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

\# **CNR No. DLHC010475462026**

\+ W.P.(CRL) 3107/2026

KANWALJEET SINGH .....Petitioner

Through: Mr. B.S. Chowdhary, Ms. Sneha, Ms. Lata Rana, Ms. Lakshmi, Ms. Anju, Mr. Manish and Mr. Sagar Choudhary, Advs.

versus

THE STATE GOVT OF NCT OF DELHI .....Respondent

Through: Mr. Anand V Khatri, ASC (Crl.) for the State
SI Dharmendra, PS D.B.G. Road

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 28.10.2026

1. This petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [‘BNSS’], seeking a writ of mandamus so as to direct that the sentences in both Criminal Complaint [‘CC’] No. 6665/2017 and CC No. 6668/2017 [collectively hereinafter referred to as the ‘criminal cases’] shall run concurrently instead of consecutively.

2. The brief facts relevant for this petition are as follows: -

2.1. The Petitioner, proprietor of M/s General Traders, had purchased iron round bars and S-wire from the complainant firm(s) on credit against various invoices but failed to clear the outstanding dues despite repeated assurances. Towards discharge of his liability, the Petitioner issued the cheque(s) in question, which was dishonoured for the reason ‘insufficient funds’. Despite service of the legal demand notice dated 25.03.2017, the Petitioner failed to

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make the payment, pursuant to which the two [2] separate complaints were filed by the two [2] separate complainants, which culminated in CC Nos. 6665/2017 and 6668/2017.

2.2. The learned Trial Court, *vide* separate judgments dated 19.05.2025, convicted the Petitioner under Section 138 of the Negotiable Instruments Act, 1881 ['NI Act'] in both of the criminal cases.

2.3. Thereafter, the learned Trial Court, *vide* separate orders on sentence dated 14.07.2025 ['sentence orders'], directed the Petitioner to pay a fine of Rs. 9,00,000/- in CC No. 6665/2017, and Rs. 2,30,000/- in CC No. 6668/2017 respectively. In default of payment, the Petitioner was sentenced to undergo simple imprisonment for four [4] months and two [2] months, respectively.

2.4. It is stated that the Petitioner failed to pay the fine amount and therefore was taken into judicial custody to undergo the sentences.

3. Mr. B.S. Chowdhary, learned counsel for the Petitioner, states that the Petitioner is a senior citizen and has been tried simultaneously in both the criminal cases under Section 138 of the NI Act. He states that the two [2] complaints were tried by the same Trial Court, i.e., same judge.

3.1. He states that, however, the sentence orders do not specify whether the sentence in two [2] complaint cases are to run concurrently or consecutively. He states that the learned Trial Court erred in not specifying whether the sentences imposed in the complaint cases were to run concurrently or consecutively, and in not recording any direction in this

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regard under Section 427 of the Code of Criminal Procedure, 1973 ['Cr.P.C'].

3.2. He submits that the Petitioner does not have the financial capacity to pay the fines. He states that neither his wife nor his two [2] sons are either supporting or helping him pay the fines.

3.3. He relies upon the judgment of the Division Bench of the High Court of Bombay in **Navnit Madhukar Naik v. State of Maharashtra**[1], wherein the sentence in two of the three criminal cases was directed to run concurrently.

3.4. In view of the aforesaid facts and circumstances, learned counsel for the Petitioner prays that the sentences imposed in the two [2] criminal cases be directed to run concurrently.

4. Mr. Anand V Khatri, learned ASC (Crl.) appearing on behalf of the same, states that the learned Trial Court has not erred and the sentences are to be served consecutively.

4.1. He states that the complainant in both the cases are distinct. He states that the Petitioner has not filed any appeal against the orders of conviction and sentence and, therefore, the said orders have attained finality.

4.2. He states that the trial Court has awarded fine to the Petitioner and it is only on the Petitioner failing to pay the fine he has to undergo the sentence. He states that therefore the learned Trial Court has thus given reasonable opportunity to the Petitioner to pay the fine and avoid the

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sentence.

4.3. He submits that the Petitioner's claim that his family is not supporting him is incorrect, as the present petition has been verified and signed by the Petitioner's wife, who is also acting as his pairokar.

