

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

118.

OA (Appeal) 2032/2024

Hav/Clk (SD) Bhim Singh thru Pairokar Sh Raj Kumar	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Satya Saharawat, Advocate and Ms. Aditi Laxman, Advocate
For Respondents	:	Mr. K K Tyagi, Sr. CGSC

WITH

119.

RA 48/2024 WITH OA 2032/2024

Union of India & Ors.	Applicant
Versus		
Hav/Clk (SD) Bhim Singh thru Pairokar Sh Raj Kumar	Respondents
For Applicant	:	Mr. K K Tyagi Sr CGSC
For Respondents	:	Mr. Satya Saharawat, Advocate Ms. Aditi Laxman, Advocate

CORAM

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

O R D E R
24.09.2024

OA (Appeal) 2032/2024

Learned Sr. CGSC for the respondents prays for and is granted six weeks' time to file counter affidavit. Rejoinder, if any, may be filed within two weeks thereafter.

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2. The applicant is currently out on bail pursuant to the order passed by this Tribunal on 06.08.2024. The

respondents have filed this Review Application under Section 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, seeking a review and recall of the bail order passed by this Tribunal on 06.08.2024 wherein it is alleged that the applicant made a false statement regarding the period of custody and, on that basis, argue that the bail order should be recalled. In the counter affidavit, the respondents contend that the applicant falsely stated that he had been in pre-trial custody for 74 days and sought bail on the ground that he had served half of his jail sentence.

3. Even assuming that the applicant made an incorrect statement regarding the pre-trial custody period and even if the 74 days period is excluded from the applicant's custody duration, we are of the considered view that there is no necessity to recall or modify the order granting bail. This is because the sentence of imprisonment and the grant of bail remain valid in the light of the law laid down by the Hon'ble Supreme Court in *Vishnubhai Ganpatbhai Patel & Anr. Vs. State of Gujarat* [Criminal Appeal No. 3415/2023, SLP (Criminal) No. 12853/2023, decided on 03.11.2023]. The Supreme Court explicitly held that there is no legal principle or precedent requiring a person to undergo more than 40% or 50% of their sentence before being eligible for bail. The

court, considering the facts and circumstances of each case, can suspend the sentence for a shorter period. Taking into account the totality of the circumstances in this case, we find no ground to recall or modify the bail order based on the arguments presented in this application.

4. However, we direct that notice be issued to the applicant with respect to the review application, limited to explaining why he made a false statement regarding the 74 days pre-trial custody period in his pleadings. If we find the applicant's statement to be incorrect, we may proceed against him for making a false statement on affidavit before this Tribunal as such conduct is impermissible under Section 340 of the CrPC.

5. We further clarify that we have not stayed the applicant's conviction but merely suspended the jail sentence. Therefore, the respondents' apprehensions in this regard are unfounded.

6. Additionally, it is noted that the confirmation proceedings regarding the sentence have not yet been undertaken. Consequently, should the applicant's presence be required at the time promulgation of sentence, he shall be present before the Competent Authority upon receiving notice thereof.

7. List again on 27.11.2024.
8. A copy of this order be given ***DASTI'*** to both the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps