



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.947 OF 2024 (Filing No.)

Mr Mahanand Naik,
Son of late Mr Ramnath Naik,
Aged 56 years,
Convict No.65/10 of Central Jail,
Indian National,
Presently lodged in
Modern Central Jail,
Colvale Bardez Goa.

... Petitioner

Versus

1 State of Goa,
Through the Chief Secretary,
Secretariat, Porvorim Goa.

2 Inspector General of Prisons,
1st Floor, Old Education Building
Panaji Goa.

3 The Public Prosecutor,
High Court of Bombay at Goa
Porvorim Goa.

... Respondents

Ms Dolorosa Tulkar, Advocate for the petitioner.

Mr S. Karpe, Additional Public Prosecutor for the respondents.

**CORAM: M. S. KARNIK &
 NIVEDITA P. MEHTA, JJ**

DATED : 10th DECEMBER 2024

JUDGMENT : (Per Nivedita P. Mehta, J)

1. By the present petition, the petitioner seeks a direction to the respondents to grant the benefit of the provisions as mentioned in Section 428 of the Criminal Procedure Code and set off the period of imprisonment undergone by him as under trial prisoner against the term of imprisonment imposed on him.

2. Necessary facts to be noticed for disposal of this petition are that the petitioner herein was convicted in a case arising out of FIR No.97/2009 registered under Sections 364, 302, 392, 201, 411 of Indian Penal Code by the Sessions Judge, North Goa Panaji. The petitioner was sentenced to undergo rigorous imprisonment for a term of three years for the offence punishable under Section 364 of IPC and also to pay the fine of Rs.10,000/- in default to undergo imprisonment for a term of two months. The petitioner was further sentenced to undergo imprisonment for life for the offence punishable under Section 302 of IPC and to pay fine of Rs.50,000/-, in default to undergo imprisonment for a term of one year. The petitioner was further sentenced to undergo imprisonment for a term of five years for the offence punishable under Section 392 of IPC and to pay fine of Rs.50,000/-, in default to undergo imprisonment for a term of one year. The petitioner was further sentenced to undergo rigorous imprisonment for a term of five years for the offence punishable under Section 201 of IPC and to pay the

fine of Rs.20,000/- in default to undergo imprisonment for a period of six months. The Sessions Judge, North Goa, Panaji vide judgment and order dated 20.07.2011 observed that the accused is not entitled to the benefit of any set off in terms of Section 428 of Cr.P.C. having availed of it on conviction in Sessions Case No.30/2009 under Section 376 of IPC.

3. In appeal before this Court bearing Criminal Appeal No.20 of 2012, this Court quashed and set aside the conviction of the accused/petitioner for the offence punishable under Section 201 of IPC and upheld the conviction of the petitioner in respect of offence punishable under Sections 364, 392 and 302 of IPC. In other case, i.e. Sessions Case No.30/2009 the petitioner was registered for the offence punishable under Section 376 of IPC, wherein the learned Sessions Judge, Panaji sentenced the petitioner for rigorous imprisonment for seven years with fine of Rs.25,000/- and in default further imprisonment for two months was imposed upon the petitioner. The said order was challenged by the petitioner in Criminal Appeal No.7 of 2011 before this Court, wherein by order dated 06.08.2013, this Court set aside the conviction of the petitioner for the offence punishable under Section 376 of IPC.

4. The petitioner had filed Criminal Writ Petition No.398 of 2024 (F) wherein he sought direction for considering the benefit of

set off which was denied to him in judgment and order dated 04.04.2012 passed by the Sessions Judge at Panaji, in Sessions Case No.33/2009. This Court vide order dated 30.07.2024 directed the Sentence Review Board to reconsider the application of the petitioner for premature release in terms of the Goa Prison Rules 2021 read with Section 433A of Cr.P.C. after taking into consideration that the petitioner is entitled to set off in terms of Section 428 of Cr.P.C. in Sessions Case No.33/2009. As stated above, the petitioner is seeking set off in connection with FIR No.97/2009.

5. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

6. Learned counsel for the petitioner submitted that in view of the provisions of Section 428 of Cr.P.C. denial of the benefit of set off is contrary to the well-established principles of law. Section 428 of Cr.P.C. reads thus :-

“428. Period of detention undergone by the accused to be set off against the sentence of imprisonment- Where an accused person has, on conviction, been sentenced to imprisonment for a term, 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.

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

7. Learned counsel for the petitioner relied upon the following decisions in support of his submissions:

- (1) *Bhagirath Vs Delhi Administration*¹
- (2) *Rohan Dhungat Vs State (Through Police Inspector, Panaji Police Station) and Ors.*²
- (3) *Clint Vs State of Maharashtra & Ors*³
- (4) *Shyam Gawas Vs State of Goa, thr. The Public Prosecutor*⁴
- (5) *Adawayya @ Swami Kuntainwar Vs State of Goa*⁵

8. After considering the relevant provisions and from the wording of Section 428 of Cr.P.C., it is clear that what is to be set off is the period of

¹ (1985) 2 SCC 580

² 2019 SCC OnLine Bom 376

³ 2019 SCC OnLine Bom 1732

⁴ STM No.817/2020 (F)

⁵ WPCR No.534 of 2024 (F) decided on 30.07.2024

detention, if any, undergone by the convict during the investigation, enquiry or trial of the same case and before the date of such conviction. The purpose is therefore clear that the convicted person is given the right to reckon the period of his sentence of imprisonment from the date he was in jail as an under-trial prisoner. In other words, the period of his being in jail as an under-trial prisoner would be added as a part of the period of imprisonment to which he is sentenced. We may now decipher the two requisites postulated in Section 428 of the Code, (1) during the stage of investigation, inquiry or trial of a particular case, the prisoner should have been in jail at least for a certain period, (2) he should have been sentenced to a term of imprisonment in that case.

9. If the above two conditions are satisfied, then it is to be seen that if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, inquiry or trial, the convicted person needs to undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words "if any" in the section amplifies that if there is no balance period left after such deduction, the convict will be entitled to be set free from jail, unless he is required in any other case.

10. Therefore, in view of the mandate of Section 428 of Cr.P.C., and the observations of the Hon'ble Supreme Court in *Bhagirath Vs Delhi Administration* (supra) in the context of granting set off, we have no hesitation in interfering with the order passed by the trial Court limited to the denial of the benefit of set off to the petitioner. Consequently, the

observations of the trial Court that the petitioner is not entitled to any set off is set aside. The petitioner is held to be entitled to the benefit of set off in Sessions Case No.48/2009. In this view of the matter, the Sentence Review Board to reconsider the application of the petitioner for premature release in terms of Goa Prison Rules 2021 read with Section 433A of Cr.P.C., after taking into consideration that the petitioner is entitled to set off in terms of Section 428 of Cr.P.C. in Sessions Case No.48/2009.

11. The petition is allowed in the above terms.

NIVEDITA P. MEHTA, J

M. S. KARNIK, J