

Crl.O.P.No.27173 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2023

PRONOUNCED ON : 03.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.27173 of 2022

Thangaraj @ Thamizharasan
S/o Mani

...

Petitioner

Vs.

State by:
The Superintendent of Prison,
Central Prison – 1,
Puzhal, Chennai 600 066.

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to issue a direction to the respondent to implement the judgment in SPL.S.C.No.5 of 2014 (on the file of the Special Court, NIA cases at Puducherry) dated 04.02.2022 and run concurrent the petitioner's sentence in SPL.S.C.No.5 of 2014 (on the file of the Special Court, NIA cases at Puducherry) with the petitioner's sentence in S.C.No.7 of 2017 (on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai) and set off the petitioner's detention period viz from 11.03.2014 to 13.09.2017 and from 30.01.2020 to till date.



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For Petitioner : Mr.M.Radhakrishnan
for M/s. P.Pugalenthi

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to issue a direction to the respondent to implement the judgment in SPL.S.C.No.5 of 2014, on the file of the Special Court, NIA cases at Puducherry, dated 04.02.2022 and run concurrent the petitioner's sentence in SPL.S.C.No.5 of 2014 with the petitioner's sentence in S.C.No.7 of 2017, on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai and set off the petitioner's detention period, viz., from 11.03.2014 to 13.09.2017 and from 30.01.2020 to till date.

2.The learned counsel for the petitioner submitted that petitioner was arrested on 11.03.2014, in crime No.47 of 2014, on the file of the Othakkadai police station and remanded to judicial custody. When he was in prison, he was remanded in crime No.10 of 2014, on the file of the Nachiyarpuram police station, Sivagangai District, before the Judicial Magistrate Court, Thirupathur on 25.03.2014. Thereafter, on 09.04.2014, he was produced



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before the Special Court, NIA cases Puducherry and remanded to judicial

custody in SPL.S.C.No.5 of 2014. The abovesaid three cases were the result

of one series of acts connected together as to form the same transaction

committed by six accused. Crime No.10 of 2014 was transferred to the

Session Court for Exclusive Trial of Bomb Blast Cases, Poonamallee,

Chennai and taken on file in S.C.No.7 of 2017. On 30.1.2020, the Trial Court

convicted petitioner and five accused for the offences under Sections 120B

r/w 124A IPC, Section 15 r/w 16 (b) and Sections 18 & 20 of Unlawful

Activities (Prevention) Act 1967, and sentenced him to undergo five years

rigorous imprisonment under these sections. During trial in SPL.S.C.No.5 of

2014, petitioner and five others were convicted for the offences under

sections 120B r/w Sections 3 and 4 of Explosive Substances Act 1908,

Section 4 (a) of Explosive Substances Act 1908, Section 16 (1) (b) of

Unlawful Activities (Prevention) Act 1967 and Section 6 of Explosive

Substances Act, 1908 and Sections 18, 20 and 23 of Unlawful Activities

(Prevention) Act 1967 and sentenced to five years rigorous imprisonment for

each offences. The learned Trial Judge ordered in SPL.S.C.No.5 of 2014 that

all the sentences shall run concurrently as per section 427 Cr.P.C. along with

the sentence passed in S.C.No.7 of 2017, on the file of the Session Court for



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Exclusive Trial of Bomb Blast Cases, Poonamallee since the conspiracy in all

the three cases are from the same place. The period of detention already undergone by the accused are ordered to be set off under section 428 Cr.P.C. since all the three incidents are connected to each other. It is stated that petitioner is in prison from 11.03.2014 to 13.09.2017 and from 30.01.2020 to till date. He completed more than 5 ½ years of imprisonment. His further detention is illegal. Therefore this petition.

3.In support of his submission, he produced the relevant portions of the copies of the judgment in S.C.No.7 of 2017 and SPL.S.C.No.5 of 2014. He also produced the copies of the orders in Crl.O.P.Nos.3884 of 2022, 5653 of 2022 and 20554 of 2022 to show that the co-accused had been given the benefit of set off and were released.

