

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : O.A. 74 of 2013

APPLICANT (S)	Ex Sub Maj Jagmal Singh
RESPONDENT (S)	<u>Union of India & 3 Ors</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. Rajiv Mangalik/Mr. Suman Basu	Mr. Sudipto Panda

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u> Order Sl. No. : <u>2</u> Dated : <u>27.09.2013</u>
	<p>Mr. Rajiv Mangalik, learned counsel appearing for Ex sub Maj Jagmal Singh, the appellant, submits that in this appeal he has prayed for the appellant's enlargement on bail during the pendency of the present OA, on suspension of sentence so imposed upon him in a General Court Martial (GCM) proceedings.</p> <p>2. In support of his prayer for bail, he has strenuously endeavoured to highlight certain procedural lapses leading to serious irregularities/illegalities in the GCM proceedings impugned. He invites our attention to the contents of the complaint lodged by the aggrieved husband of PW5 and submits that, even though the appellant was charged and convicted for commission of adultery or sexual intercourse with the complainant's wife, there is no whisper about the adulterous conduct of the appellant within the four corners of the complaint, which is the basic document and sets the law into motion in the GCM proceedings. According to him, there are specific allegations of blackmailing and outraging the modesty of the victim only. Therefore, the appellant ought not to have been</p>

	<p>charged and convicted for commission of an offence u/s 497 IPC.</p> <p>3. That apart, cognizance of an offence punishable u/s 497 IPC can only be taken upon a complaint made by the aggrieved husband. Since there is no complaint alleging specifically commission of sexual intercourse by the appellant with the wife of the complainant, cognizance in respect of an offence u/s 497 IPC was taken in violation of the Section 198 Cr.P.C. In this context he refers to a ruling of the Division Bench of the Hon'ble Calcutta High Court reported in 1986 Cr.L.J. Cal 563 (Ananda Singh Bishit, ...petitioner –vs- Union of India & Ors) and argues that while interpreting section 5 of Cr.P.C. in the context of applicability/exclusion of the provisions of the Criminal Procedure in respect of trial of an offence under any special Act, it is observed inter alia therein that the relevant provisions of Cr.P.C. are applicable to a trial under the Special Act so long it does not 'affect' the Act. In such view of the matter, the trial before the GCM stands vitiated <i>ab initio</i> since cognizance taken in respect of an offence u/s 497 IPC is bad in law.</p> <p>4. It is further submitted by him that the deposition of PW 5, the married wife of the complainant, if taken as a whole, would clearly establish that there are ingredients of an offence of rape and not adultery. But the charge u/s 376 IPC has deliberately been omitted since Section 70 of the Army Act strictly prohibits the trial in respect of commission of an offence of <u>rape</u> by a court martial.</p> <p>5. By pointing out all these legal infirmities, Mr. Mangalik, Id. advocate for the appellant has sought to seriously assail the legality/validity of the GCM proceedings impugned. It is, therefore, forcefully contended by him that since the question of civil liberty of an individual is involved and there are sufficiently strong grounds to form an opinion prima facie that the entire GCM proceedings are not legally tenable and resultantly the</p>
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	<p>conviction of the appellant cannot be sustained lawfully, the Tribunal, in exercise of its judicial discretion, should release the appellant on bail on suspension of sentence of imprisonment under challenge to safeguard the personal liberty of the appellant.</p> <p>6. Such submission of Mr. Mangalik, Id. counsel for the appellant, is strongly disputed by Mr. Sudipto Panda, Id. advocate for the respondents. By referring to the testimony of PW 5, the wife of the complainant, it is submitted by him, that the married lady had been pressurized and subjected to frequent sexual intercourse with the appellant who resorted to blackmailing even by extending a threat of revelation of her indecent and objectionable photographs which were taken by clicking his mobile. Since such serious allegations of committing adultery/sexual intercourse with the wife of his subordinate officer frequently have been proved beyond reasonable doubt against the appellant in the GCM proceedings, his enlargement on bail on suspension of sentence of imprisonment is not legally justified. More so, whenever the appellant, who is no longer in service consequent upon an order of dismissal passed in the GCM proceedings, is detained in civil prison for even less than two months only. The prayer for bail is, therefore, vehemently opposed by Mr. Panda on behalf of the respondents. He has, however, no objection if the appeal itself is heard and disposed of as expeditiously as possible.</p> <p>7. We have very meticulously taken into consideration rival contentions of the Id. counsel for the parties, in the light of evidence and circumstances as have been made available to us from the GCM proceedings in original, produced before the Tribunal. Arguments challenging the legality/ validity of the GCM proceedings so advanced by Mr. Mangalik are to be definitely taken into consideration during the final hearing of the appeal</p>
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itself. In our considered view, for the purpose of consideration of the appellant's prayer for bail, technical flaws in the GCM proceedings, as sought to have been highlighted by Mr. Mangalik, Id. advocate, are of no consequence. More so, whenever on conclusion of a full fledged trial and on proper evaluation of evidences and other relevant materials and circumstances on record, the convict/appellant was sentenced to suffer RI for two years and a half coupled with an order dismissal from service by the GCM. We, however, refrain from making any observation even tentatively on the issue of legality/illegality of the GCM proceedings under challenge at the stage of bail hearing.

8. In such view of the matter, having regard to the extremely grave and serious nature of charge u/s 497 IPC committed by the appellant and convicted thereunder together with the quantum of punishment so inflicted upon the convict appellant and the period of detention already suffered by him as also the weight of evidence so adduced on behalf of the prosecution, we are to opine that it would not be fit and proper in the facts and circumstances of the present case to release the convict appellant on bail on suspension of the sentence of imprisonment pending hearing of the appeal. Accordingly, the prayer for bail stands refused at this stage.

9. On the question of expeditious hearing of the appeal, it is agreed by both sides that since the filing of the A/O and A/R is not necessitated from either of the sides, an early date for hearing of the appeal may be fixed as per convenience of the court's diary. In view of such agreed submission of the parties, respondents are directed to cause production of all the relevant documents e.g. the complaint, court of inquiry proceedings, summary of evidence, GCM proceedings, confirmation and promulgation orders etc. within six weeks from this date. Some

of the documents pertaining to GCM proceedings produced in original, however, be retained in the safe custody of the Id. Registrar of this Tribunal till the next date of hearing.

10. Let the appeal be fixed for final hearing on 19.12.2013 as agreed by both sides.

11. To 19.12.13 for hearing.

12. A plain copy of the order duly countersigned by the Tribunal Officer be furnished to the parties upon observance of all usual formalities.

(LT. GEN K.P.D.SAMANTA)
MEMBER(A)

(JUSTICE RAGHUNATH RAY)
MEMBER(J)