



**HIGH COURT OF TRIPURA
AGARTALA**

**I.A. No.1 of 2026
in WP(C) No.771 of 2026**

Sri Shivkaran Yadav,
S/o Shivpal Yadav, R/o Mahant Ki Dhani,
Parasrampura Village, P.O.: Parasrampura,
P.S.: Nawalgarh, District: Jhunjhunu,
PIN: 333308, aged about: 56 years.

At the time of termination, the petitioner was posted at -49 Battalion
BSF, Fatikchara, West Tripura, PIN: 799211.

----Applicant(s)

Versus

- 1. The Union of India,**
Represented by its Secretary, Ministry of Home Affairs, North Block,
New Delhi.
- 2. The Director General,**
Border Security Force, Block 10, CGO Complex, Lodhi Road, New
Delhi, PIN: 110003.
- 3. The Commandant,** 49 BN BSF, Fatikchara, West Tripura, PIN:
799211.

----Respondent(s)

For Applicant(s)	:	Mr. Ankan Tilak Paul, Adv. Ms. Saswati Nag, Adv.
For Respondent(s)	:	Mr. Bidyut Majumder, Dy. SGI

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

22/10/2026

Heard Learned Counsel, Mr. Ankan Tilak Paul appearing
on behalf of the applicant. Also heard Learned Dy. SGI, Mr. Bidyut
Majumder appearing on behalf of the respondents-Union of India.

2. At the time of hearing, Learned Counsel for the applicant
submitted that the applicant has filed the original writ petition for
setting aside the order dated 07.11.2025 passed by General Security
Force Court (for short, GSFC) and the confirmation order dated
05.12.2025 passed by the respondent authority, which is still pending
for adjudication.

Along with the original writ petition, this present I.A. is filed for suspending the order of sentence imposed upon the applicant till disposal of the original writ petition.

It is submitted that the applicant was found guilty by the BSF Court and he was imposed punishment of dismissal from service with sentence of rigorous imprisonment for 2(two) years under Section 117 and Section 130 of BSF Act. Learned Counsel further submitted that by this time, the applicant has been incarceration in custody for more than 403 days during and after the trial. So, considering the nature of punishment and period of detention, Learned Counsel for the applicant urged this Court for suspending the order of sentence imposed upon the applicant till disposal of the writ petition.

In support of his contention, Learned Counsel relied upon judgment of the High Court of Delhi in **Sarbraj Singh v. Union of India & Ors. [W.P. (C) 2942/2023 & CM APPL. 11477/2023]**, judgment passed by the High Court of Meghalaya in **No.G/5007784K Rifleman (GD) Anil Kumar v. Union of India & 4 Ors. [MC (W.P. CrI) No.1 of 2022 in W.P. (CrI.) No.2 of 2022]** and also the judgment of the Calcutta High Court in **David Masih v. Director General of BSF & Ors.[MAT 745 of 2023 with IA No. CAN 01 of 2023]**.

3. On the other hand, Learned Dy. SGI appearing on behalf of the respondents-Union of India submitted that this petition is not maintainable and there is no scope to interfere with the findings exercising jurisdiction under Article 226 of the Constitution of India.

In support of his contention, Learned Dy. SGI relied upon one judgment of the Hon'ble Supreme Court of India in **Union of**

India & Ors. v. Dalbir Singh reported (2021) 11 SCC 321,

wherein in para No.21, Hon'ble the Apex Court observed as under:

"21. This Court in Union of India v. P. Gunasekaran [Union of India v. P. Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under : (SCC pp. 616-17, paras 12-13)

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;**
- (b) the enquiry is held according to the procedure prescribed in that behalf;**
- (c) there is violation of the principles of natural justice in conducting the proceedings;**
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;**
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;**
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;**
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;**
- (i) the finding of fact is based on no evidence.**

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;**
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;**
- (iii) go into the adequacy of the evidence;**
- (iv) go into the reliability of the evidence;**
- (v) interfere, if there be some legal evidence on which findings can be based;**

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

Learned Dy. SGI also relied upon another judgment of the Hon'ble Supreme Court of India in **Union of India & Ors. v. Major A. Hussain (IC-14827)** reported in **(1998) 1 SCC 537**, wherein in para Nos.22 and 23, Hon'ble the Apex Court observed as under:

“22. We find the proceedings of the General Court-Martial to be quite immaculate where trial was fair and every possible opportunity was afforded to the respondent to defend his case. Rather it would appear that the respondent made all efforts to delay the proceedings of the court-martial. Thrice he sought the intervention of the High Court. Withdrawal of the defence counsel in the midst of the proceedings was perhaps also a part of his plan to delay the proceedings and to make that a ground if the respondent was ultimately convicted and sentenced. Services of qualified defending officer were made available to the respondent to defend his case, but he had rejected their services without valid reasons. He was repeatedly asked to give the names of the defending officers of his choice but he declined to do so. The court-martial had been conducted in accordance with the Act and Rules and it is difficult to find any fault in the proceedings. The Division Bench said that the learned Single Judge minutely examined the record of the court-martial proceedings and after that came to the conclusion that the respondent was denied reasonable opportunity to defend himself. We think this was a fundamental mistake committed by the High Court. It was not necessary for the High Court to minutely examine the record of the General Court-Martial as if it was sitting in appeal. We find that on merit, the High Court has not said that there was no case against the respondent to hold him guilty of the offence charged.

