

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 2 (SI No 7)

O.A. (A) No 1052 of 2022 with M.A. No 1173 of 2022

Ex Cfn Deepak Chandra Pandey (through Pairokar Renu Devi, wife) Appellant
By Legal Practitioner for the Appellant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>19.12.2022</u> <u>Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p><u>M.A. No. 1173 of 2022 (Bail Application)</u></p> <p>Heard Shri Puru Mudgal, Advocate holding brief of Wg. Cdr. Ajit Kakkar (Retd.), Ld. Counsel for the appellant and Ms. Appoli Srivastava, Ld. Counsel for the respondents on bail application.</p> <p>The appellant has filed Original Application (Appeal) No. 1052 of 2022 seeking bail and setting aside findings and Sentence Order dated 31.03.2022 passed by Summary General Court Martial (SGCM) under Section 69 of the Indian Army Act, 1950.</p> <p>Objection on bail application filed by the respondents is taken on record.</p> <p>Ld. Counsel for the appellant submitted that Summary General Court Martial has recorded the findings of conviction against the appellant without any reasoning and application of mind. On 14.01.2021 at 2030 hrs, the appellant finished his dinner and consumed liquor. The appellant after 2030 hrs was highly intoxicated and stood up after finishing his dinner and started roaming around without any mala fide intention. Considering the intoxicated condition of the appellant, another counterpart of the appellant namely Cfn</p>

Birbal Yadav stood up and asked the appellant to leave the gun, however, the appellant was unable to act upon due to high intoxication. Cfn Birbal Yadav himself took the initiative to snatch the gun from the appellant. While doing so a mishap and accident took place when the trigger was pressed unknowingly and unintentionally by both the individuals due to which 2 rounds were fired on the floor. Upon hearing the sound of firing Cfn YK Steipa along with other personnel rushed towards both of them and both of them were pushed aside and the rifle was taken away by one Subedar & Hony Lt Packianathan S. Applicant was booked under Section 307 IPC vide tentative charge sheet dated 13.09.2021. Appellant never had any personal animosity and enmity against Cfn Birbal Yadav. The proceedings of SGCM have been conducted in most arbitrary manner whereby the appellant was suppressed and compelled to plead guilty for the offence in order to safeguard his employment. Learned counsel for the appellant submitted that one year Rigorous Imprisonment out of the sentence of two years Rigorous Imprisonment awarded to the applicant was remitted vide order dated 16.09.2022. The appellant has already undergone about ten months of Rigorous Imprisonment. He further submitted that if the appellant is not enlarged on bail the purpose of Original Application (Appeal) would be defeated.

Learned counsel for the appellant pleaded that this Tribunal has jurisdiction to decide cases of Uttar Pradesh as well as cases of Uttarakhand as given in the website of Armed Forces Tribunal, Principal Bench, New Delhi. During arguments, learned counsel for the appellant has relied upon order of this Tribunal dated 18.11.2022 passed in O.A. (Appeal No 975 of 2022), **Nb Sub Birender Singh Rawat vs. Union of India & Others** on similar matter in which bail application

was considered as maintainable and bail was allowed. Learned counsel for the appellant pleaded that instant bail application be considered as maintainable and bail be granted to the applicant.

On the other hand, learned counsel for the respondents has not filed objection on application for maintainability of bail application but she verbally opposed on maintainability of bail application.

Learned counsel for the respondents submitted that this application is not maintainable in this Tribunal under Rule 6 of The Armed Forces Tribunal Act, 2007 as applicant is permanently residing at Nainital. Rule 6 of The Armed Forces Tribunal Act, 2007, reads as under:-

“6. Place of Filing Application. (1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction –

(i) The applicant is posted for the time being; or was last posted or attached; or

(ii) Where the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or section 15 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

Learned counsel for the respondents pleaded that since appellant is resident of Nainital (Uttarakhand) and there is separate Regional Bench for the Residents of Uttarakhand, hence instant bail application is not maintainable in this Tribunal.

Learned counsel for the respondents further submitted that disciplinary proceedings against the appellant were initiated for attempting murder of his brother soldier, Cfn Birbal Yadav, in the state of intoxication. Charge levelled against the appellant was serious in nature and appellant was provided opportunity to defend himself. The appellant was charged under Section 69 of Army Act read with Section 307 of IPC for firing two rounds on his brother soldier. Full opportunity was given to him to defend his case throughout the Court Martial Proceedings. The appellant pleaded guilty to the charge and he was awarded rigorous imprisonment for 1 year and dismissal from service. Learned counsel for the respondents pleaded that instant bail application is not maintainable and appellant is not liable to get bail, hence bail application is liable to be rejected.

As far as territorial jurisdiction is concerned, AFT, Principal Bench on its website has given territorial jurisdiction of all Regional Benches of Armed Forces Tribunal, wherein on page 2, Sr. No 3, it has been held that AFT, Regional Bench Lucknow is empowered to decide cases of armed forces personnel residing at U.P. and U.K. Further all the cases filed in Circuit Bench, Nainital are decided by AFT, Regional Bench, Lucknow itself.

In Original Application (Appeal) appellant has shown himself to be a resident of Nainital, Uttarakhand. When the Appeal is maintainable under Section 15 of the Armed Forces Tribunal Act, 2007, the provisions for Bail has also been embodied in Section 15 of the said Act. If an Appeal is preferred by convicted person, bail is to be considered during pendency of Appeal. The submission of respondents is against the settled basic principles of criminal law.

Accordingly, objection on maintainability of bail application raised by learned counsel for the respondents is rejected. In the circumstances, the bail application

filed by the applicant in this Tribunal is maintainable as provided in Rule 6(2) of the Armed Forces Tribunal (Procedure) Rules, 2008.

Keeping in view the charge against the appellant and that the appellant has been sentenced for one year and he has already served about 10 months of sentence and only about two months sentence remains to be served, therefore, without expressing any opinion on the merits of the case, we find substance in the submission made by the Ld. Counsel for the appellant. Hence, there exist sufficient ground to suspend the execution of the sentence during the pendency of the instant appeal and to release appellant on bail.

Accordingly, application for bail is allowed and the execution of sentence is hereby suspended.

The appellant Ex Cfn Deepak Chandra Pandey (Army No 17024783-F) 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 appellant is presently confined serving out his sentences.

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

M.A. aforesaid stands disposed of accordingly.

O.A. (A) No 1052 of 2022

List this case on **16.01.2023**.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Ukt/-