UKHC010028732026

2026:UHC:7477-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

Habeas Corpus No. 6 of 2026

19 August, 2026

Jai Prakash Moshal --Petitioner

Versus

State Of Uttarakhand and others --Respondents

Present:

Mr. T.P.S. Takuli, Advocate for the petitioner.
Mr. J.S. Virk, A.A.G. with Mr. B.N. Molekhi, D.A.G. for the State.

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

The petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 in various complaints. He is undergoing sentence.

2. It is the grievance of the petitioner that the court imposing sentence has not exercised the discretion vested under Section 427 of the Code of Criminal Procedure, 1973 ("the Code") and has not directed that the sentences shall run concurrently. Hence, now this Court should issue direction for immediate release of the petitioner.

3. Heard learned counsel for the parties and perused the record.

4. It is the case of the petitioner that he is a permanent resident of Village Deodhar, Tehsil and District Pithoragarh. He is a small contractor, who works in the locality for the livelihood of the

family which consist of his old mother, wife and minor son. According to the petitioner, in most of the cases in which the petitioner is convicted, the same court has passed the conviction order as on the same day or within a short duration, but has not considered the provisions of Section 427 of the Code. Hence, the petitioner seeks his release from District Jail, Almora forthwith.

5. State has filed a short counter affidavit. According to it, the petitioner has been convicted in as many as 20 different criminal cases and separate sentences have been awarded in his case. Since conviction arise out of distinct and independent offences committed in different cases, the sentences cannot be treated as a single transaction. Alongwith the short affidavit filed on 20.05.2026, State has given list of the cases, sentence imposed and the court's names as below:-

SL No.	Criminal Case No.	Section	Sentence	Date of Sentence	Fine/amount of compensation	Court
1	122/2024	138 N.I. Act	04 months	21/04/2025	1,10,000/- IDF 01 month	JM-1st, Didihat
2	17/2024	138 N.I. Act	06 months	02/05/2025	7,55,000/- IDF 30 days	JM-1st, Dharchula
3	38/2024	138 N.I. Act	06 months	02/05/2025	1,00,048/- IDF 30 days	JM-1st, Dharchula
4	1657/2024	138 N.I. Act	04 months	05/05/2025	1,15,000/-	CJM-PTH
5	38/2025	138 N.I. Act	04 months	20/05/2025	2,25,000/-	CJM-PTH
6	1663/2024	138 N.I. Act	08 months	23/05/2025	8,40,000/-	CJM-PTH
7	1898/2024	138 N.I. Act	02 months	26/05/2025	1,40,000/-	CJM-PTH
8	1284/2024	138 N.I. Act	03 months	02/06/2025	2,70,000/-	CJM-PTH

9	398/2025 (old) 62/2025 (new)	138 N.I. Act	06 months	08/07/2025	68,500/-	CJ (Sr.D.)/ JM-PTH
10	123/2024	138 N.I. Act	06 months	11/07/2025	2,00,000/- IDF 01 month	JM 1st, Didihat
11	76/2025	138 N.I. Act	06 months	10/09/2025	1,13,250/- IDF 30 days	JM 1st Didihat
12	403/2025 (old) 64/2025 (new)	138 N.I. Act	06 months	22/09/2025	3,05,000/- IDF 15 days	JM 1st PTH
13	433/2025 (old) 125/2025 (new)	138 N.I. Act	03 months	22/09/2025	1,55,000/- IDF 15 days	JM 1st PTH
14	399/2025 (old) 67/2025 (new)	138 N.I. Act	02 months	22/09/2025	75,000/- IDF 15 days	JM 1st PTH
15	265/2025 (old) 59/2025 (new)	138 N.I. Act	04 months	22/09/2025	1,85,000/- IDF 15 days	JM 1st PTH
16	81/2025	138 N.I. Act	06 months	06/10/2025	4,70,158/- IDF 30 days	JM 1st, Didihat
17	95/2025	138 N.I. Act	06 months	28/10/2025	36,350/ IDF 30 days	JM 1st, Didihat
18	685/2025 (old) 135/2025 (new)	138 N.I. Act	02 months	29/10/2025	1,50,000/-	JM 1st PTH
19	85/2025	138 N.I. Act	01 year	20/04/2026	1,70,000/- IDF 01 month	JM 1st/CJ (JD), Didihat
20	92/2025	138 N.I. Act	01 year	20/04/2026	1,90,000/- IDF 01 month	JM 1st/CJ (JD), Didihat

6. The petitioner has also filed the complaints with the copy of the judgments. Thereafter, this Court had sought a report from the State with regard to the family condition of the petitioner.

