

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2336 of 2017

Davendra Markandey (In Central Jail, Durg) S/o Shri Bhagat Ram Markandey
Aged About 38 Years R/o Katulboard, Ward No. 59, Durg, Police Station-
Mohan Nagar, Tahsil & District-Durg, (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/police, Mahanadi, Mantralay, P. S. And Post- Rakhi, New Raipur, District Raipur, (Chhattisgarh).
2. Director General Of Police (D G P), Police Headquarter (P H Q), Near Mahanadi Bhawan, Mantralay, P. S. And Post- Rakhi, New Raipur, District Raipur, (Chhattisgarh).
3. Inspector General Of Police (I G P) Office Of Inspector General Of Police (I G P), 32 Bungalow, Bhilai, Police Station- Supela, District- Durg, (Chhattisgarh).
4. Superintendent Of Police (S P), Office Of Superintendent Of Police (S P), Near Collectorate Office, Durg, District- Durg, (Chhattisgarh).
5. City Superintendent Of Police, C. S. P. / Enquiry Officer, Office Of C. S. P. Chhavni , Bhilai, District- Durg, (Chhattisgarh).

---- Respondents

&

WPS No. 3173 of 2017

Bhuneshwar Patel S/o Shri Anuj Patel, Aged About 32 Years R/o Dabrapara,
South Shitla Chowk, Bhilai 3, Police Station Bhilai 3, Tahsil Patan, District Durg
(Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police, Mahanadi Mantralaya, P. S. And Post Rakhi, New Raipur, District Raipur (Chhattisgarh).
2. Additional Director General Of Police (A. D. G. P.) Chhattisgarh Armed Force (C A F) Police Headquarter (P H Q), Near Mahanadi Bhawan, Mantralaya, P. S. And Post Rakhi, New Raipur, District Raipur (Chhattisgarh).
3. Inspector General Of Police (I G P), Chhattisgarh Armed Force (C A F) Police Headquarter (P H Q), Near Mahanadi Bhawan, Mantralaya, P. S. And

Post Rakhi, New Raipur, District Raipur (Chhattisgarh).

4. Commandant, VIP Security Vahini, Mana, Raipur, District Raipur (Chhattisgarh).

---- Respondents

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WPS No. 810 of 2017

1. Sanjay Soni S/o Thak Bahadur Soni, Aged About 27 Years R/o Hari Nagar, Katul Board, Police Station Mohan Nagar Durg Tahsil And District Durg Chhattisgarh
2. Sagar Kumar S/o Manoj Kumar, Aged About 28 Years R/o Baikunth Nagar, Camp 2 Bhilai Near Rastriya Vidyalay, Bhilai Police Station Chhawni, Tahsil And District Durg Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home Secretariat Mahanadi Bhawan, New Raipur, Police Station And Post Rakhi District Raipur Chhattisgarh
2. Director General Of Police, (D G P), Police Headquarter (P H Q) Near Mahanadi Bhawan, New Raipur, Police Station And Post Rakhi, District Raipur Chhattisgarh
3. Inspector General Of Police (I. G. P.), Office Of Inspector General Of Police, 32 Bungalow, Bhilai, District Durg Chhattisgarh
4. Superintendent Of Police, (S P), Office Of Superintendent Of Police, Near Collectorate Office, Durg District Durg (Chhattisgarh)

---- Respondents

&

WPS No. 1508 of 2017

Kamal Singh Markam (In Jail) S/o Shri Gundhar Singh Markam, Aged About 29 Years R/o Village Koshamguda, Post And Police Station Chhura, Tahsil Chhura, District Gariyaband (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police, Secretariat, Mahanadi Bhawan, New Raipur, P. S. And Post Rakhi District Raipur (Chhattisgarh).

2. Director General Of Police (D. G. P.), Police Headquarter (P H Q), Near Mahanadi Bhawan, New Raipur, P. S. And Post Rakhi District Raipur (Chhattisgarh).
3. Inspector General Of Police (I. G. P.), Office Of Inspector General Of Police (I. G. P.) Shankar Nagar, Raipur District Raipur (Chhattisgarh).
4. Superintendent Of Police (S. P.), Office Of Superintendent Of Police (S. P.) Gariyaband District Gariyaband (Chhattisgarh).
5. Sub Divisional Officer (Police) (S D O P), Office Of The Sub Divisional Officer (Police), Mainpur, District Gariyaband (Chhattisgarh).

---- Respondents

Shri Abhishek Pandey, counsel for the petitioner/s.
Shri A.S.Kachhawaha, Addl. A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/10/2017

The aforesaid petitions are de-linked from WPS No.3901/2016, WPS No.3903/2016, WPS No.4123/2016, WPS No.4124/2016 and WPS No.4946/2016.

After hearing learned counsel for the parties, I find, at this stage that these petitions can be disposed off only on the issue of permissibility of departmental enquiry during the period the petitioners are in jail.

2. Common facts arising in the aforesaid cases are that the petitioners on certain allegations have been proceeded against in a departmental enquiry and criminal case have also been registered against them for commission of offences under the Indian Penal Code. It is not in dispute that all the petitioners are in jail and they have not been granted bail till date.

3. Submission of learned counsel for the petitioners is that as these petitioners are still in jail, they are unable to defend themselves in the departmental enquiry which has been initiated against them. It is argued that even if the petitioners have been subjected to criminal proceedings, their right to defend themselves in the departmental enquiry is not taken away. Learned

counsel submits that the protection granted under Article 311 of the Constitution of India to defend against charges and to have reasonable opportunity of being heard is sacrosanct and cannot be taken away.

4. It appears that against the aforesaid petitioners, departmental enquiry and criminal case is going on parallelly on the accusation of certain offences under IPC. These petitioners have been arrested and since then, they are in jail as bail has not been granted to them.

5. If that be so, at present, it is impossible for these petitioners to defend themselves in the departmental enquiry by submitting their reply and participating in the pending enquiry. Therefore, as long as they are in jail, they are unable to defend themselves in the departmental enquiry.

6. Though number of grounds have been raised in these petitions, I am inclined to allow these petitions only on the ground that the petitioners are in jail and departmental enquiry is pending against them. These petitions, at this stage, are disposed off with a direction that the departmental enquiry / criminal case against the petitioners shall not be proceeded as long as they are in jail. If the petitioners are released on bail or acquitted, whichever is earlier, it would be open for the authorities to proceed with the departmental enquiry. In that event, it will be open for the petitioners to challenge the continuance of departmental enquiry on any other ground which may be available to them under the law.

Sd/-
(Manindra Mohan Shrivastava)
Judge