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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4258 OF 2016

Ram Chandra Godara	...	Petitioner
Vs.		
Union of India, Through the Secretary, Ministry of Defence, Government of India, New Delhi & Ors.	...	Respondents

Mr. Wesley Menezes, a/w. Mr. Aditya Swarup and Mr. Abhishek Bharti,
for the Petitioner.

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

Mr. J.P. Yagnik, A.P.P., for the Respondent-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 13TH DECEMBER 2016.

P.C. :

1. Heard learned counsel appearing for the respective parties.
2. By this Petition, filed under Article 226 of the Constitution of India, Petitioner is seeking writ of habeas corpus, directing the Respondents to produce Petitioner's son before this Court on the ground that detention of the Petitioner's son is illegal.

3. Learned counsel for Respondent Nos.1 to 3 states that the Petitioner's son is charged for absenting himself without leave. She invited our attention to Charge-Sheet No.1, Exhibit-J Collectively at Page No.160 of the paper-book, and pointed out the period during which the Petitioner's son remained absent without leave. The counsel further submits that, initially, Petitioner's son was taken into custody on 31st May 2016 and thereafter released on 7th June 2016 on the ground that his wife was at the advance stage of pregnancy. Thereafter, Petitioner's son did not report and, therefore, was again taken into custody on 17th August 2016. The counsel also submits that, by order dated 5th October 2016, Chief of Air Force authorized the custody of Petitioner's son beyond 60 days. The counsel also submits that, in the meanwhile, court martial was convened on 3rd November 2016. However, due to non-cooperation of the Petitioner's son, proceedings against him could not be concluded.

4. Chapter IX of the Air Force Act, 1950, speaks about “*Arrest and Proceedings Before Trial*”. Under sub-clause (1) of sub-section (102) thereof, “*any person subject to this Act, who is charged with an offence, may be taken into air force custody*”. Under sub-clause (2) of sub-section (102) thereof, “*any such person may be ordered into air force custody by any superior officer*”.

5. In pursuance of this provision, the Petitioner's son was taken into custody under the orders of superior officers on 31st May 2016.

6. Rule 22 of the Air-Force Rules, 1969, speaks about “*The Manner*

and Extent of Custody Pending Trial or Confirmation of Court Martial Proceedings”.

7. Under sub-section (2) thereof, *“the detention in air-force custody beyond a total period of 60 days; whether continuously or in broken periods, of a person, subject to the Act, who is not on active service and for whose trial a court-martial has not assembled, shall require the sanction of the Chief of the Air Staff or any other officer duly authorized, with the approval of the Central Government, by the Chief of the Air Staff in that behalf”.*

8. Under sub-section (4) thereof, *“no such person, as is described in sub-rule (2), shall be detained in air force custody beyond a period of 90 days; whether continuously or in broken periods, except with the approval of the Central Government”.*

9. Reverting back to the facts of the present case, initially, the Petitioner's son was in custody for a period of 7 days, i.e. the period between 31st May 2016 to 7th June 2016, and thereafter he was again taken into custody on 17th August 2016 and the court-martial was convened on 3rd November 2016. Thus, the Petitioner's son, till the court-martial was convened, was in custody for a period of 84 days, i.e. less than 90 days, for which, as stated above, there was authorization from the competent officer.

10. It is the case of the Respondents that court-martial of the

Petitioner's son could not be concluded on account of his non-cooperation. This allegation is denied by the Petitioner. Learned counsel for the Petitioner states that the Petitioner's son is ready and willing to co-operate with the proceedings of court-martial. But the fact remains that, before expiry of period of 90 days, court-martial is convened and, therefore, detention of the Petitioner's son cannot be called as illegal.

11. In such circumstances, this Petition seeking writ of habeas corpus is misconceived and, therefore, the same stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]