

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D – 1958 of 2025

Petitioners : Faisal Ansari @ Soni and Qaiser @ Kala, through Mr. Habib-ur-Rehman Advocate a/w Ms. Safia Lakho Advocate.

Respondents : Province of Sindh, Inspector General of Prisons & Corrections Service Sindh, Senior Superintendent Central Prison & Correction Facilities Karachi and the State, through Mr. Mumtaz Ali Shah, A.P.G.

Date of hearing : **24.07.2025**

Date of Order : **24.07.2025**

ORDER

TASNEEM SULTANA, J. The Petitioners/accused namely Faisal Asari alias Soni son of Muhammad Sadiq and Qaisar alias Kala son of Noor Muhammad were convicted vide judgment dated 21.09.2006 in Special Case No.14/2006, by the Anti-Terrorism Court No.V, Karachi Division, Karachi, whereby they were awarded death sentence under Section 265-H(ii) Cr.P.C. for the offence punishable under 7(e) of the Anti-Terrorism Act, r/w Section 365-A PPC and awarded them death sentence. Each of them was ordered to be hanged by neck till their death and their property to the tune of Rs.100,000/- (Rupees One Lac) each was to be forfeited to the Government. The Petitioners/accused were also convicted for the offence under Section 6(i) (b) of ATA punishable under Section 7 (i) and each sentenced to R.I. five (05) years and to pay fine of Rs.50,000/-.

2. Both Petitioners/accused along with co-accused Asif Ali @ Asif Patel and Ali Raza preferred Special Criminal Anti-Terrorism Jail Appeal No.30/2006 before this Court. The said appeal was partially allowed vide judgment dated 26.01.2016; the death sentence awarded to them was reduced from death to imprisonment

for life; benefit of Section 382-B Cr.P.C. was also extended to them. However, remaining sentences and fine were maintained.

3. The Petitioner/accused Qaiser alias Kala preferred Jail Petition No.197-K/2016 before the Hon'ble Supreme Court of Pakistan and vide order dated 04.08.2016 the said Jail Petition was dismissed and leave declined. Now through this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners pray that the sentence passed by the High Court in appeal be made to run concurrently.

4. Learned counsel draws attention to the fact that in C.P. No.D-4458/2022 the sentence awarded to the co-accused persons namely Asif Ali and Ali Raza had been ordered to run concurrently.

5. We have heard the learned counsel and perused the record. The Code of Criminal Procedure, 1898 (Cr.P.C.) has broad application to A.T.A. 1997 and Schedule thereto, therefore, in order to determine whether multiple sentences awarded in a single trial shall run consecutively or concurrently, a through-examination of section 35 Cr.P.C. is paramount consideration which deals as under:

“Section 35. Sentence in cases of conviction of several offences at one trial Maximum term of punishment.

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Penal Code sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate

punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) if the case is tried by a Magistrate [1](#)[* * *], the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.”

6. The aforesaid provision already stipulates that when multiple sentences are awarded in a single trial, they shall run consecutively, i.e. one after the other unless the Court expressly directs them to run concurrently. Section 35 of the Code also imposes a statutory limitation, stating that in no case shall consecutive sentence for multiple offences would exceed 14 years. If a sentence exceeds this threshold, it is deemed legally invalid and the Superior Courts have consistently directed that such sentence be modified to run concurrently instead. Similarly Section 397 Cr.P.C. empowers a trial Court or an appellate Court to make an order that sentences in two different trials shall run concurrently or consecutively. Joint reading of Section 397 and Section 35 Cr.P.C. reveals that it is discretionary power with a Court to order running of sentences in two different trials concurrently or consecutively, but if no such order is passed, then sentences shall run consecutively. However, this discretion must be exercised judiciously, taking into account the over all circumstances of each case. Reliance is placed on Zaid Shah alias Jogi versus The State 2020 SCMR 497.

7. In the case of Shah Hussain versus The State reported in PLD 2009 SC 460, the apex Court found that the sentences awarded to the appellant in more than one offences were to run concurrently instead. Similar view was followed by the apex Court while deciding the cases of Ishfaq Ahmed versus The State reported in 2017 SCMR 307, Mst. Zubaida versus Falak Sher and others reported in 2013 SCMR 548, Muhammad Sharif and others versus The State reported in 2014 SCMR 668 and in the case of Faiz Ahmed and others versus Shafiq-ur-Rehman reported in 2013 SCMR 467 interpreted the similar provision of Section 397 Cr.P.C. for sentences of various offences at different trials, which reads as under:

“12. The aggregate of punishment of imprisonment for several offences at one trial were deemed to be a single sentence. However, the position of an accused person is different who while already undergoing a sentence of imprisonment for life, is subsequently convicted and sentenced in another trial. Such subsequent sentence in view of section 397, Cr.P.C. would commence at the expiration of imprisonment for life for which he had been previously sentenced but even then in such cases, the said provision expressly enables the Court to direct that the subsequent sentence would run concurrently with the previous sentence. It is clear from section 397, Cr.P.C. that the Court, while analyzing the facts and circumstances of every case, is competent to direct that sentences in two different trials would run concurrently. In that eventuality, the Court has wide power to direct that sentences in one trial would run concurrently. The provision of section 397, CrP.C. confers wide discretion on the Court to extend such benefit to the accused in a case of peculiar nature, like the present one. Thus extending the beneficial provision in favour of the appellant, would clearly meet the end of justice. We, therefore, observe that there is nothing

wrong in treating the sentences of imprisonment for life of the convict/appellants on three counts to run concurrently, in view of facts and circumstances discussed above.”