7. By virtue of the compliance affidavit dated 10.08.2026, in para 4 of it, it is stated that, in fact, the petitioner is permanent resident of Village Deodar, District Pithoragarh where he owns an old and uninhabited house. His elderly mother resides with his elder brother, while his wife and child are residing at his in-laws' house in Khatima.

The petitioner belongs to BPL family and prior to his incarceration, worked as an assistant with road and bridge construction contractors. His reputation in the village is as a poor person which has been certified by the Gram Pradhan, Gram Panchayat Deodar.

8. Section 427 of the Code reads as follow:-

> **"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."

9. Learned counsel for the petitioner submits that the petitioner is a poor person, who would work with the contractor and all the cheques were given in consideration for either hardware purchase or grocery items purchased for supplying to the labours. He would submit that only on one occasion, the petitioner had taken advance of Rs.1 Lakh and in lieu thereof he had given a cheque which when presented was dishonoured. It is argued that, in fact, the construction work was with regard to a road, which subsequently, submerged in the water. Therefore, the main contractor did not give any money to the petitioner and his cheques were dishonoured accordingly. The court ought to have exercised jurisdiction under Section 427 of the Code. In support of his contentions, learned counsel has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the cases of Iqram

Vs. State of Uttar Pradesh and others, (2023) 3 SCC 184, V. K. Bansal vs. State of Haryana and another, (2013) 7 SCC 211, Benson Vs. State of Kerala, (2016) 10 SCC 307, Shyam Pal Vs. Dayawati Besoya and another, (2016) 10 SCC 761, Anil Kumar Vs. State of Punjab, (2017) 5 SCC 53 and Vicky alias Vikas Vs. State (NCT of Delhi), (2020) 11 SCC 540.

10. The case of Iqram *(supra)* was with regard to multiple cases of electricity thefts, in which separate conviction and sentence were recorded. It was the grievance of the petitioner in that case that the jail authorities were not justified in treating the sentences to be consecutive. A habeas corpus petition was filed which was rejected. Under those facts and circumstances, the Hon'ble Supreme Court observed that **" Once the petitioner espoused the remedy of moving a writ petition under Article 226 of the Constitution, the High Court ought to have noticed the serious miscarriage of justice which would occur consequent upon the trial court not having exercised specifically its discretion within the ambit of Section 427(1)."**

11. In the case of V.K. Bansal *(supra),* multiple cheques were dishonoured and various complaints were filed, in which sentences were passed. It was the grievance of the petitioner in that case that instead of the sentence awarded to him consecutively, they ought to run concurently. In the case of V.K. Bansal *(supra)*, the Hon'ble Supreme Court applied a formula in para 16 laid down as below:-

> "**16.** In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor."

12. In fact, in para 10 of the judgment, in the case of V.K. Bansal *(supra),* the Hon'ble Supreme Court has observed that there is no straightjacket formula for application of Section 427 of the Code. In para 10 of the judgment, the Hon'ble Supreme Court observed as follows:-

> **"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."

13. The case of Benson *(supra)* was a case of multiple thefts in one day. The sentences were not directed to run concurrently. Under those facts and circumstances, the Hon'ble Supreme Court in para 9 observed that **"the maximum sentence in respect of the present crimes is two years' rigorous imprisonment. As per the record, these crimes were committed on the same day."** Accordingly, the Hon'ble Supreme Court directed the sentence to run concurrently.

