

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIMINAL PETITION NO. 11 OF 2022

1. Ksh. Kennedy Singh,

2. Ch.Ibomcha Singh,

3. S.Bijen Singh,

.....Petitioners

- versus -

1. The State of Manipur represented by the Chief Secretary,
Government of Manipur, Babupara, Old Secretariat,
P.O. & P.S., Imphal, District Imphal West, Manipur -795001.
2. The Superintendent of Jails, Manipur Central Jail,
Sajiwa, P.O. Lamlong, P.S. Heingang, District Imphal East,
Manipur-795010.

..... Respondents

For the Petitioners	::	Mr. N.Surendrajit Singh, Advocate.
For the Respondents	::	Mr. Athouba Khaidem, PP
Date of reserving of Order	::	06.04.2022
Date of delivery of Order	::	08.04.2022

BEFORE
HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR

O R D E R (CAV)

[1] By way of this petition filed under Section 482 Cr.P.C., the petitioners seek set-off of the period of detention undergone by them prior to their conviction and sentencing, under Section 428 Cr.P.C.

[2] The petitioners were arrested on 22.03.2012 in connection with FIR No.32(03)2012 BPR PS. After a full-fledged trial, they were convicted of offences under Sections 367, 376(2)(g) and 392 IPC and sentenced to imprisonment for life, along with payment of fine, by the learned Sessions Judge, Manipur East, in Sessions Trial No. 8 of 2012, *vide* Judgment dated 12.06.2013 and Order of Sentence dated 25.06.2013. In appeal, however, this Court reduced the sentence imposed upon the petitioners to 10 years rigorous imprisonment. The petitioners are presently lodged in Manipur Central Jail, Sajiwa. They assert that they completed the requisite incarceration on 22.03.2022, after reduction of the set-off period claimed by them. It is stated that the fine amount imposed upon the petitioners has already been paid.

[3] Heard Mr. N.Surendrajit Singh, learned counsel for the petitioners; and Mr. Athouba Khaidem, learned Public Prosecutor, appearing for State authorities.

[4] At the outset, it may be noted that there is no mention in the judgments of the Trial Court and this Court that the benefit of Section 428 Cr.P.C. is either extended or denied to the petitioners. The question that would

then arise is whether such an observation is necessary at all in the light of the statutory scheme. In that context, the issue would also arise as to whether the period of detention undergone by a person during the investigation, inquiry or trial of the same case, which would be in the nature of 'simple imprisonment', can be set-off against the 'rigorous imprisonment' that he or she is sentenced to after conviction.

[5] Section 428 Cr.P.C. reads thus: -

“428. Period of detention undergone by the accused to be set off against the sentence or imprisonment.-- Where an accused person has, on conviction, been sentenced to imprisonment for a term ¹ [not being imprisonment in default of payment of fine], the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

²[Provided that in case referred to in Section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section.]”

1. Ins. By Act 45 of 1978, sec.31 (w.e.f. 18-12-1978)

2. Added by Act 25 of 2005, sec 34 (w.e.f.23-6-2006)

[6] In the light of the *proviso* which was inserted in the statute book on 23.06.2006 by Act No. 25 of 2005, it would be necessary to take note of the provisions of Section 433A Cr.P.C. This provision deals with restriction on the power of remission or commutation in certain cases. It reads to the effect that where a sentence of life imprisonment is imposed upon conviction for an offence for which death is one of the punishments provided by law, or where a death sentence has been commuted into one of life imprisonment, such person shall not be released from prison unless he has served at least 14 years of imprisonment. The statutory scheme is therefore to the effect that even in cases

of life imprisonment, which would extend to at least 14 years of imprisonment, the benefit of set-off under Section 428 Cr.P.C. is available. Trite to state, life imprisonment is invariably 'rigorous imprisonment', i.e., with hard labour. Therefore, there can be no gainsaying that even a convict sentenced to undergo a term of 'rigorous imprisonment' would be entitled to seek set-off of the pre-conviction detention suffered by him in relation to the same case, which would be in the nature of 'simple imprisonment'.

