

Appeal No.52 of 2007 (Zila Ganna Utpadadak Sahkari Samiti Ltd. Hardoi Vs. Union of India and Another) by the Additional District Judge, Court No.6, Hardoi is accordingly modified. The suit filed by the appellant stands partly allowed and decreed accordingly.

30. With the aforesaid, this appeal is **partly allowed**. No order as to costs.

(2025) 1 ILRA 718
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.01.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Habeas Corpus Writ Petition No. 439 of 2023

Gurmel Singh & Anr. ...Petitioners
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioners:
 Sri Akash Mishra

Counsel for the Respondent:
 G.A.

Criminal Law — Constitution of India, Article 226- Criminal Procedure Code, 1973 - Section 427- Narcotic Drugs and Psychotropic Substances Act, 1985- Habeas Corpus — Illegal detention — Convict undergoing sentence in two separate NDPS cases — Sentence in second conviction to run consecutively in absence of direction to run concurrently — Petitioner contended continued detention illegal since sentence served in first case — Held, Section 427 Cr.P.C. provides general rule of consecutive sentence unless otherwise directed — Discretion to order concurrent running of sentences not exercised by trial court — Convictions under NDPS Act are serious and against

society — No illegality found in continued custody — Habeas corpus petition liable to be dismissed. (Paras 9, 11,12, and 15)

HELD:

Section 427 Cr.P.C. 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, subsection (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. (Para 9)

It has been held that if the transactions related to the offences is not the same or the facts constituting the two offences are quite different in that case the subsequent sentence should run consecutively- Further, in absence of any direction as to running of subsequent sentence, as per general rule enunciated in Section 427(1), the subsequent sentence will not run concurrently but consecutively. (Para 11)

It has further been observed that even while exercising discretion under 427(1) Cr.P.C. to run subsequent sentence concurrently with the previous sentence, the discretion is to be exercised judiciously and depending upon the offence/offences committed. Therefore, considering that offences under the NDPS Act are very serious in nature and against the society at large, held, no discretion shall be exercised in favour of such accused who is indulging in multiple offences under the NDPS Act. (Para 12)

Upon hearing the learned counsel for the parties and from the perusal of the record and the two custody certificates, it transpires that the corpus Gurmel Singh is a repeat offender under the N.D.P.S. Act and has been convicted in two separate offences by different trial courts in two different transactions having different case crime numbers and the cases have been registered at different Police Stations in different

St.s and have been decided by two different judgments. Therefore, the petitioner is not entitled to any benefit of concurrent sentence under Section 427 of Cr.P.C. especially when there is no specific order or direction that the sentences shall run concurrently. He is in custody since 31.12.2005. His sentence in FIR No. 306/2005 at Punjab was completed on 17.09.2019 and thereafter his sentence in FIR No.89/2006 at Uttar Pradesh started on 18.09.2019 and is continuing till date. He has served approximately seven years of imprisonment with remission. (Para 15)

Writ petition dismissed. (E-14)

(Delivered by Hon'ble Vivek Kumar Birla, J. & Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Sri Akash Mishra, learned counsel for the petitioners, Sri Rahul Asthana, learned Additional Government Advocate for the State and perused the record.

2. The present Habeas Corpus Writ Petition has been filed with a prayer to issue a writ, order or direction in the nature of Habeas Corpus directing the respondent no.2 to release the corpus/petitioner no.1.

3. The corpus, petitioner no.1 Gurmel Singh has filed the present writ petition through his son Harprit Singh, the petitioner no.2, seeking his release from District Jail, Etawah.

4. The main contention of the learned counsel for the petitioners is that the corpus Gurmel Singh, aged about 68 years is behind the bar since 31.12.2005. It has been contended that the respondent No.2 had illegally detained the corpus as the custody period of the corpus served out at District Jail, Mansa, Punjab vide judgment and order dated 27.08.2008 has not been calculated. It has also been

contended that the petitioner no.1 has already served out the sentence, which was awarded by the District Courts of Ludhiana and Etawah and yet he has been kept under illegal custody, which is in violation of Rules of Jail Manual and Article 21 of the Constitution of India. It has also been asserted that the conduct of the corpus in jail is good and there is no adverse remark against him by the Jail Superintendent. It has been emphasized that the District Court, Etawah while imposing the sentence of 10 years rigorous imprisonment in Case Crime No.89/2006 has not clarified whether the sentence in both the cases, shall run concurrently or not, despite recording the finding that the petitioner no.1 is being convicted by District Court Ludhiana, Punjab and therefore, the benefit of section 427 Cr.P.C. should be given to the petitioner.

5. From the perusal of records, it transpires that the corpus has been convicted in two separate offences under the N.D.P.S. Act at Punjab and Uttar Pradesh.

(i) Briefly stated, the corpus Gurmel Singh was a named accused in Case Crime No.187/2005 lodged at Punjab on 04.08.2005, under Section 15/61/85 of N.D.P.S. Act, Police Station Sadar Mansa, District Mansa, Punjab and was convicted by the learned Trial Court but was subsequently acquitted by the Punjab and Haryana High Court at Chandigarh vide judgment and order dated 06.07.2015.

