

## **HIGH COURT OF AZAD JAMMU & KASHMIR**

*Petition No.199/2023.*

*Date of institution 07.08.2023.*

*Date of decision 29.04.2024.*

Muhammad Shafique S/o Abdul Hussain Caste Gakhar R/o Gameer Tehsil Hajira District Poonch, presently detained in District Jail Rawalakot, Azad Jammu and Kashmir.

.....Petitioner.

### **VERSUS.**

1. State through Advocate General of Azad Jammu and Kashmir, having his office at Supreme Court Building Muzaffarabad.
2. Secretary Law, Justice, parliamentary Affairs and Human Rights Department of Azad Jammu and Kashmir, having his office at new Secretariat, Muzaffarabad.
3. Department of Law, Justice and parliamentary Affairs and Human rights Azad Jammu and Kashmir, through its secretary having its office at new Secretariat, Muzaffarabad.
4. Home Department of Azad Jammu and Kashmir, through its Secretary Muzaffarabad, office situated at new Secretariat Muzaffarabad.
5. Inspector General Prisons of Azad Jammu and Kashmir, Muzaffarabad.
6. Superintendent Jail District Jail Rawalakot, Azad Jammu and Kashmir.
7. Muhammad Hanif Khan S/o Ali Muhammad caste Sudhan R/o Bailona Tehsil Trarkhal District Sudhnoti, Azad Jammu and Kashmir. (Complainant of relevant FIR).

....Respondents.

### **PETITION UNDER SECTION 561-A, CR.P.C**

***Before: Justice Sadaqat Hussain Raja, C.J***

**PRESENT:**

*Raja Muhammad Mehboob Khan, Advocate for the petitioner.*

*Ch. Muhammad Manzoor, Addl.A.G, for State.*

*Sardar Muhammad Waheed Arif, Advocate for respondent No.07*

**JUDGMENT:**

The captioned petition has been filed under section 561-A, Cr.P.C, whereby the petitioner has implored the following relief;-

*“In view of above mentioned facts and circumstances, it is, therefore, very humbly prayed on behalf of the petitioner that by accepting this petition under section 561-A read with section 34, Cr.P.C, the impugned order (annexure A) (order of secretary Law, Justice, Parliamentary Affairs and Human Rights dated 29.04.2021 in reference from Home Department bearing No.675/20 dated 01.12.2020 may kindly be declared as illegal, unjust, and against the principle criminal jurisprudence (as the petitioner was liable to be suffer concurrent executing sentence life imprisonment, under section 302, 377,APC which has been completed) be quashed with kind direction to jail authorities/inspector General Prisons and jail superintendent District Jail Rawalakot to release the petitioner forthwith.”*

Brief facts forming background of the instant petition are that petitioner was tried in offences under sections 302,

377, & 316,APC before the learned District Court of Criminal Jurisdiction, Sudhnoti. The learned trial Court after completion of the trial convicted the petitioner; however, both the members of the Court recorded different judgments, wherein the learned Sessions Judge, Sudhnoti awarded death sentence under section 302,APC and life imprisonment under section 377,APC, while the learned District Qazi, Sudhnoti awarded life imprisonment under section 377,APC and sentenced to Diyyat under section 316,APC alongwith sentence of 14 years Rigorous imprisonment vide judgment dated 21.02.2003. Feeling aggrieved, petitioner preferred an appeal before this Court and a reference has also been sent by the learned trial Court for decision of the case. This Court vide judgment dated 12.06.2012, concurred with the judgment recorded by the learned Session Judge, Sudhnoti and differed with the findings of District Qazi, consequently, death reference was confirmed. Against the judgment of this Court, petitioner filed an appeal before the apex Court. The Hon'ble Apex Court vide judgment dated 18.05.2015, altered the death sentence as "Tazir" to life imprisonment awarded under

section 302,APC. Convict-Petitioner was also given the benefit of section 382-B, Cr.P.C. Thereafter, guidance was sought from Law, Justice Parliamentary Affairs and Human Rights Department regarding implementation of sentence. The relevant Department vide office memorandum dated 29.04.2021, opined that the sentences shall run consecutively and not concurrently, hence the instant application filed under section 561-A, Cr.P.C for setting aside the same.

