

Court No. - 2

Case :- WRIT - A No. - 9321 of 2023

Petitioner :- Tirath Ram (No. 9116770y Rifleman) Of 8 Jammu And Kashmir Thru. His Father And Next Friend Dev Raj

Respondent :- Union Of India Thru. Secy. Govt. Of India, Ministry Of Defence , New Delhi And Others

Counsel for Petitioner :- Shachindra Pratap Singh, Yash Pal Singh

Counsel for Respondent :- A.S.G.I., Raj Kumar Singh

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard Shri Shachindra Pratap Singh, learned counsel for the petitioner and Shri Raj Kumar Singh, learned counsel for the respondent Nos.1 to 9.
- (2) This is a writ petition challenging the order dated 11.10.2023 passed by learned Armed Forces Tribunal, Regional Bench, Lucknow (hereinafter referred to as "**Tribunal**") rejecting the application for bail (M.A. No.70 of 2023) filed along with Original Application No.466 of 2020 : *Tirath Ram vs. Union of India and others*.
- (3) The O.A. No.466 of 2020 has been filed challenging the decision of the General Court Martial dated 14.05.2022 convicting the petitioner herein *inter alia* for the offence under Section 10 of Protection of Children from Sexual Offences Act, 2012 read with Section 69 of the Army Act, 1950 and sentencing him to undergo rigorous imprisonment of five years and has also dismissed him from service.

- (4) The appellant has remained in house arrest since 21.03.2022 till date i.e. for a period of two years, one month and twenty four days. He had moved an application for enlargement on bail which has been rejected by the impugned order, hence, this writ petition.
- (5) The bail application was filed after his conviction which has been rejected and now this writ petition for enlargement on bail has also been filed after his conviction. The parameters for considering a bail of an under trial and that of a convict are different in the sense that in the case of a convict there is a judgment of conviction of the petitioner.
- (6) The main contention of the petitioner's counsel is that :-
 - (i) Considering the period of incarceration as the sentence awarded for the offence for which he has been convicted albeit illegally and perversely, is only five years out of which he has already undergone two years, one month and twenty four days.
 - (ii) His continued house arrest is impeding his right of pursuing his appeal. He has also submitted that the version as mentioned in the F.I.R. which was lodged by the father of the victim before the police wherein a Final Report was submitted is different from the testimony of the victim before the General Court Martial.
 - (iii) He has also submitted that he had engaged a defense counsel in addition to the defence officer provided by the Army to defend himself in the trial but the said defence counsel was not allowed to defend the petitioner and was

forced to go out of the court proceedings. He took us through relevant pages of the proceedings of the General Court Martial which are in his possession and which have also been placed before us by the counsel for the respondents.

(iv) It is also a submission that after the defence counsel who was engaged earlier was unable to appear, he sought time to engage another defence counsel but this was denied with the result that defence officer alone appeared on his behalf and he did not conduct the proceedings appropriately, therefore, there was denial of opportunity to the accused to defend himself and the trial was not a fair one, in fact, the defence officer did not even cross examine the victim.

(v) It is also his submission that the defence officer was not a legally qualified person whereas he was faced against the prosecution counsel who was an Advocate practicing at Delhi, therefore, clearly the trial was unfair.

(7) Shri Raj Kumar Singh, learned counsel for the respondents submits that :-

(i) It is not the sentence alone which is material while considering enlargement of the petitioner on bail but the nature of the offence and its impact on the organization i.e. the Army, its officers and personnel as also the society at large and the trust which has been broken should also be kept in mind.

(ii) He has taken us through the statement of the victim wherein she has supported the prosecution case to the hilt.

