

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

LPASW No. 160/2009
CMA No.214/2009

Date of decision: 25.07.2012

Union of India and ors.

V. Mukesh Kumar

Coram:

Hon'ble Mr. Justice J.P.Singh, Judge.

Hon'ble Mr. Justice Hasnain Massodi, Judge.

Appearing Counsel:

For Appellant(s) : Mr. R. Koul, CGSC.
For Respondent(s) : Mr. Sunil Sethi, Sr. Advocate with
Mr. Ravi Abrol, Advocate.

i) Whether approved for reporting in Press/Media : Yes/No.
ii) Whether to be reported in Digest/Journal : Yes/No.

JUDGMENT

J.P. Singh-J :

This Letters Patent Appeal is directed against the order dated 2-9-2009 of a learned Single Judge of this Court whereby the respondent was ordered to be admitted to bail pending consideration of his Writ Petition SWP No. 1362/2009, questioning the conviction and sentence awarded by the Summary General Court Martial under sections 69 of the Army Act, contrary to sections 456 and 354 of the Ranbir Penal Code.

The respondent was admitted to Bail by the learned Single Judge on the solitary ground of his having been in custody for more than two years, when the punishment awarded to him was only two years. The learned Single Judge, therefore, did not comment on the merits of the legality or otherwise of the conviction and sentence awarded by the Summary General Court Martial.

Appearing for the appellants, Mr. Koul, the learned Central Government Standing Counsel submitted that the respondent remained in custody for a total period of 31 (Thirty One) days and the learned Single Judge had erred in admitting him to Bail on a factually incorrect basis and the order was, therefore, liable to be set aside.

Per contra, Mr. Sethi learned Senior Counsel appearing for the respondent would say that the respondent had all along been in custody and his release pending disposal of the Writ Petition against his conviction and sentence was justified in law as also in the facts and circumstances of the case because the period spent by him during the trial had to be set off in terms of the provisions of Section 169-A of the Army Act.

We have considered the submissions of the learned counsel for the parties and gone through the material available on records.

Perusal of the order of the learned Single Judge reveals that the respondent was admitted to Bail by the learned Single Judge without going into the merits of his challenge to the conviction and sentence awarded by the Summary General Court Martial and all that had weighed with the learned Single Judge was that if the period spent by the respondent during trial had to be taken note of, his further detention would go beyond the period for which he was sentenced by the Summary General Court Martial.

It is true that the period spent by a person in Civil or Military custody during investigation, inquiry or trial before the order of sentence is required to be set off against the term of imprisonment imposed by the Court under the Army Act and the sentence is restricted to the remainder, if any, of the term of imprisonment imposed on a person in terms of the provisions of Section 169-A of the Army Act but the respondent cannot derive any benefit of the provisions of Section 169-A referred to by his learned

counsel, for, we do not find any material on records on the basis whereof it be said that the respondent was in custody, Civil or Military, during investigation, inquiry or trial except for 31 (Thirty One) days.

The learned Single Judge has committed a factual error in treating the respondent to have been in custody for over a period of two years because neither was any such plea in the respondents' Application on the basis whereof it could be said that he was in custody for more than the period of sentence awarded to him nor would the documents produced by him on records justify the ground on which he was admitted to Bail. On the other hand, the records of the appellants are specific to the effect that the respondent had remained in civil custody for 9 (Nine) days and in military custody for 22 (Twenty Two) days, thus, making the total days of his custody to 31 (Thirty One) days.

The view taken by the learned Single Judge that the respondent had been in custody beyond the period of sentence awarded to him is, therefore, found to have been taken on a factually incorrect basis.

We, therefore, allow this Appeal, set aside the learned Single Judge's order dated 2-9-2009 and direct the respondent to surrender to custody forthwith.

The Registry is directed to post the respondent's Writ Petition SWP No. 1362/2009 for final disposal before the appropriate bench in week following the next so that the Writ Petition itself was decided on merits at the earliest.

(Hasnain Massodi) (J.P. Singh)
Judge Judge

JAMMU
25.07.2012
Naresh/Pvt. Secy.