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**(1988) 08 P&H CK 0015**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. 1454-M of 1988

Baldev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Aug. 23, 1988

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 268

**Hon'ble Judges:** H.S. Rai, J

**Bench:** Single Bench

**Advocate:** S.S. Kang, A.A.G. Punjab, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

H.S. Rai, J.

Baldev Singh convict has made an application to Sh. Dina Nath Sharma, Additional Sessions Judge, Ludhiana, with the prayer that the under trial period from 8-4-1987 to 26-9-1987 should be counted towards his sentence. This petition was ordered to be heard on Judicial side by S.S. Sodhi, J., vide his order dated 7.3.1988. The report of Shri Dina Nath Sharma, Additional Sessions Judge, Ludhiana, was called. The facts of the case as reported by the Additional Sessions Judge are that FIR No. 2 dated 28-1-1983 was registered in Police Station Rai Kot u/s 326 etc. of the Indian Penal Code against Baldev Singh petitioner and others. Baldev Singh was arrested in this case on 4.2.1983 and was released on bail on 21.5.1983. The challan in this case was presented in the Court of Judicial Magistrate 1st Class, Jagraon, on 4.5.1983 and the petitioner along with others was convicted and sentenced on 13.6.1986 He was sent to jail to serve the sentence and was released on bail under orders of sessions Judge, Ludhiana, on 26-6-1986. This bail was granted on an appeal preferred by Baldev Singh against that conviction.

2. Petitioner Baldev Singh absented during the pendency of the appeal and it was learnt that he has been arrested in some other case and has been sent to Nabha Jail. As notification u/s 268 of the Code of Criminal Procedure had been issued he could not be produced in court. His personal appearance in the appeal was dispensed with.

3. Additional Sessions Judge, Ludhiana maintained the conviction and sentence of Baldev Singh petitioner u/s 326 etc. of the Indian Penal Code vide his judgment dated 26-9-1987.

4. Vide this application he has prayed that the period from 8.4.1987 to 26.9.1987 which is spent in detention in another case be also counted and be set off against the sentence of imprisonment u/s 36 of the Indian Penal Code.

5. I have heard learned counsel for the State and given my careful consideration. It is not disputed that Baldev Singh petitioner was in custody from 8.4.1987 to 26.9.1987, but as he was in custody in another case and was on bail in this case (in which he wants to set off) so it is submitted by the learned counsel for the State that he is not entitled to claim the benefit of section 428 of the Code of Criminal Procedure (hereinafter referred to as the "Code") for this period.

6. The contention of the learned counsel for the State is that for getting the benefit of section 428 of the Code the convict person must be kept in jail on being arrested in connection with that case only and the period which he is made to suffer because of his arrest in connection with another case will not be liable to be set off u/s 428 of the Code. Section 428 of the Code reads as under:-

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 terms 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.

7. It is not denied that the period from 8.4.1987 to 26.9.1987 falls within the period of inquiry or trial of the petitioner for the offence in respect of which the petitioner had been convicted. This was the period when his appeal remained pending in the court of Sessions. In Section 428 the words "during the investigation, inquiry or trial" refer only to the period the trial had continued; if an accused person is ultimately convicted then any period spent by him in prison during this span of time will have to be set off against the term imposed on him ultimately. There appears to be no justification for reading the words "on account of" in S. 428, Cr. P.C. as suggested by the learned Government Advocate. Section 428, Cr. P.C. refers only to the period of time and not to the causation or reason for the person's remaining in jail.

8. In the case of [Government of Andhra Pradesh and Another Vs. Anne Venkatesware and Others](#), the convicts had not even been arrested in respect of offences for which they were ultimately convicted but had to remain in jail during the period of investigation, inquiry and trial because of their being kept in detention under the Preventive Detention Act, still it was held by the Supreme Court that the convicts will be entitled to get the benefit of S. 428, Cr. P.C. It was observed:-

.....We do not find any justification in law for the position taken up by the State. Rao being already in custody the authorities could have easily produced him before the Magistrate when the First Information Report was lodged. Nothing has been pointed out to us either in the preventive detention law or the Code of Criminal Procedure which can be said to be a bar to such a course. That being so we think that the claim that the entire period from Dec. 19, 1969 when many of the co accused were produced before the Magistrate, to April 18, 1970 should be treated as part of the period during which Rao was under detention as an under trial prisoner, must be accepted as valid.

9. If it is possible for a person to get the benefit of S. 428, Cr. P.C. during the period of preventive detention. I see no reason" why to a person who is wanted in two criminal cases and remains in jail in connection therewith, benefit cannot be given to him under S. 428 Cr. P.C. in respect of the case which ultimately ends in his conviction and award of sentence of imprisonment.

10. Even if the contention of the learned counsel for the State is correct, the petitioner would be entitled to the set off claimed by him because the petitioner was Initially arrested in connection with the same case in which he was ultimately convicted by the Court. He was granted bail in that case but was arrested in connection with another case. As soon as he was arrested the bail stood cancelled. Hence, the petitioner had to be deemed to be in custody in connection with the case in which he was initially arrested Taking from any angle, the petitioner who was in custody from 8.4.1987 to 26.9.1987 shall be entitled to claim set off u/s 428 of the Code. It is ordered that petitioner Baldev Singh should be given benefit of section 428 of the Code for the period from 8-4-1987 to 26-9-1987 and this period be taken the period undergone in case F.I.R. No. 23 dated 28.1.1983.

11. In the result, the petition is allowed. The Superintendent, District Jail, Nabha is directed to count the period from 8-4-1987 to 26-9-1987 as the period allowable for the purpose of set off u/s 428 Cr. P.C. in connection with the sentence awarded to the petitioner in case F.I.R. No. 23 dated 28-1-1983 and to release the petitioner if he be entitled to release on such a set off being allowed to him and the petitioner is not otherwise required to remain in jail in connection with some other case.