2025 INSC 541

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1371 OF 2025

THE SUPERINTENDENT OF PRISON & ANR. … APPELLANTS

VS.

VENKATESAN @ SENU @ SRINIVASAN @ BASKARAN @ RADIO @ PRAKASAM … RESPONDENT

WITH

CRIMINAL APPEAL NO. 1372 OF 2025

THE SUPERINTENDENT OF PRISON & ANR. … APPELLANTS

VS.

RAVICHANDRAN @ KALAI @ RAVI … RESPONDENT

J U D G M E N T

CRIMINAL APPEAL NO. 1371 OF 2025

1. The Superintendent of Prison, Central Prison – 1, Puzhal, Chennai, Tamil Nadu and the Inspector of Police, Q Branch, CID Police Station, Perambalur District, Tamil Nadu[1] are in appeal against the judgment and order dated 11.09.2020 of a learned Judge of the High Court of Judicature at Madras. By reason of the impugned order, a petition of the respondent[2] under Section 482 of the Code of Criminal Procedure,

[1] appellants
[2] Venkatesan

1973[3] succeeded. In such petition, Venkatesan had sought that the remand period from (i) 24.03.2005 to 28.02.2006; (ii) 22.04.2008 to 22.04.2009 and (iii) 21.04.2014 to 23.12.2014 as undertrial prisoner produced under P.T. (Prisoner Transit) warrant in S.C. No.2 of 2002, under Section 428 of the Cr. PC., be set-off.

2. Venkatesan belongs to Tamil Nadu Liberation Army, an organisation banned by the Government of Tamil Nadu. With the objective of liberating Tamil Nadu from the Union of India, Venkatesan resorted to violent activities and through armed struggle has been involved in several incidents of crime. Upon full-fledged trial, Venkatesan has been found guilty in Crime No.346 of 1993, S.C. No.12 of 2001 and DS.C. No.2 of 2002.

3. The question of law that we are tasked to decide is, whether on facts and in the circumstances, Venkatesan was entitled to the set-off for the three periods granted by the High Court in terms of Section 428, Cr. PC.

4. Both Section 427 and Section 428, Cr. PC, appear under Chapter XXXII of the Cr. PC titled "EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES". Section 428 envisages, upon a conviction being recorded in a particular case followed by a sentence to imprisonment for a term, set-off of pre-sentence detention period during the investigation, enquiry or trial of the same case. However, Section 427(1), Cr. PC, ordains that when a person already

[3] Cr. PC

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.

5. Venkatesan was arrested and remanded to judicial custody on 08.03.1998 in Crime No.234 of 1997 registered at Andimadam Police Station. After completion of investigation, police report under Section 173(2), Cr. PC was filed. Besides Crime No.234 of 1997, Venkatesan was arraigned as A-2 in S.C. No.2 of 2002. Cognizance was taken in S.C. No.2 of 2002 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai. Venkatesan was released on bail in S.C. No.2 of 2002 on 24.3.2005. Though released on bail, Venkatesan was not released from custody since he was involved in other crime cases. Therefore, Venkatesan was again produced on PT warrant before the trial court and his remand extended till 28.02.2006. Venkatesan was convicted on 22.04.2008 in Crime No.346 of 1993 registered at Kullanchavadi Police Station; as such, he was produced under PT warrant in S.C. No.2 of 2002 and remanded in custody till 22.04.2009. On 24.03.2014, Venkatesan was convicted in S.C. No.12 of 2001, and during his detention period, he was produced under PT warrant from 21.04.2014 to 23.12.2014 in S.C.No.2 of 2002. Thereafter, he was convicted on 29.11.2019 in

S.C. No.2 of 2002 for the offences punishable under Sections 120-B, 148, 450, 395 r/w 397, 307 and 332 of IPC and sentenced to rigorous imprisonment varying from 3 years to 10 years and fined. The trial court rejected Venkatesan's plea for setting off his remand period produced under PT warrant under Section 428, Cr. P.C reasoning that according to Section 428, Cr. PC, there is no mention of inclusion of the period during which the accused is produced on the strength of P.T. warrant while undergoing imprisonment in a different case.

6. The judgment of conviction and order on sentence passed by the sessions court in S.C. No.2 of 2002 were not challenged by Venkatesan. Hence, refusal of the sessions court to grant Venkatesan set-off under Section 428, Cr. PC went unchallenged. The decision of the sessions court in S.C. No.2 of 2002, thus, attained finality.

