

**HIGH COURT OF DELHI****Bench: Justice Swarana Kanta Sharma****Date of Decision: 7<sup>th</sup> June 2024**

CRIMINAL JURISDICTION

W.P.(CRL) 463/2023 &amp; CRL.M.A. 4336/2023

**MOHSIN IBRAHIM SAYYED ...PETITIONER****VERSUS****NATIONAL INVESTIGATION AGENCY ...RESPONDENT****Legislation:**

Article 226/227 of the Constitution of India

Sections 482, 427(1) of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Sections 120B of the Indian Penal Code, 1860 (IPC)

Sections 17, 18, 20, 38, 39 of the Unlawful Activities (Prevention) Act, 1967 (UAPA)

Subject: Petition seeking concurrent running of sentences awarded to the petitioner in two separate cases under UAPA and IPC.

**Headnotes:**

Criminal Law – Concurrent Running of Sentences – Criminal Petition under Article 226/227 of the Constitution of India read with Sections 482, 427(1) of Cr.P.C. – Petitioner sought direction for concurrent running of sentences imposed in two separate NIA cases – Delhi High Court declined to exercise discretion under Section 427(1) of Cr.P.C. – Held, offences committed by petitioner in two separate cases cannot be considered part of the “same transaction” – Maximum sentence not awarded by trial courts – Offences under UAPA are grave, impacting national security and societal harmony – Consecutive running of sentences upheld. [Paras 1-51]

Role of Petitioner in Criminal Conspiracy and Terrorist Activities – Convictions in separate cases for raising funds and conspiring to carry out terrorist attacks during Ardh Kumbh Mela and planning assassination of a political leader – Petitioner pleaded guilty to charges – Both cases involved distinct facts and separate trials – Petitioner found guilty of serious offences affecting national security. [Paras 24-29]

Guiding Principles for Exercise of Discretion under Section 427 of Cr.P.C. – Consideration of separate transactions, totality of sentences, gravity of offences, and societal impact – Judicial discretion to be exercised judiciously, not mechanically – Concurrent running of sentences not favored in cases

involving serious offences with wide societal impact. [Paras 20-23, 35-47]

Decision – Petition for concurrent running of sentences dismissed – Sentences in two NIA cases to run consecutively. [Para 51]

### **Referred Cases:**

- Mohd. Zahid v. State (2022) 12 SCC 426
- Neera Yadav v. Central Bureau of Investigation (2017) 8 SCC 757
- Mohd. Akhtar Hussain v. Assistant Collector of Customs (Prevention), Ahmedabad and Ors. (1988) 4 SCC 183
- V.K. Bansal v. State of Haryana (2013) 7 SCC 211
- Kuttu v. State of Maharashtra 2021 SCC OnLine Bom

### **Representing Advocates:**

Mr. Siddharth Sunil for petitioner

Mr. Akshai Malik, SPP for NIA with Mr. Khawar Saleem and Mr. Arun Kumar, Advocates for respondent

## **JUDGMENT**

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**SWARANA KANTA SHARMA, J.**

1. The petitioner has preferred this petition under Article 226/227 of the Constitution of India read with Section 482 and 427(1) of the Code of Criminal Procedure, 1973 (‘Cr.P.C.’), whereby he has sought a prayer that the sentence imposed upon him in NIA Case No. RC-09/2016/NIA/DLI by the learned Additional Sessions Judge-03, Patiala House Court, New Delhi *vide* order dated 02.06.2022 be directed to run *concurrently* with the sentence imposed upon him in NIA Special Case no. 3/2016 arising out of RC-02/2016/NIA/MUM, by the learned Additional Principal Judge and Special Judge MCOCA/POTA/NIA/TADA Greater Bombay *vide* order dated 07.01.2022.

