

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

M.A. No. 250 of 2021

Hav. Mukhram Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>31.05.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>On the case being taken up for hearing Shri Vinay Pandey, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present.</p> <p>Ld. Counsel for the applicant submitted that as per order dated 12.05.2021 of this Tribunal applicant has to surrender before the concerned Prison/Jail today i.e. 31.05.2021. He further submitted that applicant has tested Covid-19 Positive in Antigen test carried out on him on 27.05.2021 and as per Government guidelines he has to remain in Home Isolation for ten days as he is asymptomatic, therefore, his interim bail be extended for fifteen days and a liberty be also given to him to surrender in District Jail, Alwar in place of Lucknow.</p> <p>In reply, Ld. Counsel for the respondents submitted that applicant has also filed a Writ Petition in Jaipur Bench of Hon'ble Rajasthan High Court against the order of General Court Martial in which he has challenged the jurisdiction of the General Court Martial. He further submitted that applicant obtained the order of interim bail by concealing this fact, therefore, prayer for extension of bail be not allowed.</p> <p>During the course of hearing, it came to our notice that applicant was granted interim bail believing that order is being passed in appeal filed against the order of General Court Martial sentencing applicant with imprisonment. At the time when interim bail was granted it was not brought to the notice of Tribunal that applicant has not filed appeal against the order of General Court Martial and that he has filed a Writ Petition against the order of General Court Martial challenging jurisdiction of the General Court Martial and also that the said Writ Petition has been filed prior to filing of this Application. When applicant's Ld. Counsel was confronted to this and also that how his prayer for grant of bail is</p>

maintainable without filing Appeal against the order of General Court Martial, the Ld. Counsel for the applicant could not give any satisfactory reply rather submitted that time be given to him to seek amendment in Application so that bail application may be converted into Appeal.

We have gone through Sub-Section (3) of Section 15 of the Armed Forces Tribunal Act, 2007 which empowers the Tribunal to grant bail in Appeal filed against the order of conviction passed by General Court Martial. On perusal of Sub-Section (3) it is clear that bail/interim bail against conviction and sentence could be passed in Appeal only filed under Sub-Sections (1) and (2) of Section 15 of the Armed Forces Tribunal Act, 2007. The applicant's Ld. Counsel did not inform the Tribunal before seeking bail that he has not filed Appeal and that applicant has filed a Writ Petition against the order of General Court Martial against his punishment. This shows that applicant obtained interim order not only by concealing the material facts but also keeping the Tribunal in dark which is most unfair.

This Tribunal granted interim bail to applicant under the belief that it is passing order in Appeal filed against the order of conviction and sentence and not in an application filed for grant of bail only. Filing Appeal under Sub-Sections (1) and (2) of Section 15 of the Armed Forces Tribunal Act, 2007 being must for seeking bail/interim bail against conviction and sentence passed by General Court Martial, the Misc. Application No. 250 of 2021 filed by the applicant for bail is not maintainable and is, therefore, **dismissed** and order dated 12.05.2021 granting interim bail is vacated. Applicant is directed to surrender before the concerned Prison at once. It is also directed that if applicant does not surrender before the concerned Prison, the respondents shall take all necessary measures to arrest and get him lodged in the Prison. It is further directed that at the time of surrender/lodgement Antigen/RTPCR test shall be carried out on the applicant by the Jail authorities, and if applicant is found Covid-19 Positive, he shall be kept separately from the other inmates as per Government guidelines.

Let a copy of this order be provided to the Ld. Counsel for the applicant as well as Ld. Counsel for the respondents by today itself for compliance.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 260 of 2021

Col. (TS) Nagendra Singh (Retd.)
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>31.05.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Shri Arvind Kumar Pandey, Advocate filed power today in Court on behalf of the respondents which is taken on record.</p> <p style="text-align: center;">On the case being taken up for hearing Shri R. Chandra, Ld. Counsel for the applicant and Shri Arvind Kumar Pandey, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;">It is a fit case for adjudication.</p> <p style="text-align: center;">Admit.</p> <p style="text-align: center;">Issue notice to respondents.</p> <p style="text-align: center;">Shri Arvind Kumar Pandey has accepted notice on behalf of the respondents who prays for and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.</p> <p style="text-align: center;">List the matter before Registrar on 03.08.2021 for exchange of pleadings.</p> <p style="text-align: center;">List the matter before Tribunal on 23.08 .2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p>
	UKT/SB