7. Before the High Court, the learned Additional Public Prosecutor raised an objection to the maintainability of the petition under Section 482, Cr. PC filed by Venkatesan on the ground that the remedy lies in an appeal under Section 374(2), Cr. PC; and since a remedy was available in law, the petition under Section 482, Cr. PC was not maintainable. Any prayer for set-off could be and had to be made before the High Court in appeal and not otherwise.

8. We have noticed with a sense of surprise that the learned Judge of the High Court after recording the aforesaid objection proceeded to decide the question of set-off claimed by Venkatesan, while relying

on the decision of this Court in ***State of Maharashtra v. Najakat Alia Mubarak Ali***[4], by a short order.

9. A remedy of appeal having been provided by the Cr. PC, we are of the firm view that the High Court erred in law in entertaining the petition under Section 482, Cr. PC filed by Venkatesan. We accept the submission of Mr. V. Krishnamurthy, learned Senior Additional Advocate General for the appellants that on this short ground this appeal deserves to be allowed.

10. However, we do not wish to allow the appeal only on the above ground. This appeal involves a serious question as to proper interpretation of Section 428, Cr. PC, notwithstanding that there are at least half a dozen decisions on such provision. As the narrative hereafter would unfold, interpretation of Section 428, Cr. PC is not found to be consistent and an authoritative decision seems to be the need of the hour.

11. Section 428 of the Cr. PC reads as under:

> "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, enquiry 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."

[4] (2001) 6 SCC 311

12. A coordinate Bench of this Court while disposing of a special leave petition in ***Maliyakkal Abdul Azeez v. Collector***[5] was called upon to consider a plea to set-off a period of detention from the term imprisonment of three years imposed for an offence under the Customs Act, 1962 not in course of an investigation or inquiry or trial of that particular case but in terms of an order for preventive detention passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. This Court noticed the two requisites postulated in Section 428 as follows:

> "**8.** …
>
> (*1*) During the stage of investigation, enquiry 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.
>
> If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, enquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded."

13. The aforesaid extract neatly sums up the legal position on the object, intent and import of Section 428, Cr. PC.

14. However, ***Najakat Alia Mubarak Ali*** (supra) is a decision of a three-Judge Bench of this Court. This decision the High Court relied on, to grant set-off to Venkatesan not confined to the period of custody in S.C. No.2 of 2002. It is interesting to read and understand what each

[5] (2003) 2 SCC 439

of the member Judges on the Bench had said with regard to the object and scope of Section 428, Cr. PC.

15. Hon'ble K.T. Thomas, J., presiding over the Bench, observed:

> "**18.** Reading Section 428 of the Code in the above perspective, the words 'of the same case' are not to be understood as suggesting that the set-off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. **The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case.** It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words 'of the same case' were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words."

16. Dissenting with the aforesaid view, Hon'ble R.P. Sethi, J. expressed:

> "**29.** A perusal of the section unambiguously indicates that only such accused is entitled to the benefit of that period of detention which he has undergone during the investigation, enquiry or trial of the same case. **It does not contemplate the benefit of set-off of the period of detention during investigation, enquiry or trial in any other case.** The purpose and object of the section, as pointed out by brother Thomas, J., is aimed at providing amelioration to a prisoner in a case where he has been in detention for no fault of his. The section, however, does not intend to give any benefit or bonus to an accused guilty of commission of more than one crime by treating the period of detention during investigation, enquiry and trial in one case as that period in the other cases also for the purposes of set-off in the sentence. Such an entitlement requires judicial determination which can be adjudicated by a court awarding the sentence in exercise of its powers under Section 427 of the Code. **The words 'period of detention, if any, undergone by him during the investigation, enquiry or trial of the *same case*' are important to indicate the paramount concern and intention of the legislature to protect the interests of undertrial prisoners by giving them the set-off of that period in 'that case', at the conclusion of the trial. The section makes it clear that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused, on conviction, must be during the investigation,**

enquiry or trial in connection with the same case in which he has been convicted."