(ii). Thereafter, the corpus was again implicated at Punjab in First Information Report bearing Case Crime No.306/2005, under

Section 15/25/60/61/85 of N.D.P.S. Act, Police Station Sidhwa Bet, District Ludhiana, Punjab and was arrested on 30.12.2005. The Special Court, Ludhiana vide its judgment and order dated 26.08.2008 had convicted the petitioner under Section 15 of N.D.P.S. Act awarding sentence to undergo rigorous imprisonment of 12 years and to pay fine of Rs.1,50,000/- and in default of payment of fine, to further undergo rigorous imprisonment of one and six months. Against the said order of conviction, the petitioner filed a Criminal Appeal No. CRA-D No.300-DB of 2019 (OM) before the High Court of Punjab and Haryana at Chandigarh, which was dismissed vide judgment and order dated 30.01.2014.

(iii). During his confinement at District Jail, Mansa, Punjab, another case was registered against the petitioner at Uttar Pradesh bearing Case Crime No. 89/2006 dated 16.11.2006, under Section 15/18/25 of N.D.P.S. Act at Police Station Badpura, District Etawah in which the petitioner was summoned through B-Warrant from District Jail, Mansa, Punjab to District Jail, Etawah on 28.04.2008 and remained in custody at Etawah as an under trial from 28.04.2008 upto 17.01.2010 and was convicted in the said matter by the Additional District and Sessions Judge, Fast Track Court No.1, Etawah by the judgment and order dated 18.01.2010 for an offence under Section 25(15) of N.D.P.S. Act for the term of 10 years rigorous imprisonment and fine of Rs.1 lac,

in default of payment of fine, two years additional rigorous imprisonment. Against the said order of conviction, the petitioner no.1 preferred a Criminal Appeal No.1373 of 2010 before this High Court, which was partly allowed by this Court on 09.06.2017 to the extent that the petitioner's conviction under Section 25(15) of N.D.P.S. Act was confirmed and sentence of 10 years of rigorous imprisonment and fine of Rs.1 lac was also maintained but the additional sentence of two years in default of payment of fine, was reduced to one year.

6. Per contra, learned Additional Government Advocate has refuted the contention by referring to the two Custody Certificates issued by the Superintendent District Jail, Mansa, Punjab dated 09.09.2019 and the Senior Superintendent District Jail, Etawah dated 06.07.2023.

A. Details of Custody Certificate, District Jail, Mansa, Punjab dated 09.9.2019

(i)	Name of the Convict	Gurmel Singh S/o Nachhatar Singh
(ii)	FIR No.	306/2005, U/s 15/25/60/61/85 NDPS Act, P.S. Sidhwa Bet, Punjab.
(iii)	Convicted by the Ld. Court	Special Court, Ludhiana, Punjab
(iv)	Date of Judgment	27.08.2008
(v)	Term of Sentence	20 years R.I. (which has been wrongly transcribed in the

		record. The correct term of sentence is 12 years R.I. and fine of Rs.1,50,000/- and in default thereof to further undergo R.I. for one year and six months)
(vi)	Custody as Under trial	31.12.2005 to 26.08.2008
(vii)	Custody after conviction	27.08.2008 to 17.09.2019
(viii)	Total sentence including remission	12 years

Note : The actual sentence awarded to said convict in above mentioned FIR No.306/2005 was completed on 17.09.2019 and with remaining one and half year of imprisonment in lieu of fine which will be started after completion of sentence or bail in FIR No.89/2006, U/s 15/18/25 NDPS Act, PS Badpura, District Etawah (U.P.).

B. Details of Custody Certificate, District Jail, Etawah (U.P.) dated 06.07.2023

(i)	Name of the Convict	Gurmel Singh S/o Nachhatar Singh
(ii)	FIR No.	89/2006, U/s 25/15 NDPS Act, P.S. Badpura, District Etawah (U.P.)
(iii)	Convicted by the Ld. Court	Additional District and Sessions Judge, Fast Track Court-1, Etawah
(iv)	Date of Judgment	18.01.2010

(v)	Term of Sentence	10 years R.I. & fine of Rs.1,00,000/-, in default of payment of fine, to further undergo one year imprisonment
(vi)	Custody as Under trial	28.04.2008 to 17.01.2010
(vii)	Custody after conviction	18.09.2019 to 06.07.2023
(viii)	Total sentence including remission	5 years, six months and 9 days as on 06.07.2023
(ix)	Pending conviction of Punjab	FIR No.306/2005, U/s 15/25/60/61/85 NDPS Act, P.S. Sidhwa Bet, Punjab.

7. It has been asserted by the learned State Counsel, that the corpus has been convicted by two different courts in two different trials, in two different transactions, therefore, the petitioners cannot avail the benefit of Section 427(1) Cr.P.C.

8. To appreciate the submissions made by the learned counsel for the parties, it will be appropriate to produce the provisions of Section 427 Cr.P.C., which reads as under :

“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."

