

Reserved**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****M.A. No 127 of 2022 Inre O.A. (A) No.91 of 2022**Thursday, this the 23rd day of March, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**
“Hon’ble Maj Gen Sanjay Singh, Member (A)”

No. 18004082A, Ex Sapper Ajay Singh, of 55 Engineer Regiment, Resident of Vill & PO Kanehti, District Prayagraj, Uttar Pradesh, PIN - 212402, (Lodged in District Jail Rajauri, J&K) Through his Parokar, Smt. Poonam Yadav W/O Ex Sapper Ajay Singh

..... Applicant

Ld. Counsel for the : **Shri R K Tripathi, Advocate**
Applicant

Versus

1. Union of India, Service through: The Secretary, Government of India, Ministry of Defence, South Block, New Delhi, PIN - 110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), New Delhi, PIN -110011.
3. General Officer Commanding 25 Infantry Division as confirming authority.
4. Chief Record Officer, Bengal Engineer Group Records, Roorkee, Uttarakhand. PIN- 247667

.....Respondents

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

ORDER**“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”****M.A. No. 127 of 2022**

1. Facts of the case in brief are that the appellant was enrolled in Indian Army on 04.06.2009. Although he was barber by trade in but he was generally employed as buddy to some or the other officer of his unit. He was detailed buddy of Lt Col ABC, PW-10. Apart from Lt Col ABC, appellant was also buddy of two more officers including lady officer Capt Sudha. No one ever had any complaint against his conduct. He used to perform buddy duty of Lt Col ABC from 0700 hours in the morning till 1800 hrs in evening and looked after his daughter Miss XYZ who was about 8 years old. The appellant was charged on 19.11.2019 for repeatedly pinched and pressed the vagina of Miss XYZ, daughter of Lt Col ABC. The appellant was convicted by Summary General Court Martial (SGCM) and was sentenced with imprisonment for five years along with dismissal from service for the offence under Army Act Section 69 that is to say, Aggravated Sexual Assault, contrary to Section 10 of the Protection of Children from Sexual Offences Act. This application has been filed by the appellant for grant of parole/bail.

2. It is submitted by the learned counsel for the appellant that mother of appellant got paralyzed and has been bed ridden for last one year and his father is suffering with acute osteoarthritis and has become almost immobile for last one year. Daughter of applicant is under treatment of ENT Specialist of Army Hospital Allahabad and a private Hospital at Prayagraj for her speech disorder since last five years. In the absence of the appellant, there is no one to take care of his parents and his family who are now living in a pathetic condition. There is every likelihood that the appeal would be allowed in favour of the appellant due to illegalities committed by the Court Martial. The Hon'ble Apex Court in the case of *Kashmira Singh Vs State of Punjab* 1977 AIR 2147 have held that *"It would indeed be a travesty of Justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him"*. Further the respondents will not be at prejudice in any manner in case parole/bail is granted to the appellant as appellant is liable to be recommitted to prison in case he is unsuccessful in his appeal. Appellant has been sentenced with five years R.I. and the appellant is continuously in custody since 09.09.2021 at District Jail Dhangri, Rajouri, J&K, therefore, he has already served out about one and half year of the punishment. He submitted that in case the appellant is not released on parole/bail

his Appeal shall become infructuous. Learned counsel for the appellant prayed that if appellant cannot be released on bail due to not completing $\frac{1}{2}$ of his imprisonment, he may be released at least on parole for one month, as there is no chance of accused fleeing, repeating of offence or influencing the witnesses.

3. Ld. Counsel for the respondents submitted that appellant was issued administrative order for trial by a Summary General Court Martial (SGCM) vide 25 Inf Div letter dated 29.01.2021. Charge sheet under Army Act Section 69 was initiated against the individual and close arrest order was issued on 20.02.2021. SGCM proceedings commenced on 22.02.2021 and completed on 17.03.2021. The individual was found guilty and was awarded punishment 'To Suffer Rigorous Imprisonment for Five Years and to be Dismissed from service'. SGCM proceedings were vetted by HQ Northern Command on 21.08.2021. Applicant was handed over to Superintendent of District Jail Dhangri, Rajouri, J&K on 09.09.2021. Appellant has committed a grave offence and the same should be taken into consideration before considering the parole /bail petition. He prayed that appellant is not liable to be released on parole/Bail.

4. Section 15 of the Armed Forces Tribunal Act, 2007, deals with jurisdiction, powers and authority in matters of appeal against

court-martial. Sub-section (1), (2) and (3) and (6) of this Section being relevant for the disposal of present controversy are reproduced as below:-

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto.

(2) Any person aggrieved by an order, decision, finding or sentence passed by a court-martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary.

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of any offence punishable with death or imprisonment for life.

6. Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to-

a. substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions

of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950, (45 of 1950) as the case may be; or

b. if sentence is found to be excessive, illegal or unjust, the Tribunal may-

i. remit the whole or any part of the sentence, with or without conditions;

ii. mitigate the punishment awarded;

iii. commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, (46 of 1950) the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950, (45 of 1950) as the case may be;

c. enhance the sentence awarded by a court martial:

Provided *that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;*

d. release the appellant, if sentenced to imprisonment, on parole with or without conditions;

e. suspend a sentence of imprisonment;

f. Pass any other order as it may think appropriate.

5. In view of above, we do not find any substance in the submission made by the Ld. Counsel for the respondents. The submission of respondents is against the settled basic principles of criminal law. Provisions for parole have been embodied in para 6 of

Section 15 of the said Act as mentioned above. An Appeal is preferred by convicted person only and parole has to be considered during pendency of Appeal.

6. Keeping in view that appellant has no other male member in his family to look after his ailing parents as well as appellant is continuously in custody since 09.09.2021, 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 grant parole to the appellant for one month and to release him from jail during the pendency of the instant appeal.

7. The appellant has completed more than one and half years of sentence and his conduct has been reported to be good in the Jail. He cannot be released on bail as has been awarded punishment of 5 years R.I. and he has undergone imprisonment only for a period of one and half years. Therefore, we deem it just and proper to grant 30 days First Parole to the appellant Sapper Ajay Singh to look after his family. Immediately, after conclusion of period of parole of 30 days inclusive journey period to and from, he shall surrender before the jail authorities. In case any complaint with regard to his conduct during the period of parole is received, we may consider withdrawing this order. He shall furnish a personal bond in the sum of Rs. 10,000/- and a surety of Rs.

10,000/- 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 Jail Superintendent, District Jail - Dhangri, Rajouri, J&K wherein the appellant is presently confined serving out his sentences.

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

9. M.A. aforesaid stands disposed off accordingly.

O.A. (A) No. 91 of 2022

List this case on **24.04.2023**.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 23March, 2023

Ukt/-