8. The apex Court in the case of Mst. Shahista Bibi and another versus Superintendent Central Jail Mach and 2 others reported in PLD 2015 SC 15 has held as under:

“8. Besides the provisions of section 35, Cr.P.C. the provisions of section 397, Cr.P.C. altogether provide entirely a different proposition widening the scope of discretion of the Court to direct that sentences of imprisonment or that of life imprisonment awarded at the same trial or at two different trials but successively, shall run concurrently. Once the Legislation has conferred the above discretion in the Court then in hardship cases, Courts are required to seriously take into consideration the same to the benefit of the accused so that to minimize and liquidate the hardship treatment, the accused person is to get and to liquidate the same as far as possible. In a situation like the present one, the Court of law cannot fold up its hands to deny the benefit of the said beneficial provision to an accused person because denial in such a case would amount to a ruthless treatment to him/her and he/she would certainly die while undergoing such long imprisonment in prison. Thus, the benefit conferred upon the appellant/appellants through amnesty given by the Government, if the benefit of directing the sentences to run concurrently is denied to him/them, would brought at naught and ultimately the object of the same would be squarely defeated and that too, under the circumstances when the provision of S.397, Cr.P.C. confers wide discretion on the Court and unfettered one to extend such benefit to the accused in a

case of peculiar nature like the present one. Thus, construing the beneficial provision in favour of the accused would clearly meet the ends of justice and interpreting the same to the contrary would certainly defeat the same.”

9. Another most relevant case law of the apex Court on the similar subject has been elaborately discussed in the case of Rahib Ali versus The State reported in 2018 SCMR 418 wherein it was observed as under:

“13. In view of the discussion made above, position that emerges is that the Courts in Pakistan generally take charitable view in the matter of sentences affecting deprivation of life or liberty of a person and unless some aggravating circumstances do not permit so, liberally exercise enabling power under section 35 and section 397, Cr.P.C. respectively to order concurrent running of sentence in one trial and so also consolidation of earlier sentence while handing down sentence of imprisonment in a subsequent trial.”

10. In the instant case since the trial Court had awarded a death sentence for one of the offences there was no occasion to order that the other sentence would run concurrently. However, while reducing the death sentence to life imprisonment, the appellate Court did not specify whether that would run concurrently or consecutively with the other sentence of imprisonment. In our view had the intention been of consecutive sentences, the appellate Court would have specified so. In this view we are fortified by the fact that the author Judge of the appellate judgment and the order of concurrent sentence passed in C.P. No.D-4458/2022 for co-accused persons was the same. The A.P.G. has concurred with us and has no objection to the prayer made by the petitioners.

11. Now it is to be determined whether in exercise of its jurisdiction under Article 199 of the Constitution of the Islamic

Republic of Pakistan, 1973, a High Court can order the conversion of consecutive sentences into concurrent ones, despite not being a trial or appellate/revisional Court? It is imperative to recognize that this Court possesses inherent jurisdiction as well as under Section 561-A Cr.P.C. in addition to its constitutional jurisdiction. Section 561-A Cr.P.C. has a very wide scope empowering the Court to pass an order necessary to prevent the abuse of the process of Court and to secure ends of justice. The inherent jurisdiction conferred through this provision empowers the High Court to rectify legal anomalies and ensure that judicial process may not be misused to the detriment of justice. It was observed by the Honourable Supreme Court in Rahib Ali (supra) that;

“In the light of discussion made above, there remains no doubt that the High Court and so also this Court have jurisdiction under Section 561-A Cr.P.C., read with Section 35 and or Section 397 Cr.P.C. as the case may be to order such multiple sentences in same transaction/trial or in a separate and subsequent trial to run concurrently.”

12. It is also settled law as held in the cases of Muhammad Ayub and 4 others v. R . Obaidullah and 6 others 1999 SCMR 394 and Rahim Yar Khan and others 2017 SCMR 56. that the High Court has the power to convert one type of proceedings to another.

13. In the light of discussion made above, we convert this petition to an application under Section 561-A Cr.P.C. and invoke inherent jurisdiction i.e. under Section 561-A Cr.P.C. read with Section 35 Cr.P.C. to allow the same and direct that the sentences awarded to the petitioners in Criminal A.T.A. Jail Appeal No.30/2006 shall run concurrently. Let a copy of this order be placed on the record of said appeal and a copy be sent to the Senior Superintendent Central Prison & Correction Facilities Karachi for compliance.

J U D G E

J U D G E

Nadeem Qureshi P.A.