

**(1989) 11 DEL CK 0014**

**In the Delhi High Court**

**Case No :** Criminal Miscellaneous Appeal No. 534 of 1989 and Criminal Writ  
Petition No. 675 of 1989

Harish Chandra Goswamy

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 27-11-1989

**Acts Referred:**

**Citation :** (1990) 18 DRJ 28 : (1990) 60 FLR 356 : (1990) 1 RCR(Criminal)  
308 : (1990) RLR 23

**Hon'ble Judges :** P.K. Bahri, J

**Bench :** Single Bench

**Advocate :** S. Pappu, K.T. Anantharaman and Dalip Singh, for the Appellant;

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## **Judgement**

P.K. Bahri, J.

(1) Have heard arguments for deciding this application seeking interim reliefs during the pendency of the Criminal Writ Petition No. 675 of 1989 in which rule has been already issued. The petitioner. who has been found guilty in the proceedings held by the General Court Martial and has been sentenced to undergo imprisonment of two years ana has been cashiered from the service, has challenged the said orders in the writ petition. In the application the petitioner has sought the interim reliefs for staying the operation of the findings and the sentences awarded by the General Court Martial and for releasing the petitioner from custody on bail and restraining the respondents from dispossessing the petitioner from Quarter No. 53, Civil Lines, Mathura (U.P.) allotted to him on account of his being in service and for payment of normal pay and allowances during the pendency of the writ petition.

(2) This application is strongly opposed by the respondents pleading that there has been not committed any illegality by the General Court Martial in holding the trial and in returning the findings of guilty and in imposing the sentences Reference has been made to Article 237(4) of the Constitution of India pleading that the court has no jurisdiction to examine the findings of the said General

Court Martial. Reference is also made to Article 33 of the Constitution of India emphasizing that the official in the defense services cannot exercise the fundamental rights which are available to the citizens. However, legally the court has jurisdiction under Article 226 of the Constitution of India to examine the correctness or otherwise of the proceedings and the findings recorded by the General Court Martial. A rule had been already issued and it would not be appropriate to give any finding on the merits of the case which would be gone into only after the writ comes up for regular hearing.

(3) It must be held that the petitioner has a prima facie case in favor inasmuch as the rule stands issued in the writ petition. It would not be in the interests of justice that the petitioner should be allowed to undergo the sentence of imprisonment till the writ petition is decided on merits otherwise the petitioner would not be able to get any benefit of having filed this writ petition in which rule had been issued if he was to already undergo the sentence which the petitioner has challenged by filing this writ petition.

(4) Counsel for the respondents has made reference to Ajmer Singh and Others Vs. Union of India (UOI) and Others, In this judgment it has been held that the provisions of Section 428 of the Code of Criminal Procedure cannot be attracted in case of persons convicted and sentenced by the Court Martial. However, I do not understand how anything said in this judgment is of any use to counsel for the respondents in showing that while exercising the power under Article 226 of the Constitution of India the High Court has no jurisdiction to grant any interim relief during the pendency of the writ petition.

(5) The learned counsel for the petitioner has cited The State of Bihar Vs. Rambalak Singh and Others, , in which it has been laid down that in dealing with habeas corpus petition under Article 226 of the Constitution of India where orders of detention passed under Rule 30 of the defense of India Rules are challenged, the High Court has jurisdiction to grant bail but the exercise of said jurisdiction is inevitably circumscribed by the considerations which are special to such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed under the said Rules. So, in view of the above, I hold that the High Court has power to grant interim relief during the pendency of the main writ petition on merits.

(6) So, keeping in view the facts and circumstances of the case, I direct that the petitioner be released on bail on furnishing a bail bond in the sum of Rs. 10,000.00 (ten thousand only) with one surety in the like amount to the satisfaction of the Registrar of this Court during the pendency of this writ petition and I also direct that the petitioner be not evicted from the premises allotted to him till "April 30, 1990. The petitioner, in my opinion, is not entitled to have any other interim relief.