



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.216 of 2025

Date of Decision: 06.05.2026

Suresh KumarPetitioner

Versus

State of Himachal Pradesh ... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner : Ms. Madhurika Sekhon, Advocate.

For the Respondent: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge(oral):

By way of instant petition filed under Section 528 and Section 468 of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as the BNSS), prayer has been made on behalf of petitioner that the sentences awarded to him, by the various Courts, under Section 138 of the Negotiable Instruments Act (in short 'the Act') in 15 cases may kindly be ordered to be run concurrently.

2. Reply filed by the respondents in the petition reveals that petitioner stands convicted in 15 cases as detailed herein below :

Sr.No.	Case details	Convicting Courts
1.	Case No.175/3 of 2015, under Section 138 of NI Act, titled	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.

¹ Whether the reporters of the local papers may be allowed to see the judgment?



2.	Case No.260/3 of 2014, Under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
3.	Case No.10/3 of 2022, Under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
4.	Case No.388-3 of 2013, under Section 138 of the Act	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
5.	Case No.236-3 of 2012, under Section 139 of the Act	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
6.	Case No. 503-3 of 2018, under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
7.	Case No.510-3 of 2018, under Section 138 of the Act	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
8.	Case No.551-3 of 2018, under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
9.	Case No.498-3 of 2018, under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
10.	Case No.83-3 of 2015, under Section 138 of the Act	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
11.	Case No.379-3 of 2013, under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
12.	Case No.16/2019, under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
13.	Case No.552-3 of 2018, under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
14.	Case No.35-3 of 2019, under Section 138 of the Act.	Ld. Additional Chief Judicial Magistrate, Theog, District Shimla, Himachal Pradesh.
15.	Case No.9-3 of 2019, under Section 138 of the Act.	Ld. Judicial Magistrate, First Class, Chopal, District Shimla, Himachal Pradesh.

3. Petitioner, who is 60 years old, at present is lodged in jail.

As stated in the petition, he has already undergone 5 years imprisonment and in case his remaining sentence is to be counted, he has to undergo imprisonment for 12 years. During proceedings of the case, learned counsel representing the petitioner also made available judgments passed by various Courts in the proceedings initiated



against the petitioner under Section 138 of the Negotiable Instruments Act.

4. Prayer made on behalf of the petitioner has been opposed by respondents-State on the ground that convict Suresh Kumar has undergone substantive sentence (with under trial period and remission) in his 15 different cases as mentioned at Sr. No.1 to 15 of the details of cases reproduced hereinabove. However, sentence in default of fine/compensation would commence after the completion of sentence in all 15 cases. It has been submitted that since fine imposed by the learned Court below has been not deposited, petitioner is also to undergo sentence in default.

5. Mr. Rajan Kahol, Additional Advocate General, while referring to reply submitted that sentence to be served in default would commence after petitioner's having undergone the sentence awarded to him on account of his having committed offence under Section 138 of the Act.

6. Having heard learned counsel representing the parties and perused material available on record, this Court finds that despite petitioner, having undergone imprisonment five years, is still to undergo sentence of seven years, if prayer made on his behalf through instant petition is not accepted.

7. With a view to substantiate the prayer of the petitioner, learned counsel representing petitioner invited attention of this Court



to judgment passed by Hon'ble Apex Court in ***State of Punjab Versus Madan Lal, (2009) 5 Supreme Court Cases, 238, V.K. Bansal versus State of Haryana & Another, (2013) 7 Supreme Court Cases, 211, Anil Kumar Versus State of Punjab (2017), 5, Supreme Court Cases, 53, Nagaraja Rao Versus Central Bureau of Investigation, (2015) 4 Supreme Court Cases, 302, Benson Versus State of Kerala, (2016) 10 Supreme Court Cases, 307.***

8. Reliance is also placed upon the Judgment of Hon'ble the Supreme Court in the case titled as ***Iqram versus The State of Uttar Pradesh & Ors.*** in Criminal Appeal No.2319 of 2022. Relevant facts of the case are as hereunder :

7. The Division Bench of the High Court has come to the conclusion that in view of the provisions of Section 427 of the Code of Criminal Procedure 1973, each subsequent term of conviction has to commence at the expiration of the imprisonment currently being undergone by the appellant.

8. The net consequence of the position, as it emerges, is that the appellant would have to undergo a total term of imprisonment of 18 years in respect of the nine convictions for offences under Section 136 of the Electricity Act and cognate provisions.

