

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

MA-17/2015

(In OA(A)-18/2015)

Ex-Nk Biswajit Biswas

Applicant

**By legal practitioners for
Applicant**

Mr. Debasish Chattopadhyay

- Versus -

- 1) The Union of India, Service through the Secretary,
Ministry of Defence, New Delhi-110011,
- 2) The Major General, General Officer Commanding, 2 Mountain
Division. C/o 99 APO,
- 3) The Colonel Commanding Officer, 9 Parachute Field Regiment,
C/O 99 APO,
- 4) IC 73296M, Major Monal Pashine, Assistant Judge Advocate
General, Headquarters, Eastern Command,
- 5) IC 54022M, Colonel Manoj Singh 1822 Light Regiment.

Respondents

**By legal practitioner for
Respondents**

Mr. D. C. Chakravarty, CGSC

P R E S E N T

**HON'BLE MR. JUSTICE N. K. AGARWAL, MEMBER (J)
HON'BLE LT. GEN (RETD) GAUTAM MOORTHY, MEMBER (A)**

01.10.2015

Heard Mr. D. Chattopadhyay, learned counsel for the applicant. Also heard Mr. D. C. Chakravarty, learned CGSC, appearing for the respondents.

(2) The instant Misc. Application has been filed by the applicant for grant of bail.

(3) The facts giving rise to the filing of OA-18 of 2015 as well as the instant bail application (MA-17/2015), are that, the applicant was enrolled in the Indian Army in the month of January,2001. Vide chargesheet dated 31.12.2014 he was chargesheeted for committing a civil offence, i.e., aggravated penetrative sexual assault. Accordingly, General Court Martial (GCM) was conducted and after conclusion of trial, he was awarded with the following sentences on 09.02.2015, (a) Reduction to the rank, (b) To suffer RI for 10 years(c) dismissal from the service. Subsequently, the sentences awarded by the GCM was confirmed under section 164 of the Army Act. It is also not in dispute that presently the applicant/appellant is confined in the civil jail and till now has suffered 128 days of sentence.

(4) Mr.D.Chattopadhyaya, learned Counsel for the applicant/appellant submits that after coming into force of The Protection of Children From Sexual Offences Act, 2012 (hereinafter referred as the Act,2012), the offence in question was required to be tried by Special Court established and not by the Court Martial and therefore, the entire proceedings vitiates. It is further contended that the statement of the victim child was not recorded in accordance with the provisions of the said Act. The Appellant has already suffered 128 days of imprisonment and in this circumstances, he may kindly be enlarged on bail.

(5) On the other hand, Mr.D.C.Chakravarty, learned CGSC, appearing for the respondents, submits that the authority has been obtained for Court Martial under section 25 of the Army Act and the Act of 2012 does not prohibit trial by GCM. However, the proceedings have been conducted taking into consideration of the provisions of the Act of 2012 and therefore, the trial of the applicant/appellant by the Court Martial is perfectly legal, and conviction awarded is based on proper appreciation of evidence. It

is further contended that the offence committed by the applicant/appellant is heinous and very serious in nature which affects society at large and therefore, the applicant/appellant should not be granted bail and the application may kindly be rejected.

(6) We have gone through the provisions of the Act of 2012 and also sections 69 and 125 of the Army Act, 1950. The Act of 2012 was promulgated to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. As per section 28 of the Act, the State Government shall, in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Sessions to be a Special Court to try the offences under the Act.

(7) Section 33 of the Act of 2012 provides the procedure and power of Special Court and mode and manner of recording of evidence. Section 69 of the Army Act, 1950 (hereinafter referred as the Act of 1950) defines Civil Offence. Undisputedly, the offence in question is civil offence within the meaning of Section 69 of the Act of 1950. Section 125 of the Act of 1950 confers discretion on the Officer commanding the army, army, corps, division or independent brigade in which the accused person is serving, to choice of trial of accused between Court Martial and Criminal Court, and after exercising the aforesaid discretion, the accused was tried by GCM. There is no provision in the act of 2012 prohibiting trial of the appellant by Court Martial, as mentioned in the Act of 1950 which itself is a special Act, and therefore, we are unable to accept the argument advanced by the learned Counsel for the applicant/appellant that the applicant/appellant's trial by GCM vitiates, for the reasons as aforementioned.

(8) It is a settled rule of interpretation that the Criminal Court includes Special Court.

(9) Coming to the next question, the offence involved in the instant matter is very heinous in nature which affects the entire society, and hence, in our considered opinion, the applicant/appellant is not entitled for grant of bail.

(10) The application (MA-17/2015) for grant of bail is liable to be and is accordingly dismissed.

(11) The Misc. Application No.MA-17 of 2015 accordingly stands disposed of on contest.

MEMBER(A)

MEMBER(J)

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