I have heard the learned counsel for the parties and gone through the record of the case with utmost care.

The main case of the petitioner is that he has already undergone the sentences; as such he may be released from custody. The petitioner has also challenged the order passed by the Law, Justice Parliamentary Affairs and Human Rights Department regarding implementation of sentence, wherein the relevant Department vide office memorandum dated 29.04.2021, opined that the sentences shall run consecutively and not concurrently. In this regard, it is relevant to mention here that the convict-petitioner was awarded death sentence under section 302,APC and life

imprisonment under section 377,APC by the trial Court which was maintained by this Court, however, the Hon'ble apex Court of AJ&K altered/reduced the sentence death to life imprisonment under section 302,APC vide judgment dated 18.05.2015. So, now the convict-petitioner has been awarded life imprisonment in both the offences i.e 302 & 377,APC. He has also been given the benefit of section 382-B ,Cr.P.C by the Hon'ble apex Court.

As the plea of the convict-petitioner is with regard to seeking orders for concurrent running of sentences is concerned, it is suffice to say that awarding punishment is only meant to have a balance in the society because all the divine laws speak about hereafter. Thus, conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (Criminals inside jail) or strengthening the society by reforming the guilty. The Court have to appreciate certain circumstances before setting quantum of punishment and an opportunity may be given to a guilty of 'reformation' by awarding less punishment which low-so-ever, may be, will

be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. The plea of concurrent running of all sentences, however, shall not be available to a dangerous, desperate and hardened criminal.

On reviewing, the provision of Cr.P.C, this Court finds that the issue relating to the sentence of a convicted person to run concurrently or consecutively has been dealt with under sections 35 and 397 of Cr.P.C which reads as under;-

**35. Sentence in case of conviction of several offences at one trial.** (1) *When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Pakistan Penal Code sentence him, for such offences, to the several punishment prescribed therefor which such Court is competent to inflict; such punishment when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishment shall run concurrently.*

(2) *In the case of consecutive sentences, it shall not be necessary for the Court by reason only the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.*

*Maximum term of punishment. Provided as follows;-*

(a) *In no case shall such person be sentenced to imprisonment for a longer period than 14 years,*

(b) *If the case is tried by a Magistrate , the aggregate punishment shall not exceed*

*twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict,*

*(3) For the purpose of appeal [the aggregate of consecutive] sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence."*

It is clear from reading of the definition of section 35, Cr.P.C that aggregate of punishment of imprisonment for several offences at one trial were deemed to be a single sentence. So, there cannot be more than a life sentence at one trial or the aggregate of the said sentence at one trial must not exceed the period of imprisonment hereinbefore. It is, therefore, abundantly clear that there shall be nothing wrong if the sentences of imprisonment were awarded for life two counts to an accused and they are allowed to run concurrently instead of consecutively. Furthermore, an embargo has been placed by section 35, Cr.P.C proviso (a) in terms that the quantum of maximum sentence of imprisonment in case of conviction for more than one offence at one trial should not exceed 14 years. However, under section 397, Cr.P.C, the position of a person is different, who while already undergoing a sentence of

imprisonment for life, is subsequently, convicted and sentenced on another trial. His subsequent sentence commence at the expiration of imprisonment for life for which he has been previously sentenced, but even in such cases, the said provision expressly enables the Court to direct that the subsequent sentence would run concurrently with the previous sentence. Reliance can be placed from a case titled “Mst. Shahista bibi & another Vs. Superintendent Central Jail Mach & 2 others” reported in PLD 2015 S.C 15, it has been held as under;-

*“It is by now well embedded and deeply entrenched universal principle of law that while interpreting the provision of punitive law, Courts are required to strive in search of an interpretation, which prefer the liberty of a person instead of curtailing the same and that too unreasonably and unfairly unless, the statutory law clearly directs otherwise.*

