IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 703 OF 2019

Kuttu @ Rahul Chhahalal Pardhi (In Jail),
Age 33 years, Occ. Farmer,
R/o Biruli, Tahsil Rithi,
District Katni (Madhya Pradesh).

...PETITIONER

// VERSUS //

1. State of Maharashtra,
Through Assistant Forest Conservator,
Bhandara, Tahsil & District Bhandara.

2. Assistant Conservator of Forest,
Logging Officer, Gadegao Depot,
Taluka Lakhani, District Bhandara.

3. Conservator of Forest,
Wadsa Forest Division, Wadsa,
Tahsil Desaiganj, District Gadchiroli.

...RESPONDENTS

Shri M.N. Ali, Advocate h/f Shri R.R. Vyas, Advocate for the petitioner.
Shri M.K. Pathan, A.P.P. for the respondents.

CORAM : SUNIL B. SHUKRE AND
PUSHPA V. GANEDIWALA, JJ.

DATE OF RESERVE : NOVEMBER 04, 2020.

DATE OF PRONOUNCEMENT : JANUARY 04, 2021.

JUDGMENT (Per Pushpa V. Ganediwala, J.) :

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioner, a convict, who is undergoing sentence of imprisonment in three different crimes, is seeking directions for concurrent running of sentences under Section 427 of the Code of Criminal Procedure, 1973 (for short "the Code").

3. The petitioner is convicted and sentenced in the following three cases :-

> i) In Reg. Cri. Case No. 50/2015, POR dated 27/04/2015, the petitioner is sentenced to suffer rigorous imprisonment for three years and fine of Rs.15,000/-, in default to suffer simple imprisonment for three months, for the offence punishable under Sections 51(1), 39(1)(d) and 39(3) of The Wild Life (Protection) Act, 1972 (for short "Act of 1972"), and also under Section 120B of the Indian Penal Code, 1860 (for short "IPC") vide judgment dated 18/04/2017 passed by the Judicial Magistrate First Class, Pauni.

ii) In Reg. Cri. Case No. 10/2015, POR dated 29/05/2007, he is sentenced to suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to suffer simple imprisonment for fifteen days, for the offence punishable under Sections 51 read with Section 2(16) and Section 52 of the Act of 1972, and also under Section 26(1)(d)(h) of the Indian Forest Act, 1927 vide judgment dated 05/05/2017 passed by the Judicial Magistrate First Class, Desaiganj.

iii) In Reg. Cri. Case No. 51/2015, POR dated 08/03/2013, he is sentenced to suffer rigorous imprisonment for three years and fine of Rs. 25,000/-, in default to suffer simple imprisonment for six months for the offence punishable under Sections 9/51(1) of the Act of 1972 vide judgment dated 10/08/2017 passed by the Judicial Magistrate First Class, Tumsar.

4. It is stated that all the aforesaid crimes were committed in three different transactions and prosecuted in three different trials. In all these crimes, the petitioner is found guilty and convicted of the offence punishable under the provisions the Act of 1972 and the allied Acts.

5. The orders of the Magistrates in the subsequent two cases are silent with regard to directions under Section 427 of the Code. The application under Section 427 of the Code before the Sessions Court, Bhandara, bearing Misc. Cri. Case No. 55/2018, also came to be rejected for want of jurisdiction, as the petitioner is also convicted by the Court of JMFC, Desaiganj, Dist Gadchiroli. That is how the petitioner is before this Court. The record is silent as to the preference of appeals by the petitioner against the orders of conviction so that the Appellate Courts could have possibly dealt with the question of concurrent running of sentences. Now, the question is whether this Court, under extra ordinary jurisdiction, can examine the issue.

6. The Co-ordinate Benches of this Court, of which one of us was the member (Sunil B. Shukre, J.), dealt with the similar issue in the cases of ***Akash Rashtrapal Deshpande & Anr. Vs. State of Maharashtra & Anr.***, reported in ***2019 ALL MR (Cri) 3298***, and ***Abidkhan @ Salman Mukhtar Khan Pathan Vs. State of Maharashtra & Anr.***, reported in ***2014 ALL MR (Cri) 1719***, and upheld its power under writ jurisdiction read with Section 482 of the Code.

7. In the case of Akash Deshpande (*supra*), it is held that it is the onerous responsibility of the Constitutional Courts to protect the rights of citizens pending trial and post trial.

