COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

108.

OA 1369/2025

Mahesh Kumar (Presently In Army Custody) ..... Applicant
Through His Wife Ms Lata Arya (Pairokar)
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Mohan Kumar, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate
Mr. Ankush Kapoor, Advocate

CORAM
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R
30.05.2025

OA 1369/2025

Invoking the jurisdiction of this Tribunal under Section 15(3), 15(6)(d),(e),(f) of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the only prayer made is to grant bail/parole or suspension of sentence.

2. The applicant was put to trial in a Court Martial and the charge for which the applicant was put to trial was an offence under Section 69 of the Army Act and the allegation against the applicant reads as under:

First Charge Army Act Section 69	*COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE,*

in that he,

> *on the intervening night of 01/02 May 2021, while travelling from Howrah to New Delhi, in Coach No B-8 in Train Number 02301 Howrah-New Delhi AC Special, inserted his hand inside the pajama of Mrs ABC wife of Naik XYZ of 23 Field Workshop Electrical and Mechanical Engineers (EME) with intent to touch her genitals while she was sleeping on her berth number 61 in the said coach, thereby using criminal force to a woman with intent to outrage her modesty.*

3. On trial, the Court has found him guilty of the first charge as detailed hereinabove and he has been punished with imprisonment for three years and dismissal from service.

4. The proceedings of the Court Martial are yet to be confirmed by the Competent Authority and in accordance to the provisions of the Army Act and without waiting for the confirmation, the applicant has invoked the jurisdiction of this Tribunal.

5. It is the case of the applicant that for preparing a petition under Section 164, the applicant has to meet a lawyer, discuss the matter and, therefore, he should be granted bail. It is further stated that the sentence of imprisonment is only for three years and the applicant has been in custody for about 519 days.

6. On notice being issued, the respondents have raised an objection, they contended that until and unless the confirmation is not done, the trial is not complete and without the trial being not complete, the punishment is not given effect to and therefore, the appeal itself at this stage is not maintainable. They further submitted that the confirming authority can reduce the jail sentence or modify the punishment to a lesser one. They further submitted that the applicant has only being in custody for 310 days.

7. Looking to the seriousness of the allegation levelled which is a conduct unbecoming for a man in uniform, the respondents raised serious objection with regard to maintainability of this application. They also submitted that for the purpose of preparing a petition under Section 164 of the Army Act, the applicant will be granted all facilities to meet his lawyer, discuss with him and prepare the petition under Section 164. Under these circumstances, the respondents object to grant of any relief to the applicant.

8. Having heard learned counsel for the parties, we are of the considered view that as the punishment and sentence is yet to be confirmed and the confirmation proceedings are still awaited, at this stage, entertainment of the application

particularly looking to the serious nature of allegations found to be proved in the trial, no case is made out for intervention.

9. That apart, respondents have made a statement that the confirmation proceedings shall be concluded within a period of 15 days. That being so, we dispose of the OA with liberty to the applicant to invoke the appellate jurisdiction of this Tribunal after the confirmation proceedings are over. However, for preparation of the confirmation petition, if required, facility to the petitioner to meet the lawyer and brief him should be arranged.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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