- (iii) He has also invited our attention to the relevant paragraphs of General Court Martial proceedings wherein the behaviour of the defence counsel of the petitioner has been considered at length and the General Court Martial was very patient but when his behaviour became so unruly that he was asked to go out of the proceedings.
- (iv) The defence officer who had appeared on behalf of the petitioner then conducted the proceedings and so far as the cross examination of victim is concerned, he sought time to consult the accused before conducting the cross examination and then came back to say that the petitioner says that if he is not allowed to engage any other counsel then the Court Martial may proceed and it does not want to cross examine the victim.
- (v) He also says that the petitioner had ample opportunity to engage another counsel just as he had engaged the earlier one who is to come from Delhi as his father is already there to make such arrangements and access in this regard to the petitioner was also available. If the counsel wants to meet the accused, he can always do so but he did not avail such opportunity rather as is evident from the proceedings of General Court Martial, a deliberate attempt was made by the defence counsel and the petitioner to delay the proceedings on one pretext or the other.
- (vi) On the fateful day when the defence counsel had to be asked to go out of the court proceedings initially the court was informed by the defence officer on the instructions of the defence counsel that he was on his way, struck in the traffic jam, therefore, the proceedings be adjourned for two

hours but after two hours the Court Martial was informed that he has fallen ill and gone back to Delhi. He has taken us to the General Court Martial proceedings to say that this was nothing but a delaying tactics and then Court Martial has dealt with these aspect elaborately in these proceedings, but these issues will be seen in appeal filed by the petitioner against his conviction.

(vii) He also says that the appeal has already been filed and time was granted to the petitioner to file a rejoinder affidavit which he was unable to do so and now the matter is fixed for the said purpose on 28.05.2024 giving last opportunity to the petitioner to file rejoinder affidavit. He says that if the petitioner wants to seek assistance of his lawyer or the defence officer or his father, so as to facilitate filing of the rejoinder affidavit, this would be permitted by the Army Authorities and there is no impediment in this regard. In fact, a lawyer has filed the appeal, therefore, obviously his services are available.

(viii) He opposes the writ petition and says that the impugned order should not be interfered and, the petitioner, considering nature of his offence for which he has been convicted based on evidence on record specially considering the victim's statement, should not be enlarged on bail.

(8) Having heard learned counsel for the parties and having perused the records including the records of the General Court Martial proceedings which have been produced before us by Shri Raj Kumar Singh in original and the order impugned before us, we

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are not inclined to enlarge the applicant-petitioner on bail nor to set aside the impugned order for the following reasons :-

- (a) Firstly, no doubt the sentence is of five years and the petitioner has already undergone two years, one month and twenty four days of incarceration but this by itself need not necessarily be a ground for enlarging an accused who has been convicted, on bail, in a case such as the one at hand considering the nature of the offence alleged which is against a minor who is daughter of a senior officer with whom the petitioner was attached and the petitioner is alleged to have committed the offence under Section 10 of Protection of Children from Sexual Offences Act, 2012 read with Section 69 of the Army Act, 1950.
- (b) On the merits of the issue as to whether adequate opportunity was given to the petitioner to defend himself in the trial are issues to be seen in the appeal but having gone through the record of General Court Martial proceedings, we cannot at this stage allow this plea or make it a ground for enlarging the applicant on bail. The appeal against the conviction has already been filed and that can be considered and decided at an early date on our direction.
- (9) For all these reasons, considering the totality of the facts and the records, we are of the opinion that this petition challenging the order dated 11.10.2023 is liable to be dismissed, as the impugned order does not suffer from any error, at this stage.
- (10) If the petitioner requires assistance of his counsel or his father then access to them shall be provided by the Army Authorities

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as per rules so as to facilitate filing of the rejoinder affidavit in the appeal and also hearing of the appeal.

- (11) The Tribunal which is seized with the appeal shall make an earnest endeavour to dispose of the appeal at an early date, say within a period of four months from filing of the rejoinder affidavit or failure to file the same on the date of last opportunity which is 28.05.2022.
- (12) In the event, the appeal is not disposed of within four months from today, it shall be open for the petitioner to move a fresh application for enlargement on bail before the Tribunal in the pending appeal which shall be considered and decided within three weeks of its filing.
- (13) Subject to above, the present writ petition is **dismissed**.
- (14) The observations made hereinabove are only for the purposes of these proceedings arising out of rejection of bail and shall have no adverse bearing on the proceedings of the appeal which shall be considered and decided as per law uninfluenced by these observations.
- (15) The original record be returned back to Shri Raj Kumar Singh, learned counsel for the respondents.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 14.5.2024

Shubhankar