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**ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

OA/377/2010

WG CDR HS VIRK

...APPELLANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT.GEN. Z.U.SHAH, MEMBER**

ORDER
10.06.2010

Present : Sh. Rajiv Manglik, Advocate for the appellant.

Ms. Jyoti Singh, Advocate for respondents.

An application purporting to be under section 15(3) of the Armed Forces Tribunal Act has been moved from the side of the appellant for admitting him on bail. It is submitted that he was tried by Court Martial for as many as 18 charges and in some of the charges his culpability was fixed and he was awarded sentence of dismissal from service. He is in close arrest from 09.03.2010. No imprisonment was awarded to him. In the given circumstances, case for the detention is said to be unwarranted. However, application was resisted from the side of Union of India contending that the rules permit detention/close arrest till the findings/order of the Court Martial are confirmed under Section 152 of the Air Force Act. There is no dispute with regard to the rule position that it would be difficult to divorce the order of sentence of imprisonment from the confirmation, for without confirming the order of sentence have no legal subsistence. But here no imprisonment was awarded by the Court Martial though it still remains subject to revision by the appropriate authority. The factual position as on today is that there is no order of imprisonment. In that backdrop application is considered.

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However, arguments were also advanced from the side of respondents that the close arrest of the petitioner was made keeping in view his desperation which is well reflected in the order of the close arrest dated 09.03.2010. In that order it has also been mentioned that his close arrest is "*with an aim to prevent him from doing any further damage to himself or other person or to the property around him.*" Though it is said he is not a psychiatric patient and his correspondence would reveal him to be in a fit state of mind, at the moment, this issue is not required to be looked into. To call a man desperate is to affix desperate adjective to stigmatic a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available. However the father of the petitioner also undertakes that he will take care of his son and there would not be any hazard to him and the community around him.

Keeping in view the sentence awarded to the petitioner and also the undertaking to be given by the father of the petitioner, the petitioner/appellant be admitted on bail and to be permitted to proceed on leave subject to furnishing personal bond at the place of his detention for the amount of Rs.25,000/-, wherefrom the original personal bond after retaining its copy shall be sent to this Bench for record and also subject to his furnishing two sureties of the like amount to the satisfaction of the Principal Registrar of this Bench with the undertaking that the petitioner shall report to the appropriate authority on 29.06.2010 and also separate undertaking from the father of the petitioner that he would take care for the personal safety of the petitioner and also of other persons. **Application is disposed off accordingly. Order be given Dasti.**

Z.U.SHAH
(MEMBER)

S.S.KULSHRESTHA
(MEMBER)