**THE CASE OF PETITIONER**

2. Succinctly put, the case set out by the petitioner herein is that the Court of NIA Special Judge at Greater Bombay had convicted him for the offences punishable under Section 120B of Indian Penal Code, 1860 (‘IPC’) and Sections 18/20/38/39 of Unlawful Activities (Prevention) Act, 1967 (‘UAPA’) in case arising out of RC/02/2016/NIA/MUM, *vide* judgment dated 07.01.2022. Thereafter, *vide* order on sentence dated 07.01.2022, the learned Trial Court (Greater Bombay) had sentence the petitioner to five years of rigorous imprisonment under Section 18 of UAPA and Section 120B of IPC; eight years of rigorous imprisonment under Section 20 of UAPA; and seven years of rigorous imprisonment under Section 38/39 of UAPA. It was further directed that these sentences would would run concurrently. Thus, the maximum actual sentence in this case was eight years.

3. Thereafter, the Court of learned Additional Sessions Judge-03, Patiala House Court, New Delhi had held the petitioner guilty in case arising out of RC-09/2016/NIA/DLI and had convicted him, *vide* judgment dated 20.05.2022, under Sections 17/18/20 of UAPA and Section 120B of

IPC. Pursuant thereto, the learned Trial Court (Delhi) had, *vide* order dated 02.06.2022, sentenced the petitioner to five years of rigorous imprisonment under Section 120B of IPC; seven years of rigorous imprisonment, each, under Section 17, 18 and 20 of UAPA; and had directed that these sentences would run concurrently. Thus, the maximum actual sentence in this case was seven years.

4. It is, however, stated that the factum of petitioner's conviction and sentencing by the learned Trial Court (Greater Bombay) was not brought to the attention of the learned Trial Court (Delhi), as a result of which, the Court in Delhi could not exercise its statutory discretion under Section 427(1) of Cr.P.C. to determine the manner of execution of the sentence, considering that the petitioner was already serving the sentence awarded by the learned Trial Court (Greater Bombay) *vide* order dated 07.01.2022 at such time.

5. The main ground for filing this petition is that since the learned Trial Court (Delhi), after pronouncement of judgment recording conviction and order on sentence, has become *functus officio*, the petitioner has no other remedy but to approach this Court seeking exercise of its inherent and extra-ordinary jurisdiction to direct that the sentence awarded to the petitioner by the learned Trial Court (Delhi), run concurrently with the sentence previously awarded to him by the learned Trial Court (Greater Bombay).

6. Notice was issued in the present petition on 17.02.2023 and the respondent i.e. NIA was directed file a reply to the petition. Reply was filed on record on behalf of respondent, opposing the grant of relief in the present case.

#### **ARGUMENTS ADDRESSED BEFORE THE COURT**

7. **Learned counsel appearing on behalf of the petitioner** argues that there are ample grounds on which judicial discretion under Section 427(1) of Cr.P.C. ought to be exercised to direct the concurrent running of separate sentences awarded to the petitioner herein. It is submitted that there ought to be a consideration of the totality of the sentences which the accused must undergo if the sentences are made to run consecutively. It is further argued that a

Court can, even when substantive sentences of imprisonment have been imposed by courts in different trials/convictions, direct the concurrent running of such separate sentences.

8. It is submitted that the jail conduct report of the petitioner amply demonstrates his inclination towards reformation, and his intention to study further, care for his family, and contribute meaningfully to society. It is also submitted that numerous factors, including the petitioner's plea of guilt, must be considered when exercising discretion under Section 427(1) of the Cr.P.C. as outlined in the case of ***Kuttu v. State of Maharashtra*** 2021 SCC OnLine Bom 8. Learned counsel, submits on behalf of the petitioner, that the petitioner being a young, poor and illiterate man who, upon realizing the error of his ways as a result of being misguided, had voluntarily pleaded guilty to the charges framed against him before both the learned Trial Court in Delhi as well as in Greater Bombay, out of a genuine desire to reform himself, attain education, and become a productive member of society. Thus, the petitioner's act of voluntarily pleading guilty in the midst of the trial ought to be considered for exercising discretion under Section 427(1) of Cr.P.C.