4.In response, the learned Government Advocate (Crl.Side) opposed this petition on the ground that in the order passed in Crl.O.P.Nos.3884 of 2022, 5653 of 2022 and 20554 of 2022, the actual detention undergone by the accused was not considered while deciding those petitions. In the case before hand, the petitioner has not completed five years of sentence independently in



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both cases. The period of detention already undergone can be set off only

against a particular case and set off of detention during investigation and trial

in one case cannot be extended to another case. The petitioner had filed

SR.No.422 of 2021 in S.C.No.7 of 2017, before the Sessions Court for

Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai. Prior to that he

filed, Crl.O.P.Nos. 14839 of 2020, 5652 of 2022 and 23597 of 2022 for the

same relief. Crl.O.P.Nos.14839 of 2020 and 5652 of 2022 were dismissed as

withdrawn. A direction was issued to consider the petitioner's representation,

dated 16.09.2022, in Crl.O.P.No.23597 of 2022. Considering that the petition

filed in Crl.O.P.No.14839 of 2020 was dismissed, the Sessions Court for

Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai had also

dismissed petitioner's pleading for set off of his detention in one case to

another case.

5.The learned Government Advocate (Crl.Side) also produced the committal warrant in S.C.No.7 of 2017 to show that the petitioner was

remanded in the case on 25.03.2014 and was released on bail on 04.09.2014.

The committal warrant in SPL.S.C.No.5 of 2014 is also produced to show that

the petitioner's detention period in this case was from 09.04.2014 to



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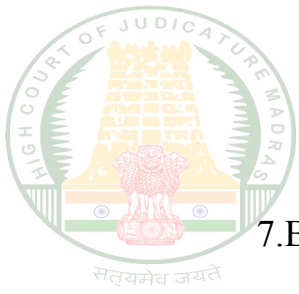
13.09.2017. These period of detention are taken into consideration for set off.

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The petitioner is not entitled to claim set off of a detention period during investigation and trial in one case for another case. In support of his submission, he relied on the judgment in ***Atul Manubhai Parekh Vs. Central Bureau of Investigation*** reported in ***(2010) 1 SCC 603*** for the proposition that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. It is observed in this judgment as follows:

14. The wording of Section 428 is, in our view, clear and unambiguous. The heading of the section itself indicates that the period of detention undergone by the accused is to be set off against the sentence of imprisonment. The section makes it clear that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. It is quite clear that the period to be set off relates only to pre-conviction detention and not to imprisonment on conviction.

6. Considered the rival submissions and perused the records.



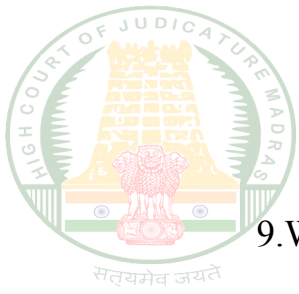
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7. Before considering the entitlement of set off, it is necessary to have certain basic details. It is seen from the additional counter affidavit filed by the respondent that petitioner was remanded in S.C. No.7 of 2017 on 25.03.2014. It is claimed that he was released on bail on 04.09.2014. The date of conviction in this case was on 30.01.2020. The petitioner was remanded in SPL.S.C.No. 5 of 2014 on 09.04.2014. He was released on bail in this case on 13.09.2017. Date of conviction in this case was on 04.02.2022. According to the calculation made by the respondent, petitioner had undergone 03 years 04 months and 06 days of sentence till 22.12.2022 and he has to undergo 01 year 07 months and 24 days of sentence in S.C.No.7 of 2017. Similarly, he had undergone 04 years 03 month and 27 days and has to undergo 08 months and 03 days sentence in SPL.SC.No.5 of 2014. They have taken care of concurrent sentence and set off. If there had been no concurrent running of sentences imposed in both cases, the date of release of the petitioner in S.C.No.7 of 2017 would be 18.08.2024 and in SPL.SC.No.5 of 2014 would be 12.03.2026. However, this calculation is strongly disputed by the learned counsel for the petitioner and it is claimed that petitioner is entitled for set off as prayed for in the petition.



