

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

RESERVED
Court No.2
(Ser No 30)

O.A. (A) No. 377 of 2023 with M.A. No. 503 of 2023

Ex L/Nk Pramod Kumar Appellant
By Legal Practitioner for the Appellant: **Col Ashok Kumar (Retd)**, Advocate
Shri Rohit Kumar, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : **Ms Appoli Srivastava**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>07.12.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p><u>M.A. No. 503 of 2023</u></p> <p>1. This application (appeal) has been filed under Section 15 (3) of the Armed Forces Tribunal Act, 2007 read with Section 389 of the Criminal Procedure Code challenging the GCM proceedings and suspension of the sentence dated 16.09.2022. The GCM has awarded appellant five years rigorous imprisonment and dismissal from service. Appellant is undergoing imprisonment at Central Jail, Gaya (Bihar).</p> <p>2. The O.A. (Appeal) has been admitted by this Tribunal.</p> <p>3. The appellant was tried by General Court Martial under Section 69 of the Army Act, 1950 on charge of molestation for committing a civil offence i.e. aggravated sexual assault contrary to section 10 of the POCSO Act, 2012. On 08.04.2021, the appellant pulled down the underwear of Ms ABC aged about 14 years daughter of Mrs XYZ and unzipped his trouser, thereby committing aggravated sexual assault. The GCM was held and on 16.09.2022, after trial, the serious allegation of molestation of the victim by the appellant being found proved by the GCM, he was found guilty of the offence. Pre-confirmation petition dated 20.02.2023 preferred by the appellant was rejected vide order dated 15.02.2023. The findings and sentence was confirmed vide order dated 28.02.2023 and promulgated on 09.03.2023. After rejection of pre-confirmation petition, post confirmation petition dated 20.02.2023</p>

submitted by the appellant has also been rejected vide order dated 04.07.2023.

4. It is submitted by learned counsel for the appellant that despite the gravity of the offence which the appellant has been alleged, no FIR was lodged. It is further submitted by learned counsel for the appellant that the prosecution has failed to explain the reason for not lodging complaint in time as also no identification parade was done which is violative of Para 406 of Defence Service Regulations for the Army, 1987.

5. It is further submitted by learned counsel for the appellant that appellant being in custody/jail w.e.f. 24.07.2022 has not been granted leave w.e.f. April 2021 i.e. from the date the alleged incident was reported. He pleaded for grant of bail to the appellant.

6. The respondents have filed objection on bail application. It is submitted by learned counsel for the respondents that on 08.04.2021 appellant behaved inappropriately and attempted molestation of Ms ABC who is a special girl child daughter of Mrs XYZ. Mrs XYZ was maid servant residing in Block No 195 and she stated that she saw her daughter with a soldier in combat dress. The underwear of her daughter was down below her knee with a 10/- rupee note in her hand and when she rushed the spot, the soldier zipped up his trouser and fled the scene on his motorcycle.

7. Learned counsel for the respondents further submitted that though no FIR was lodged in this case, yet written statement of Mrs XYZ was given to Resident Welfare Association after one day as she is an illiterate lady and her daughter being a special child was unable to give her statement. It was further submitted that Mrs XYZ had identified the appellant as same person who was involved in the incident with her daughter and the appellant even confessed his deed to the Court and accepted his mistake.

8. Heard Shri Rohit Kumar, learned counsel for the appellant and Ms Appoli Srivastava, learned counsel for the respondents on bail application.

9. There is serious allegation of attempt of molestation by the appellant on a special girl child aged about 14 years. The appellant was in uniform who committed serious offence of molestation on special child who was found to be 50% intellectually disabled by the rehabilitation psychologist. The undergarment of victim aged about 14 years was pulled down below her knee with intent for aggravated sexual assault

and appellant was in unzipped position. On raising alarm by the mother the appellant ran away from the place. Appellant was seen and identified by the mother of the child at the place of occurrence, therefore, averment of Mrs XYZ are fully supporting the case. There is nothing on record to indicate that appellant has been falsely implicated in this case.

10. The punishment provided for offence u/s 69 of the Army Act 1950 for such type of offences is up to 07 years imprisonment, but he has been awarded rigorous imprisonment of only 05 years for having aggravated assault on a disabled girl child (special child) which needs no sympathy.

11. After considering the submissions made by the Learned Counsel for the parties, gravity of the offence under the Army Act 1950 and evidence on record to substantiate the charges, there is no sufficient ground to enlarge the appellant on bail at this stage.

12. Accordingly, bail application is **rejected**.

13. M.A. No 503 of 2023 is disposed off.

O.A. (A) No. 377 of 2023

14. List on **18.01.2024**.

(Maj Gen Sanjay Singh)
Member (A)

rathore

(Justice Anil Kumar)
Member (J)