9. To buttress his aforesaid submissions, learned counsel has placed reliance on the following case laws: ***Akash Rashtrapal Deshpande v. State of Maharashtra*** 2019 SCC OnLine Bom 283, ***Neera Yadav v. Central Bureau of Investigation*** (2017) 8 SCC 757, ***Mohd. Akhtar Hussain vs. Assistant Collector of Customs (Prevention), Ahmedabad and Ors.*** (1988) 4 SCC 183, ***Yamin v. The State (Govt. of NCT of Delhi)***, Crl. A. 769/2015.

10. It is lastly submitted on behalf of the petitioner that this Court has the power to direct the concurrent running of sentences under Article 226/227 of the Constitution of India, and under Section 482 read with Section 427(1) of Cr.P.C. and invocation of such jurisdiction and passing any such direction of concurrent running of sentences in view of Section 427 of Cr.P.C. would not amount to altering, varying or modifying the findings of the learned Trial Court.

11. Therefore, it is prayed that the present petition be allowed, and the relief, as prayed for, be granted to the petitioner.

12. **Learned counsel appearing on behalf of the respondent NIA**, while opposing the present petition, argues that it has been held by the Hon'ble Apex Court in catena of judgments that while courts are

empowered to order the running of two sentences concurrently, the general rule however remains that when an offender while undergoing sentence for a fixed term is subsequently convicted to imprisonment for another term, the subsequent sentence would commence at the expiration of the first sentence as per Section 427 of Cr.P.C. It is further argued that the learned counsel for the petitioner though has relied upon several case laws while praying that the sentence in this case be ordered to run concurrently, he has failed to indicate the gravity and seriousness of the offences under which the petitioner has been sentenced. It is submitted on behalf of respondent that in the present case, two distinct convictions and subsequent sentences have been awarded under certain scheduled offences of UAPA, which are serious offences affecting sovereignty and security of the country. It is argued that in such a case, the magnitude of offences has to be considered by this Court and no case for exercise of discretion under Section 482 read with Section 427(1) of Cr.P.C. to order concurrent running of sentences is made out. Therefore, it is prayed that the present petition ought to be dismissed. Learned counsel for the NIA has placed reliance on the following case laws, to make out a case for dismissal of present petition: ***Nakul Bera, In Re 2023 SCC OnLine Cal 830, Mohd. Zahid v. State (2022) 12 SCC 426.***

13. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned counsel for the respondent, and has perused the material placed on record including the case laws relied upon by the either side.

#### **ISSUE FOR CONSIDERATION**

14. The issue, which falls for consideration of this Court in the present case is whether the discretion, as provided under Section 427(1) of Cr.P.C., should be exercised by this Court, by invoking its extraordinary and inherent powers, to direct concurrent running of sentence awarded to the petitioner by the learned Trial Court (Delhi) with the sentence awarded to the petitioner by the learned Trial Court (Greater Bombay).

#### **SECTION 427 OF CR.P.C.**

15. Since the sole provision of law which falls for consideration and examination in this case is Section 427 of Cr.P.C., it shall be useful to first take note of the law including the judicial precedents governing

exercise of discretion under the said provision.

### ***The Provision***

16. Section 427 of Cr.P.C. deals with the cases, where a convict who is already undergoing a sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment or imprisonment for life. Section 427 is extracted hereunder for reference:

#### **“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.

### ***Essence of Section 427(1) of Cr.P.C.***

17. An analysis of sub-section (1) of Section 427 would reveal that it *firstly* presupposes two separate sentences awarded to a person in two different cases, *secondly*, the person must be undergoing the sentence in the first case, and *thirdly*, the person must be subsequently sentenced to imprisonment in the second case.

18. In such a scenario, the *general rule* is that the imprisonment which has been awarded subsequently shall commence to operate when the previous imprisonment would expire.

19. The *exception* to this general rule, is the *discretion* provided to the Courts, that such imprisonment which has been awarded subsequently to the person can be ordered to run concurrently with the previous sentence of imprisonment which the convict is already undergoing.

