

Reserved**Court No. 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION (A) No. 1103 of 2022 with
M.A. No 1315 of 2022**

Friday, this the 03 day of February, 2023

“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Hav / Clk Swapnil Santosh Suryavanshi (15432372Y)
Through Pairokar Smt. Varsha Swapnil, W/O Swapnil Santosh
Suryavanshi R/O Snehvarsha Apartment, Saptshrungi Nagar, Near
Niligiri Garden, Jail Road, Nashik Road, Nashik, Maharashtra
- 422 101

..... Appellant

Ld. Counsel for the : **Shri Puru Mudgil, Advocate and**
Appellant **Wg Cdr Ajit Kakkar (Retd) Advocate.**

Versus

1. Union of India, Through the Secretary, Ministry of Defence
DHQ PO, New Delhi – 110011.
2. The Chief of Army Staff, South Block,
New Delhi – 110001
3. HQ AMC Centre & College, PIN – 900450, C/ 56 APO
4. GOC, HQ MUPSA, PIN - 900334, C/O 56 APO
5. Commandant, Command Hospital, (CC), Lucknow – 02,
C/O 56 APO

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal,**
Respondents. **Central Govt Counsel**

ORDER

“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”

M.A. No 1315 of 2022

1. This bail application has been filed by the appellant seeking relief of bail under Section 15 (3) of the Armed Forces Tribunal Act, 2007, who is under custody. Appellant has been awarded punishment of dismissal from service along with 1 year Rigorous Imprisonment (RI) by District Court Martial vide order dated 31.10.2022. This appeal has filed by the appellant with the prayer to suspend his sentence and pass order to respondents for release on bail.

2. Learned counsel for the appellant submits that he has filed appeal challenging the legal sanctity of the findings and sentence order dated 31.10.2022 passed by learned District Court Martial (DCM). The action of the respondents in constituting the trial of the appellant is in contravention to section 122 of the Army Act, 1950 as the trial proceedings commenced after the expiry of limitation time of 3 years. The appellant was charged under Section 64 (e) of Army Act, 1950 for obtaining gratification of Rs. 1,29,000/- as a motive for processing enrolment of one recruit namely Shri Kapil Solanki. Out of total period of 1 year R.I., appellant has already undergone custody for a period of 6 months. The parents of the appellant are old and ailing with deteriorating health conditions. The appellant

would only be able to present his defence by way of appeal when the sentence will be suspended and the applicant will be released on bail. Further, the findings and sentence passed by DCM are uncorroborated on circumstantial evidence. The prosecution failed to prove the charges levied upon the appellant beyond reasonable doubt. The punishment of dismissal from service, along with 1 year R.I. has caused grave prejudice to the applicant. Appellant was not allowed to avail leave prior to commencement of DCM. The appellant is undergoing severe mental agony as well professional end due to prolonged confinement. In case the appellant is not granted Bail his Appeal shall become infructuous. The punishment awarded to the appellant is illegal. The appellant undertakes to abide by the terms and conditions of the bail as may be imposed upon him in the event of this Hon'ble Tribunal granting him bail. The appellant further undertakes that he shall not abuse the liberty so granted. The appellant also undertakes to appear on each and every date before this Hon'ble Tribunal whenever called for. Learned counsel for the appellant prayed that an order to suspend the sentence and pass order to release appellant on bail be passed.

3. On the other hand, learned counsel for the respondents submitted that appellant was tried by DCM on three charges i.e. one charge under Army Act Section 64 (e) and two charges under Army Act Section 63. The DCM in respect of the appellant was

assembled on 27.07.2022 at Lucknow. The appellant pleaded Not Guilty and the court after trial found him guilty of all the charges with variations. The court sentenced him to be reduced to rank and to suffer R.I. for one year and to be dismissed from service. The trial concluded on 01.10.2022. Section 21 of the Armed Forces Tribunal Act 2007, restricts the appellant to approach the Armed Forces Tribunal unless he has exhausted the statutory remedy provided to him under the Army Act. Secondly, sentence awarded to the appellant is not valid unless the same is confirmed. Army Act Section 153 stipulates that no finding or sentence of a General District or Summary General Court Martial be valid except so far as it may be confirmed as provided by this Act. Since the sentence awarded by DCM to the appellant has not been confirmed by the competent authority, the same has not attained finality. Thus O.A. is not maintainable at this stage and appellant cannot be released on bail. The appellant is required by the civil agencies on serious charges of fraud. In this connection, it is submitted that an enquiry was conducted based on a joint investigation report of CCIB and STF, Allahabad to investigate the involvement of the appellant in army recruitment racket. In this connection, FIR number 35 dated 20 January 2020 has been registered. Further FIR No 083/2020 under Section 419, 420, 467, 468 and 471 and 120(B) of the Indian Penal Code, 1960 has also been registered against the appellant at

Police Station Garhi Puktha, District- Shamli on 26.06.2020. The appellant would be handed over to police of District- Shamli after completion of proceedings. Learned counsel for the respondents pleaded that considering the gravity of offence and involvement of the appellant in other cases, application of bail filed by the appellant be rejected.

4. We have heard learned counsel of both the parties on bail application and perused the documents available on record.

5. In the instant case though the appellant has already served more than half of his sentence but keeping in view involvement of the appellant in heinous offence of enrolling candidates in army by taking money, he is not liable to be released on bail. Keeping in view the charge against the appellant, without expressing any opinion on the merits of the case, we find substance in the submission made by the Ld. Counsel for the respondents. Releasing appellant on bail can adversely affect the case. Hence, there exist no sufficient ground to suspend the execution of the sentence during the pendency of the instant appeal and to release him on bail. Bail application is liable to be dismissed.

6. Accordingly, bail application filed by the appellant is **dismissed**.

7. M.A. aforesaid stands disposed of accordingly.

ORIGINAL APPLICATION (A) No. 1103 of 2022

List this case on **23.03.2023** for filing counter affidavit by the learned counsel for the respondents and rejoinder affidavit, if any, by learned counsel for the appellant.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 03 February, 2023

Ukt/-