

CRWP-5278-2020

Through Video Conference

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRWP-5278-2020.

Decided on: September 14, 2020.

Vivek Kumar Sharma

.. Petitioner

VERSUS

Union of India and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Arun Singla, Advocate,
for the petitioner.**

**Mr.Satya Pal Jain, Addl. Solicitor General of India,
with Ms.Sonia Sharma, Central Government Counsel,
for the Union of India – respondents.**

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Article 226 of the Constitution of India, for issuing writ in the nature of *certiorari* for quashing the order dated 16.05.2019 (Annexure P-2) passed by the Armed Forces Tribunal, Chandigarh Bench, Chandigarh, whereby the application

of the petitioner for suspension of sentence has been dismissed.

Learned counsel for the petitioner has submitted that the actual detention of the petitioner is 11 years, 1 month and 21 days. He submits that in view of the custody period of the petitioner, he may be granted the benefit of suspension of sentence. He has further submitted that the law with regard to the maintainability of the petition before the High Court against the orders of the Armed Forces Tribunal is settled that the High Court can entertain such a petition in its supervisory capacity. The learned counsel for the petitioner has relied upon the judgment of Hon'ble the Supreme Court in **Balkrishna Ram Vs. Union of India and anr. SLP Civil No.6999 of 2017, decided on 9.1.2020** to contend that the present petition would be maintainable before the High Court in its supervisory capacity.

The learned Additional Solicitor General of India, assisted by Ms.Sonia Sharma, Central Government Counsel, has submitted that so far as the maintainability of the present petition is concerned, he has no objection with regard to the same since the law has been settled by Hon'ble the Supreme Court in **Balkrishna Ram** (supra). He has also not disputed the custody period of the petitioner, however, he has referred to the reply which has been filed by the Union of India – respondents in which he has been stated that the petitioner has remained as an absconder from 26.04.2008 to 23.12.2009, because he escaped from the military custody and was apprehended by the police on 23.12.2009 and on account of same, his bail application before the Armed Forces Tribunal, Chandigarh Bench,

was rejected. He has further submitted that it is a case of cold blooded murder of two of the colleagues of the petitioner namely Subedar Shiju Alex and Battery Havildar Major in 2007 and he has been convicted for that.

I have heard the learned counsel for the petitioner as well as the learned Additional Solicitor General of India through video conference at length.

The learned counsel for the petitioner has submitted that after going through the reply which has been filed by the respondents – Union of India, he would be satisfied in case the appropriate directions are issued to the Armed Forces Tribunal, Chandigarh Branch, to decide the appeal within a fixed timeframe.

The learned Additional Solicitor General of India, on instructions states that the Armed Forces Tribunal, Chandigarh Branch, is operational and the matters are being heard.

Therefore, this Court does not find any specific reason, at this stage, with regard to the suspension of sentence of the petitioner, however, in view of the facts and circumstances of the present case and taking into consideration the total custody period of the petitioner, this Court deems it fit and appropriate to direct the Armed Forces Tribunal, Chandigarh Branch, to decide the appeal of the petitioner as expeditiously as possible preferably within a period of three months from today.

Consequently, the present petition is disposed of with a direction to the Armed Forces Tribunal, Chandigarh Branch, to decide the appeal of the petitioner as expeditiously as possible preferably within a

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period of three months from today.

September 14, 2020.
raj arora

JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No