### ***Guiding Principles for Exercise of Discretion under Section 427 of Cr.P.C.***

20. In case of *Mohd. Akhtar Hussain v. Asstt. Collector of Customs* (1988) 4 SCC 183, the Hon<sup>ble</sup> Apex Court had recognized the rule of convictions arising out of same transactions, and held that if the transaction relating to offences is not the same or the facts constituting the two offences are quite different, in that case, the subsequent sentence should run consecutively. The relevant observations read as under:

“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.**”

(emphasis supplied)

21. Similarly, in case of *Neera Yadav v. CBI* (2017) 8 SCC 757, the Hon<sup>ble</sup> Apex Court had 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. ....

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 strait jacket 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...”

(emphasis supplied)

22. In the case of *V.K. Bansal v. State of Haryana* (2013) 7 SCC 211, it was observed as under by the Hon<sup>ble</sup> Apex Court:

“10. We are in the case at hand concerned more with the nature of power available to the Court under Section 427(1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations: one falling under the proviso to sub-section (1) to Section 427; the second falling under sub-section (2) thereof; and the third where the court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall **have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner**. It is difficult to lay down any straitjacket approach in the matter of exercise of such



discretion by the courts. **There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.”**

(emphasis supplied)

23. The Hon“ble Apex Court, in the case of ***Mohd. Zahid v. State (2022) 12 SCC 426*** has carved out the following principles of law with respect to Section 427 of Cr.P.C.:

“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 427 of Cr.PC;**

17.4. under Section 427 (1) of Cr.PC 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.”

(emphasis supplied)

### **OFFENCES COMMITTED BY THE PETITIONER**

#### ***Petitioner’s Role in Case Arising out of RC-09/2016/NIA/DLI***

24. The petitioner was arrested by Special Cell of Delhi Police on 05.02.2016 for his involvement in an ISIS-related case concerning planning of an attack during the Ardh Kumbh Mela in Haridwar, Uttarakhand. The case was later taken over by the NIA. During the course of trial, the petitioner had pleaded guilty to the charges framed against him.

25. It was revealed in this case that the petitioner had come in

contact with an ISIS handler, Yousuf Al-Hindi, and had attempted to join ISIS. On his directions, the petitioner had fled to Kerala to obtain fake IDs but had fled to escape the police. He had then traveled to Delhi and Rohtak and subsequently had collected funds from his associate in Lucknow on the directions of Yousuf Al-Hindi, which he had then handed over to other co-accused persons. The petitioner had also instructed his associates/co-accused to collect powder from matchsticks, intending to teach them bomb-making.

26. For the aforesaid acts, the petitioner was convicted by the learned Trial Court (Delhi) for offences under Sections 17/18/20 of UAPA and Section 120B of IPC.

***Petitioner's Role in Case Arising out of RC-02/2016/NIA/MUM***

27. After his arrest by Special Cell of Delhi Police on 05.02.2016, the petitioner was arrested in this case also, on 15.06.2016. This case had initially been registered by the ATS Branch of Mumbai Police against one Aiyaz Md. Sultan and other unknown persons for instigating youths to join ISIS and furtherance of activities of Islamic State. During the course of trial, the petitioner had pleaded guilty to the charges framed against him.

28. In this case, the investigation had revealed a criminal conspiracy between Aiyaz Md. Sultan, petitioner Mohsin Ibrahim Sayyed, and ISIS handlers, particularly Yousuf Al-Hindi, which was aimed at promoting jihadist activities of ISIS. They had sought to recruit Muslim youths, enticing them to become "Fidayeen" or emigrate for jihad. Utilizing various social media platforms, the accused persons had disseminated propaganda to attract like-minded individuals. It was discovered that Aiyaz Md. Sultan had left for Kabul in the year 2015 to join ISIS. The petitioner herein, at the behest of Yousuf Al-Hindi, had facilitated co-accused Rizwan Ahmed with prepaid SIM cards brought by using fake documents. The petitioner had also persuaded two youths to join ISIS, and had taken them to Chennai. He had also traveled to Ghaziabad and Muzaffarnagar for meeting other ISIS operatives. Furthermore, the petitioner had also planned the assassination of Kamlesh Tiwari, a leader of Hind Mahasabha.