8. In the case of Abidkhan Pathan (*supra*), it is observed as under :-

> *"1 to 14 XXXX*
> *15. XXXX It is well settled law that when there is a failure to perform public duty or grave error of law apparent on the face of record or there is a miscarriage of justice resulting from the order passed by the Court below or when it is necessary to do so for enforcing fundamental or legal rights or to meet the ends of justice, this Court can entertain a petition of the present nature. XXXX*

In the said judgment, this Court also relied on the full bench judgment of the Madhya Pradesh High Court delivered in the case of ***Shersingh v/s State of Madhya Pradesh***, reported in ***1989 Cri.L.J.632***, wherein it is held that inherent powers of the High Court can be invoked under Section 482 even if the trial Court or the appellate or revisional Court has not exercised its discretion under Section 427(1) of the Code of Criminal Procedure and the

inherent powers of the High Court are not in any way fettered by the provision of Section 427(1) and that it can be invoked at any stage even if there is no order passed under the said section.

9. Learned counsel for the petitioner submitted that while considering an application under Section 427 of the Code, the Court has to appreciate that the sentencing policy in India leans in favour of reformation. Learned counsel urges to take into consideration principle of proportionality, as the petitioner would be required to undergo a total sentence of more than nine years qua seriousness of the offence. In conclusion, learned counsel urged to allow the application and release the petitioner, as he has already undergone more than six years of imprisonment.

10. As against this, learned Additional Public Prosecutor for the State, strongly opposed the petition and submitted that the petitioner was an active member of a gang which is infamous for hunting of tigers in Central India and was also a follower of notorious tiger poacher – Sansar Chand. It is further stated that the petitioner has been convicted by three different Courts, and the *modus operandi*

of the petitioner, while committing crime, was obvious and he is beyond reformation and is not entitled to any relief much less the relief prayed for. Learned Additional Public Prosecutor further states that the petitioner came to fore as a hardcore criminal and a habitual offender. It is because of the persons like the petitioner, the count of tigers is decreasing day-by-day in forest of India. Learned APP urged to reject the petition.

11. Before discussing the issue involved, it would be apposite to have a glance at the relevant provisions i.e. Sections 31 and 427 of the Code with regard to running of sentences in different situations. For ready reference, both these Sections are reproduced below :-

> *"31. Sentence in cases 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 Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments 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 punishments shall run concurrently.*

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of 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;

Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

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."*

12. Section 31 of the Code deals with power of the Court to award sentence in cases where the accused is convicted of several offences at one trial. The Court is empowered to use its discretion in directing that the sentence for each offence may either run consecutively or concurrently, subject to the provisions of Section 71 of the IPC (45 of 1860) and the aggregate punishment must not exceed the limits fixed in provisos (a) and (b) of Sub-Section (2) of Section 31 of the Code, that is; (i) it should not exceed 14 years; and (ii) it cannot be more than twice the maximum imprisonment awarded by the sentencing Court for a single offence.

13. Section 427 of the Code fixes the time from which a sentence passed on an offender, who is already undergoing another

sentence. The general rule is that a sentence commences to run from the time of its being passed, but Section 427 of the Code creates an exception in the case of persons already undergoing imprisonment, and postpones the operation of the subsequent sentence until after expiry of the previous sentence. Section 427 of the Code presupposes two different sentences imposed in two different cases arose out of two different transactions. The Court is empowered to use its discretion in directing that the subsequent sentence may either run consecutively or concurrently with the previous sentence. Both these Sections i.e. Section 31 and Section 427 operate in different fields, although, the general rule of 'consecutive sentence' applies in both the cases, and discretion is conferred on the Court to order concurrent sentences. The basic difference in these two provisions is with regard to number of transactions. Section 31 of the Code covers the area of a single transaction with more than one offences, while Section 427 of the Code covers the area when accused is convicted in two separate trials arose out of two separate transactions and he is already undergoing sentence of imprisonment in one transaction. However, it is not necessary that he/she shall be actually in prison at the time of pronouncing of sentence in the subsequent conviction.

14. In the Code, there is absolutely no statutory guideline with regard to the use of discretion. The discretion is to be exercised on sound principles of law. Casual use of discretion may go against the mandate of statute. The Court has to consider all the attending circumstances. The Hon'ble Supreme Court in the case of ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and others,*** reported in ***AIR 1988 SUPREME COURT 2143*** recognized the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard is worth noting :-

> *"10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."*

15. In the case of Mohd. Akhtar (*supra*), the appellant, a foreign national, was tried under Section 85(1)(ii) of the Gold (Control) Act, 1968, wherein he pleaded not guilty, and accordingly he

was convicted. While the accused was in judicial custody, a further investigation was conducted, and on that basis, he was prosecuted along with others under Section 135 of the Customs Act. In this trial also, he pleaded not guilty, and accordingly he was convicted. In this regard, the Hon'ble Supreme Court held that if a given transaction constitutes two offences under two enactments, generally, it is wrong to have consecutive sentences.

