

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6004 of 2017

Surendra Singh Rathiya S/o Shri Chinta Ram Rathiya, Aged About 31 Years R/o Alola, Police Station Kapu, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Social Welfare, Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
2. The Chief Executive Officer, Janpad Panchayat, Odagi, Dist. Surajpur Chhattisgarh.
3. The Block Education Officer, Odagi, Dist. Surajpur Chhattisgarh.

---- Respondents

Shri Rishi Rahul Soni, counsel for the petitioner/s.
Shri S.P.Kale, Dy.A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/11/2017

This petition has been filed by the petitioner seeking appropriate directions for consideration of his case for revocation of suspension on the submission that on certain allegations of commission of offence under Section 354 IPC and Section 7 and 8 of the Protection of Children from Sexual Offences Act, 2012, the petitioner was arrested by police which led to his deemed suspension vide order dated 04/03/2017. Later on, the petitioner was granted bail by this Court on 15/06/2017. The petitioner, then, submitted his joining on 20/06/2017 before the competent authority for taking him on duty.

2. Learned counsel for the petitioner would submit that more than seven months have elapsed, since the petitioner is continuing under suspension on the charges of criminal proceedings. Relying upon the decision of the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India though its Secretary and anr., (2015) 7 SCC 291**, learned counsel for the petitioner submits that in view of the aforesaid pronouncement of the Apex Court,

petitioner's suspension is liable to be revoked because in the criminal case, charge sheets have already been filed and the trial is likely to take some more time. He submits that in any case, there has to be consideration regarding periodical review of the suspension order in view of the circumstances that the applicant has now been released on bail.

3. On the apparent facts of the case that the petitioner was arrested leading to his deemed suspension order dated 04/03/2017 and thereafter, his release from jail in the month of June, 2017, the Supreme Court decision in the case of **Ajay Kumar Choudhary** (supra) mandates review of petitioner's case of suspension as to whether, it would be necessary to continue further suspension taking into consideration the nature and gravity of allegations in the criminal case and other relevant circumstances.

4. In the case of **Ajay Kumar Choudhary** (supra), dealing with such a situation, the Supreme Court has laid down guide lines as below -

“20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in *Raghubir Singh vs. State of Bihar*, 1986 (4) SCC 481, and more so of the Constitution Bench in *Abdul Rehman Antulay V. R.S. Nayak*, 1992 (1) SCC 225, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the

expiry of the similar period especially when a Memorandum of Charges/Charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Charge-sheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge-sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

5. As the petitioner is continuing under suspension for the last more than seven months, this matter would require reconsideration.

Let the Chief Executive Officer of Janpad Panchayat, Odagi examine petitioner's case for revocation of suspension taking into consideration relevant factors including the period during which the petitioner has remained under suspension, filing of charge sheet in the criminal case, nature and gravity of allegations etc. The decision should be taken within 30 days from the date of receipt of copy of this order.

6. The petition is accordingly finally disposed off.

Sd/-

(Manindra Mohan Shrivastava)

Judge