29. For the aforesaid acts, the petitioner was convicted by the learned Trial Court (Greater Bombay) for offences under Section 120B of IPC and Sections 18/20/38/39 of UAPA.

**WHETHER THE PETITIONER HAS MADE OUT A CASE FOR CONCURRENT RUNNING OF THE SENTENCES AWARDED TO HIM?**

***Principle of Same Transaction Cannot be Applied in this Case***

30. While discussing the law of Section 427(1) of Cr.P.C. in the preceding discussion, this Court has already taken note of the principle laid down by the Hon<sup>ble</sup> Apex Court in case of ***Mohd. Akhtar Hussain (supra)*** and ***Neera Yadav (supra)*** that sentences ought not to be allowed concurrently in cases involving different transactions, different facts, etc.

31. Having perused the judgments of conviction passed by both the learned Trial Court (Greater Bombay) and learned Trial Court (Delhi) in case arising out of RC-02/2016/NIA/MUM and RC- 09/2016/NIA/DLI respectively, this Court notes that the petitioner was convicted in two different cases registered by NIA, one registered in Mumbai, and another in Delhi, for which separate trials were conducted in the Courts of Greater Bombay and Delhi, and the petitioner was convicted *vide* different judgments passed by these Courts. The co-accused persons in these two cases were also different.

32. Moreover, in one case, the petitioner has been convicted for conspiring to carry out attack in the city of Haridwar during the Ardh Kumbh Mela, and raising funds for the same. Whereas in the other case, the petitioner has been convicted for promoting the activities of ISIS, including recruitment of youths for the purpose of enticing them to become „*Fidayeen*’, as well as for planning assassination of a leader of Hindu Mahasabha.

33. Therefore, this Court is of the opinion that the offences committed in the two cases, for which petitioner has been convicted, cannot be termed to be a part of a „same transaction”.

34. Further, it is true that the petitioner herein has been convicted and sentenced under similar provisions of IPC and UAPA, however, the facts of the two cases and the acts committed by the petitioner are different. In this regard, this Court’s view is also guided by the decision of the Hon<sup>ble</sup> Apex Court in case of ***Neera Yadav (supra)***, in which although the petitioner therein had been convicted under similar provisions of Prevention of Corruption Act in two different cases, yet the Hon<sup>ble</sup> Apex Court had refused to allow concurrent running of sentences after observing that she had been convicted for abusing the official

position in getting the plots allotted to herself and her daughters and for other irregularities in making changes in the site plan in one case, and for abusing her position as CEO, Noida and conspiring with co-accused in allotting plot to him in the other case. *Thus*, merely because the petitioner has been convicted under similar provisions of IPC and UAPA in both the cases, the same cannot entitle him to seek concurrent running of sentence, as the facts of both the cases do not form part of a same transaction.

***Totality of Sentence: Maximum Sentence Not Awarded to the Petitioner***

35. Another relevant factor to be considered, for the purpose of exercising discretion under Section 427(1) of Cr.P.C., is the total period of sentence awarded to the petitioner in the two cases.

36. The principle of totality, i.e. considering the total quantum of sentence to be undergone by a person in case the sentences are to run consecutively, was explained by the Hon<sup>ble</sup> Apex Court in case of ***Mohd. Akhtar Hussain*** (*supra*), in the following words:

“17. It is no doubt 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] Cr. App. R. (S) p. 1 (at 6), Lord Lane, C.J., observed :

"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."

(emphasis supplied)

37. In the present case, the record reveals that in both the cases, the Courts have not awarded maximum sentence to the petitioner herein. For offences punishable under Sections 17, 18 and 20 of UAPA, a person can be sentenced to imprisonment for life. Therefore, in both the cases i.e. the one tried in Greater Bombay and the other in Delhi, the petitioner could have been sentenced to imprisonment for life.