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8. From the statistics produced by the respondent, it is claimed that the petitioner was released on bail on 04.09.2014 in S.C.No.7 of 2017. Before the bail granted in S.C.No.7 of 2017, petitioner was arrested in SPL.S.C.No.5 of 2014 on 09.04.2014. He was released on bail in SPL.S.C.No.5 of 2014 only on 13.09.2017. It appears that the petitioner though obtained bail in S.C.No.7 of 2017 on 04.09.2014, he was not actually released from jail. He was produced on PT warrant for facing trial in S.C.No.7 of 2017 as evidenced from the order of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai. Petitioner, though got bail in his favour in S.C.No.7 of 2017 on 04.09.2014, he had not gone out of prison and was facing trial till he was released on bail in SPL.S.C.No.5 of 2014 on 13.09.2017. It is seen from the information provided under the RTI Act to the petitioner that the petitioner was released only on 13.09.2017 in crime Nos. 47 of 2014, 10 of 2014 and 1 of 2014. This information was provided by the Public Information Officer, Central Prison, Madurai. This information clearly shows that the petitioner was in jail from 13.03.2014 to 13.09.2017 in all the three cases including cases in S.C.No.7 of 2017 and SPL.S.C.No.5 of 2014.



9. Whether the period of detention in prison, though obtained bail on 04.09.2014 and was produced on PT warrant, till 13.09.2017 in S.C.No.7 of 2017 i.e., from 04.09.2014 to 13.09.2017, can be considered for set off in S.C.No.7 of 2017 is the point to be decided.

10. The next point is that the petitioner was convicted in S.C.No.7 of 2017 on 30.01.2020 and he underwent sentence in S.C.No.7 of 2017 from 30.01.2020. The trial in SPL.S.C.No.5 of 2014 was concluded only on 04.02.2022 with conviction and sentence. Petitioner would have been produced before the Principal District Judge, Puducherry, for facing trial in SPL.S.C.No.5 of 2014, while undergoing sentence in S.C.No.7 of 2017, till the trial in SPL.S.C.No.5 of 2014 was completed on 04.02.2022. The next question is whether the period of detention in SPL.S.C.No.5 of 2014 from 30.01.2020 to 04.02.2022 can be taken for giving set off in SPL.S.C.No.5 of 2014? If the period from 04.09.2014 to 13.09.2017 is taken into consideration for set off in S.C.No.7 of 2017, the petitioner is entitled for release for the reason that he had already completed five years of sentence. Similarly, if the period from 30.01.2020 to 04.02.2022 is taken into consideration for set off in SPL.S.C.No.5 of 2014, the petitioner is entitled for



release in SPL.S.C.No.5 of 2014 for the reason that he had completed five years of sentence.

11.What is the Law on this point? It is stated in the judgment of the Hon'ble Supreme Court reported in **(2010) 1 SCC 603 Atul Manubhai Parekh Vs.Central Bureau of Investigation** that section 428 makes it clear that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. In paragraph 20 of the judgment, it is observed as follows:

20. The facts on which the decision was rendered in Najakat Alia Mubarak Ali case are distinguishable from the facts of this case. In the said case, the convict was undergoing imprisonment in two cases in which he had been convicted and he claimed that he was entitled to a set off in respect of both the cases. This Court drawing inspiration from Section 427 on the concurrent running of sentences, held that the petitioner was entitled to set off in both cases in view of the doctrine of merger of sentences when directed to run concurrently in a particular case where conviction is on many counts.

