

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 500 of 2017**Tuesday, this the 22<sup>nd</sup> day of May, 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex Hav Vijai Misra  
 S/o Ram Chandra Misra  
 C/o Jitendra Prasad Nag  
 498/KHA, Faizabad Road  
 Babu Ganj, Lucknow – 226009

.....Applicant

Ld. Counsel for : **Col A.K. Srivastava (Retd), Advocate**  
 the Applicant

Versus

1. Govt of India (MoD) (Through Defense Secretary)  
South Block, DHQ P.O. New Delhi – 110001
2. The Chief of Army Staff  
Integrated HQ of MoD (Army)  
South Block, DHQ P.O. New Delhi – 110001
3. The Adjutant General's Branch  
Integrated HQ of MoD (Army)  
South Block, DHQ P.O. New Delhi – 110001
4. GOC MB Area, Jabalpur
5. Commandant MCTE, Mhow
6. Commanding Officer  
Static Workshop (Station Workshop), Mhow
7. Commander Works Engineer (CWE), Mhow (Indore)
8. Garrison Engineer (GE),  
Military College of Tele Communication & Engineering (MCTE),  
Mhow/Indore (M.P.)

.....Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani**  
 Respondents **Ld. Counsel for Central Govt.**

**ORDER (Oral)**

**M.A. No.1907 of 2017 (Bail Application)**

1. This is a Misc. Application under Section 15 of the Armed Forces Tribunal Act, 2007 with the prayer for grant of bail to the applicant/appellant Vijai Misra, who is in custody after his conviction by GCM. The applicant/appellant Ex Hav Vijai Mishra was tried by the GCM for the following charges :

*“DRAFT CHARGE SHEET*

*The accused Number 1588750X Havildar Vijai Misra of Garrison Engineer (MCTE) Mhow now attached with Station workshop electronic and Mechanical Engineers, Mhow vide HQ MB Area (DV Branch) letter No 022/Discp/Vijay Mishra/DV-2 dated 04 Sep 2015 (Army Order 7/2000), is charged with :-*

*ARMY ACTION SECTION 69 COMMITTING A CIVIL OFFENCE  
READ WITH SEC 10 OF SAY, AGGRAVATED SEXUAL  
PROTECTION OF CHILDREN CONTRARY TO SECTION 10 OF THE  
FROM SECUAL OFFENCES PROTECTION OF CHILDREN FROM SEXUAL  
ACT 2012 OFFENCES ACT 2012.*

*In that he,*

*at Mhow, on 04 February 2015. With sexual intent touched private parts of Girl Child X daughter of JC-352938F Nb Sub JJ Joshi, aged about 12 years with his hands, there by committed sexual assault.*

*Place :*

*Dated :”*

2. During GCM, the victim has supported the case of the prosecution and ultimately the applicant/appellant was sentenced with five years R.I. Learned counsel for the applicant/appellant has argued that in this case no FIR was lodged and the evidence of the victim was not supported by the medical evidence. He has further argued that the conduct of the applicant/appellant, as alleged by the victim, also does not appeal to reason. It is argued that only allegation against the applicant/appellant is that the applicant/appellant on the pretext of giving chocolate, called the victim outside her house and thereafter he touched on her private parts. It has also been argued that the applicant/appellant has already remained in custody for about three years and served more than half of the sentence inflicted on him.

3. Learned counsel for the respondents has argued that the registration of the FIR is not necessary under the Army Act or Rules. It has also been argued that the

medical corroboration of the injury cannot be a ground to place reliance upon the evidence of a victim of sexual assault. However, it is admitted that the applicant/appellant has already remained in custody for a period of about three years.

4. So far as the question of registration of FIR is concerned, we refrain to express any opinion at this stage as it may affect the interest of the parties during hearing. So far as the arguments of the learned counsel for the applicant/appellant that in the case of fingering, there must be some laceration or abrasion, but there is no such evidence and therefore, the evidence of the victim should not be acted upon. On this point, law is settled that the evidence of a victim of sexual assault has to be taken at par with that of a evidence of an injured witness. Unless and until the medical contradictions are of such a nature, that completely rules out the case of the prosecution, the absence of medical corroboration cannot be a ground to discard the evidence of a victim of sexual assault. On this point, we would like to refer the pronouncement of the Hon'ble Apex Court in the case of *Latesh vs State of Maharashtra* (2018 (3) SCC 66.

5. It has also been taken as a ground on behalf of the applicant/appellant that the respondents have not taken a lenient view and have awarded punishment for a period of five years. This argument has absolutely no substance because the applicant/appellant has been held guilty for an offence under Section 10 of the POSCO Act and the minimum sentence provided under law is of five years, which may extend to seven years and also with a fine. Therefore, the GCM has only inflicted the minimum sentence, which could have been awarded under Section 10 of the POSCO Act.

6. Now the only point which is to be considered is the long detention of the applicant/appellant in custody, which admittedly is more than half of the total sentence inflicted on the applicant/appellant. Since the applicant/appellant has already served more than half of the sentence inflicted on him, therefore, keeping in view the pronouncements of the Hon'ble Apex Court, without expressing any opinion on the merits of the case, keeping in view the fact that the applicant/appellant has already served more than half of the period of sentence imposed by the GCM, we find it to be sufficient ground to suspend the execution of the sentence during the pendency of the instant appeal and to release him on bail. We find substance in the submission of the learned counsel for the appellant

that in case the disposal of appeal is delaying for any reasons, his appeal shall be rendered infructuous.

7. Accordingly, this application is allowed and the execution of sentence is hereby suspended.

8. The applicant/appellant Ex Hav Vijai Misra shall be released on bail on his furnishing a personal bond of Rs.50,000/- (Fifty Thousand) with two sureties each in the like amount to the satisfaction of the Registrar of this Tribunal. On furnishing sureties, as stated above, Registrar shall then issue the release order, which in turn will be conveyed to the concerned Jail Superintendent, wherein the applicant/appellant is presently confined serving out his sentences.

9. After the release of the applicant/appellant, the bail bonds furnished for his release, shall be kept on record with the main record.

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

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

**(Justice S.V.S.Rathore)**  
**Member (J)**

Dated: 22<sup>nd</sup> May, 2018.  
PKG