[7] It would be apposite at this stage to note existing curial output on this issue. In **Raja Ram Kashinath Charoskar vs. State of Maharashtra (2009 Cri LJ 97)**, a Division Bench of the Bombay High Court opined that the benevolent provision contained in Section 428 Cr.P.C. cannot be denied to a convict and such benefit must be awarded without exception and/or discretion of the Court. These observations were made in the context of a person sentenced to life imprisonment even prior to 23.06.2006, the date of insertion of the *proviso* to Section 428 Cr.P.C. The period of detention undergone by him prior to his conviction was accordingly directed to be set-off against the period of 14 years, referred to in Section 433 A Cr.P.C.

[8] In **Sukhdev Singh Kahlon vs. CBI, Chandigarh, and others [2002 (4) RCR (Criminal) 721]**, a learned Judge of the Punjab & Haryana High Court observed that, ordinarily, set-off should be calculated and granted by the prison authorities without any direct order from the Court. Reference was made to the observations of the Supreme Court in **State of Maharashtra and another vs. Najakat Alia Mubarak Ali, [(2001) 6 SCC 311]** and it was

observed that if the sentence of imprisonment is longer than the period of detention undergone by the convict during the stage of investigation, inquiry or trial, he need undergo only the balance period of imprisonment, after deducting the earlier period from the total period of imprisonment.

[9] In **Suraj Bhan vs. Om Prakash and another [(1976) 1 SCC 886]**, the Supreme Court held that even if the conviction was prior to the enforcement of the Code of Criminal Procedure, 1973, the benefit of Section 428 therein would be available to the convict, as the said provision did not contemplate any challenge to the conviction or sentence but merely conferred benefit on the convict to reduce his liability to undergo imprisonment out of the sentence imposed for the period which he has already served as an undertrial prisoner.

[10] In **Ranjit Singh vs. State of Punjab [(2010) 12 SCC 506]**, the Supreme Court was dealing with a case where the Sessions Court denied the benefit of set-off under Section 428 Cr.P.C. on the basis of the decision in **Kartar Singh vs. State of Haryana [(1982) 3 SCC 1]**. However, the Supreme Court noted that, in **Bhagirath vs. Delhi Administration [(1985) 2 SCC 580]**, a Constitution Bench had overruled **Kartar Singh** (*supra*), and held that imprisonment for life would be imprisonment for a term within the meaning of Section 428 Cr.P.C. The appellant was therefore held entitled to the benefit of set-off under Section 428 Cr.P.C.

[11] In the light of the above precedential wisdom and given the statutory scheme of the Code of Criminal Procedure, 1973, there can be no doubt that the pre-conviction period of detention suffered, even if it is in the

nature of 'simple imprisonment', would still be liable to be set-off against a sentence of 'rigorous imprisonment'. Further, the operation of Section 428 Cr.P.C. would be automatic unless the benefit thereof is specifically denied in the judgment itself. That is perhaps the reason why, in **Atul Thakur vs. State of Himachal Pradesh and others [(2018) 2 SCC 496]**, the Supreme Court ended the judgment by stating that it was 'needless to mention' that the appellant would be entitled to set-off under Section 428 Cr.P.C. It would therefore not be necessary for the authorities to insist upon an observation to this effect in the judgment of conviction/order of sentence before extending this statutory benefit to a convict who is otherwise eligible for the same.

[12] In the case on hand, the petitioners were arrested on 22.03.2012 and, therefore, they completed 10 years of imprisonment by 22.03.2022. The period of rigorous imprisonment suffered by them commenced from 25.06.2013 but in the light of Section 428 Cr.P.C., the 'period of detention' undergone by them till that day would be liable to be set-off against the total period of imprisonment to be undergone.

Viewed thus, the Criminal Petition is allowed and the respondent authorities are directed to release the petitioners, viz., 1) Ksh. Kennedy Singh, aged about 42 years, s/o Ksh. Achou Singh, 2) Ch.Ibomcha Singh, aged about 46 years, s/o Ch.Samu Singh, and 3) S.Bijen Singh, aged about 43 years, s/o S.Gourababu Singh, from Manipur Central Jail, Sajiwa, by giving them the benefit of set-off under Section 428 Cr.P.C. in relation to their sentence of imprisonment pursuant to the common judgment and order dated 17.07.2017

passed by this Court in Criminal (Jail) Appeal No.2 of 2013 and batch, arising out of the Judgment of Conviction dated 12.06.2013 and the Order of Sentence dated 28.06.2013 of the learned Sessions Judge, Manipur East, in Sessions Trial Case No.8 of 2012, unless their incarceration is lawfully required in connection with any other case.

CHIEF JUSTICE

FR/NFR

Opendro