

Neutral Citation No. - 2025:AHC:114401-DB

A.F.R.

Judgment reserved on 03.07.2025

Judgment delivered on 16.07.2025

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 11627 of 2025

Petitioner :- Santosh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ankit Kumar Singh,Vikas Sharma

Counsel for Respondent :- G.A.

Hon'ble Siddharth,J.

Hon'ble Avnish Saxena,J.

(Per Justice Avnish Saxena)

1. The point of concern in the present writ petition preferred under Article 226 of the Constitution of India is for issuance of direction to the Jail Superintendent District Jail Aligarh for concurrently running of sentence imposed in six cases arising out of theft of electricity equipment, wherein the petitioner was sentenced on admitting the guilt under plea bargaining.
2. The petitioner is aggrieved, as the trial Judge while convicting the petitioner in six cases on the same date has sentenced the accused for imprisonment of one years six months in each case, leading to his incarceration of nine years in jail, due to non exercise of discretion provided under Section 427(1) Cr.P.C.
3. The six cases in which the petitioner has been convicted and sentenced, are tabulated below:-

Sr. No.	Sessions Case No.	Case Crime No.	Police Station	Under Section	Date of Judgment	Sentence	Fine Depos-ited on
1	2	3	4	5	6	7	8
1	2559/2023	Case Crime No. 375/2022	Jawan, District- Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months	25-04-2025

						imprisonment.	
2	2560/2023	Case Crime No. 10/2023	Jawan, District- Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04- 2025
3	2562/2023	Case Crime No. 379/2022	Jawan, District- Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04- 2025
4	2565/2023	Case Crime No. 374/2022	Jawan, District- Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04- 2025
5	2566/2023	Case Crime No. 361/2022	Jawan, District- Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04- 2025
6	2568/2023	Case Crime No. 06/2023	Jawan, District- Aligarh	Section 136 of Electricity Act, 2003	06-01-2024	Imprisonment of 1 year, 6 months and Fine of Rs. 5000/-. In default, 6 months imprisonment.	25-04- 2025

4. Sri Ankit Kumar Singh, learned counsel for the petitioner submits that the discretion provided under Section 427(1) Cr.P.C. has not been exercised by the trial Judge. The petitioner has confessed the crime on plea bargaining, considering that in all the cases the petitioner would be released after one and half years of imprisonment, as all the cases have been lodged by the police. The non exercise of discretion of consecutive or concurrent running of sentence by the trial Judge while convicting the petitioner simultaneously in six cases led to travesty of justice and long incarceration in jail. He has relied on the case of *Iqram Vs. State of Uttar Pradesh*¹.

¹ (2023) 3 SCC 184

5. Per contra, learned A.G.A. submits that Section 427 (1) Cr.P.C. provides the principle of running of sentence consecutively, unless the court directs the subsequent sentence to run concurrently with the previous sentence. The petitioner is apparently a habitual offender, who is convicted for theft of electricity equipment. He was apprehended by the police and accused has pleaded guilty and has been convicted accordingly.

6. We have given thoughtful consideration to the rival submissions made by the parties and perused the record.

7. The perusal of the judgements of conviction and sentence clearly shows that the order of conviction in six cases, detailed above have been passed by the same Judge, on the same date and on the basis of plea bargaining, on admission of guilt. The sentence passed in each case evinces same sentence with the direction of set off the period of detention undergone by the petitioner in the case, in view of Section 428 Cr.P.C. but the trial Judge has not exercised the discretion provided under Section 427 Cr.P.C. directing concurrent running of sentences, despite the fact that all the convictions have been recorded and sentences awarded on the same date which infers that the subsequent orders of punishment were within the knowledge of the Trial Judge.

8. The same issue has been dealt with by the Supreme Court in the case of ***Iqram Vs. State of U.P. (Supra)***², while dealing with the theft of electricity equipment wherein, in nine cases, the accused was sentenced without exercise of discretion whether the sentences shall run consecutively or concurrently. The Supreme Court has intervened in the matter and considered that the right to personal liberty is a precious and inalienable right recognised by the Constitution, which requires protection in the exercise of writ jurisdiction. The relevant paragraphs 6 to 13 are reiterated underneath:-

“6. The appellant is in jail for a period of three years. The appellant moved a petition under Article 226 of the Constitution of India, being habeas corpus Writ Petition No. 460 of 2021, before the High Court of Judicature at Allahabad. The High Court noted that the writ petition was filed on the premise that the sentences of the appellant in nine separate and distinct cases should run concurrently. The grievance of the appellant

² (2023) 3 SCC 184

was that the jail authorities were not justified in treating the sentences to be consecutive.

7. The Division Bench [*Iqram v. State of U.P.*, 2022 SCC OnLine All 875] of the High Court has come to the conclusion that in view of the provisions of Section 427 of the Code of Criminal Procedure, 1973 (“CrPC”), each subsequent term of conviction has to commence at the expiration of the imprisonment currently being undergone by the appellant.

8. The net consequence of the position, as it emerges, is that the appellant would have to undergo a total term of imprisonment of 18 years in respect of the nine convictions for offences under Section 136 of the Electricity Act and cognate provisions.

