

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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MA 2735 of 2015 & OA (Appeal) 608 of 2015

Sunil Kumar	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Col NK Kohli (Retd), Advocate
For the Respondent(s) :	Mr Karan Nehra Sr PC

**Coram: Justice Surinder Singh Thakur, Judicial Member.
Lt Gen DS Sidhu (Retd), Administrative Member.**

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**ORDER
25.08.2015**

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Interim Relief

[Suspension of sentence under Section 15 (6)(e) of
the Armed Forces Tribunal Act, 2007]

The petitioner Sunil Kumar (Number 15715857 K) Signalman (OCC) of Western Command Composite Signal Regiment was tried and convicted by Summary Court Martial held on 20.1.2015 holding him guilty of charge under Section 69 read with Section 354 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of two years and dismissal from service. His pre confirmation petition was rejected and the confirmation of the sentence was made on 20.5.2015. Presently he is lodging in Central Jail, Ambala.

2. In brief the allegations on which the petitioner faced the court martial proceedings are that during the intervening night of 09/10 June, 2014 the petitioner used criminal force to the prosecutrix, a colleague of the same regiment, by holding her from her hand, dragging her inside the room, pushing her down, mounting on her back and covering her mouth intending thereby to outrage her modesty. The petitioner was

taken into military custody on 29.12.2014. The S.C.M. was held and he remained throughout such custody till 4.6.2015 till its conclusion. As already stated above his pre confirmation petition was rejected on 20.5.2015. The petitioner was committed to Central Jail, Ambala on 4.6.2015 where he is presently undergoing the sentence.

3. Feeling aggrieved and dissatisfied by the impugned order of conviction and sentence as also by the confirmation of rejecting his pre confirmation petition he laid a challenge by filing an appeal under Section 15 (2) of the Armed Forces Tribunal Act, 2007 (in short 'the Act') which is pending for hearing and adjourned for 2.09.2015.

4. As an interim relief, the petitioner has prayed for suspension of sentence under Section 15(6)(e) of the Act.

5. In their reply, the respondents have objected to the suspension of sentence as the petitioner did not exhaust the remedy provided under Rule 164(2) of the Army Rules.

6. We have heard the learned counsel for the parties and have carefully gone through the record.

7. The main petition stands admitted for hearing and upon notice served upon the respondents, they have also filed their reply.

8. Shri Karan Nehra, learned counsel for the respondents vehemently argued that offences charged against the petitioner are of serious nature. The petitioner, who is Army personnel, mis-conducted himself in such a way which is against the military discipline. The evidence on record totally connects him with the alleged offence not only by the prosecutrix as well also by his subsequent conduct by admitting his guilt to various other persons and had apologized for his act and conduct which lends further support to the prosecution case.

The prosecutrix, was a newly married woman of 20 years and her husband was hospitalized. It is also submitted that once sentence of imprisonment is suspended, the petitioner may not turn up to face the remaining part of the sentence.

9. On the other hand, Shri N.K. Kohli, learned counsel for the petitioner, submitted that the main petition may take time in its disposal and the petitioner will languish in jail unnecessarily, in case. he is ultimately found to be not guilty of the offences aforesaid and there exists sufficient grounds to conclude so, from the evidence adduced. It is also argued that to exhaust the alternative remedy is not *sine qua non* to file an application/ appeal under Section 15(2) of the Act. Therefore, when the OA has been admitted for hearing and more specifically the sentence is less than three years, it is within the power and ambit of the Tribunal to suspend the substantive sentence of imprisonment on the reasonable terms and conditions.

10. We have critically examined the rival contention of the parties and have gone through the legal aspects.

11. Section 15(6) (e) of the Act empowers the Tribunal to suspend the sentence of imprisonment when an appeal has been preferred under Section 15(2) of the Act within the prescribed time, which is his statutory right. Otherwise also when a convicted person is sentenced to a fixed period of sentence and he files appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are exceptional circumstances to deny it. Otherwise, the very valuable right of appeal would be an exercise in futility by efflux of time as held by the Hon'ble Supreme Court in **Bhagwan Rama Shinda Gosai v. State of Gujrat** 1999 AIR (SC)

1859; and also that when the appellate Court finds that due to practical reasons such appeals cannot be disposed of expeditiously. It is also held that The appellate Court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right meaningful and effective. Further, the learned counsel has also relied upon the verdicts of the apex Court in Angana v. State of Rajasthan (SC) 2009(2) RCR (Criminal) 51 and Kanaka Rekha Naik v. Manoj Kumar Pradhan (SC) 2011 (1) RCR (Criminal) 894 to buttress his point that suspension of sentence is to liberally construed by the Court unless there are exceptional circumstances which exist to deny this relief to the accused/ convict.

12. In this case the appeal has been preferred within time, and there is no likelihood of hearing of the OA at the earliest because of the pendency of quite old cases. We have also judiciously considered on the relevant factors, like gravity of offence, nature of crime, age, antecedents and the time spent in custody/ Jail by the petitioner, his roots in society, impact on public confidence in Court. We can also ensure the presence of the petitioner and see that he serves out the remaining part of sentence, by imposing reasonable conditions.

13. Keeping in view the settled law and the facts involved, we allow the interim prayer and suspend the sentence, of remaining part of imprisonment of the petitioner, till the decision of main application/appeal, subject to furnishing a bond in a sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the Commanding Officer (C.O.) of Western Command Composite Signal Regiment, on the following terms and conditions:

- i) The petitioner shall present in the Court/ Tribunal or its command on all dates of hearing, including the dates fixed before the Registrar of this Tribunal, unless exempted;
- ii) The petitioner shall also furnish an undertaking in his personal bond that in case of dismissal of the appeal he would immediately surrender before the Tribunal/ Judicial/ Army authorities as may be directed by the Tribunal in this appeal.

14. Let a copy of this order alongwith the specimen of bond(s) be sent to the Commanding Officer aforesaid by the Registrar of this Tribunal, under the seal of his office, by speed post for information and necessary action at his end with the direction:

- a) that C.O. would accept and attest the surety bond of the surety, while doing so he would attest his photograph to be pasted on the surety bond and receive the details of his property duly certified from the revenue authority to show his worth and his undertaking to produce the petitioner as ordered;
- b) The C.O. shall thereafter send the release order alongwith the personal bond of the petitioner, to the Superintendent, Central Jail, Ambala;
- c) The C.O. on the receipt of personal bond of the petitioner from Superintendent Jail duly attested and accepted, shall send it alongwith surety bonds aforesaid to this Tribunal under the forwarding letter addressed to

Registrar of this Tribunal to tag it, with OA (Appeal) 608 of 2015 which is fixed for 2.9.2015.

d) Registry shall also send the copy of this order by Speed Post to the C.O. aforesaid and Records office concerned for information.

15. In case of any doubt by the executing authorities they may contact for further details to the Registrar of this Tribunal Shri Vijay Kumar Bawa on his office Telephone No. 0172-2554219.

16. Copy of this order be supplied *dasti* to the learned counsel for the parties.

(Justice Surinder Singh Thakur)

(Lt Gen DS Sidhu (Retd))

25.08.2015

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Whether for reference this order is to be put on internet Yes/ No