



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 21st OF JULY, 2026

WRIT PETITION No. 6514 of 2022

RINKU @ YATENDRA TOMAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Sameer Kumar Shrivastava - Advocate for the petitioner.

Shri Sohit Mishra - Govt. Advocate for the respondent/State.
.....

ORDER

This petition under Article 226 of the Constitution of India has been filed challenging the inaction of the respondents in not counting the period of custody undergone by the petitioner from 12.04.2013 to 08.08.2018, despite the undisputed fact that the petitioner remained lodged in Central Jail, Gwalior throughout the said period.

FACTS

2. The short facts of the case are that the petitioner was prosecuted for offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act in Sessions Trial No. 34/2005. By judgment of conviction and order of sentence dated 28.02.2007 passed by the learned Sixth Additional Sessions Judge, Gwalior, the petitioner was convicted and sentenced to undergo imprisonment for life. Aggrieved by the said judgment, the petitioner preferred Criminal Appeal



No. 295/2007 before this Court. During the pendency of the appeal, the petitioner remained in custody. However, by order dated 24.04.2009, this Court suspended the sentence and granted interim bail to the petitioner for a period of four months. The interim suspension of sentence was thereafter extended from time to time without interruption. Subsequently, by order dated 22.03.2013, the petitioner was granted temporary suspension of sentence for a further period of three months. Before the expiry of the aforesaid period of temporary suspension, the petitioner came to be convicted in another criminal case, i.e. Sessions Trial No. 141/2010, arising out of Crime No. 95/2007. By judgment dated 10.04.2013 passed by the learned Seventh Additional Sessions Judge, Gwalior, the petitioner was convicted for offences under Sections 148, 302/149 and 307 of the Indian Penal Code and sentenced to undergo imprisonment for life. In compliance with the said judgment, the petitioner surrendered before the trial Court on 12.04.2013 and was taken into judicial custody on the same day. The judgment itself records that the petitioner was sent to jail on 12.04.2013. From that date onwards, the petitioner continuously remained in judicial custody in Central Jail, Gwalior. Although the temporary suspension of sentence granted in Criminal Appeal No. 295/2007 was valid until 22.06.2013, the petitioner had already been taken into custody on 12.04.2013 pursuant to the conviction recorded in Sessions Trial No. 141/2010. Consequently, from 12.04.2013 onwards, the petitioner was in custody. Criminal Appeal No. 295/2007 was ultimately decided by this Court on 05.10.2021. Thereafter, when the petitioner intended to challenge



the said judgment before the Hon'ble Supreme Court, he applied for a custody certificate as required under the applicable Rules. It was at that stage that the petitioner came to know that the respondents had not treated him as being in custody from 25.04.2009 to 09.08.2018 in connection with Sessions Trial No.34/2005 and, more particularly, had failed to account for the period from 12.04.2013 to 08.08.2018 rather had treated him in custody in S.T. No.141/2010, notwithstanding the fact that he had remained continuously lodged in Central Jail, Gwalior during the said period.

ARGUMENTS

3. Learned counsel for the petitioner submits that at the time of his admission to jail, the respondents ought to have duly recorded that the petitioner was already a life convict in Sessions Trial No. 34/2005 and his temporary suspension of sentence had become inconsequential once he was taken into custody in the subsequent case. However, the respondents failed to make the necessary entries in the jail records and erroneously failed to treat the petitioner as being in custody in Criminal Appeal No. 295/2007 from 12.04.2013 onwards. Criminal Appeal No. 295/2007 was thereafter listed before this Court on 09.08.2018. As the petitioner and the co-accused intended to engage another counsel, the petitioner was produced before this Court directly from Central Jail. The order dated 09.08.2018 specifically records that the petitioner had been brought from jail and grants liberty to engage another counsel. Significantly, there was no judicial order directing that the petitioner be taken into custody on 09.08.2018. His production from jail on that date itself establishes that he had remained continuously in



judicial custody prior thereto. It appears that only upon his production before this Court the respondents realized the omission in their records and, therefore, started reflecting his custody only from 09.08.2018 instead of from 12.04.2013 in conviction under S.T. No.34/2005.