9. Section 427 Cr.P.C. 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.

10. Recently, the Hon'ble Apex Court has clarified the law on Section 427(1) Cr.P.C. and has also laid down the

principles of law in respect to concurrent and consecutive running of sentences in Mohd. Zahid vs. State through NCB, (2022) 12 Supreme Court Cases 426.

11. It has been held that if the transactions related to the offences is not the same or the facts constituting the two offences are quite different in that case the subsequent sentence should run consecutively- Further, in absence of any direction as to running of subsequent sentence, as per general rule enunciated in Section 427(1), the subsequent sentence will not run concurrently but consecutively.

12. It has further been observed that even while exercising discretion under 427(1) Cr.P.C. to run subsequent sentence concurrently with the previous sentence, the discretion is to be exercised judiciously and depending upon the offence/offences committed. Therefore, considering that offences under the NDPS Act are very serious in nature and against the society at large, held, no discretion shall be exercised in favour of such accused who is indulging in multiple offences under the NDPS Act.

13. Further, the principles of law laid down are as under:

"(i) 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;

(ii) 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;

(iii) 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 of Cr.PC;

(iv) under Section 427 (1) of Cr.PC 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."

14. Further it has been emphasized in paragraph-11 of the aforesaid judgment :

"Even otherwise as observed hereinabove under Section 427 (1) of Cr.P.C, the Court has the power and discretion to issue a direction that the subsequent sentence to run concurrently with the previous sentence in that case also, the discretion has to be exercised judiciously depending upon the nature of offence or the offences committed. In the present case the appellant – accused has been convicted for the offences under the NDPS Act. He has been

convicted in one case for recovery of 4 kg heroin and sentenced to undergo 12 years RI and in another case there is a recovery of 750 grams of heroin and considering the Section 31 (ii) of the NDPS Act, he has been sentenced to undergo 15 years RI. No leniency should be shown to an accused who is found to be guilty for the offence under the NDPS Act. Those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable. Such accused causes deleterious effects and deadly impact on the society. They are hazard to the society. Such organized activities of clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have a deadly impact on the society as a whole. Therefore, while awarding the sentence or punishment in case of NDPS Act, the interest of the society as a whole is required to be taken into consideration. Therefore, even while applying discretion under Section 427 of Cr.PC, the discretion shall not be in favour of the accused who is found to be indulging in illegal trafficking in the narcotic drugs and psychotropic substances. As observed hereinabove, even while exercising discretion under Section 427 of Cr.PC to run subsequent sentence concurrently with the previous sentence, the discretion is to be exercised judiciously and depending upon the offence/offences committed.

Therefore, considering the offences under the NDPS Act which are very serious in nature and against the society at large, no discretion shall be exercised in favour of such accused who is indulging into the offence under the NDPS Act.”

15. Upon hearing the learned counsel for the parties and from the perusal of the record and the two custody certificates, it transpires that the corpus Gurmel Singh is a repeat offender under the N.D.P.S. Act and has been convicted in two separate offences by different trial courts in two different transactions having different case crime numbers and the cases have been registered at different Police Stations in different States and have been decided by two different judgments. Therefore, the petitioner is not entitled to any benefit of concurrent sentence under Section 427 of Cr.P.C. especially when there is no specific order or direction that the sentences shall run concurrently. He is in custody since 31.12.2005. His sentence in FIR No. 306/2005 at Punjab was completed on 17.09.2019 and thereafter his sentence in FIR No.89/2006 at Uttar Pradesh started on 18.09.2019 and is continuing till date. He has served approximately seven years of imprisonment with remission.

16. The learned Additional District and Sessions Judge/Fast Track Court No.1, Etawah in its judgment and order of conviction dated 18.01.2010 has not passed any specific order or direction while imposing the subsequent sentence that the subsequent sentence shall run concurrently with the previous sentence. The petitioner/corpus having been convicted repeatedly for an offence under the NDPS Act, which is very serious in nature and against the society at large, therefore, no

discretion shall be exercised in favour of the petitioner. In the light of the Hon'ble Apex Court's judgment as discussed above, the petitioner shall have to serve the remaining sentence consecutively after the date of expiration of the previous sentence.

17. In view of the above and for the reasons stated above, the corpus has not been illegally detained by the respondent no. 2. The present Habeas Corpus Writ Petition fails and the same deserves to be dismissed and is accordingly, **dismissed**.

(2025) 1 ILRA 724

**APPELLATE JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 15.01.2025

BEFORE

**THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.**

Special Appeal (D) No. 10 of 2025

Saurabh Saxena ...Appellant
Versus
Union of India & Ors. ...Respondents

Counsel for the Appellant:
Rishi Raj, Garv Saxena

Counsel for the Respondents:
A.S.G.I., C.S.C., Gaurav Mehrotra, S M Singh Royekwar

A. Service Law – UP Government Industrial Training Institutes (Instructors and Foreman Instructors) Service Rules, 2021 – Post of Instructor in Sewing Technology – Qualification – Determination – Competence of the Court – Diploma in Garment Fabrication Technology/Costume Design & Dress making was required, but instead it, a qualification equivalent to it was claimed to be possessed – Permissibility – Held, any person claiming to possess any qualification equivalent to a required