38. However, lenient views were taken by the learned Trial Courts.

For instance, under Section 18 of UAPA, the maximum prescribed sentence is imprisonment for life and the minimum is imprisonment for five years, and the petitioner has been awarded the minimum sentence by the learned Trial Court (Greater Bombay) and a sentence of seven years by the learned Trial Court (Delhi). Similarly, the learned Trial Court (Delhi) has sentenced the petitioner to imprisonment for seven years, each for offences punishable under Sections 17 and 20 of UAPA, whereas the maximum punishment prescribed under both these provisions is imprisonment for life.

39. Since the sentences were to run concurrently as per Section 31 of Cr.P.C. as far as each individual trial/case is concerned, the maximum sentence to be undergone by the petitioner was eight years in RC-02/2016/NIA/MUM and seven years in RC-09/2016/NIA/DLI. The concurrent running of these sentences would imply that the petitioner would serve a total sentence of eight years only in the prison, and the consecutive running would imply that the total sentence to be served by the petitioner would be fifteen years.

40. Learned counsel for the petitioner had also placed reliance on the observations of Hon<sup>ble</sup> Apex Court in case of ***Mohd. Akhtar Hussain*** (*supra*) which have been extracted in para no. 36, but in this Court's opinion, the petitioner cannot obtain any benefit from the said decision insofar as it relates to application of „totality principle“ for the purpose of exercising discretion under Section 427(1) of Cr.P.C. In the present case, though the consecutive running of sentences would mean fifteen years of total imprisonment for the petitioner, the petitioner however has not been awarded the maximum sentence by either of the Courts, which could have been imprisonment for life.

41. As regards the contention of learned counsel for petitioner that since the petitioner had pleaded guilty to the offences, he must be granted relief under Section 427(1) of Cr.P.C., this Court is of the considered opinion that both the learned Trial Courts have already extended benefit of pleading guilty to the present petitioner by not awarding maximum sentence i.e. life imprisonment, which could have been awarded to him under the provisions he has been convicted.

42. Thus, even taking into consideration the totality principle propounded by the Hon<sup>ble</sup> Apex Court, this Court is of the opinion that the petitioner has already been awarded lesser sentence by both the learned Trial Courts, and thus, consecutive running of sentences of eight

years and seven years, will not cause prejudice to the petitioner as far as total period of sentence *vis-a-vis* offence committed by him is concerned.

### ***Gravity of Offence and Impact on Society***

43. Another important and crucial factor to be considered in the present case is the gravity of offence committed by the petitioner and its impact on the society as a whole.

44. In case of ***Mohd. Zahid*** (*supra*), the Hon<sup>ble</sup> Apex Court, while refusing to allow concurrent running of sentences of twelve years and fifteen years awarded to a convict in two cases involving offences under NDPS Act, had made the following significant observations regarding impact of offence under NDPS Act on the society as a whole:

“No leniency should be shown to an accused who is found to be guilty for the offence under the NDPS Act. **Those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable. Such accused causes deleterious effects and deadly impact on the society.** They are hazard to the society. Such organized activities of clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have a deadly impact on the society as a whole. **Therefore, while awarding the sentence or punishment in case of NDPS Act, the interest of the society as a whole is required to be taken into consideration.** Therefore, **even while applying discretion under Section 427 of Cr.PC, the discretion shall not be in favour of the accused who is found to be indulging in illegal trafficking in the narcotic drugs and psychotropic substances.** As observed hereinabove, even while exercising discretion under Section 427 of Cr.PC to run subsequent sentence concurrently with the previous sentence, the discretion is to be exercised judiciously and depending upon the offence/offences committed. Therefore, **considering the offences under the NDPS Act which are very serious in nature and against the society at large, no discretion shall be exercised in favour of such accused who is indulging into the offence under the NDPS Act.**”

(emphasis supplied)

45. The present case is one where the petitioner has been convicted under the provisions of UAPA, *inter alia* for commission of offences such as raising funds for terrorist acts, indulging in conspiracy for terrorist acts, being a member of terrorist organisation and giving support to a terrorist organisation. The petitioner herein had joined a terrorist organisation i.e. ISIS and was involved in conspiracy to carry out attacks in Haridwar during the period when Ardh Kumbh Mela was to be organised in

Haridwar. He was also involved in the conspiracy of recruiting innocent youth and enticing them towards radicalization.