4. Learned counsel for the petitioner submits that once the petitioner had surrendered on 12.04.2013 and was taken into judicial custody pursuant to the judgment dated 10.04.2013 passed in Sessions Trial No. 141/2010, there was no break whatsoever in his incarceration. The judgment of conviction expressly records that he was sent to custody on 12.04.2013. Further, the order dated 09.08.2018 passed by this Court in Criminal Appeal No. 295/2007 also records that the petitioner had been produced from jail. These contemporaneous judicial records conclusively establish that the petitioner remained in custody throughout the period from 12.04.2013 to 08.08.2018 for conviction under S.T. No.34/2005. There being no order extending or reviving the suspension of sentence after the petitioner was taken into custody, the respondents had no justification for excluding the said period while calculating his total period of incarceration. It is, therefore, submitted that the omission on the part of the respondents is purely administrative and contrary to the judicial record. The respondents are under a legal obligation to correctly compute the petitioner's custody by including the entire period from 12.04.2013 to 08.08.2018. The failure to do so is arbitrary, illegal and violative of the petitioner's rights, and accordingly the respondents deserve to be directed to rectify the custody record and count the aforesaid period while calculating the total period of imprisonment



undergone by the petitioner.

5. *Per contra*, learned counsel for the respondent/State submitted that in Sessions Trial No. 34/2005, the petitioner was enlarged on bail on 24.04.2009 after his sentence was suspended for a period of four months. Thereafter, the suspension of sentence was temporarily extended by order dated 22.03.2013 for a further period of four months and was subsequently extended up to 22.06.2013. However, during the subsistence of the said extension, the petitioner was convicted in Sessions Trial No. 141/2010 and was sentenced to imprisonment for life by judgment dated 12.04.2013. Pursuant thereto, he was taken into custody and committed to prison for undergoing the sentence imposed in Sessions Trial No. 141/2010. It is, therefore, contended that from 12.04.2013 onwards, the petitioner's custody was exclusively in execution of the sentence of life imprisonment awarded in Sessions Trial No. 141/2010 and not in connection with Sessions Trial No. 34/2005. Consequently, the exclusion of the said period from the computation of sentence in Sessions Trial No. 34/2005 is lawful and justified. On this basis, it is submitted that the petitioner is not entitled to any of the reliefs claimed in the present petition, which deserves to be dismissed.

6. It is further submitted that the period of custody undergone by the petitioner in Sessions Trial No. 141/2010 cannot be treated as custody for the purpose of Sessions Trial No. 34/2005 and Criminal Appeal No. 295/2007. According to the respondent/State, after availing the benefit of the extended suspension of sentence in Sessions Trial No. 34/2005, the petitioner neither informed the concerned court nor surrendered himself into custody in



connection with the said case. Therefore, the custody undergone by him pursuant to the conviction in Sessions Trial No. 141/2010 cannot be reckoned towards the sentence in Sessions Trial No. 34/2005. It is contended that the petitioner was required to surrender in Criminal Appeal No. 295/2007 only upon the expiry of the suspension of sentence on 22.06.2013, and until such surrender, his custody remained solely referable to the life sentence imposed in Sessions Trial No. 141/2010. Accordingly, it is prayed that the present petition, being devoid of merit, is liable to be dismissed.

7. Heard counsel for the parties and perused the record.

DISCUSSION AND CONCLUSION

8. The undisputed factual position emerging from the record is that the petitioner was convicted in Sessions Trial No.34/2005 by judgment dated 28.02.2007 and was sentenced to undergo imprisonment for life. During the pendency of Criminal Appeal No.295/2007, this Court suspended the sentence and granted him interim bail by order dated 24.04.2009. The order of suspension of sentence was extended from time to time and, lastly, by order dated 22.03.2013, temporary suspension of sentence was granted for a further period of three months.