9. The plea bargain was with reference to the provisions of Chapter XXI-A of the Cr.PC. Section 265-G stipulates that the judgment delivered by the Court shall be final and no appeal (except a Special Leave Petition under Article 136 and a Writ Petition under Articles 226 and 227 of the Constitution) shall lie in any court against such a judgment.

10. Section 427 provides that 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. In other words, sub-section (1) of Section 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.

11. In Mohd. Zahid Vs State through NCB3, this Court interpreted the provisions of Section 427 of CrPC after duly considering the precedents in the following terms :

“33. Thus from the aforesaid decisions of this Court, the principles of law that emerge are as under:

- (i) if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced;
- (ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;
- (iii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 Cr.P.C.;
- (iv) under Section 427(1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.”

12. The Trial judge, in the present case, granted a set off within the ambit of Section 428/Section 31 Cr.PC. No specific direction was issued by the trial court within the ambit of Section 427(1) so as to



allow the subsequent sentences to run concurrently. All the convictions took place on the same day.

13. 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). When the appellant moved the High Court, he was aggrieved by the conduct of the jail authorities in construing the direction of the trial court to mean that each of the sentences would run consecutively at the end of the term of previous sentence and conviction. The High Court ought to have intervened in the exercise of its jurisdiction by setting right the miscarriage of justice which would occur in the above manner, leaving the appellant to remain incarcerated for a period of 18 years in respect of his conviction and sentence in the nine sessions trials for offences essentially under the Electricity Act.

14. In view of the above discussion, we allow the appeal and set aside the impugned judgment of the High Court dated 24 March 2022. We order and direct that the sentences which have been imposed on the appellant in the nine sessions trials noticed in the earlier part of this judgment shall run concurrently.

9. Reliance is also placed upon judgment passed by Hon'ble Apex Court in **V.K. Bansal versus State of Haryana & Another, (2013) 7 Supreme Court Cases, 211**, wherein, it has been held that the powers under Section 427(1) Cr.P.C, should be exercised judiciously and not mechanically. Relevant paragraph 16 is reproduced, as under:-

“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.”

10. Similarly, the Hon’ble Apex Court in **Anil Kumar versus State of Punjab, (2017) 5 Supreme Court Case, 53**, has elaborately discussed the provisions of Section 427 Cr.PC. Relevant paragraphs 4 to 7 are reproduced, as under:-

“4. The power conferred on the Court under Section 427 Cr.P.C. to order concurrent sentence is discretionary. Section 427 Cr.P.C. reads as under:- “S.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.”

5. In terms of sub-section (1) of Section 427, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. Only in appropriate cases, considering the facts of the case, the court can make the sentence run concurrently with an earlier sentence imposed. The investiture of such discretion, presupposes that such discretion be exercised by the Court on sound judicial principles and not in a mechanical manner. 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.

6. In *V.K. Bansal v. State of Haryana and Anr. (2013) 7 SCC 211*, it was held by this Court as under:

“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." This Court then went on to club various crimes in respect of which sentences were imposed upon the appellant therein in three groups.

7. After referring to V.K. Bansal's case, in *Benson v. State of Kerala* (2016) 10 SCC 307: 2016 (9) SCALE 670, this Court directed the substantive sentences imposed on the appellant Benson to run concurrently. The appellant therein was convicted for the offences punishable under Section 379 and Section 414 read with Section 34 IPC in at least eleven cases. By a separate judgment, the appellant was convicted and sentenced in each of the aforesaid cases and total length of sentences in aggregate was around nineteen years."

11. Keeping in view the age of the petitioner and considering the fact that he is undergoing sentence in various cases, this Court is of the view that ends of justice would be met, if the substantive sentence, in fifteen cases, as detailed hereinabove, is ordered to run concurrently.

12. Having taken note of aforesaid law laid down by Hon'ble Apex Court coupled with the fact that petitioner, aged 60 years, is behind bars for more than 5 years, substantive sentence all the 15 cases detailed hereinabove is ordered to run concurrently.

13. However, it is clarified that in view of the decision of Hon'ble Apex Court in **Vicky @ Vikas versus State (Govt. of NCT of Delhi) 2020 (3) Scale 40**, the benefit of the 'concurrent running of sentences' is granted to the petitioner, with regard to the substantive sentence and not the sentence, which has been inflicted, upon him, in default of payment of fine, meaning thereby, substantive sentence



ordered by learned Court below in all the present cases shall run concurrently but after completion of the same, petitioner herein shall have to undergo the sentence inflicted upon him in default of payment of fine, if fine has not been deposited.

14. With the aforesaid observation, present petition allowed, pending application(s), if any, also stands disposed of.

**(Sandeep Sharma),
Judge**

May 06, 2026
(shankar)