

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 459 of 2017

Deepak Godwani S/o Shri Vasu Godwani, Aged About 26
Years R/o Kundrapara, Durg, District Durg, Chhattisgarh.,
Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through Secretary, Home, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.,
2. District Magistrate, Durg, Chhattisgarh., District : Durg, Chhattisgarh
3. Superintendent of Central Jail, Durg, District Durg, Chhattisgarh., District : Durg, Chhattisgarh
4. Jailer, Central Jail, Durg, District Durg, Chhattisgarh., District : Durg, Chhattisgarh
5. Station House Officer, City Kotwali, Durg, District : Durg, Chhattisgarh **--- Respondents**

For Petitioners : Mr. Shikhar Bakhtiyar, Advocate
For Respondents : Mr. Ashish Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13.02.2018

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a direction to release the petitioner from jail by holding two different sets of sentences to run concurrently.
2. Earlier the State was directed to enquire about the period of sentences undergone by the appellant for the alleged offences committed by him. As per the information received by the State the petitioner was initially convicted for the offence punishable under sections 376(1), 366, 363 on 24.08.2012 by the Sessions Judge in Sessions Trial No.252/2011 and after remission he was released as the

period of sentence was completed on 17.08.2017. However, in another case being Criminal Case No.24/2010 registered under section 456 & 354 IPC, the petitioner was convicted and sentenced to undergo R.I., for one year each and fine of Rs.500/- each, in absence of payment of fine to further undergo imprisonment for 30 days. Therefore, by calculating the total number of days undergone by the appellant in jail for the offence u/s 376, 366 and 363 if the date release of 17.08.2017 is taken to be the starting point, the addition of 425 days has to be taken into account.

3. Learned counsel for the petitioner submits that if the entire days are counted then the period of custody in subsequent crime i.e., 236 days are deducted from 425 days, the sentence for remaining days of 189 days would come to an end on 26.02.2018. He submits that in view of the law laid down by the Supreme Court, both the sentences awarded in two separate cases respectively may be directed to run concurrently and the petitioner may be released.
4. The facts would reveal that the petitioner was initially convicted under sections 376, 363, 366 and the subsequent to conviction of the Sessions Court the sentence has been completed. According to the communication received by the State Counsel, the sentence has been completed on 17.08.2017. The order of the Court of JMFC dated 28.4.2016 for the subsequent offence u/ss 456 & 354 IPC would show that the petitioner

was arrested in such case on 28.05.2009 and he remained in jail from 28.05.2009 to 11.06.2009 and thereafter he was taken into custody on 21.09.2015, therefore, for the second offence 236 days were counted as the custody period. The facts would suggest that initially when the petitioner was released in Sessions Trial on bail , the second offence u/s 456 & 354 was committed. Therefore, considering the nature of offence which runs parallel to the earlier offence committed, it shows that even after release of the petitioner on bail in connection with offence u/s 376 IPC, he again committed similar nature of offence against women. Considering the same and under the facts and circumstances of the case, it cannot be said to be an exceptional case and this Court is not inclined to exercise its discretion in favour of the petitioner in similar facts of repeated offence and nature thereof. Therefore, I do not find it proper to direct both sets of sentences to run concurrently as per the provisions of code of Criminal Procedure. The petition has no merit and is dismissed.

**Sd/-
(Goutam Bhaduri)
JUDGE**

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