9. It is equally undisputed that before the expiry of the said period, the petitioner was convicted in Sessions Trial No.141/2010 by judgment dated 10.04.2013 and, pursuant thereto, he surrendered before the trial Court on 12.04.2013. The judgment itself records that after pronouncement of conviction and sentence, the petitioner was sent to jail on 12.04.2013. From that date onwards, the petitioner remained continuously lodged in Central



Jail, Gwalior. The respondents have not disputed the factum of the petitioner's continuous incarceration from 12.04.2013 onwards. Their only contention is that such custody was exclusively in execution of the sentence awarded in Sessions Trial No.141/2010 and, therefore, the said period cannot be reckoned while computing the custody in Sessions Trial No.34/2005.

10. The object of suspension of sentence under Section 389 of the Code of Criminal Procedure is to keep the execution of the sentence in abeyance during the pendency of the appeal. Once the petitioner surrendered before the competent Court on 12.04.2013 pursuant to the conviction recorded in Sessions Trial No.141/2010 and was committed to prison, he ceased to enjoy the liberty which had been extended to him by virtue of the order suspending sentence in Criminal Appeal No.295/2007. The benefit of suspension of sentence is intended to keep a convict out of custody. Once the convict is actually taken into judicial custody and remains continuously incarcerated under the authority of law, the very foundation of such suspension becomes inconsequential so far as the factum of custody is concerned.

11. The record further demonstrates that on 09.08.2018, when Criminal Appeal No.295/2007 was listed before this Court, the petitioner was produced directly from Central Jail, Gwalior. The order dated 09.08.2018 specifically records his production from jail and grants liberty to engage another counsel. The order dated 09.08.2018, therefore, itself constitutes contemporaneous judicial evidence that the petitioner had remained continuously in custody even prior thereto.



12. The respondents have not produced any material to show that after 12.04.2013 the petitioner was ever released from jail or there existed any break in his incarceration. On the contrary, the judicial record unequivocally establishes that he remained continuously confined in Central Jail from 12.04.2013 onwards.

13. At this stage, it would also be apposite to refer to Rule 288 and 290 of the M.P./C.G. Jail Manual, which reads as under:

"नियम 288. कैदियों को प्रवेश दिये जाने पर वारंट की परीक्षा की जायेगी - समस्त वारंटो का परीक्षण यह अभिनिश्चित करने के लिये किया जायेगा कि क्या वे उच्च न्यायालय के आदेशों के अनुरूप हैं। यदि कोई वारंट अशुद्ध हो, तो छोटी गौण अनियमितताओं की दशा में उसकी (वारंट की) एक प्रति उसे जारी करने वाले कार्यालय को इस निवेदन के साथ भेजी जानी चाहिये कि पुनरीक्षित वारंट अग्रेषित किया जाय और उसके प्राप्त हो जाने पर, असंगत वारंट न्यायालय को वापस कर देना चाहिए। इस प्रयोजन के लिये जेलों में वारंट के कोरे प्रारूप रखना चाहिये। पुनरीक्षित वारंट की प्राप्ति की अभिस्वीकृति जेल प्राधिकारियों द्वारा एक विशेष पत्र भेज कर दी जायेगी और जब तक ऐसा पत्र प्राप्त नहीं हो जाता तब तक मूल वारंट में अशुद्धि (यदि कोई हों) के परिणामस्वरूप होने वाली किसी भूल के लिए वारंट भेजने वाले न्यायालय को सरकार द्वारा उत्तरदायी ठहराया जायेगा। अधीक्षक प्रत्येक सिद्धदोष कैदी के वारंट की परीक्षा करेगा तथा अपना समाधान कर लेगा-

(ए) कि प्रत्येक कैदी के लिए एक पृथक वारंट है,

(बी) कि वारंट पर वह तारीख अंकित है जिसको कि दण्डादेश पारित किया गया था और यह कि न्यायालय की मुद्रा की छाप सुस्पष्ट



तथा सुभिन्न है तथा यह कि न्यायालय के पीठासीन अधिकारी के हस्ताक्षर सुवाच्य तथा पूर्ण हैं,

(सी) कि कैदी की जनकता, जाति, निवास-स्थान तथा उपजीविका वारंट में सम्यक् रूप से उपवर्णित हैं,