46. There is no gainsaying that terrorism not only threatens the national security of the country but also the very fabric of society by targeting innocent civilians and institutions indiscriminately, with an aim to instill fear among the common and innocent citizens of a country. The impact of such terrorist activities on society is profound and far-reaching, as these crimes have the capacity to sow fear and insecurity among communities, as well as disrupt the social harmony. They also result in loss of innocent lives, destruction of property, and destabilization of regions. These impacts are often long-lasting. Thus, the gravity of such crimes lies in their potential to cause widespread harm, both physically and psychologically, and their challenge to fundamental values of peace, tolerance, and coexistence in a nation.

47. Thus, when the Hon<sup>ble</sup> Apex Court has observed that concurrent running of sentences should not be allowed in cases under NDPS Act since offences involving narcotic drugs and psychotropic substances are against society at large and even result in loss of young lives, this Court is of the firm opinion that cases such as the present one have to be dealt with the same or even a higher degree of sternness. In this case, the petitioner had himself pleaded guilty to charges framed under UAPA, for his acts of planning to carry out terrorist attacks in Haridwar during Kumbh Mela and plotting to kill a leader of Hindu Mahasabha, primarily with an aim to harm and disrupt communal harmony in the country, and since lenient view has already been taken by the Trial Courts at the stage of sentencing, no further leniency can be granted to the petitioner by allowing concurrent running of sentences awarded to him by the Trial Courts in Greater Bombay and in Delhi.

48. Before concluding, this Court would acknowledge that the learned counsel for the petitioner had placed reliance on some case laws during the course of arguments. Though there is no dispute with regard to the proposition of law laid down in the said judgments, the same however are not applicable to the facts of the present case. In ***Akash Rashtrapal Deshpande*** (*supra*), the Hon<sup>ble</sup> High Court of Bombay had allowed concurrent running of sentences awarded to the petitioners, who had been convicted in several robbery cases and sentenced to the maximum imprisonment of three years in each case. Similarly in ***Kuttu*** (*supra*), concurrent running of sentences awarded to the petitioners was allowed,

wherein convictions had been recorded under provisions of Wild Life Protection Act, 1972 and the petitioner had been sentenced to three years of imprisonment. These judgments can be of no help to the petitioner since neither the petitioner has been awarded maximum sentence in this case by the Trial Courts, nor the offence under UAPA can be compared to offence of robbery or offence under Wild Life Protection Act. As far as reliance on decision in case of *Yamin (supra)* is concerned, the Coordinate Bench of this Court had granted relief under Section 427(1) of Cr.P.C. primarily because similar relief had been granted to aco-accused by the Hon<sup>ble</sup> Supreme Court, which is clearly distinguishable from the facts of present case.

### **CONCLUSION**

49. The observations recorded in the foregoing discussion can be summed up as under:

- i. The offences committed by the present petitioner, for which he has been convicted upon conclusion of trial in two different cases, cannot be termed as part of a „same transaction“.
- ii. The petitioner was not awarded maximum sentence i.e. imprisonment for life in either of the case by the Trial Courts; rather a lenient approach was adopted by the Courts while awarding sentence to him.
- iii. The offence committed by the petitioner under the provisions of Unlawful Activities (Prevention) Act, 1967 are grave and serious in nature, which have an impact on the society at large as well as the national security and communal harmony of the nation.

50. Therefore, this Court finds no reasons to exercise discretion under Section 427(1) of Cr.P.C. and thus, the sentence of imprisonment awarded to the petitioner in case arising out of RC- 09/2016/NIA/DLI by the learned Trial Court (Delhi) shall commence upon expiration of the sentence of imprisonment awarded to the petitioner in case arising out of RC-02/2016/NIA/MUM by the learned Trial Court (Greater Bombay).

51. In view thereof, the present petition alongwith pending application stands dismissed.



52. The judgment be uploaded on the website forthwith.

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