12.This Court while considering this point in Crl.O.P.No.14729 of 2020



dealt with the judgments in ***State of Punjab Vs. Madam Lal*** reported in (2009) 5 SCC 238, ***Atul Manubhai Parekh Vs.CBI*** reported in (2010) 1 SCC 603, ***Pyare Mohan Lal vs. State of Jharkhand*** reported in (2010) 10 SCC 693, ***Maliyakkal Abdul Azeez vs. Collector*** reported in (2003) 2 SCC 439, ***State of Maharashtra vs. Najakat Alia Mubarak Ali*** reported in (2001) 6 SCC 311 and observed as follows:

23. *A plain reading of Section 428 of the Cr.P.C., makes it very clear that the period of set-off contemplated is case-specific. However, when there are multiple convictions, such a set-off can be resorted to as held by the Hon'ble Supreme Court in Najakat Alia Mubarak Ali (cited supra), since when the convict who is undergoing a sentence in a particular case is also convicted in another case and starts undergoing the sentence in the second case, the sentence undergone by him merges with the same period during which he is undergoing the sentence in the first case. This will be the effect of a combined reading of Sections 427 and Section 428 of the Cr.P.C.*

13. Thus, it is clear from the judgment of the Hon'ble Supreme Court in ***State of Maharashtra vs. Najakat Alia Mubarak Ali*** reported in (2001) 6 SCC 311 rendered by the Hon'ble three member Bench, that when the convict



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is undergoing a sentence in a particular case, is also convicted in another case

and starts undergoing the sentence in the second case, the sentence undergone by him merges with the same period during which he is undergoing the sentence in the first case. This will be the effect of a combined reading of Sections 427 and 428 Cr.P.C.

14.If this ratio is applied to this case, this Court is of the view that the petitioner is entitled to set off for the period from 04.02.2022 in S.C.No. 7 of 2017 for the reason that the sentence passed in S.C.No. 7 of 2017 and Spl.S.C.No. 5 of 2014 merges from 04.02.2022.

15.So far as Spl.S.C.No. 5 of 2014 is concerned, th petitioner challenged the extension of remand beyond 90 days in Crl.R.C.No.370 of 2014. This Court on 02.09.2014 allowed Crl.R.C.No.370 of 2014 holding that “the order of remand extension dated 25.06.2014 passed by the District Munsif cum Judicial Magistrate in Crl.M.P.No. Nil of 2014 is set aside as one passed without jurisdiction. It will go without saying that petitioner shall be released forthwith unless his detention is required in some other order or in some other matters or under some other provisions of the law”. It is admitted



case that though petitioner was released in S.C. No.7 of 2017 on 04.09.2014,

he could not go out of prison for the reason that he was remanded in Spl. S.C.No.5 of 2014 on 04.09.2014. From 04.09.2014, petitioner was not a remanded prisoner in S.C.No.7 of 2017, but he was produced only on PT warrant for facing trial in S.C.No.7 of 2017.

16.The learned Government Advocate (Crl.Side) pressed into service the judgment of the High Court of Allahabad in ***Crl.A.No.1973 of 2019 in Sudama Uraon Vs. State of U.P.*** for the proposition that the period of detention in compliance of production warrant issued under Section 267 of the Code, shall not be treated for set off. It was observed in this case as follows:

22. In view of above discussion, it is clear that mere issuing of production warrant by any Court to incharge of any prison u/s 267 of the Code, to produce any person before such Court, does not amount detention or custody. The period of detention in another criminal case prior to actual production of such person before the Court in compliance of production warrant issued u/s 267 of the Code, and period during which such convicted person was transferred to another prison, in compliance of another



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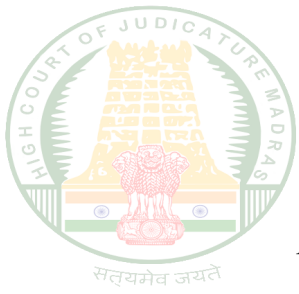


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production warrant issued by another Court, would be excluded from the counting of period of sentence awarded to the convicted accused. Thus, in view of the [section 428](#) read with [Section 427](#) of the Code, the period of detention in another criminal case in another prison shall not be treated as detention in same case.