23. Though court-martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court-martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A court-martial has also the same

responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law relating to court-martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court-martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court-martial has jurisdiction over the subject-matter and has followed the prescribed procedure and is within its powers to award punishment."

Referring the same, Learned Dy. SGI submitted that there is no scope to entertain the petition filed by the applicant and the same is liable to be dismissed.

4. Heard both the sides and also perused the writ petition, the interlocutory application and the documents annexed as well as the counter affidavit filed by the respondents-Union of India in the interlocutory application.

5. The applicant has also challenged the order dated 24.07.2026 issued by Directorate General, BSF. Initially, by order dated 16.01.2024, the applicant was awarded punishment to be dismissed from service by Summary Security Force Court (for short, SSFC). Thereafter, the DIG SHQ BSF set aside the SSFC proceedings and the matter was proceeded afresh. After that, fresh charge was framed and the applicant was tried by General Security Force Court (for short, GSFC) at Battalion HQ, 49 Bn BSF, Fatikchara. The said Court found him guilty and sentenced him to be dismissed from service subject to confirmation by confirming authority. The matter was again remitted back for revision and to rectify certain observations and consequently, the GSFC trial was held. However,

the Court of GSFC, after consideration, revoked the earlier sentence and sentenced the applicant to suffer imprisonment for 2(two) years and to be dismissed from service. After that, the applicant submitted pre-confirmation petition against his conviction by GSFC, which was examined by the authority and by order dated 24.07.2026, his petition was found to be devoid of merit and accordingly, the same was rejected.

6. Now, challenging the punishment, the writ petition has been filed and this interlocutory application has also been filed for suspending the sentence.

7. It is the admitted position that out of two years of imprisonment, the applicant has already undergone a considerable period in custody.

8. I have also perused the judgment of High Court of Meghalaya in **No.G/5007784K Rifleman (GD) Anil Kumar v. Union of India & 4 Ors. [MC (W.P. CrI) No.1 of 2022 in W.P. (CrI.) No.2 of 2022]**, the judgment of High Court of Delhi in **Sarbraj Singh v. Union of India & Ors. [W.P. (C) No.2942 of 2023 and CM Appl. 11477/2023]** and the judgment passed by Calcutta High Court in **David Masih v. Director General of BSF & Ors.[MAT 745 of 2023 with IA No. CAN 01 of 2023]** referred by Learned Counsel for the applicant as well as the judgments referred by Learned Dy. SGI appearing on behalf of the respondents-Union of India.

9. The original writ petition is still pending for adjudication. Admittedly, in a petition of this nature, under Article 226 of the Constitution of India, the scope for re-appreciation of evidence is very limited. However, since the applicant is incarceration in custody for a considerable long period, so, in the opinion of this court, till disposal

of this writ petition, the sentence imposed upon the applicant by the respondent Court be suspended and the applicant be released on bail with the following terms and conditions:

i. that the applicant shall execute a bond of Rs.25,000/- with one surety of like amount to the satisfaction of the Registrar General of High Court of Tripura.

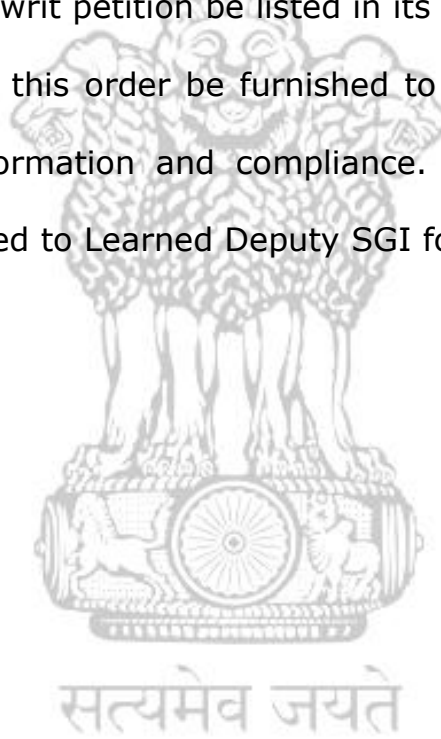
ii. that the applicant shall not leave the jurisdiction of this Court during pendency of the writ petition.

With this observation, this interlocutory application stands disposed of.

The main writ petition be listed in its usual course.

A copy of this order be furnished to Learned Counsel for the applicant for information and compliance. Also a copy of this order be communicated to Learned Deputy SGI for information.

JUDGE



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