16. In the case of ***Neera Yadav v. Central Bureau of Investigation***, reported in ***AIR 2017 SUPREME COURT 3791,*** while relying on the judgment of Mohd. Akhtar Hussain (*supra*), the Hon'ble Supreme Court in para Nos. 67 and 68 has observed as under :-

> *"67. It is well-settled that where there are different transactions, different crime numbers and cases have been decided by different judgments, concurrent sentences cannot be awarded under Section 427 Cr.P.C.XXXX*
>
> *68. The above general rule that there cannot be concurrency of sentence if conviction relates to two different transactions, can be changed by an order of the Court. There is no straitjacket formula for the Court to follow in the matter of issue or refusal of a*

> *direction within the contemplation of Section 427(1) Cr.P.C. Depending on the special and peculiar facts and circumstances of the case, it is for the court to make the sentence of imprisonment in the subsequent trial run concurrently with the sentence in the previous one.XXXX"*

17. In the case of Neera Yadav (*supra*), the appellant was convicted for two different offences in two different transactions and, therefore, the Hon'ble Supreme Court, relying on the ratio of Mohd. Akhtar's case, upheld the direction of consecutive running of sentences. However, at the same time, it is held that there is no straitjacket formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1) of the Code. It is further held that depending on the special and peculiar facts and circumstances of the case, it is for the Court to make the sentence of imprisonment in the subsequent trial run concurrently with the sentence in the previous one.

18. In the case of ***Nathu Ram Bansal and another v. State of Haryana and another,*** reported in ***1997 CRI. L. J. 1413,*** the Hon'ble Supreme Court emphasized on 'totality principle'. The relevant para reads thus :-

> *"It is no doubt true that the enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although it is grave. The Court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The totality principle has been accepted as correct principle for guidance. In R.V. Edward Charles French (1982) Crl App R (S) p. 1 (at 6)), Lord Lane, C.J., observed:*
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> > *"We would emphasize that in the end, whether the sentences are made consecutive or concurrent the sentencing Judge should try to ensure that the totality of the sentences is correct in the light of all the circumstances of the case."*

19. In the instant case, undisputedly, the findings of convictions against the petitioner were recorded in three different trials by three different Courts in three different transactions/crimes registered at three different jurisdictions. In each of these three crimes, the maximum substantive sentence imposed upon the petitioner is three years. While passing orders of sentences in both the subsequent convictions, the trial Court did not pass any order under Section 427 of the Code directing the mode of running of subsequent sentences.

Therefore, by default, the sentences would run consecutively. Accordingly, the petitioner has to undergo aggregate sentence of nine years.

20. Now, the question before us is whether the petitioner deserves discretion to be used in his favour? As discussed above, the discretion is to be exercised by the Courts on the basis of sound principles and by balancing the aggravating and mitigating circumstances against and in favor of the convict. Seriousness of the crime is, no doubt, one of the criteria to be considered. Apart from seriousness of crime, the total length of sentence, sentence period already undergone while suffering sentences, the maximum sentence prescribed for each of the offences, his/her conduct in jail, conduct during trial, age of the convict, possibility of reform, applicability of deterrence theory, circumstances under which the crimes were committed, enormity of the crimes, significant role of the convict in collective nature of crimes, crimes committed in individual capacity, *modus operandi* in committing the crimes, time gap between two transactions, similarity of transactions, plead guilty by the accused etc. are also the relevant factors to be considered. The list is not

exhaustive. It mainly depends on the facts and circumstances of each case.

21. In the instant case, the charges of hunting, killing and selling of skins, nails, teeth etc. of Tiger specified in Schedule I of the Act of 1972 are proved against the petitioner. He played a role as kingpin of the racket which is active in wild life trafficking. The trial Courts have discussed in the judgment, at length, about the seriousness of the crimes, and also the need to protect the wild life. It can be seen from the record that while in judicial custody, he absconded and the police could bring him back after a period of one year. Although, he has been booked and tried for the above three crimes, one does not know as to how many tigers and other scheduled wild life in reserve forests, he might have hunted and killed. Crime against human body can immediately be noticed and traced out, but crime in the forest area against the wild animals is very difficult to get noticed and detected. Nagpur region is substantially covered by natural forests. The aforesaid three crimes were committed in three different jurisdictions, which itself suggests the expansive nature of the activity of the petitioner in committing the crimes. The learned Additional Public Prosecutor on behalf of the State informed that after absconding for a year during

trial while in custody, he could be arrested with difficulty, and that too from the adjoining area of the reserved forest of another State. A reward of Rs. 1,00,000/- (rupees one lakh) was also announced for his capture. The investigation of the case was handed over to the Central Bureau of Investigation.

22. Learned counsel for the petitioner submitted that the petitioner has already undergone more than six years of imprisonment, and that only three years of sentence awarded has remained to undergo, and, therefore, leniency be shown to the petitioner.