17. Faced with such conflicting opinions of the two senior members of the Bench, the third Judge, Hon'ble S.N. Phukan, J., penned a short opinion. The same is quoted hereunder:

> "**43.** I had the advantage of going through the reasoned judgments of both my learned Brother Judges but with respect I am unable to accept the views expressed by my learned Brother Mr Justice R.P. Sethi. In addition to the views expressed by my learned Brother Mr Thomas, I would like to add a para on the language of Section 428 of the Code of Criminal Procedure:
>
> **44.** The only question which according to me needs consideration is the true effect of the expression 'same case' as appearing in Section 428 of the Code of Criminal Procedure. **The provision is couched in clear and unambiguous language and states that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be one undergone by him during investigation, enquiry or trial in connection with the 'same case' in which he has been convicted. Any other period which is not connected with the said case cannot be said to be reckonable for set-off.** The view of learned Brother Mr Justice Thomas according to me accords the legislative intent. Acceptance of any other view would mean necessary (*sic* necessarily) either adding or subtracting words to the existing provision, which would not be a proper procedure to be adopted while interpreting the provision in question.
>
> **45.** I am, therefore, in respectful agreement with the views expressed by my learned Brother Mr Justice Thomas."
>
> (emphasis supplied)

18. Although in paragraph 45 (supra) the view of Hon'ble K.T. Thomas, J. did have the concurrence of Hon'ble S.N. Phukan, J., bare reading of the view expressed by His Lordship in paragraph 44 (supra) as highlighted by us, to our mind, accords with the dissenting view of Hon'ble R.P. Sethi, J.

19. Faced with such a conundrum where the Hon'ble Judges have spoken in different voices, we attempted a reconciliation of the conflicting views. However, we are afraid, it has proved abortive. How far and to what extent the efficacy of the decision in ***Najakat Alia Mubarak Ali*** (supra) as a precedent would bind subsequent Benches of this Court remains debatable in view of the aforesaid apparent irreconcilable conflict.

20. ***Najakat Alia Mubarak Ali*** (supra), with all its shortcomings, is still a decision of a three-Judge Bench and, therefore, would obviously bind us as a precedent.

21. We, however, find that such decision fell for consideration in ***Atul Manubhai Parekh v. CBI***[6]. The latter decision considered the earlier decisions on the point, viz. ***State of Andhra Pradesh v. Anne Venkatesware***[7], ***Champalal Punaji Shah v. State of Maharashtra***[8], ***Raghbir Singh v. State of Haryana***[9] and ***Maliyakkal Abdul Azeez v. Collector***[10]. True it is, ***Raghbir Singh*** (supra) stands overruled in view of ***Najakat Alia Mubarak Ali*** (supra); but the first reported decision on Section 428, which was inserted in the Cr. PC in 1973, does have a material bearing and makes interesting reading.

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[6] (2010) 1 SCC 603
[7] (1977) 3 SCC 298
[8] (1982) 1 SCC 507
[9] (1984) 4 SCC 348
[10] (2003) 2 SCC 439

22. Upon considering Section 428, Cr. PC, this is what the coordinate Bench speaking through Hon'ble A.C. Gupta, J. laid down in ***Anne Venkatesware*** (supra):

> "**7.** … The claim in both these appeals is that the period of detention undergone by each appellant under the preventive detention law should be set off under Section 428 of the Code of Criminal Procedure against the term of imprisonment imposed on them on their conviction in the aforesaid sessions cases. The argument is that the expression 'period of detention' in Section 428 includes detention under the Preventive Detention Act or the Maintenance of Internal Security Act. It is true that the section speaks of the 'period of detention' undergone by an accused person, but it expressly says that the detention mentioned refers to the detention during the investigation, enquiry or trial of the case in which the accused person has been convicted. The section makes it clear that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be during the investigation, enquiry or trial in connection with the 'same case' in which he has been convicted. We therefore agree with the High Court that the period during which the writ petitioners were in preventive detention cannot be set off under Section 428 against the term of imprisonment imposed on them."

23. We have noted that a three-Judge Bench in ***Champalal Punaji Shah*** (supra) had the occasion to consider ***Anne Venkatesware*** (supra), which was cited in support of relief claimed by the review petitioner; the Bench, however, appears to have distinguished the decision on facts and disallowed the prayer finding the aforesaid reasoning to stand in the way of grant of relief.