(डी) कि उस कारावास की कालावधि, जिसके लिए कि कैदी दण्डादिष्ट किया गया है, यदि अंग्रेजी में लिखे गये हैं तो अंकों के साथ-साथ बड़े शब्दों में तथा स्पष्ट अक्षरों में लिखी है और यदि हिन्दी या उर्दू में लिखी गई हो तो स्पष्ट सुवाच्य तथा अंकों के साथ-साथ पृथक-पृथक अक्षरों में लिखी हो न कि जल्दबाजी में ।

(इ) यह कि कारावास का प्रकार जैसे सादा अथवा कठिन स्पष्ट रूप से वारंट में उपवर्णित है।

(एफ) यह कि वारंट में न्यायालय के आदेश स्पष्ट रूप से विवरणित किये गये हैं।

उदाहरणार्थ- (1) ऐसे कैदी के मामले में जो पहले से ही दण्ड भुगत रहा हो, चाहे दण्डादेश या दण्डादेशों को एक के बाद एक पारित किया गया हो, तत्काल हो या चालू दण्डादेश के अवसान पर, प्रभावशील होंगे,

(2) उस मामले में जब कि एक ही तारीख को दो या अधिक दण्डादेश दिये गए हो तब वे दण्डादेश साथ-साथ चलेंगे या क्रमशः?

(जी) यह कि जुर्माने के संदाय में व्यक्तिक्रम करने के कारण भुगते जाने वाले अगले कारावास के दण्डादेश का पूर्ण विवरण अभिलिखित किया गया हैं।

(एच) यह कि पूर्व दोषसिद्ध व्यक्तियों के मामले में प्रत्येक दोषसिद्ध कैदी के अपराध का स्वरूप तारीख तथा दण्डादेश की अवधि देते हुए उनके सम्पूर्ण दोषसिद्धियों का विवरण सम्यक् रूप से अभिलिखित किया



गया है।"

290. नियम 290. उन दण्डादेशों का अनुक्रम जिनमें कठिन कारावास तथा आजीवन कारावास दोनों ही सम्मिलित हो - यदि वारण्ट में यह निर्देश दिया जाय कि कोई व्यक्ति पृथक-पृथक आरोपों के कारण दो या अधिक दण्ड भुगतेंगा तो ऐसे दण्डादेश जिनमें कारावास या आजीवन कारावास अन्तर्विष्ट हो एक के पूरा होने के पश्चात् दूसरे ऐसे क्रम से प्रारम्भ होंगे जैसा कि न्यायालय निर्दिष्ट करे। जब तक कि न्यायालय यह निर्देश न दे कि ऐसे दण्डादेश साथ-साथ चलेंगे (दण्ड प्रक्रिया संहिता की धारा 35) जब कोई व्यक्ति, जो पहले से ही कारावास का दण्डादेश सपरिश्रम कारावास अथवा आजीवन कारावास का दण्ड भुगत रहा हो फिर से कारावास, सपरिश्रम कारावास अथवा आजीवन कारावास से दण्डादिष्ट किया जाए तब एक के अवसान के पश्चात् दूसरा ऐसा दण्डादेश ऐसे क्रम से प्रारम्भ हो जिस क्रम में वह अधिनिर्णीत किये हैं जब तक कि आजीवन कारावास का अधिनिर्णय देने वाला न्यायालय यह निर्देश न दे कि आजीवन कारावास के ऐसे दण्डादेश तुरन्त प्रभावशील होंगे (दण्ड प्रक्रिया संहिता, 1898 की धारा 397) या जब तक कैदी निकल भागा हुआ सिद्धदोष हो जिस मामले में दण्ड प्रक्रिया संहिता, 1898 की धारा 396 के उपबन्ध लागू होंगे।

14. A plain reading of Rule 288 makes it abundantly clear that upon admission of a convict in jail, it is the statutory obligation of the jail authorities to scrutinize the warrants and correctly maintain the custody records of every prisoner. The Rule specifically contemplates situations where a prisoner is already undergoing a sentence or where multiple warrants exist, and obligates the jail authorities to verify and correctly record the effect of each judicial order. Thus, proper maintenance of custody records is not merely an administrative formality but a statutory duty cast upon the jail authorities.

