



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2002-SB-2004

Date of Decision: 10.07.2025

JAI BHAGWAN

. . . .APPELLANT

Vs.

STATE OF HARYANA

. . . . RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. R.S. Malik, Advocate for the appellant.

Mr. Ravi Pratap Singh, DAG, Haryana.

DEEPAK GUPTA, J. (ORAL)

In a case arising out of FIR No.43 dated 17.03.2003 registered at Police Station Sadar Sonipat, accused Jai Bhagwan (*appellant herein*) was convicted by the Court of learned Special Judge, Sonapat under Section 20(b) of the NDPS Act, for possessing 250 gram of *Charas* i.e. contraband of the non-commercial category, vide judgment dated 14.09.2004; and vide separate order dated 17.09.2004, he was sentenced to undergo rigorous imprisonment for a period of 2 years and to pay fine of ₹20,000/- with default sentence of 1 year.

2. Against the abovesaid conviction and sentence, present appeal has been filed.

3. Today, learned counsel for the appellant stated at the outset that appellant does not press the present appeal against the judgment of conviction; and that he wants to confine his prayer only to assail the order of sentence in order to set aside the same or to modify the same.

4. It is contended by learned counsel for the appellant that conviction has been recorded for possessing contraband of non-commercial category; and that appellant has already undergone actual custody period of 4 months and 6 days. Learned counsel for the appellant prays for reducing

the sentence of the appellant for the period already undergone by him. Learned counsel further prays that in the alternative, the sentence of the appellant be made concurrent with sentence already imposed upon him in a case arising out of FIR No.18 dated 25.01.2010 registered at Police Station Sadar Sonipat, wherein he was convicted under Sections 302 and 201 IPC and was sentenced to undergo life imprisonment.

5. Learned State counsel has strongly opposed the aforesaid prayer. Attention is drawn towards custody certificate indicating that appellant is also convict in four other cases including two cases under the NDPS Act. Learned State counsel vehemently contends that in view of the criminal antecedents of the appellant, he does not deserve either reduction in sentence or to make his sentence of the present case concurrent with the other sentences.

6. I have considered submissions of both the sides and appraised the record.

7. As the custody certificate reveals, the first conviction of the appellant was recorded in 2004 in the present case registered in 2003.

- Subsequent conviction was recorded in case FIR No.79 of 2008 registered at Police Station Rai Sonepat under the provisions of the NDPS Act, wherein he was sentenced for the period already undergone by him on 05.10.2011.
- In FIR No.20 of 2009 registered at Police Station Maneri, Uttarkashi, appellant was sentenced to six months rigorous imprisonment with fine of ₹3000/- and he has already completed that sentence.

8. Apart from the aforesaid two convictions in NDPS matters, conviction of the appellant has been recorded in FIR No.18 dated 25.01.2010 registered at Police Station Sadar Sonepat under Sections 302 & 201 IPC vide judgment dated 04.10.2011, wherein he has been sentenced to undergo life imprisonment. The custody certificate further reveals that appellant had already undergone custody period of 6 years 2 months and 23 days in that

case and was presently on bail granted by this High Court, inasmuch as his Criminal Appeal No.633-DB of 2012 is stated to be pending.

9. Appellant was also convicted under Section 25 of the Arms Act in a case arising out of FIR No.251 dated 05.09.2008, registered at Police Station Sadar Sonapat and was sentenced to undergo imprisonment for a period of 1 year with fine of ₹1000/- and he has already completed his sentence in that case.

10. The aforesaid details, as reflected from the custody certificate, would indicate that as of now, the appellant is under sentence of life imprisonment in a murder case, though he is presently on bail in that case as per the orders of this Court due to pendency of the appeal against the conviction.

11. The question is whether in the aforesaid facts and circumstances, the sentence of the appellant as imposed in the present case can be directed to run concurrently with the sentence imposed in the murder case arising out of FIR No.18 dated 25.01.2010, registered at Police Station Sadar, Sonapat?

12. Section 427 of the CrPC reads as under: -

“(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.”

13. Perusal of the aforesaid provision would reveal that as per Sub Section (2) of Section 427 CrPC, in case a person is already undergoing a sentence of imprisonment for life and is sentenced on a subsequent conviction either to imprisonment for life or for imprisonment of any term, then the subsequent sentence shall run concurrently with such previous sentence.

14. The present case is not covered by Sub Section (2) of Section 427 CrPC, because in the present case, the sentence of Life Imprisonment under Section 302 IPC of the appellant has been ordered on 04.10.2011 i.e., subsequent to sentence to imprisonment for a term of 2 years in the present case, which was recorded much earlier on 17.09.2004. In other words, sentence of Life Imprisonment under Section 302 IPC of the appellant in another case is not earlier to imprisonment of present case, which is pre-requisite of Section 427 (2) *ibid*; and rather, it is subsequent. Section 427(2) mandates concurrency only when the prior sentence is life imprisonment.

15. Even Sub Section (1) of Section 427 CrPC is not applicable in present case, because when appellant was sentenced to Life Imprisonment in case FIR N: 18/2010 on 4.10.2011, he was already expected to complete his sentence of 2 years imposed in present case on 17.09.2004 but the bail was granted in present appeal on 12.10.2004. Thus, there was no subsisting sentence for Section 427(1) to operate upon. Section 427(1) only applies if the person is "already undergoing" a sentence at the time of the second conviction.

16. As such, it is held that appellant is not entitled to the benefit of Section 427 Cr.P.C for concurrency of sentence.

17. However, this court cannot ignore the fact that conviction of the appellant has been recorded for possessing contraband of non-commercial category; and he has already undergone actual custody period of 4 months

and 6 days. He is on bail in the case, wherein he was convicted under Section 302 IPC; whereas, in rest of the cases, he has already concluded his sentence. Conviction in this case was recorded way back in September, 2004 and sentence suspended in October, 2004 i.e., more than 20 years back.

18. Considering all the above said facts and circumstances, the sentence of appellant is reduced to the period already undergone by him. The present appeal is disposed of accordingly.

10.07.2025

Vivek

**(DEEPAK GUPTA)
JUDGE**

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>