

# Mohd Zahid vs State, Through Ncb on 7 December, 2021

**Author: M. R. Shah**

**Bench: B. V. Nagarathna, M. R. Shah**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1457 OF 2021

Mohd Zahid

..Appellant (

VERSUS

State through NCB

..Respondent (

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31.03.2017 passed by the High Court of Delhi at New Delhi in Criminal Appeal No. 879 of 2002, by which the High Court has dismissed the said appeal preferred by the appellant herein □ original accused and has confirmed the judgment and order passed by the learned Trial Court, convicting the appellant for the offence under Section 29 read with Section 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act) and sentencing him to undergo rigorous imprisonment (RI) for a period of 15 years with a fine of Rs.1,50,000/□ for the aforesaid offence in view of the provisions of Section 31(ii) of the NDPS Act, the original accused has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under: □ 2.1 That the appellant herein – original accused faced the trial in connection with FIR No.134/1999 for the offence under Section 23 and Section 21 of the NDPS Act, PS Customs, Amritsar, Punjab for recovery of 4 kg of heroin. He was sentenced to undergo 12 years RI by the Amritsar Court. One another FIR was also filed against the appellant herein – original accused being FIR No.43/1999 at New Delhi for recovery of 750 grams of heroin from Delhi. In the second case also by judgment and order dated 30.01.2002, he was held guilty for the offence under Section 29 read with Section 21(c) of the NDPS Act. The learned Trial Court at Delhi imposed the sentence of 10 years RI (minimum sentence), however, in view of the provisions of Section 31 (ii) of the NDPS Act, which provides for an enhanced

punishment for offences after previous conviction, and considering the fact that earlier appellant was convicted for the offence under the NDPS Act in a case arising out of the FIR No.134/1999, the learned Trial Court awarded minimum sentence of 15 years RI. No specific order was passed by the learned Trial Court at Delhi in the trial arising out of FIR No.43/1999 (subsequent trial) that the sentence imposed of 15 years RI would run concurrently or consecutively.

3. Feeling aggrieved and dissatisfied with the judgment and order of conviction passed by the learned Trial Court at Delhi in a case arising out of FIR No.43/1999 (second/subsequent case), the appellant – original accused preferred the appeal before the High Court. Before the High Court, it was mainly submitted on behalf of the appellant – accused that as the appellant – accused had already undergone 12 years sentence in a case arising out of FIR No.134/1999, he cannot be punished twice and that in a case arising out of FIR No.43/1999 he has already undergone sentence of 6 years and 2 months, a lenient view may be taken and the sentences imposed in both the cases/trials, one arising out of FIR No.134/1999 (Amritsar Case) and another arising out of FIR No.43/1999 (New Delhi Case) shall be held to run concurrently. By the impugned judgment and order the High Court has not accepted the above and has dismissed the appeal. Hence, the accused has preferred the present appeal.

4. Ms. Sangeeta Kumar, learned counsel appearing for the appellant, in her short written submissions, has stated that the appellant is a foreign national, resident of Lahore, Pakistan and has been behind bars for the last nearly 22 years as he was arrested on 15.06.1999 in respect of FIR No. 134 of 1999 by the Police Station, Customs, Punjab and he was charged for the offences under Sections 21 and 23 of NDPS Act, 1985, for import of 4kg heroin and was convicted by the order of the Additional Sessions Judge, Amritsar, dated 08.12.2000.

Without prejudice to the aforesaid submissions, learned counsel for the appellant submitted that the appellant was under trial for the period from 17.09.1999 to 14.02.2002 and for the second offence the said period has not been taken into consideration. It was submitted that if the sentences are to run consecutively and if the aforesaid period is also taken into consideration, then the number of years that the appellant has to be behind bars, would have to be reduced. 4.1 Learned counsel for the appellant submitted that the appellant was 30 years of age when he was convicted and presently, he is 52 years old. His conduct in jail is good and there is no adverse remark made against him by the Jail Superintendent. Hence, the two sentences which the appellant is now undergoing, may be held to run concurrently under Section 427 Cr.P.C.

4.2 It is submitted that the appellant – accused has already completed 12 years RI in FIR No.134/1999 and if the sentences imposed, in both the cases – arising out of FIR No.134/1999 registered at Amritsar and arising out of FIR No.43/1999 registered at New Delhi, are not held to run concurrently and the appellant – accused is to undergo sentences consecutively, in that case the appellant is required to undergo in all 27 years of imprisonment. It is submitted that therefore the sentences imposed in both the cases are to be held to run concurrently.