9. The plea bargain was with reference to the provisions of Chapter XXI-A of the CrPC. Section 265-G stipulates that the judgment delivered by the court shall be final and no appeal (except a special leave petition under Article 136 and a writ petition under Articles 226 and 227 of the Constitution) shall lie in any court against such a judgment.

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* [*Mohd. Zahid v. State*, (2022) 12 SCC 426] , this Court interpreted the provisions of Section 427CrPC after duly considering the precedents in the following terms : (SCC p. 440, para 17 “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 427CrPC.

17.4. Under Section 427(1)CrPC 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.”

12. The trial Judge, in the present case, granted a set-off within the ambit of Section 428/Section 31 CrPC. No specific direction was issued by the trial court within the ambit of Section 427(1) so as to allow the subsequent sentences to run concurrently. All the convictions took place on the same day.

13. Once the petitioner espoused the remedy of moving a writ petition under Article 226 of the Constitution, the High Court ought to have noticed the serious miscarriage of justice which would occur consequent upon the

trial court not having exercised specifically its discretion within the ambit of Section 427(1). When the appellant moved the High Court, he was aggrieved by the conduct of the jail authorities in construing the direction of the trial court to mean that each of the sentences would run consecutively at the end of the term of previous sentence and conviction. The High Court ought to have intervened in the exercise of its jurisdiction by setting right the miscarriage of justice which would occur in the above manner, leaving the appellant to remain incarcerated for a period of 18 years in respect of his conviction and sentence in the nine Sessions trials for offences essentially under the Electricity Act.”

9. The petitioner by judgment and sentence dated 6th January, 2024 passed in one case has been punished with imprisonment of one and half years of judicial confinement. The trial court has not exercised the discretion provided under Section 427 Cr.P.C., which is required to be exercised at the time of subsequent conviction. Consequently in absence of no direction for running the sentences concurrently, the accused-petitioner would suffer incarceration consecutively in six cases for a term of nine years. This will adversely affect his right to life and personal liberty.

10. To elaborate further the provision of Section 427 Cr.P.C., deals with two aspects of legislative intent. These are, (i) whether it is necessary for the trial court to pass an order under Section 427 Cr.P.C.; and (ii) how to exercise the discretion. We are not concerned with the latter in the present matter, but in our view, it would be obligatory on the Trial Court to exercise the discretion provided under Section 427 Cr.P.C., when read in conformity with Sections 235(2) and 236 Cr.P.C., which deals with the previous conviction and imposition of sentence, needless to elaborate. We further considered it necessary to quote the view of the larger Bench of Bombay High Court in ***Satnam Singh Puransing Gill Vs. State of Maharashtra***³, while answering the question, **“whether power under section 427 of the Criminal Procedure Code, 1973 can be exercised when the conviction of the accused is in two or more cases for distinct and separate offences arising out of different transactions/incidents?”**, the larger Bench has opined in following words:-

“..... It is a legislative mandate which operates on its own force. In contra-distinction to this provision, Section 427(1) of the Code vests discretion in the Court, which has to be exercised judiciously and in conformity with the settled principles, to direct whether the sentence passed on conviction in the subsequent trial will run

3 2009 SCC Online Bom 52

concurrently or consecutively with the previous sentence awarded to the accused. The Legislature, thus, has made it obligatory upon the Court to exercise such discretion. A bare reading of the Section does not contemplate even an application by convict or an accused in that behalf. The legislative intent requires the Court to act on its own as sentencing is primarily the duty of the Court and it is expected to consider all facets of sentencing policy while passing an order as envisaged under Section 427(1) of the Code. It is only the subsequent conviction and sentence in case of a person already undergoing a sentence of imprisonment in a previous conviction that the provisions of this Section would operate. Expression 'the Court' appearing at the end of Section 427(1) of the Code obviously refers to the Court of competent jurisdiction which deals with the imposition of sentence of imprisonment in a subsequent conviction.....”

11. The sentence provided under Section 136(1) of Electricity Act, 2003 is 'imprisonment for a term which may extend to three years or with fine or with both' and sub-section(2) of Section 136 of the Act provides that 'If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees'.

12. The accused petitioner has been made to suffer long incarceration of nine years, merely because the trial court has not exercised the discretion, whether the sentences shall run consecutively or concurrently. The conviction has been recorded under plea bargaining, as per Section 265-G of Cr.P.C. against which no appeal lies, but the writ petition under Article 226 of the Constitution of India.

13. Hence, we are of the considered view that the life and liberty of the petitioner will be jeopardised if his grievance is not redressed in this writ petition. Thus, the writ petition is **allowed**. The sentence of one year and six months imprisonment awarded to the petitioner in all the six session cases, shown in the chart, shall run concurrently. The fine has been deposited by the petitioner, per enclosed receipts.

14. The Registry to inform the District Jail, Aligarh to release the petitioner- Santosh, considering the concurrent running of sentences.

15. The copy of this judgment shall also be sent to Additional District and Sessions Judge/Special Judge E.C. Act, Aligarh and learned District Judge Aligarh for ensuring compliance.

Order Date :- 16.7.2025

Shivangi

(Avnish Saxena, J.)

(Siddharth, J.)