23. We are not able to accede to the request of the learned counsel for the petitioner. No doubt, already undergone sentence is one of the parameters to be considered while exercising discretion, however, in our view, considering the enormity of the crime, his role in the crime and the conduct of the petitioner during trial, there is no assurance that after spending lesser time than is required in jail, he would not again join his dangerous profession of poaching. If released earlier, their would be less chances of his being reformed, and on the other hand, if the petitioner is made to remain in jail for more time by application of rule of consecutive sentences, in our view, there would

be possibility of the petitioner awakening himself to the reality that crime never pays in the long run and undergoing a transformation in the ultimate analysis. In each of these crimes, he has been sentenced to three years imprisonment which is the minimum sentence prescribed for the crime, and the maximum sentence is up to seven years. Total sentence he has to undergo is only nine years, which in our view, is not disproportionate considering the nature and gravity of the crime he has committed. Moreover, he being a professional poacher, a kingpin of wild life trafficking gang, he would require time to contemplate and change himself, if at all. Then, if a habitual and compulsive wild life offender like the petitioner, which is evident from his three convictions, is made to suffer consecutively the sentences subject to of course to limits of law, it sends a message to society that professional poachers are dealt with sternness and professionalism which they deserve so fully. This is the theory of proportionality as is the crime, so is the punishment. The petitioner, therefore, does not deserve benefit of discretion of this Court.

24. The Co-ordinate Bench of this Court in the cases of Abid Khan and Akash Deshpande (*supra*), where one of us was a member (Sunil B. Shukre J.), while considering a prayer under Section 427 of

the Code, exercised discretion in favour of the accused. The facts and circumstances in those cases are distinguishable. In the case of Abid Khan (*supra)*, the trial Judge recorded plea of guilt of the accused in all the three cases which were of similar in nature, and on the same day, the Court convicted him in three different crimes, but failed to pass any order under Section 427 of the Code, whereas in the case of Akash Deshpande (*supra)*, this Court found the principle of proportionality, possibility of early reformation and totality of the sentences vis-a-vis the ages of the petitioners, all working in favour of the petitioners, unlike here. In that case, ages of the accused were 21 and 23 at the relevant time, and by the time they would complete 24 years of their consecutive running of sentences, they would have been 43 and 45 years, which is not so here.

25. In the instant case, the age of the petitioner is 33 years. Three different crimes within three different jurisdiction were committed. The minimum sentence of imprisonment for these crimes is three years and maximum sentence is seven years. In Section 51 of the Act of 1972, if the offence of hunting of tiger is committed in the core area of a tiger reserve, the minimum imprisonment is three years for the first offence, and for subsequent offence, the minimum

imprisonment is seven years with fine which shall not be less than five lakh but may extend to rupees fifty lakh.

26. In the instant case, the Magistrate in Reg. Cri. Case No. 50/2015 recorded finding that the offence is committed in the core area of the reserve forest. The total sentence which the petitioner has to undergo would be nine years of imprisonment, while for a single crime, the maximum sentence is seven years, and if it is committed in core area then the minimum sentence is seven years for subsequent crime. In this scenario, we are not inclined to apply the principle of proportionality in favour of the petitioner, rather we would apply the very principle to bring in some semblance of proportionality of sentences to the crimes committed by the petitioner.

27. Apart from the aforesaid criteria, if we read other provisions of the Act, we would find some deviation has been made from the general law of the criminal procedure, and certain stringent provisions have been enacted which would indicate the seriousness of the crime. The object of the lawmakers appears obvious for inclusion of these provisions in the statute book. The gist of these provisions are hereunder :-

(i) Section 51A of the Act of 1972 restricts releasing of the accused of commission of any offence relating to Schedule I or Part II of Schedule II or offences relating to hunting inside the boundaries of National Park or wild life sanctuary, on bail, who had been previously convicted of an offence under this Act unless the following twin conditions are satisfied :-

(a) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence, and;

(b) that he is not likely to commit any offence while on bail.

(ii) Section 51(5) of the Act of 1972 prohibits release of the convict, who is convicted of an offence with respect to hunting in a sanctuary or a National Park unless such person is under eighteen years of age, on probation under the Probation of Offenders Act, 1958 or under Section 360 of the Code.

(iii) Graver sentence of imprisonment and fine is provided in case of subsequent crimes.

(iv) As per Section 60B of the Act of 1972, the State Government may empower the Chief Wild Life Warden to order payment of reward not exceeding ten thousand rupees to be paid to a person who renders assistance in the detection of the offence or the

apprehension of the offender, from such fund and in such manner as may be prescribed.

28. Considering the seriousness of the offence, role of the petitioner in each of the crimes, his conduct of absconding while in custody during trial, the age of the petitioner, rare chances of his early reformation, stringent provisions in the Act etc., we are of the considered view that the petitioner does not deserve any discretion to be used in his favour.

29. For the reasons aforestated, we do not find any merits in the petition and hence, it deserves to be rejected and the same is accordingly rejected. Rule is discharged.

JUDGE JUDGE

Sumit/D.S. Baldwa