

Reserved On : -
Pronounced On : 19/01/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 10324 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY

=====

Approved for Reporting	Yes	No
		✓

=====

RAMJANBHAI HASAMBHAI KHRAJ
Versus
STATE OF GUJARAT & ORS.

=====

Appearance:

MS KD PARMAR(589) for the Applicant(s) No. 1

MR.MEET THAKKAR, APP for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3,4

=====

CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

CAV JUDGMENT

1. By filing present position under article 226 and 227 of the constitution of India the petitioner has prayed for the following reliefs :-

(A) Your Lordships may be pleased to admit and allow this petition.

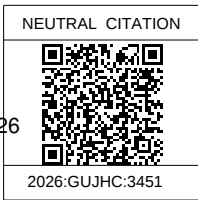
(B) Your Lordships may be pleased to issue appropriate writ,



order or direction and be pleased to direct to run the sentences concurrently imposed in Criminal Case No.4950 of 2003 on 23.02.2004 by Judicial Magistrate First Class Court, Porbandar and confirmed in Criminal Appeal No.03 of 2008 by Sessions Judge, Porbandar on 22.09.2008 in the interest of justice.

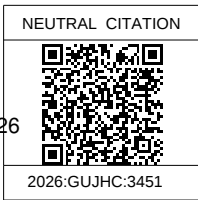
- (C) kindly dispense with filing of affidavit as petitioner is in jail.
- (D) kindly grant the compensation as the provisions of the Cr.P.C.

2. The facts and circumstances giving rise to filing the present petition are such that the offence being C.R.No.80 of 1998 came to be registered against the petitioner with Kalyanpur Police Station for the offence punishable under Section 302 and 498A of the IPC. After conclusion of the trial, the applicant was convicted for the said offence and was imposed punishment of rigorous life imprisonment. The applicant herein was ordered to be enlarged on temporary bail by this Court for a period of 30 days. The applicant was released from the custody pursuant to the order of this Court on 12th March, 2003 and was supposed



to surrender before the concerned jail authority on 12th April, 2003. However the petitioner did not surrender before the jail authority on 12th April, 2003 and had absconded. A separate offence came to be registered against the petitioner for the offence punishable under Section 51(B) of the Prison Act, 1960 with Bagodar Police Station being C.R.II No.6 of 2003, which culminated in Criminal Case No.4950 of 2003. Learned Judicial Magistrate First Class, Porbandar vide judgment and order dated 23.02.2004 was pleased to convict the petitioner for the offence punishable under section 51(B)(1) of the Prison Act and had imposed sentence of simple imprisonment for a period of 2 years. Learned Magistrate, however, had directed that the sentence would commence after completion of the sentence of life imprisonment, which the petitioner was already undergoing at the relevant time.

3. Being aggrieved by the said judgment and order, the petitioner herein preferred Criminal Appeal No.3 of 2006 before the learned Sessions Court, Porbandar. The learned Session Court, Porbandar vide judgment and order dated 22nd September, 2008 dismissed the Apple filed by the

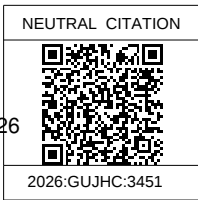


petitioner and confirmed the order passed by the learned Magistrate. The State Government had considered the case of the petitioner for grant of remission as regards the sentence of life imprisonment and the petitioner was ordered to be released as regards offences punishable under the provisions of Section 302 and 498A of the IPC and therefore, on 4th July, 2025 the petitioner was released from the jail so far as it relates to the offence punishable under Section 302 and 498A of the IPC. However, since the sentence imposed upon the petitioner in another offence was ordered to commence after completion of the sentence of life imprisonment upon him, the petitioner is still not effectively released from the jail and is presently undergoing sentence imposed upon him by the learned Magistrate in Criminal Case No.4950 of 2003. It is the case on the part of the petitioner that in view of the provisions of Section 427(2) of the Cr.P.C., subsequent sentence imposed upon the petitioner has to run concurrently with the sentence of life imprisonment. Therefore, the petitioner has approached this Court by filing present petition.