4.3 It is submitted that as such in the case arising out of FIR No.43/1999, the Delhi Court while imposing the sentence of 15 years RI has not passed any order whether the sentences in both the

cases to run concurrently or not. It is submitted that therefore the appellant should be given benefit of Section 427 of Cr.PC.

5. The present appeal is vehemently opposed by Ms. Akaanksha Kaul, learned counsel appearing on behalf of the State – respondent. Heavy reliance is placed on Section 427 of Cr.PC. It is submitted that in the present case the accused faced two separate trials for separate offences and not arising out of the same transaction and therefore the sentences imposed in both the cases are to run consecutive only. 5.1 It is submitted that general rule is that sentences imposed in two separate trials in separate offences will run consecutively where there are two different transactions; different crime numbers and cases have been decided by different judgments. It is submitted that exceptions are cases falling under proviso to Section 427(1) of Cr.PC; falling under Section 427(2) of Cr.PC or when the court directs sentences shall run consecutively.

5.2 It is submitted that even the power conferred on the court under Section 427 of Cr.PC to order concurrent sentence is discretionary, but the discretion ought to be exercised having regard to the nature of the offence committed and the facts situation in which the question arises.

5.3 It is submitted that in the present case, the sentencing court did not direct the sentences to run concurrently. It is submitted that in the present case appellant – accused faced two separate trials for two separate offences and for two different transactions (not arising out of the same transaction) and therefore the submissions on behalf of the appellant that the sentences imposed in both the cases to run concurrently has no substance and cannot be granted. 5.4 In support of her above submissions, she has relied upon the following decisions of this court: □Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad & Anr. (1988) 4 SCC 183; Ranjit Singh Vs. Union Territory of Chandigarh & Anr. (1991) 4 SCC 304; V.K. Bansal Vs. State of Haryana & Anr. (2013) 7 SCC 211; Neera Yadav Vs. Central Bureau of Investigation (2017) 8 SCC 757; Vicky @ Vikas Vs. State (NCT of Delhi) (2020) 11 SCC 540; Gurdev Singh Vs. State of Punjab (2021) 6 SCC 558; Sharad Hiru Kolambe Vs. State of Maharashtra & Ors. (2018) 18 SCC 718 and Rajpal Vs. Om Prakash & Anr. (2019) 17 SCC 809.

5.5 It is further submitted that in the present case, the appellant – accused as such is a habitual offender. In connection with FIR No.134/1999, he was convicted for the offence under Section 23 and Section 21 of the NDPS Act for having in possession/recovery of 4 kg of heroin and in another case arising out of FIR No.43/1999, he has been convicted for the recovery of 750 grams of heroin. It is submitted that therefore the appellant – accused is not entitled to any leniency as prayed.

6. Making the above submissions and relying upon the decisions of this court, it is prayed to dismiss the present appeal.

7. We have heard the learned counsel appearing on behalf of the respective parties at length.

8. The short question which is posed for the consideration of this Court is, whether, the sentences imposed against the appellant – accused by two different courts in two different trials but against the same accused/person should run concurrently as submitted on behalf of the appellant – accused

or consecutively.

8.1 At the outset, it is required to be noted that in the present case, the appellant – accused has been convicted by two different courts in two different trials for the offences with respect to the different transactions. In one case, he has been sentenced to undergo 12 years RI for the offence under Section 23 and Section 21 of the NDPS Act by Amritsar Court and in another case arising out of FIR No.43/1999 he has been sentenced to undergo 15 years RI for the offence under Section 29 read with Section 21(c) of the NDPS Act by Delhi Court. In one case he has been convicted for having in possession of 4 kg of heroin and in another case for having 750 grams of heroin. It is also required to be noted that judgments have been delivered in both the cases one after another and in the subsequent judgment and order of conviction and sentence by the Delhi court there is no specific order passed by the learned Trial Court (Court at Delhi) that the sentences to run concurrently. In view of the above facts, the question posed for the present appeal is required to be considered.

8.2 While considering the issue in the present appeal Section 427 of Cr.PC is required to be referred to 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 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.

Therefore on a fair reading of Section 427 of Cr.PC, when a person who is 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. Meaning thereby the sentences in both the conviction shall run consecutively. However, there is an exception to that, namely unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. There is one another exception. As per Sub-Section (2) of Section 427 of Cr.PC 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. Therefore, in aforesaid two cases only the subsequent sentence shall run concurrently with previous sentence. Otherwise the subsequent sentence shall run consecutively and the imprisonment in subsequent sentence shall commence at the expiration

of the imprisonment to which he has been previously sentenced.

