



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1081 OF 2023

Guru s/o Arjun Bhalerao,  
Age 42 years, Occ. Nil,  
R/o. Mangwada, Near Laxmi  
Mata Temple, Aurangabad Road  
Yeola, Tq. Yeola  
District Nashik  
A/p. Nashik Road Central Prison,  
Nashik, district Nashik

...Petitioner

versus

1. The State of Maharashtra  
Through Police Station Deopur  
Tq. and district Dhule

2. The Deputy Superintendent of Prison,  
Nashik Road, Central Prison  
Nashik 422 101

...Respondents

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Mr. Rahul M. Gaikwad, advocate for the petitioner (appointed)  
Mr. A.R Kale, A.P.P. for respondents.

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**CORAM : R. G. AVACHAT AND  
SANJAY A. DESHMUKH, JJ.  
DATED : 13<sup>th</sup> DECEMBER, 2023.**

**JUDGMENT (PER SANJAY A. DESHMUKH):-**

1. Rule. Rule is made returnable forthwith. By consent of the parties, heard finally at admission stage.

2. The petitioner has put forth the following prayers:-

- “B. By issuing appropriate writ, order or direction in the like nature the order dated 20.02.2023 passed by learned Chief Judicial Magistrate, Dhule, below application may kindly be quashed and set aside in the interest of justice.
- C. By issuing appropriate writ, order or direction in the like nature, it may be directed to run the sentences in R.C.C. No. 362 of 2013 and R.C.C. No. 499 of 2013, imposed by the Judgment and order dated 23.05.2022 by learned Chief Judicial Magistrate, Dhule concurrently and simultaneously, in the interest of justice.”

3. The petitioner is convicted in R.C.C. No. 362 of 2013, by the learned Chief Judicial Magistrate, Dhule by judgment and order dated 23.05.2022 and sentenced to suffer R.I. for three years and to pay fine of Rs.5000/- i/d to suffer S.I. for three months. He is also convicted in R.C.C. No. 499 of 2012, by the learned Chief Judicial Magistrate, Dhule, by judgment and order dated 23.05.2022 and sentenced to suffer R.I. for three years and to pay fine of Rs.5000/- i/d to suffer S.I. for three months.

4. Learned advocate for the petitioner submitted that the learned Chief Judicial Magistrate, Dhule though decided aforesaid two cases, did not invoke Section 427 (1) of Cr.P.C. and failed to direct to run the said sentences concurrently in these cases. Learned advocate further submitted that the petitioner has undergone more than three years rigorous imprisonment and now he is directed to suffer simple imprisonment of three months in each case for non payment of fine

amount. He pointed out that the benefit of set off is not given by the jail authority. Lastly, it is prayed that necessary directions be issued to run the those sentences concurrently, including default sentence for non payment of fine amount. He lastly prayed to allow the writ petition.

5. Learned A.P.P. has strongly opposed the writ petition and contended that fine amount is not paid by the petitioner. Therefore, he has to undergo the default sentence for non paying fine amount. He submitted that the petitioner has not preferred any appeal against the said conviction and therefore this court cannot grant any relief as prayed by him. Learned A.P.P. prayed for dismissal of the writ petition.

6. Perused the judgments by which the petitioner was convicted. The set off for the period undergone by the petitioner is 1370 days, which appears from the judgments of conviction.

7. In ***Shersingh Vs State of M.P. (1989) Cri.L.J. 632***, the Hon'ble Supreme Court held that inherent powers of the High Court can be invoked under section 482 of the Criminal Procedure Code even if the trial Court or revision or appellate Court has not exercised its discretion under section 427(1) of the Cr.P.C. The inherent power of the High Court are not fettered by the section 427(1) of the Cr.P.C. Merely because appeal is not preferred by the petitioner, his right as per Section 427 of Cr.P.C. cannot be ignored or taken away. Thus,

this Court has power to consider the prayers of the petitioner under Section 482 of Cr.P.C.

8. In the case of ***Akash Rashtrapal Deshpande and another vs. State of Maharashtra and another*** (Criminal Writ Petition No. 1036 of 2018) decided on 15.2.2019, this Court in para 21 of the judgment, held thus:-

*“21. In no way, however, we intend to interfere in imprisonment inflicted for default in payment of fine. Section 64 of I.P.C. says of separate running of default sentence. So, the petitioners will be required to undergo default sentence if they will fail to pay the fine. At the same time, we want to clarify that default sentence will run consecutively without being affected by any of these observations.”*

9. As per record, the petitioner is in jail near about for 1945 days from the date of arrest. The set off is granted to him under Section 428 of Cr.P.C. He has almost completed more than five years in jail. For default in payment of fine also he cannot be kept behind bar which covers in set off period. The respondent No.2 and Chief Judicial Magistrate, Dhule ought to have considered that application submitted to them for concurrent running of sentence in its proper perspective. The learned Chief Judicial Magistrate, Dhule failed to consider section 427 of Cr.P.C. in its proper perspective and also failed to exercise the discretion in favour of the petitioner. It failed to invoke Section 427 of Cr.P.C. in favour of the petitioner. This power has to be exercised by the trial Courts in appropriate cases like this.

For the reasons discussed above, the impugned order of Chief Judicial Magistrate, Dhule deserves to be set aside.

10. Considering the facts and circumstances of the case and also the reformatory theory of the punishment, in the interest of justice, the petition deserves to be allowed. We are inclined to allow this petition. Accordingly, the writ petition is allowed in terms of prayer clauses "B" and "C". The petitioner be released forthwith, if not required in any other case.

11. Rule made absolute in the above terms.

12. Writ petition is disposed of. No costs.

13. We quantify an amount of Rs.10,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad to the learned advocate appointed to represent the case of the petitioner.

**(SANJAY A. DESHMUKH, J.)**

**(R. G. AVACHAT, J.)**

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