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IN THE HON'BLE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

In Re: Criminal Writ Petition-7769-2022

In Miscellaneous Application-1277-2020

In Original Application (Appeal)-329-2017

AMENDED MEMO OF PARTIES

Ex. Lance Dafadar Narinder Singh, Army No. 1548244N, aged 42 years, son of Pritpal Singh, of 62 Cavalry resident of Dehbalmanj, Police Station and Tehsil Mukerian, Post Office- Dehbalmanj District- Hoshiarpur PIN-144306.

(Now confined in Central Jail, Hoshiarpur)

.....Petitioner

Versus

1. Union of India, Ministry of Defence, South Block, New Delhi, through its Defence Secretary. PIN-110011.

   Email id- defsecy@nic.in

2. General Officer Commanding, 11 Corps C/O 56 APO. PIN 912662.

   Email id- webmaster.indianarmy@nic.in

3. Commander, 55 (Independent) Mechanized Brigade, C/o 56 APO. PIN-912662.

   Email id- webmaster.indianarmy@nic.in

4. Commandant, 62 Cavalry, C/o 56 APO,. PIN-912662.

   Email id- webmaster.indianarmy@nic.in

5. Armed forces tribunal, Chandigarh Regional Bench, Chandimandir; through its Registrar, PIN- 134107
   Email id – aftdelhi@rediffmail.com

....Respondents

Place: Chandigarh
Dated: 19-08-2022

(Gurinder Singh Ghuman) (Harkirat Singh Ghuman)
Counsels for the petitioner
P-1491/1998 P-947/2007
NOR- PH221778 PH221959

For issuance of writ in the nature of certiorari under Article 226 read with Article 227 of the Constitution of India, whereby setting aside/ quashing the order passed by of the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir, i.e. Respondent No-5; whereby rejecting the miscellaneous application for concession of suspension of sentence and to enlarge the petitioner to bail vide its order passed in MA-1277-2020 in OA (Appeal) 329-2017 dated 28-07-2022. i.e. Annexure P-1 And/Or;

For issuance of writ in the nature of mandamus under Article 226 read with Article 227 of the Constitution of India, whereby, directing, ordering or commanding the respondents, to grant the concession of suspension of sentence and to enlarge the petitioner to Bail under Section 15 (6) (e) of the Armed Forces Tribunal Act, 2007 read with Section 389 of Code of Criminal Procedure, during the pendency of the appeal. And/Or;

The petitioner be exempted from filing the certified copies of Annexure P-2, Annexure P-3, Annexure P-4, and Annexure P-5 along with Annexure A-1 to Annexure A-12. However, typed/ photocopies of Annexure P-2, Annexure P-3, Annexure P-4 and P-5 along with Annexure A-1 to Annexure A-12 be accepted in the interest of justice.

For issuance of any order, direction or command, which the Hon'ble High Court, deems fit and appropriate, under the facts and circumstances of the case.

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2024:PHHC:066619-DB

CRWP-7769-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRWP-7769-2022
Date of Decision: 13.05.2024

Ex. Lance Dafadar Narinder Singh, Army No.1548244N

....Petitioner

Versus

Central Government and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. G.S. Ghuman, Advocate
for the petitioner.

Mr. Rohit Verma, Advocate
for respondents No.1 to 4-UOI.

Mr. Saurav Arora, Addl. A.G, Punjab.

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SUDHIR SINGH, J. (Oral)

1. The petitioner has filed the instant petition under Article 226 read with Article 227 of the Constitution seeking issuance of writ in the nature of Mandamus for directing the respondents to grant the concession of suspension of sentence and to enlarge the petitioner to bail under Section 15 (6) (e) of the Armed Forces Tribunal Act, 2007 read with Section 389 of the Code of Criminal Procedure during the pendency of the appeal.

2. The petitioner was convicted under Section 69 of the Army Act, and vide order of sentence dated 20.07.2016 (Annexure A-4A), he was sentenced to undergo life imprisonment.

3. Custody certificate dated 06.05.2024 has been tendered, in course of hearing, by learned State counsel. The same is taken on record.

4. The case of the prosecution was that the deceased found the petitioner doing unnatural sex as a result whereof, a scuffle took place, in which, the petitioner had fired three rounds upon the deceased. The deceased succumbed to the injuries suffered. The petitioner was convicted and sentenced, as noticed above.

5. Learned counsel for the petitioner has submitted that the petitioner has already undergone an actual sentence of 08 years, 09 months and 03 days (as on 06.05.2024). Appeal is not likely to be taken up in near future. It has been further submitted that the petitioner never misused the benefit of parole granted to him. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in ***"Ash Mohammad versus Shiv Raj Singh and others (2012) 9 SCC 446"*** wherein it has been held that period of custody is relevant factor for considering suspension of sentence. Reliance has also been placed upon ***"Bhagwan Rama Shinde Gosai and Others Vs. State of Gujarat (1999) 4 SCC 421"***, wherein the Hon'ble Supreme Court has held that suspension of sentence can be considered by the Appellate Court liberally unless there are exceptional circumstances.

6. Learned State counsel has opposed the prayer for grant of bail to the petitioner.

7. In view of the aforesaid facts and circumstances and considering the fact that the petitioner has already undergone actual sentence of 08 years, 09 months and 03 days (as on 06.05.2024) and the appeal is not likely to be taken up for hearing in near future, we deem it appropriate to suspend the sentence of the petitioner. Consequently, the petition is allowed and sentence of the petitioner, is suspended during the pendency of the appeal. He shall be released on bail subject to his furnishing bonds to the satisfaction of the Chief Judicial Magistrate, Hoshiarpur/Registrar, Armed Forces Tribunal Regional Bench, Chandigarh.

8. It is made clear that the observations made above shall not be construed as an expression of opinion on the merits of the case.

9. Accordingly, the instant petition stands disposed of.

10. All pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

13.05.2024
Himani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

Express/Urgent/Ordinary Petition No. 1639887
Date of presentation of Application 13/05/24
No. of Pages of Documents 5
Total No. of pages issued against Petition
Per page Charges
(1) Express (Initial fee Rs.200/- upto 10 pages and Rs. 20/- per page thereafter)
(2) Urgent (Initial fee Rs.100/- upto 20 pages and Rs. 5/- per page thereafter)
(3) Ordinary (Initial fee Rs.50/- upto 10 pages and Rs. 2/- per page thereafter)
Total Cost Rs.
Advance Deposited
Recovery
Registration & Postage Charges
Date of notification of the defects
Date of rectification of defects
Date of preparation of Copy 17/05/24
Date of Delivery of Copy

17/05/24

17/5/2024

Seal of the High Court of Punjab and Haryana
सत्यमेव जयते

17-05-2024