8.3 At this stage, few decisions of this court on whether the subsequent sentence should run concurrently or consecutively are required to be referred to. 8.3.1 In the case of Mohd. Akhtar Hussain (Supra), it is observed 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.

In the case of Mohd. Akhtar Hussain, this Court observed that the broad expanse of discretion left by legislation to sentencing Courts should not be narrowed only to the seriousness of the offence. No single consideration can definitively determine the proper sentence. In arriving at an appropriate sentence, the court must consider, and sometimes reject, many factors. The court must 'recognise, learn to control and exclude' many diverse data. It is a balancing act and tortuous process to ensure reasoned sentence. In consecutive sentences, in particular, the Court cannot afford to be blind to imprisonment which the accused is already undergoing.

Mohd. Akhtar Hussain is a case which arose under Gold (Control) Act, 1968 involving a Pakistani national, the sentence in the first case was imprisonment for 7 years and fine of Rs. 10 lakhs awarded by the court of Chief Metropolitan Magistrate, Ahmedabad in CC No. 1674 of 1982. Upon appeal, the High Court confirmed the sentence but reduced the fine to Rs. 5 lakhs. The special leave petition filed by the appellant therein was dismissed by this Court and the conviction and sentence became final. When the appellant was under judicial custody in the aforesaid case, there was further investigation with regard to his smuggling activities. It revealed widespread racket of smuggling gold and silver in collusion with several persons. The appellant therein was again prosecuted along with 18 others under Section 135 of the Customs Act, 1962. The appellant therein was convicted and sentenced for 4 years rigorous imprisonment and fine of Rs. Two lakhs and default sentence in case of non-payment of fine. Thereafter, the State as well as the appellant therein approached the High Court. The High Court accepted the State's appeal and it enhanced the sentence from 4 years to 7 years and made it consecutive. Consequently, the High Court dismissed the appeal of the appellant. The result was that he had to serve in all 14 years imprisonment which he had challenged before this Court. Ultimately, this Court restored the sentence imposed by the Trial Court and set aside the sentence enhanced by the High Court by allowing the appeal.

8.3.2 In the case of Ranjit Singh (Supra) in paragraph 8, it is observed and held as under: "8. Sub-section (1) of Section 427 CrPC provides for the situation when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or life imprisonment. In other words, sub-section (1) of Section 427 CrPC deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, 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. Obviously, in cases covered by sub-section (1) where the sentence is for a fixed

term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender “already undergoing sentence of imprisonment for life” who is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well settled since the decision of this Court in Gopal Vinayak Godse [Ranjit Singh v. U.T. of Chandigarh, (1984) 1 SCC 31 following Mithu v. State of Punjab, (1983) 2 SCC 277 and reiterated in Maru Ram [(1981) 1 SCC 107 that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in sub-section (1) of Section 427. As rightly contended by Shri Garg, and not disputed by Shri Lalit, the earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the court's direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the court directs it to run concurrently. The meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is, therefore, clear.” 8.3.3 In the case of V.K. Bansal (Supra) after relying upon the decision of this Court in the case of Mohd. Akhtar (Supra) in paragraph 10 it is observed and held as under: “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.” 8.3.4 In the case of Neera Yadav (Supra) while interpreting/considering Section 427 of Cr.PC it is observed and held that Section 427 of Cr.PC deals with sentence passed on an offender who is already sentenced for another offence and the power conferred on the Court under Section 427 to order concurrent sentence is discretionary. It is further observed that the policy of the legislature is that normally the sentencing should be done

consecutively. It is further observed that only in appropriate cases, considering the facts of the case, the court can make the sentence concurrently with an earlier sentence imposed. It is further observed that the discretion exercised by the sentencing court to direct the concurrency will have to be exercised on sound principles and not on whims. Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed. It is further observed and held in the said decision that it is well settled that where there are different transactions, different crime numbers and the cases have been decided by the different judgments, concurrent sentences cannot be awarded under Section 427 of Cr.PC. It is further observed that however, the general rule that there cannot be concurrency of sentences if conviction relates to two different transactions, can be changed by an order of the court.

8.3.5 In the case of Sharad Hiru Kolambe (Supra), it is observed and held that unless the court directs that the punishment for such two or more offences at same trial should run concurrently, the normal principle is that the punishments would commence one after the expiration of the other. Similarly, in a case where a person already undergoing a sentence is later imposed sentence in respect of offence tried at subsequent trial, the general rule is that the subsequent sentence imposed run consecutively unless there is a specific order passed by the court while imposing any subsequent sentence, exercising discretion conferred under Section 427 of Cr.PC that in the facts and circumstances the subsequent sentence should run concurrently, the sentence imposed in both the cases shall run consecutively.

8.3.6 In the case of Gulam Mohammad Malik Vs. State of Gujarat and Anr. (2018) 14 SCC 473, this Court considered two appeals. One from the judgment of the High Court of Gujarat and the other from the High Court of Bombay in respect of the same appellant. In both cases, the appellant was charged for the offences under Section 8(c), 20(b) and 29 of the NDPS Act, 1985. Insofar as the case filed in Gujarat was concerned, registered as NDPS Case No. 1 of 2002, the appellant was convicted and directed to undergo rigorous imprisonment for ten years and to pay fine of Rs. 1 lakh and in default to undergo further rigorous imprisonment for one year in case the fine was not paid. Appellant therein preferred an appeal challenging the aforesaid conviction and sentence before the High Court which dismissed his appeal. In fact, the appeal by the State for enhancement of sentence was dismissed.

In the second case, the appellant therein was tried by the Special Judge for NDPS, Court of Sessions, Greater Bombay in Special Case No. 60 of 2002, culminating in the conviction and sentence of appellant therein under Section 8(c), 20(b)(ii) read with Section 31A of the NDPS Act and was sentenced to death. Death reference had been sent for confirmation before the High Court. The appellant therein had also filed an appeal against the aforesaid conviction and sentence in the High Court of Bombay. The High Court rejected the Confirmation Case no. 2 of 2008, filed by the State by not affirming the death sentence and dismissed the appeal of the appellant and the death sentence was converted into thirty years rigorous imprisonment and a fine of Rs.3 lakhs. The matter pertaining to the conversion of the death sentence was considered before this Court and on considering Section 31 of the NDPS Act on the facts of the said case, it was held that the appellant therein had to be given maximum punishment and thereafter multiplier of one and a half times applied. Minimum term of imprisonment prescribed under Section 31 is 10 years, on that reckoning,

when it is enhanced by one and a half times, the minimum sentence comes to 15 years. Ultimately, sentence ordered by this Court was rigorous imprisonment of 16 years. The Court also had in mind that the appellant therein was 65 years of age and suffering from various ailments. It was also ordered that the sentence would run concurrently and so far as with regard to both the cases, fine of Rs. 1 lakh which was imposed by the Trial Court in Gujarat was concerned, the same would remain. As far as fine of Rs. 3 lakhs in Bombay case was concerned, the same was reduced from Rs. 3 lakhs to Rs. 2 lakhs. Accordingly, the appeals were disposed.

9. Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:□

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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.

10. Applying the law laid down by this Court in the aforesaid decisions and the principles of law enumerated hereinabove to the facts of the case on hand, the submissions on behalf of the appellant – accused that his subsequent sentence to run concurrently with the previous sentence is to be rejected outright. In the present case the appellant has been convicted with respect to two different transactions, there are different crime numbers and the cases have been decided by the different judgments. Therefore, the appellant is not entitled to any benefit of concurrent sentence under Section 427 of Cr.PC. As observed hereinabove, there is no specific order or direction issued by the court while imposing the subsequent sentence that the subsequent sentence to run concurrently with the previous sentence.

11. Even otherwise as observed hereinabove under Section 427 (1) of Cr.PC, the Court has the power and discretion to issue a direction that the subsequent sentence to run concurrently with the previous sentence in that case also, the discretion has to be exercised judiciously depending upon the nature of offence or the offences committed. In the present case the appellant – accused has been convicted for the offences under the NDPS Act. He has been convicted in one case for recovery of 4 kg heroin and sentenced to undergo 12 years RI and in another case there is a recovery of 750



grams of heroin and considering the Section 31 (ii) of the NDPS Act, he has been sentenced to undergo 15 years RI. 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.

12. In view of the above and for the reasons stated above, the submissions on behalf of the appellant – accused to direct the subsequent sentence in case arising out of FIR No.43/1999 to run concurrently with the previous sentence arising out of FIR No.134/1999 is hereby rejected. In view of the above and for the reasons stated above the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

.....J. (M. R. SHAH) .....J. (B. V. NAGARATHNA) New  
Delhi, December 07, 2021