

APPLICATION No. O.A.No.45/2013

APPLICANT (S)	RFN Surinder Kumar
RESPONDENT (S)	Union of India & 4 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Miss Manika Roy	Mr. Anup Kumar Biswas

	<p style="text-align: center;"><u>ORDERS OF THE TRIBUNAL</u></p> <p><u>Order Serial Number:</u> <u>1</u> <u>Dated :</u> 13.06.2013</p>
	<p>Miss Manika Roy, learned counsel appears on behalf of the appellant Rfn. Surinder Kumar. Mr. Anup Kumar Biswas, learned counsel files his memo of appearance on behalf of the respondents. Let the memo of appearance be kept with the record.</p> <p>The OA is taken up for admission and also for hearing of the prayer for interim bail as made by the appellant in para 9 of the OA. In support of the prayer for admission of this appeal under Section 15 of the Armed Forces Tribunal Act, 2007 (AFT Act, 2007), it is submitted by Miss Roy that the findings dated 13.05.2013 and the sentence of the trial dated 13.05.2013 and also review dated 13.05.2013 and promulgation dated 13.05.2013 have been challenged in this case. It is, therefore, submitted by her that pending hearing of this appeal, the accused should be released on interim bail since he has already suffered detention for about a month. According to her, order of imprisonment and dismissal is not sustainable in view of the fact that the victim in this case failed to submit any written complaint before the GRPF even though the incident as alleged took place inside the AC-3 Tier compartment of Darjeeling Mail. Furthermore, since the complaint was made orally before the CO of the Unit where the appellant was posted, over telephone, there was a serious procedural lapse and as such, such oral complaint is not entertainable legally. That apart, the entire findings of the SCM are based upon solitary statement of the victim herself. Even co-passengers who are material eyewitnesses have also not been examined to corroborate her</p>

statement. Since an offence under Section 354 IPC as alleged against the appellant is bailable, there is no justification in refusing the prayer for interim bail. Therefore, it is forcefully submitted by her that this is a fit case where the interim bail should be granted in favour of the appellant.

The prayer for bail is, however strongly, opposed by Mr. Biswas on the ground that the disposal of the appeal may be delayed if the applicant who is already dismissed from service is granted interim bail. There is every chance of his abscondence impeding the process of administration of justice. It is further contended by him that women related offences should not be dealt with leniently since there has been a sharp rise of such offences eroding the values of the society. Therefore, he submits that the bail should be refused in this case.

Having heard both sides and meticulously considered the materials and circumstances on record, as also the nature of offence as alleged against the accused in the light of the rival submissions advanced by the counsel of both sides, coupled with quantum of punishment awarded, we are to opine that it would be fit and proper not to refuse the prayer for interim bail at this stage. However, we are inclined to impose suitable condition to ensure speedy disposal of the appeal. Accordingly, the prayer for interim bail stands allowed on imposition of suitable conditions.

The appellant Surinder Kumar may furnish a bail bond of Rs. 5,000/- (Rupees five thousand) only with one local surety of like amount who should be a serving defence personnel of the same unit to the satisfaction of the Station Commander, Kolkata on condition to report to the suitable officer as deputed by the Station Commander once a week until further order. The sentence of imprisonment be suspended pending hearing of the appeal as per Section 15(6)(e) of the AFT Act, 2007.

On submission of bail bond in terms of above order before the Station Commander, it would be scrutinized and accepted by the Station Commander, if it is in order. Thereafter the Station Commander would proceed to issue release order in favour of the appellant.

The Station Commander is further directed to submit a comprehensive compliance report together with the photocopies of the bail bond, so furnished before him and accepted by him before the next date of hearing.

The respondents are allowed four weeks' time to file their affidavit-in-opposition, as prayed for. The appellant is also allowed two weeks' time thereafter to file his affidavit-in-reply.

The respondents are directed to submit the SCM proceedings in original along with the relevant records of Court of Inquiry, JAG Review Report and all other connected documents, if any, within six weeks. Miss Roy, learned counsel for the appellant is at liberty to inspect these documents, excepting the JAG Review Report, with prior notice to the learned Registrar of this Tribunal in the presence of a Tribunal Official so deputed by the learned Registrar in the meantime. It is further made clear that the respondents shall file the JAG Review Report in a separate sealed cover for perusal of the Bench only.

The surety must ensure the attendance of the appellant on each and every date of hearing before this Court.

Let the matter be listed for further order on 12.08.2013.

A plain copy of the order, duly countersigned by the Tribunal Officer, be supplied to both parties on observance of usual formalities.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)