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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4457 OF 2015

Khyati Shah w/o. Vishal Rana

..Petitioner.

V/s.

Union of India and Ors.

..Respondents.

Mr.Vijay Hiremat for the petitioner.

Ms.Rebecca Gonsalves for respondent Nos.1 to 3.

Mrs.M.M.Deshmukh, APP for respondent-State.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 20TH NOVEMBER, 2015

P.C. :-

1. Heard learned counsel for the petitioner and learned counsel for the respondent Nos.1 to 3. The petition is filed by the petitioner seeking the following reliefs :-

- (a) That the Hon'ble Court may be pleased to issue a Writ of Certiorari and / or any other writ / order / direction in the nature of Certiorari and upon examining the legality, propriety and validity of the respondents action of arresting and continuously detaining petitioner's husband Vishal Rana since 29th October, 2015 pending investigation / trial, be pleased to quash and set aside the same and grant bail;

(b) That the Hon'ble Court may be pleased to issue a Writ of mandamus and / or any other writ / order / direction in the nature of mandamus, directing the respondents, acting through its servants / agents / subordinates to admit the petitioner's husband to be admitted in Kiran Care and Cure hospital, Juhu or any suitable critical facility hospital, Juhu at the expense of the petitioner.

2. The petitioner's husband was enrolled in the Indian Navy as a Artifice Apprentice in January, 1998. In the month of May, 2006, the petitioner's husband was transferred to INS Darshak at Vishakhapatnam. He did not join his duty. Therefore, a warrant of arrest was issued on 5th June, 2006 by the Commanding Officer. The father of Vishal Rana was served with the notice on 5th June, 2006 by the Commanding Officer informing him that his son is a deserter from the Indian Navy and warrant of arrest has been issued for his arrest. In pursuance of secret information, the petitioner's husband was apprehended from the Mumbai Airport on 29th October, 2015.

3. Ms.Gonsalves, learned counsel for respondent Nos.1 to 3 submits that the petitioner was a deserter and, therefore, arrested under section 49 of the Navy Act pursuant to a warrant of arrest. She submits that summary trial of the petitioner's husband would be held before the Commanding Officer at Vishakhapatnam in

accordance with the procedures set out under the Navy Act and other relevant regulations. She also states that the trial of the petitioner's husband would be conducted as expeditiously as possible and within a few days.

4. Mr.Hiremath, learned counsel for the petitioner has placed reliance upon the Division Bench decision of the Delhi High Court in the case of **Ex.Capt. Salim Zafar Asaad V/s. Union of India and Ors.** decided on 16th March, 2007 wherein the petitioner in that case was a Captain serving in the Indian Army. In the present case, the petitioner's husband was serving as a Sailor in Indian Navy. Be that as it may, the Navy Act, 1957 is Code in itself providing for arrest, conduct of trial, sentence to be awarded and appeal, etc. There is no provision for bail. In the circumstances, we are not inclined to release the petitioner's husband on bail.

5. So far as the petitioner's contention that her husband may be given legal aid is concerned, Ms.Gonsalves relied upon the extracts of the Regulations framed under the provisions of Navy Act and clause 26 of Chapter II thereof, the procedure for conduct of trial for Summary trial which provides for rights of person subjected to such trial. Regarding medical treatment to the petitioner's husband, Ms.Gonsalves states that the petitioner's husband was examined by the doctor after his arrest and there are no complaints. She submits that in case the petitioner's husband

requires treatment, adequate treatment would be given to him.

6. In the above circumstances, we are not inclined to entertain the petition. The petition is devoid of any substance and merit therein. Hence the petition is dismissed.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)