17. This Court, in ***Crl.A.No.526 of 2009, in Jacob Chacko Theketala Vs. State of Tamil Nadu represented by CBI, New Delhi, Camp at Chennai,*** dealing with the question as to whether set off can be permitted when accused was produced on PT warrant, held as follows:

15. Applying the principles laid down in the above case, this Court is of the considered view that though the appellant was confined in prison at Pune as under-trial prisoner in respect of another case, he being not arrested in this particular case and being not remanded pending investigation no benefit can be given to him under [Section 428](#) of Cr.P.C. But after filing the final report, the accused was produced on the basis of P.T. Warrant issued by the trial Court on 23.01.2006. From that date onwards, he was periodically produced from the prison during the pendency of the trial till the date of judgment. The accused being



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produced before the Court from the prison on the basis of the P.T. Warrant issued as final report was filed against him, the trial Court ought to have remanded him to judicial custody in this case. But the Special Court had failed to do so and to specifically mention on record that the appellant was remanded to judicial custody in this case. The accused being confined in jail through out the trial period and being produced before the trial Court periodically, merely because he was not brought as an under-trial prisoner on record for his no fault, he should not be made to suffer. Though it was not specifically mentioned in the Court record that the appellant was the remand prisoner during the relevant period from 23.01.2006 till the date of judgment by the trial Court, it should be deemed that the appellant/fourth accused was only under-trial prisoner in the present case.

In the aforesaid judgment, the accused was not at all arrested and remanded in connection with the case. However, this Court held that the accused was produced on PT warrant on 23.01.2006 and from that onwards, he was periodically produced from the prison during the pendency of the trial till the date of judgment. The Trial Court ought to have remanded him to judicial custody, but failed to do so. Merely because he was not brought as an under-trial prisoner on record for his no fault, he should not be made to suffer.



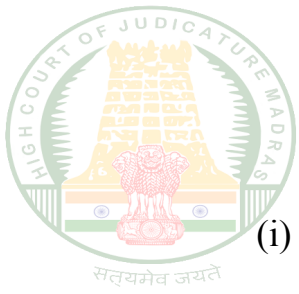
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Thus, this Court held that the accused may be given the benefit under Section 428 Cr.P.C. to set off the period of detention from 23.01.2006 of the two judgments referred above, the judgment in Crl.A.No. 526 of 2009 applies to the facts of this case.

18. In the case on hand, petitioner/accused was arrested and remanded on 25.03.2014. He was produced before the Court till he was ordered to be released by this Court in Crl.R.C.No.370 of 2014 on 04.09.2014. The information supplied under the Right to Information Act produced by petitioner also confirms that he was released only on 13.09.2017 in crime Nos. 47 of 2014, 10 of 2014 and 1 of 2014. The petitioner was produced on PT warrant from 04.09.2014 to 13.09.2017 to face trial in S.C.No.7 of 2017.

19. He was produced on regular remand warrant in Spl.S.C.No.5 of 2014. Therefore, in the facts and circumstances of this case, in the considered view of this Court, petitioner is entitled for set off in S.C.No.7 of 2017 for the period of his production on PT warrant from 04.09.2014 to 13.09.2017.

20. In the result, this Court finds that



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(i) petitioner is entitled to set off for the period from 04.02.2022 in S.C.No. 7 of 2017 for the reason that the sentence passed in S.C.No. 7 of 2017 and Spl.S.C.No. 5 of 2014 merges from 04.02.2022.

(ii) petitioner is entitled for set off in S.C.No.7 of 2017 for the period of his production on PT warrant from 04.09.2014 to 13.09.2017.

21. Accordingly, this Criminal Original Petition is disposed of.

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03.03.2023

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

1. The Superintendent of Prison,
Central Prison – 1,
Puzhal, Chennai 600 066.

2. The Special Court, NIA cases,
Puducherry.

3. The Sessions Court for Exclusive Trial of Bomb Blast Cases,
Poonamallee, Chennai.

4. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
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03.03.2023