4. Learned advocate Mr. H. B. Raval appearing for the



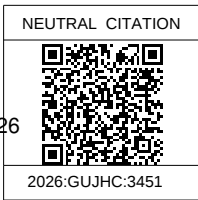
petitioner submitted that the petitioner was undergoing sentence of life imprisonment as he was convicted for the offence punishable under the provisions of Section 302 and 498A of the IPC. While undergoing such sentence, the petitioner was ordered to be enlarged on temporary bail for some time. However, upon expiry of the period of temporary release, the petitioner did not surrender to the jail authorities and had absconded. Therefore, another offence was registered against the petitioner wherein also the petitioner was also convicted and was sentenced to simple imprisonment for a period of two years. Since the petitioner was undergoing sentence of life imprisonment at the relevant time when the second offence was registered against him, the case of the petitioner would fall under Section 427(2) of the Cr.P.C. Therefore, learned trial Court as well as learned Appellate Court could not have ordered for the petitioner to undergo the sentence in the second offence after completion of life imprisonment. As per the provisions of Section 427(2) of the Cr.P.C., the order of consecutive sentence can not be passed, if the person is undergoing punishment of life imprisonment imposed upon him in first offence and punishment imposed upon him in



the second offence has to run concurrently with the punishment of life imprisonment. He, therefore, submitted to allow the present petition and quash and set aside the order impugned in the present petition and order to enlarge the petitioner forthwith as he has already completed all the sentence imposed upon him by now.

4.1. Learned advocate has sought to rely upon the judgment of this Court in the case of Prabhatji Sukhaji Dabhi v. State of Gujarat in the *Criminal Appeal No.2203 of 2017*.

5. Learned Additional Public Prosecutor has opposed the grant of present petition *inter-alia* contending that relief given under Section 427 of the Cr.P.C. is discretionary relief and while exercising discretion in favour of the petitioner, his conduct is also required to be seen. He further submitted that while undergoing sentence of life imprisonment, the petitioner had committed second offence under the Prisons Act by not reporting to the jail authority upon expiry of the temporary release. Therefore, discretion available to this Court under Section 427 of the Cr.P.C. cannot be exercised in favour of the petitioner. He, therefore, submitted to dismiss the present petition.



5.1 Learned Additional Public Prosecutor has sought to rely upon the judgment of the Hon'ble Supreme Court in the case of Mohd. Zahid v. State through NCB reported in *(2022) 12 SCC 426*.

6. Heard learned advocates for the respective parties. It is an admitted fact that the petitioner herein was convicted for the offence punishable under Section 302 and 498A of the Indian Penal Code, 1860 and was sentenced to undergo life imprisonment for the same. While undergoing such sentence, the petitioner came to be temporarily released for a period of 30 days by the order of this Court. However, upon expiry of 30 days, the petitioner did not surrender before the jail authority and had absconded and therefore, second offence came to be registered against him under the Prisons Act. The learned trial Court upon conclusion of trial, convicted the petitioner for the second offence and imposed punishment of simple imprisonment for two years upon the petitioner.

7. Section 427 of the Cr.P.C. which reads as under :-



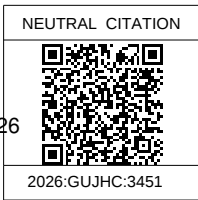
“427:- Sentence on offender already sentenced for another offence:-

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*

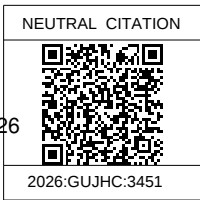
provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

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.”*

8. From the facts referred to herein above, there is no doubt that the case of the petitioner would fall under Sub-Section 2 of the Section 427 and not under sub-section 1 of the



Section 427 and sub-section 2 of the Section 427 makes the sentence imposed upon the person on a subsequent conviction to imprisonment for a term or imprisonment for life, who is already undergoing sentence of imprisonment of life; to run concurrently; mandatory. Therefore, neither learned trial Court nor the Appellate Court got any powers or discretion to order the sentence imposed upon the petitioner on subsequent conviction, to run after the imprisonment of life was over. Therefore, the learned trial Court as well as the learned Appellate Court have committed grave error in ordering the sentence imposed upon the petitioner in subsequent conviction to run consecutively, in view of the provisions of Section 427(2) of the Cr.P.C. The detention of the petitioner in second offence after completion of punishment of life imprisonment becomes illegal. Therefore, the present petition deserves to be allowed and the same is hereby allowed. From the jail remarks of the petitioner produced on record, it appears that the petitioner has already completed all the sentence imposed upon him and therefore, he is ordered to be released forthwith. The Registry shall communicate this order to the concerned jail



authority through E-mail immediately. Direct service is permitted **TODAY**.

NABILA

(M. R. MENGDEY,J)