

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

C.P.No.D-242 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

26.10.2021.

Mr. Anwar H. Ansari, Advocate for petitioner.

Mr. Muhammad Ismail Bhutto, Additional A.G a/w Shakeel Ahmed,  
Assistant Jail Superintendent, Hyderabad.

Mr. Nazar Muhammad Memon, Additional P.G.

O R D E R

MUHAMMAD IQBAL KALHORO,- Petitioner confined in jail has filed this petition seeking benefit provided under Section 397, 382-B Cr.P.C and direction to Superintendent Central Prison, Hyderabad to count his sentence concurrently in all cases from 21.02.2000 when he was first arrested in Crimes No.04 of 2000 registered at P.S Gablo Kacho for offences under Sections 324, 353, 149 PPC and Crime No.05 of 2000 registered at P.S Gablo Katcho District Jacobabad for offence under Section 13-D of Arms Ordinance.

2. His Counsel referring to contents of petition has stated that he was arrested in aforesaid crimes first and later on was shown arrested in Crime No.14 of 1999 of P.S Andal Sundrani in which he was convicted for life imprisonment vide judgment dated 08.12.2003. His challenge to conviction and sentence upto to the Honourable Supreme Court was dismissed vide order dated 01.08.2009. He is in jail since 21.02.2000 but respondent No.3 is counting his sentence from 10.06.2002 in violation of Section 382-B and 397 Cr.P.C. In Crimes No.04 and 05 of 2000 of P.S Gablo Kacho, the petitioner was acquitted vide judgment dated 22.09.2007 but he was not released due to conviction running against him in Crime No.14 of 1999. Learned Defence Counsel in support of his case has relied upon the case of SAJJAD IKRAM and others v. SIKANDAR HAYAT and others (2016 SCMR 467).

3. Comments have been filed by not only respondent No.3 but by Senior Superintendent Central Prison & Correctional Facility, Khairpur, where petitioner was initially confined. It is confirmed that the applicant was arrested on 06.03.2000 in aforesaid crimes but since challan in Crime No.14 of 1999 was submitted on 10.06.2002, his sentence period by the trial Court was ordered to commence from the said date.

4. The jail roll submitted in compliance of the various orders passed by this Court in this petition reflects that appellant has remained in jail for more than 27

years including remission and has already completed sentence but because of the aforesaid issue and his sentence in Crime No.14 of 1999 being counted from the date of submission of challan on 10.06.2002, he is shown to still undergo a further period of 04 years.

5. Learned Additional P.G although has opposed the petition but has not been able to dispute factual position vis-à-vis arrest of the petitioner first time on 21.02.2000 in Crimes No.04 and 05 of 2000 of P.S Gablo Kacho.

6. We have considered submissions of the parties and the case law. There is no dispute over the fact that applicant was arrested on 21.02.2000 and sent to judicial custody on 06.03.2000 and that since then he is in jail. Conviction and sentence awarded to petitioner in Crime No.14 of 1999 was with benefit of Section 382-B Cr.P.C evidenced from comments filed by respondent No.3 and Senior Superintendent, Central Prison & Correctional Facility, Khairpur. At the time of conviction to the petitioner in Crime No.14 of 1999, the fact of his judicial custody since 06.03.2000 was not brought to the notice of trial Court and which appears to be the reason, the trial Court considered his sentence to have commenced from 10.06.2002 when the challan in the same crime was submitted. This appears to be merely an irregularity / mistake and not an outcome of a deliberate decision. This Court has power under the constitutional jurisdiction to pass orders to rectify such mistakes and to ensure ends of justice.

7. Although the appeal filed by petitioner before this Court against his conviction and application to the Honourable Supreme Court subsequently did not succeed but the benefit of Section 382-B Cr.P.C already granted to him by the trial Court was not disturbed or reversed. Even otherwise, it is by now a well settled law that benefit under the said provision of law is mandatory and a convict cannot be deprived of the same. As no one has disputed date of arrest of the petitioner, we do not see any impediment legal or otherwise to decline benefit of Section 382-B Cr.P.C to the petitioner from 06.03.2000. Therefore, respondent No.3 is directed to count his sentence from the said date when he was first remanded to judicial custody in Crimes No.4 and 5 of 2000 of P.S Gablo Kacho. Accordingly, this petition is allowed in the terms as stated above.

JUDGE

JUDGE