

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE-III
THODUPUZHA

Present: Sri.MAHESH.G, IIIrd Additional Sessions Judge
Friday, the 4th day of August , 2023/13th day of Ssravana , 1945

Crl.M.P.2113/2023 in S.C. 263/2016
(C.P. No.02 /2016 of JFCM ,Devikulam)
(Cr.No.600/2012 of Munnar P.S.)

Petitioner/Accused:

Chinnan @ Das, S/o. Kasiyappan, aged 35/12,
Komalikudy Tribal Settlement, Basionvalley Kara,
Baisonvally.

By Adv. Sri.C.M. Tomy

Respondent/ Complainant :

State of Kerala Represented by the Inspector of Police,
Munnar P.S..

By Adv.Sri. Manoj Kurian, Addl. Public Prosecutor.

This petition coming on for hearing before me on 04.08.2023 in the presence of above counsel for both sides and the court on the same day passed the following :-

CRIMINAL M P No. 2113 /2023
(in S C 263/2016)

ORDER

This is an application u/s.428 of Cr.P.C. received through the Jail Superintendent, Central Prison and Correctional Home, Thiruvananthapuram from a life convict seeking an order for set off in respect of his remand period underwent by him during investigation of the case.

2. Petitioner was convicted by this Court in SC 263/2016 and a sentence of life imprisonment was imposed on him. Petitioner was under remand during the stage of investigation and he had undergone 135 days in custody during that stage. However there was no direction in the judgment of this Court to set off the aforesaid period against the sentence imposed on him.

3. Petitioner is undergoing the sentence and detained in Thiruvananthapuram Central Prison and Correctional Home as convict No.C 4741. He has been undergoing imprisonment since 03.12.2021. In the above circumstance he has applied to allow his remand period to be set off against the sentence imposed on him.

4. On receiving this application notice was given to the prosecutor and the lawyer who appeared for the petitioner during trial. However, the lawyer did not turn up.

5. Heard the learned Prosecutor and gone through the records

A short question arise in the case is : Whether the petitioner can seek an order for set off for the remand period?

6. A life imprisonment is also an imprisonment for a term and therefore provisions of S.428 Cr.P.C can be invoked and the remand period undergone by the accused during the investigation, inquiry or trial of the same case can be set off against the term of imprisonment imposed on him. However a convict sentenced to life imprisonment is bound to serve the remainder of his life in prison unless the sentence imposed upon him is commuted or remitted by the appropriate authority u/s. 432 or 433 of Cr.P.C.

7. Therefore, in the matter of life convict, the question of setting off the period of detention undergone by an accused as an under trial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority u/s. 432 or 433 of the Code as such set off has to be given at the end of the term of sentence. In the absence of such an order, the right to set off u/s.428 will be of no help to the prisoner. As held by the Hon'ble Apex Court in Bhagirath v. Delhi Administration (AIR 1985 SC 1050).

8. In view of the aforesaid settled legal principles, I allow the petitioner's request for set off in following terms :

If the appropriate authority passes any order u/s.432 or 433 Cr.P.C, the period from 30.05.2012 to 11.10.2012 during which period the accused was an under trial prisoner in the case, shall be taken into consideration for set off u/s. 428 Cr.P.C.

Office is directed to forward a copy of this order to the Superintendent, Central Prison and Correctional Home, Thiruvananthapuram along with another copy to be served on the petitioner for necessary information and action.

Dictated to the Confl.Asst. typed by her, corrected and pronounced by me in open Court on this 4th day of August, 2023.

Sd/-

Mahesh G

III Additional Sessions Judge