

NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 532/2016.

Kiran Dnyandeo Salve,
Aged about 48 years,
R/o Rajeshwar Nagar,
Buldhana.

----- **Applicant.**

Versus

The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai

2. The Superintendent of Police,
Washim.

----- **Respondents.**

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1. Shri S.P. Palshikar, Advocate for the applicant.
 2. Smt. S.V. Kolhe, Presenting Officer for the Respondents.

CORAM : S.S. Hingne: Member (J)

DATE : 15th October, 2016

ORDER

The applicant, Asstt. Police Inspector has filed the O.A. challenging the order dtd.14/3/2016 (Annex.A-1,page-17) by which he is placed under suspension.

2. With the consent of both the parties the matter is heard and decided finally at the stage of admission itself.

3. The applicant came to be suspended as he was arrested on 3/3/2016 in criminal case No.190/2011 under sections 304,217,218,201,302 and 385 r/w Section 34 of the IPC. The counsel for the applicant alleged that the applicant was arrested even though not involved in the offence. Not only that but 2 Police Constables who were initially main accused were released on anticipatory bail. Nothing was found against the applicant. However, the matter was transferred to CID and the applicant was arrested and he is released on bail by the Hon'ble High Court. No charge sheet is filed yet.

4. The Id. P.O. opposed the application contending that even the charge sheet is not filed and the accused can interfere and hence his application be rejected.

5. The Id. Counsel for the applicant urged that the deceased Lalesh Padgilwar was in the police custody in

crime No. 139/2011 and the applicant was the Investigating Officer. Between 29/7/2011 to 30/7/2011 the deceased was in police lock-up and at morning on 30/7/2011 Lalesh Padgilwar was found dead. It is also urged that nothing was found against the applicant in the preliminary enquiry so also in the investigation. Now more than 6 months have been lapsed and no charge sheet is filed. Seeking support of the observations made by Their Lordships in **Ajaykumar Choudhary –vs Union of India [(2015) 7 SCC]**, it is argued that such suspension can be revoked.

6. Undisputed facts are that the applicant was the Investigating Officer in the Crime No.135/2011 under Section 461 and 380 of the IPC of Police Station, Risod. Lalesh Padgilwar was arrested on 23/7/2011. From 27/7/2011 he was in police custody. On 30/7/2011 at morning he was found dead. Hence Crime No.39/2011 under Section 174 Cr.P.C was registered. Thereafter Crime No.190/2011 under Section 304,217,218,201 r/w Section 34 of the IPC came to be registered. 2 Police Constables viz. Sunil Maroti Kaldate and

Panjab Gulabrao Pawar were shown as accused. They are released on anticipatory bail. During investigation the applicant was arrested. Thereafter he was released on bail on 2/5/2016 by the Hon'ble High Court. Thereafter the matter was handed over to CID for investigation.

7. It reveals from the communication dtd.24/6/2016 that permission of the higher authorities is sought to file the charge sheet and then the charge sheet will be filed in the Court. In the affidavit-in-reply it is only alleged that the interference at the hands of the applicant may be there. However now the investigation is on the verge of completion and the permission is sought to file the charge sheet. As such the apprehension of interference at the hands of the applicant does not survive.

8. The Id. Counsel for the applicant sought the support from the observations in **Ajaykumar Choudhary**. The Id. P.O. submits that the observations are in respect of departmental proceedings and not in the matter of criminal prosecution. The Section 167 of the Cr.P.C. is referred in the

cited case only for consideration of the parity of grounds with a view that when the accused can be released on bail if the charge sheet is not filed within 90 days. Even in the case of offences punishable with death or imprisonment of life, the suspension cannot be continued in departmental proceedings because it also affects the freedom. The Id. P.O. submits that therefore the observations are not helpful to the applicant's case.

9. Apart from that it is manifest that now the applicant is involved after a gap of about 5 years. Now, the investigation is on the verge of completion and papers are sent for approval to file the charge sheet. There is no possibility of any interference in the investigation at the hands of the applicant. Two other Police Constables who were working as the Guard in the night are released on anticipatory bail. It also reveals from the record that medical examination of the deceased was carried out on 29/7/2011 and then he was kept in the lock-up. The applicant has alleged that on that night he was gone outside of city for

investigation and night duty and the entries thereof are taken in the station diary. Apart from that the order of suspension only says that the applicant was arrested and affirmation is already received. Now he is already released on bail. Under such peculiar circumstances and facts of the case, no fruitful purpose can be served by continuing the applicant under suspension because the trial will take its own time and there is no point in continuing the applicant under suspension for years together.

10. Consequently thye O.A. is allowed. The suspension of the applicant be revoked within 2 weeks. No order as to costs.

(S.S. Hingne)
Member (J)

Skt.