14. In the case of Shyam Pal *(supra)*, two cheques were given on the same day with regard to the loan advance, for a past loan and one for a subsequent loan. In two separate proceedings under Section 138 of the Negotiable Instruments Act, 1881, conviction and sentence were recorded. The petitioner in that case was denied the liberty so as to run both the sentences concurrently. Under those circumstances, the

Hon'ble Supreme Court in paras 15 and 16, referring to the judgment in the cases of Benson (*supra*) and V.K Bansal (*supra*) observed that exercise of jurisdiction under Section 427 of the Code, essentially depend on the nature of the offence or offences and the overall fact situation and directed that the sentences should run concurrently.

15. In the case of Anil Kumar (*supra*), the petitioner in that case was convicted under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 and under the provisions of Drugs and Cosmetics Act, 1940 in different drugs. Referring to the judgment in the case of V.K. Bansal (*supra*) and Benson (*supra*), the Hon'ble Supreme Court directed the sentences to run concurrently.

16. The facts in the case of Vicky alias Vikas (*supra*) are quite interesting. In that case, the Hon'ble Supreme Court was approached for running the sentence concurrently when the petitioner in that case was convicted in one trial for offences under Sections 392, 394, 397 IPC read with 34 IPC. The earlier sentences were also under grievous IPC offences. The Hon'ble Supreme Court dealt with the principles of law on the subject in the case of V.K. Bansal (*supra*), Anil Kumar (*supra*) and others, wherein it was held that investiture of Section 427 of the Code **"presupposes that such discretion be exercised by the court on sound judicial principles and not in a mechanical manner."** And further held that **"whether or not the discretion is to be exercised in directing sentences to run concurrently would depend upon the nature of the offence/offences and the facts and circumstances of each case."**

17. In para 16 of the judgment in the case of Vicky alias Vikas (*supra*), the Hon'ble Supreme Court considered the age and family

background of the petitioner in that case, who was a young man with roots in family. In para 17, the family background was considered and finally, the Hon'ble Supreme Court in para 18 held that this is a fit case for exercising jurisdiction in directing the sentence to run concurrently. Although, in that case, the Hon'ble Supreme Court has also set aside the fine keeping in view the poor economic background of the petitioner.

18. Learned State counsel submits that the cheques were not given in the same transactions. They were for different situations and were given to different complainants. But, he admits that except one cheque, all the cheques were given for consideration of purchase of hardware items or for grocery. He would submit that one cheque was given in lieu of Rs.1 Lakh advance that was taken by the petitioner. Learned State counsel also submits that as per the report, the petitioner is a poor person, having wife and a son in the family.

19. The principle of single transaction was laid down by the Hon'ble Supreme Court in the case of V.K. Bansal (*supra*). But, in para 10 of the judgment, in the case of V.K. Bansal (*supra*), the Hon'ble Supreme Court has also laid down certain principles, which are quoted hereinbefore. At the cost of repetition, it may be reiterated that the Hon'ble Supreme Court in the case of V.K. Bansal (*supra*) also held that **"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)".** And this proposition has been followed in the subsequent decision by the Hon'ble Supreme Court, particularly, in the case of Vicky alias Vikas (*supra*), where the offences were much heinous. But, keeping in view the family situation of the petitioner in that case, being a young boy, poor

and the chances of reformation, reintegration in the family and society, orders for concurrent running of the sentence was passed.

20. Instant is the case, wherein the petitioner, admittedly, works with some contractor. He had purchased some grocery items and hardware. It is stated that it was done for the contractor. It is argued on behalf of the petitioner that since the main contractor did not receive any money due to submergence of the road in the water, the petitioner also could not get the money and he could not repay the amount to the person from whom he had purchased those articles. The petitioner is poor.

21. These all situations command this Court to direct that all the sentences in all 20 cases, as mentioned in para 5 of this judgment, imposed upon the petitioner shall run concurrently. Accordingly, the petition deserves to be allowed.

22. The petition is allowed accordingly.

23. The sentences in all 20 cases, as mentioned in para 5 of the judgment, imposed upon the petitioner shall run concurrently.

(Siddhartha Sah, J.) (Ravindra Maithani, J.)

19.08.2026

Jitendra