15. Rule 290 regulates the execution of multiple sentences awarded to



the same prisoner. It prescribes the order in which such sentences are to commence and operate unless the competent Court directs otherwise. The Rule deals exclusively with the commencement and execution of sentences. It does not create any legal fiction that a prisoner who is already in lawful judicial custody pursuant to one conviction ceases to remain in custody in relation to another subsisting conviction or proceeding. Nor does it require a convict, who is already confined in prison under a valid warrant, to perform another formal act of surrender merely because another sentence has to be given effect to.

16. The distinction between execution of sentence and judicial custody must be borne in mind. The commencement, suspension, concurrency or consecutiveness of sentences is governed by statutory provisions and judicial directions. Judicial custody, however, denotes the legal status of a person who remains confined under lawful authority. Rule 290 regulates the former; it does not alter the latter. Consequently, once the petitioner was committed to prison on 12.04.2013 and continued to remain incarcerated without interruption, his judicial custody persisted irrespective of the source from which the authority to detain him initially flowed.

17. The contention advanced by the respondents that the petitioner was required to effect a separate surrender in Criminal Appeal No. 295/2007 upon the expiry of the order of temporary suspension of sentence is wholly misconceived and deserves outright rejection. The undisputed factual matrix reveals that, while availing the benefit of interim suspension of sentence in the said appeal, the petitioner had surrendered on 12.04.2013 in connection



with another criminal case and was thereafter lodged in the Central Jail, Gwalior. From that date onwards, the petitioner remained continuously in lawful judicial custody. Consequently, there was no occasion or legal necessity for him to undertake a fresh or separate act of surrender in connection with Criminal Appeal No. 295/2007. The concept of surrender necessarily presupposes that a convict is at liberty pursuant to an order of suspension of sentence or bail and is required to submit himself to the jurisdiction of the Court upon the cessation of such relief. Where the convict is already in judicial custody in another case but is on temporary suspension, the requirement of a further formal surrender is rendered otiose, if he is arrested in another offence. The law neither contemplates nor compels the performance of an empty or futile formality. In the present case, the failure to reckon the petitioner's custody in Criminal Appeal No. 295/2007 cannot, by any stretch of imagination, be attributed to any omission or default on the part of the petitioner. The omission is solely attributable to the administrative lapse of the jail authorities in failing to make the requisite endorsement in the warrant register and to duly reflect the petitioner's custody in relation to the said appeal, despite the mandatory obligation cast upon them under Rule 288 of the M.P./C.G. Jail Manual. Such a ministerial or administrative omission on the part of the State authorities cannot be allowed to operate to the detriment of the petitioner or deprive him of his valuable statutory and constitutional right to have the entire period of his actual incarceration duly reckoned towards the sentence imposed upon him. To hold otherwise would amount to penalising the petitioner for an omission exclusively attributable



to the authorities entrusted with the maintenance of prison records, a consequence wholly impermissible in law.

18. The respondents have not disputed that the petitioner remained lodged in Central Jail, Gwalior from 12.04.2013 onwards. Their refusal to reflect the said period in the custody records pertaining to Sessions Trial No.34/2005 is founded solely upon an erroneous understanding of the legal consequences of the petitioner's subsequent conviction. Such an omission in maintaining prison records cannot override the contemporaneous judicial record or alter the true legal character of the petitioner's uninterrupted incarceration.

19. This Court is, therefore, of the considered view that the petitioner remained in continuous judicial custody from 12.04.2013 onwards and the exclusion of the period from 12.04.2013 to 08.08.2018 from the custody records relating to Sessions Trial No.34/2005 is wholly unjustified. The omission is purely administrative and contrary to the judicial record as well as the statutory obligations imposed upon the jail authorities under Rule 288 of the M.P./C.G. Jail Manual. Such an administrative lapse cannot be permitted to prejudice the rights of the petitioner.

20. Accordingly, the writ petition is allowed. The respondents are directed to rectify the custody records by treating the petitioner as having remained in continuous judicial custody in connection with Sessions Trial No.34/2005 from 12.04.2013 to 08.08.2018 and to include the said period while computing the total period of custody undergone by him. The respondents shall also carry out all consequential corrections in the custody



calculation and other connected records.

21. The petition is accordingly allowed and disposed of.

(MILIND RAMESH PHADKE)
JUDGE

ojha