5. In response, learned counsel for the Petitioner submits that the Petitioner's wife had signed and verified the petition only after repeated requests of the counsel and is not otherwise assisting the Petitioner in pursuing the matter or paying the fines.

6. This Court has heard the learned counsel for the parties and perused the record.

7. The Petitioner is a businessman and he has been convicted under Section 138 of the NI Act. The said conviction has not been challenged and has attained finality.

8. This Court had called for the Nominal Roll of the Petitioner which reveal that separately Petitioner has also suffered conviction in CC No. 511329/2016 under Section 138 of the NI Act for three [3] months and in CC No. 511330/2016 under Section 138 of the NI Act for three [3] months. In those complaint as well, he was directed to pay fine amounts and in default serve a sentence. The Petitioner did not pay the fines and served consecutive sentences from 13.04.2026 to 12.07.2026 and thereafter 13.07.2026 to 12.10.2026. The conviction in the aforesaid two [2] complaints and serving of sentence have not been disclosed in this petition.

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[1] 2023 SCC OnLine Bom 282

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The said facts are relevant as it shows that the Petitioner has been convicted for a consistent offence of dishonour of cheques under Section 138 of the NI Act.

9. The Petitioner is serving sentence for conviction in CC No. 6665/2017, which is a subject matter of this petition with effect from 13.10.2026. As per the Nominal Roll dated 23.10.2026, the unexpired portion of the sentence is 3 months and 19 days. It is thereafter that the Petitioner's sentence for his conviction in CC No. 6668/2017 for a period of two [2] months shall begin.

10. The Petitioner has been granted an option by the trial Court to pay a fine amount of Rs. 9,00,000/- in CC No. 6665/2017 as compensation and in default to undergo simple imprisonment of four [4] months. The Petitioner has elected to not pay the compensation and is therefore serving the sentence. Similarly, the learned Trial Court has granted an option to the Petitioner to pay a fine of Rs. 2,30,000/- in CC No. 6668/2017 as compensation and in default to undergo simple imprisonment of two [2] months.

11. The Petitioner has simplicitor elected to not pay the aforesaid fine amount.

12. In fact, the Supreme Court in **Shantilal v. State of Madhya Pradesh**[2] has laid down the principle that imprisonment imposed upon a convict in default of payment of fine stands on a different footing, as the convict is required to undergo such imprisonment either on account of his inability to

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pay the fine or his refusal to do so. The relevant paragraph reads as under: -

> "31. …The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or "otherwise". A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine."

13. Learned counsel for the Petitioner has contended that the learned Trial Court has failed to observe that the sentences will run concurrently as per Section 427 of Cr.P.C. This Court fails to understand as to how Section 427 would be applicable in the facts of this case.

14. The Petitioner's reliance upon the judgment of **Navnit Madhukar Naik** (supra) is misplaced. In the facts of that case, the petitioners therein were tried in three criminal cases and were convicted and sentenced in each of the three cases however, the sentences in each of the three cases had to run consecutively. The petitioners therein approached the High Court of Bombay praying for invocation of Section 482 Cr.P.C. with a prayer that the sentences in all the three criminal cases should be directed to run concurrently. The High Court of Bombay noted that in two cases, the petitioners therein had voluntarily pleaded guilty and were thus found to be

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[2] (2007) 11 SCC 243

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indigent in two criminal cases. The High Court taking note of this conduct of the petitioners therein directed that in these two cases the sentences will run concurrently. However, in the third case where the petitioners had not pleaded guilty and State had to go through full-fledged trial to prove their guilt, the High Court declined to permit the sentence in the third case to run concurrently. Thus, the facts of the case were entirely different and have no bearing on the facts in hand.

15. In the facts of the present case, however, the Petitioner herein contested the complaint proceedings which were instituted in 2017 for eight [8] years and finally resulted in his conviction on 19.05.2025. The Petitioner as noted above has not challenged his conviction in both the complaints. The complainant in both the complaints are different persons and the transaction are also different. Thus, no ground is made out for directing that the sentences should run concurrently.

16. Learned counsel for the Petitioner made an oral submission that the Petitioner does not have the financial capacity to pay the fine imposed by the learned Trial Court. This submission is without any documentary basis and has been made off the cuff. The said submission is therefore without any merit and has been merely noted to be rejected.

17. The Petition is dismissed. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 28, 2026/hp/aa

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