*Besides the provisions of section 35 of Cr.P.C the provisions of section 397, Cr.P.C altogether provide entirely a different proposition widening the scope of discretion of the Court to direct that sentences of imprisonment or that of life imprisonment awarded at the same trial or at two different trials but successively, shall run concurrently. Once the Legislation has conferred the above discretion in the Court then in hardship cases, Courts are required to seriously take into consideration the same to the benefit of the accused so that to minimize and liquidate the hardship treatment, the accused person is to*



*get and to liquidate the same as far as possible. In a situation like the present case, the Court of law cannot fold up its hands to deny the benefit of the said beneficial provision to an accused person because denial in such a case would amount to ruthless treatment to him/her and he/she would certainly die while undergoing such long imprisonment in prison. Thus, the benefit conferred upon the appellant/appellants through amnesty given by the Government, if the benefit of directing the sentences to run concurrently is denied to him/them, would brought at naught and ultimately the object of the same would be squarely defeated and that too, under the circumstances when the provision of section 397, Cr.P.C confers wide discretion on the Court and unfettered one to extend such benefit to the accused in a case of peculiar nature like the present one. Thus, construing the beneficial provision in favour of the accused would clearly meet the ends of justice and interpreting the same to the contrary would certainly defeat the same.*

*It is also hard and fast principle relating to interpretation of criminal law, which curtails the liberty of a person that it should be construed very strictly and even if two equal interpretations are possible then the favourable to the accused and his liberty must be adopted and preferred upon the contrary one.”*

It is, therefore, there is nothing wrong in treating the sentences of imprisonment for life of the convict-petitioner on two counts to run concurrently. Section 397, Cr.P.C speaks as under;-

**“Section 397, Cr.P.C.** *Sentence of offender already sentenced for another offence. When a person already undergoing a sentence of imprisonment or imprisonment for life, is sentenced to imprisonment, or imprisonment for life, such imprisonment, or imprisonment for life shall commence at the expiration of the imprisonment, or imprisonment for life to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.”*

The rule laid down in section 397, Cr.P.C is that a sentence is to commence on the expiration of a sentence to which a person has been sentenced separately, unless the Court directs that both sentences shall run concurrently. Consecutive sentence is, therefore, a general rule while concurrent sentence is only an exception. Only depending on the particular circumstances of the case a plea of concurrent running of sentences awarded in separate crimes can be considered. Reliance is placed on a case titled “Muhammad Hanif & others Vs. The State & others” reported as 2001 SCMR 84, wherein it was held as under;-

*“The suggestion is misconceived inasmuch as section 397, Cr.P.C empowers Court to direct separate sentence of separate trials*

*to run concurrently when the convict is already undergoing a sentence of imprisonment.”*

Furthermore, it is also relevant to mention here that if the sentences are allowed to run consecutively i.e (two times life imprisonment), the petitioner would meet natural death during the imprisonment. The discretionary power vested in the Court to direct that the awarded sentences to run consecutively or concurrently is to be exercised in the light of the facts and circumstances of each case, keeping in view the scope of section 35 of the Code of Criminal Procedure, 1898. It is also relevant to mention here that the convict-petitioner was also given the benefit of section 382-B, Cr.P.C by the Apex Court, therefore, now he is also entitled to get the benefit of remissions granted by any authority in their post-detention or during their pre-sentence detention in connection with such offence.

For the above reasons, I accept this petition, setting aside the impugned order dated 29.04.2021 and it is ordered that the sentences awarded to the petitioner shall run concurrently and not consecutively with the benefit of

section 382-B, Cr.P.C and all the remissions pertaining to pre-judgment and post judgment detention shall be available to him. Thus, the concerned jail authorities are directed to release the convict-petitioner forthwith if he had already undergone the sentence i.e after calculating the period of life imprisonment.

Muzaffarabad:  
29.04.2024.

**Chief Justice**

**Note**;- Judgment is written and duly signed.  
The office is directed to intimate the parties or their counsel after due process of law.

**Chief Justice**

**Approved for reporting**

**Chief Justice**