24. Turning to ***Atul Manubhai Parekh*** (supra), we find the question arising for decision in paragraph 3 and the answer thereto of the coordinate Bench, speaking through Hon'ble Altamas Kabir, J., in paragraphs 14 and 15. Relevant paragraphs from such decision read as follows:

"**3.** The short point involved in this application is whether a person, who has been convicted in several cases and has suffered detention or imprisonment in connection therewith, would be entitled to the benefit of set-off in a separate case for the period of detention or imprisonment undergone by him in the other cases.

***

14. The wording of Section 428 is, in our view, clear and unambiguous. The heading of the section itself indicates that the *period of detention undergone by the accused is to be set off against the sentence of imprisonment*. The section makes it clear that the period of sentence on conviction is to be reduced by the extent of *detention* already undergone by the convict during investigation, enquiry or trial *of the same case*. It is quite clear that the period to be set off relates only to pre-conviction detention and not to imprisonment on conviction.

15. Let us test the proposition by a concrete example. A habitual offender may be convicted and sentenced to imprisonment at frequent intervals. If the period of pre-trial detention in various cases is counted for set-off in respect of a subsequent conviction where the period of detention is greater than the sentence in the subsequent case, the accused will not have to undergo imprisonment at all in connection with the latter case, which could not have been the intention of the legislature while introducing Section 428 in the Code in 1973."

(italics in original)

25. ***Najakat Alia Mubarak Ali*** (supra) was distinguished in such decision in the following words:

"**20.** The facts on which the decision was rendered in *Najakat Alia Mubarak Ali case* are distinguishable from the facts of this case. In the said case, the convict was undergoing imprisonment in two cases in which he had been convicted and he claimed that he was entitled to a set-off in respect of both the cases. This Court drawing inspiration from Section 427 on the concurrent running of sentences, held that the petitioner was entitled to set-off in both cases in view of the doctrine of merger of sentences when directed to run concurrently in a particular case where conviction is on many counts."

26. As held in paragraph 20 of ***Atul Manubhai Parekh*** (supra), ***Najakat Alia Mubarak Ali*** (supra) would have to be read as a decision confined to the facts before the three-Judge Bench where interpretation of Section 427, Cr. PC was also involved.

27. We respectfully agree with the reasoning in paragraphs 14 and 15 of the decision in ***Atul Manubhai Parekh*** (supra) on how Section 428, Cr. PC should be read and why ***Najakat Alia Mubarak Ali*** (supra) is distinguishable on facts.

28. It has been urged on behalf of Venkatesan that paragraph 18 of the opinion penned by Hon'ble K.T. Thomas, J. in ***Najakat Alia Mubarak Ali*** (supra) constitutes its *ratio decidendi* and that Benches of lesser strength are bound thereby. Sitting in a combination such as the present, propriety, discipline and decorum would demand that we show deference to what has been held therein and not act in derogation of Article 141 of the Constitution of India, which binds us too. But we wish to make the position absolutely clear that the irreconcilability of the views expressed in ***Najakat Alia Mubarak Ali*** (supra) posits that the same be reconsidered for declaring the law without any room for confusion.

29. Consistency, certainty, predictability and finality of judicial decisions are the hallmarks of a sound justice delivery system. The relevance and significance of the principle of *stare decisis* have to be borne in mind. In situations such as this, the Court has to satisfy itself that for the public good or for any other compelling reason an endeavour needs to be made so that certainty and continuity in interpretation of law are maintained. ***Najakat Alia Mubarak Ali*** (supra) was considered in ***Maliyakkal Abdul Azeez*** (supra) and ***Atul Manubhai Parekh*** (supra). The coordinate Benches have not followed the

majority view in ***Najakat Alia Mubarak Ali*** (supra). In view of our inability to reconcile the divergent views expressed in ***Najakat Alia Mubarak Ali*** (supra) itself and though such decision has been held in ***Atul Manubhai Parekh*** (supra) to be confined to its facts, under compelling circumstances, we feel it prudent to refer the matter to the Hon'ble the Chief Justice of India to consider the desirability of constituting a Bench of appropriate strength for proper interpretation of Section 428, Cr. PC. Ordered accordingly.

30. The direction for set-off in the impugned order shall remain stayed until further orders; however, if Venkatesan has been released, he may not be taken back in custody.

CRIMINAL APPEAL NO. 1372 OF 2025

31. This appeal is also directed against a similar order passed by the High Court granting the benefit of set-off to the respondent, Ravichandran.

32. The same directions as given in the lead appeal shall apply in this case.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

NEW DELHI;
APRIL 22, 2025.