and committing her murder by strangulation. We thus find that this aspect also needs to be borne in mind while considering the case of the petitioner as to whether he is entitled for the benefit of running previous term sentence(s) as well as the subsequent sentence of life imprisonment concurrently.

20. It would also be apt to rely on the judgment of the Hon’ble Apex Court in the case of *Iqram vs. State of Uttar Pradesh And Others* reported in (2023) 3 SCC 184 wherein, while considering the provisions of Section 427 of Cr.P.C., the Hon’ble Apex Court in paragraph Nos. 10 and 11 observed thus :

“10. Section 427 provides that 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. In other words, Sub-section (1) of

Section 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.

11. In *Mohd. Zahid v. State through NCB* (2022)12 SCC 426, this Court interpreted the provisions of Section 427 of CrPC after duly considering the precedents in the following terms:

“ 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 427 Code of Criminal Procedure;

17.4 Under Section 427(1) of Code of Criminal Procedure 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.”

CONCLUSION :-

21. We find that it is not the petitioner's case that he was convicted and sentenced to suffer term sentence(s) and life

imprisonment in one and the same trial on the contrary, he was tried in separate trials in separate crimes which have been decided by the separate judgments. Viewed from this legal position, since the petitioner was awarded with term sentence(s) and sentence of life imprisonment respectively in two different trials, in absence of any direction for running both these sentences concurrently, we find that the case of petitioner falls within the ambit of Section 427(1) and certainly not under Section 427 (2) of Cr.P.C. Therefore, the petitioner is not entitled to derive the benefit under Section 427 (2) of Cr.P.C. As stated above, the petitioner will have to first undergo the term sentence(s) awarded in previous trial and on its expiry, to undergo sentence of life imprisonment imposed in subsequent trial.

22. In view of above legal position and the nature of offences committed by the petitioner we find that, this is not a fit case where this Court should exercise its jurisdiction under Article 226 of the Constitution of India thereby directing the respondent/Authority to treat the sentences awarded to the petitioner in (i) Sessions Case No.100 of 2006 by learned Additional Sessions Judge, Beed and (ii) Sessions Case No.04 of 2007 by learned Sessions Judge, Parbhani (now confirmed in Criminal Appeal No.672/2008) as running concurrently in terms of Section 427 (2) of Cr.P.C. as prayed for.

23. The Writ Petition is devoid of any substance. Hence, the same stands dismissed. Rule thus, stands discharged with no order as to costs.

(ABASAHEB D. SHINDE, J.)

(SANDIPKUMAR C. MORE, J.)

V.S.Joshi