

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

Court No.2
(Ser No 20)

O.A. (A) No. 1252 of 2023 with M.A. No. 1973 of 2023

Ex Hav Lal Singh through Pairokar Bheekam Singh, Brother Appellant
By Legal Practitioner for the Appellant: **Shri T Prashad**, Advocate
Shri Bhanu Pratap Singh Chauhan, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : **Shri Amit Jaiswal**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>02.12.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>1. Appellant has filed this O.A. (Appeal) under Section 15 of the Armed Forces Tribunal Act, 2007 challenging the legality of GCM proceedings, sentence dated 27.04.2023 passed against the appellant by GCM and its confirmation dated 18.08.2023. The GCM has awarded sentence against the appellant to suffer five years rigorous imprisonment, reduction in rank and dismissal from service.</p> <p>2. The O.A. (Appeal) has been admitted by this Tribunal.</p> <p>3. This appeal has been moved by the appellant under Section 15 (6) (e) read with Section 15 (3) of the Armed Forces Tribunal Act, 2007 and Section 389 of Armed Forces Tribunal (Procedure) Rules, 2009 for suspension of the sentence and enlarging appellant on bail.</p> <p>4. Brief facts of the case is that on 20.02.2020, appellant was performing the duties of bus driver of School Bus No 54 (BA No 11D85514Y) of School X committed a civil offence under Section 10 of the POCSO Act, 2012 wherein at Lucknow on 20.02.2020, with sexual intent put his hand inside the trouser, pressed the tail bone and kissed Master ABC, aged about 14 years, son of Shri XYZ, committing thereby aggravated sexual assault and on the same day he improperly entered into the classroom of the school, which otherwise comes under the ambit of Section 63 of the Army Act, 1950.</p> <p>5. It is submitted by learned counsel for the appellant that there is no evidence justifying conviction of the appellant on the first charge under</p>

the POCSO Act, so much so that the victim himself has denied any misbehavior on the part of the appellant. It is further submitted by learned counsel for the appellant that the trial by the GCM was itself illegal for having been conducted in contravention of the statutory mandate of Section 117 (2) of the Army Act, 1950. Learned counsel for the appellant further submitted that appellant has impeccable record during his entire service and his record is good. Appellant is sole bread winner for the family and he is in custody since 04.12.2022.

6. The respondents have filed objection on bail application. It is submitted by learned counsel for the respondents that charges against the appellant are of serious nature and appellant has not yet completed half of the sentence awarded to him. In the complaint, father of the victim in his submission has supported the case but during the trial they have changed their version, reason best known to them. It is further submitted by learned counsel for the respondents that charges made against the appellant are supported with full evidence.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. After trial, the court martial has concluded that the appellant is guilty of first charge with exception of words 'pressed the tail bone and kissed the victim'. Meaning thereby that it could not be proved that appellant pressed the tail bone of the victim and kissed him. Second charge of entering the class room is found to be proved by the GCM. The victim is a child of 14 years age having good understanding and he has not supported the prosecution version and has been declared hostile. There is no other eye witness of the occurrence.

9. Considering the facts and circumstances of the case, evidence available on record and submissions of learned counsel for the parties, we are of the view that it is a fit case for bail.

10. In view of above, the application for bail is **allowed** and the execution of sentence is hereby suspended. Appellant shall be released on bail forthwith on his furnishing a personal bond of Rs. 50,000/- (Fifty Thousand only) with one surety in the like amount to the satisfaction of the Registrar of this Tribunal. On furnishing surety, as stated above, Registrar shall then issue the release order, which in turn will be conveyed to the concerned Jail Superintendent, Central Jail, Agra, wherein the appellant is presently confined and serving out his sentence. The appellant after release on bail shall attend Armed Forces Tribunal on

each and every date of hearing. He shall not indulge in any criminal activity or commission of any crime after being released on bail. He shall surrender his passport (if any) and shall not leave the Country without the prior permission of this Tribunal where his case is pending. In case any complaint with regard to his conduct during the period of bail is received, the respondents will be free to apply for cancellation of the bail granted by this Tribunal.

11. After release of the appellant, the bail bonds furnished for his release, shall be kept on record of this Original Application.

12. M.A. No 1973 of 2023 stands disposed of accordingly.

13. List this case on **17.01.2024** for orders.

(Maj Gen Sanjay Singh)
Member (A)

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(Justice Anil Kumar)
Member (J)

