

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

M.A No. 248 of 2021 Inre: O.A. (A) No. 251 of 2021

Ex Hav Abdul Wasim Khan
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>22.05.2023</u> <u>Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)</u> <u>Hon'ble Air Marshal Atul Kumar Jain, Member (A)</u></p> <p>1. Present: Shri Virat Anand Singh, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;"><u>M.A No. 248 of 2021</u></p> <p>2. Heard learned counsel for the parties on bail application.</p> <p>3. This application has been filed by the applicant for grant of bail in the O.A. preferred against the punishment inflicted by the General Court Martial (GCM). The charges against the applicant were that he, asked Rs. 40,000/- to make his X-Ray report of Chest, fit in place of unfit. He was caught red handed accepting Rs. 5,000/- from Roshan Vetwal in a paper packet. While Summary of Evidence proceedings for alleged gratification was under finalization stage, applicant was granted 19 days Part of</p>

Annual Leave but he failed to rejoin his duty after expiry of leave. He was declared deserter from service. He was apprehended by Bureau of Immigration, NSCBIU Airport, Kolkata, while trying to board a flight to Bangkok without formal permission from Army authority. A GCM was held and applicant was awarded punishment of reduced to rank, dismissal from service and six years Rigorous Imprisonment. Applicant has filed this bail application under Section 15 (3) of the Armed Forces Tribunal Act 2007 read with Section 389 of Code of Criminal Procedure 1973 for seeking enlargement on regular bail.

4. Ld. Counsel for the respondents opposed bail application mainly on the ground of maintainability of the petition/ as well as on the point of jurisdiction of this Tribunal submitting that under Section 15 of the Armed Forces Tribunal Act, 2007 the Tribunal has jurisdiction to consider bail of accused persons only. Since the appellant is a convict, hence, this Tribunal lacks jurisdiction to entertain the Bail Application. Since the appellant has been convicted, hence, his Bail Application cannot be considered by this Tribunal.

5. We do not find any substance in the submission made by the Ld. Counsel for the respondents. 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. An Appeal is preferred by convicted person only and bail has to be considered during pendency of Appeal. The submission of respondents is against the settled basic principles of criminal law.

6. Admittedly, the period spent by accused in military custody during the investigation is from 25.02.2019 to 24.05.2019. Further accused during trial duration was in military custody from 03.07.2020 to 31. 08.2020. He was in Rigorous Imprisonment (RI) from sentencing to promulgation from 01.09.2020 to 08.03.2021 and after promulgation and execution of sentence in Civil Jail Shillong, Meghalaya, since 08.03.2021 till date. Appellant has been sentenced with six years R.I. and he has already served out more than three years of the punishment out of six years awarded to the appellant. In case the appellant is not granted Bail his Appeal shall become infructuous.

7. Keeping in view the charge against the appellant that the appellant has been sentenced for six years and he has already served out more than three years of punishment, 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 him on bail.

8. In view of above, the application for bail is allowed and the execution of sentence is hereby suspended. Ex Hav Abdul Wasim Kahan shall be released on bail forthwith on his furnishing a personal bond of Rs. 50,000/- (Fifty Thousand only) with one surety in the like amount to the satisfaction of the Registrar of this Tribunal. On furnishing surety, as stated above, Registrar shall then issue the release order, which in turn will be conveyed to the concerned Jail Superintendent, Shillong, Meghalaya, wherein the appellant is presently confined and serving out his sentence. Ex Hav Abdul Wasim Khan released on bail shall attend Armed Forces Tribunal on each and every date of hearing. He shall surrender his passport and shall not leave the Country without the prior permission of this Tribunal where his case is pending. In case any complaint with regard to his conduct during the period of bail is received, the respondents will be free to apply for cancellation of the bail granted by this Court.

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

10. M.A. aforesaid stands disposed of accordingly.
11. List this case on **14.08.2023** for orders.
12. Let a copy of this order be supplied to Ld. Counsel for the respondents free of cost forthwith for onward transmission.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

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