

(2025) 07 DEL CK 0864

In the Delhi High Court

Case No : Writ Petition (C) No. 3321 Of 2025, Civil Miscellaneous Application
Nos. 15729, 23935 Of 2025

Rohtash Kumar Godara

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 11-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 5, 430(3)
Code of Criminal Procedure, 1973 — Section 313
Indian Penal Code, 1860 — Section 354, 448
Border Security Force Act, 1968 — Section 40, 46, 117(2), 130(1)
Border Security Force Rules, 1969 — Rule 93, 93(2)

Citation : (2025) 07 DEL CK 0864

Hon'ble Judges : C. Hari Shankar, J;Ajay Digpaul, J

Bench : Division Bench

Advocate : Dr. S.S. Hooda, Aayushman, Abhishek Khanna, Ankur Yadav

Final Decision : Allowed

Judgement

Ajay Digpaul, J

1. The petitioner has preferred this writ petition to assail the order dated 18.02.2025 passed by the respondents rejecting the petitioner's statutory petition under section 117(2) of the Border Security Force Act, 1968 "BSF Act" challenging the Findings and Sentence dated 30.07.2024 passed by the General Security Force Court² in respect of the petitioner; order dated 18.02.2025 passed by the respondents rejecting the petitioner's application under section 130(1) of the BSF Act seeking suspension of sentence. The petitioner also seeks quashing the Finding and Sentence dated 30.07.2024 passed by the GSFC and seeks a direction for his reinstatement in service from the date of his dismissal along with all consequential benefits.

2. The petitioner was serving as a Constable (GD) in the 177 Battalion, Border

Security Force "BSF". A complaint was filed against the petitioner by one Ms. X, wife of Constable Y, in her vernacular language i.e. Telugu, on 05.06.2022, along with its translated copy in English, the contents of which read as:

"My name is , W/o We are residing in Quarter No. 71 (Type-1). My husband was sent on guard duty to Delhi. I am staying alone at home with my son. My son is 1 ½ years old. My husband was sent on duty to Delhi on 3/06/2022. On 4/06/2022 (i.e.) on Saturday during the night-time between 1.00 AM and 1.30 AM, a male person entered our house by cutting the wire mesh of the front door of the house and he put off the lights in the room. Myself and my son were sleeping on a bed in the bedroom that night. That was observed by him and he put off the lights, and he came and lay in the bed by my side without making any noise which was not noticed by me. At the same time, the air cooler was pushed aside. Because of that, there was no air in the room. As it was hot, I turned from the right side to the left side of my bed. I was frightened as I saw a man by my side. As soon as I tuned onto his side, he closed my mouth and hands tightly so that I could not shout. I pushed him aside forcefully and ran to put on the lights. He immediately pulled back my hands. So, I could not put on the lights. He covered his face so that he could not be identified. I observed him and pushed him aside forcefully and started shouting "HELP, HELP, HELP" in a high pitch. Then my son got afraid of my shouting and started weeping. Then that person was afraid and escaped. While I was running and shouting for help, I could notice his face as I tuned back. As soon as I noticed his face I started shouting and running in the hall chasing him. He pushed me aside towards the fridge, opened the wire mesh door on the front side of the house, locked me from outside, and escaped. I called my husband because no one came to my rescue and informed the matter. We called all the people known to us over phone, but no one answered the phone, and also no one called back. I called the house of Masih which is near my house, where the lights were on. They immediately responded and took me to their house. I spent that night at their house and slept there only."

3. A second complaint dated 05.06.2022 was submitted by Ms. X in Hindi to the 2IC, Officiating Commandant on 06.06.2022, wherein for the first time, the petitioner was specifically named. The contents of the complaint read as under:

"To,

Commandant

177 Bn BSF

Hisar (Haryana)

Sub: Entering my home and attempt to commit rape

Respected Sir,

It is my humble request that my name is X, W/o Y and my application is that I

reside in My husband went from Delhi to Hisar on 03.06.2022 for duty. On 04.06.2022, between 01.00 am to 1:30 am, Rohtash Kumar Godara entered into my house by cutting the grill of the door. Me and my 2 years old child were sleeping in our room. Suddenly he entered the house and switched off the light. Due to the noise of the cooler, I could not hear anything. He came and lay down on my bed and he started touching me. When I came to know that there was someone inside the room, I screamed, he grabbed my mouth and also pressed my neck. Out of fear, he ran away from the room and locked the door from outside. Then, when I regained consciousness, I called my husband and told him the whole story. Then my husband called the person who is residing near quarters and he went to see that lady was very scared. Then my husband called SM and told him about the whole incident. SM took immediate action. I request you to take immediate action on this incident and I am 4 months pregnant.

X

W/o Y

05.06.2022”

4. On the basis of the above allegations, a charge sheet dated 16.01.2024 was issued against the petitioner by the Inspector General, BSF. The charges levelled therein are set out as hereunder:

“CHARGE SHEET

The accused No. 120620890 Rank:- Constable (GD) Name:

Rohtash Kumar Godara of 'E' Coy, 177 Bn BSF is charged with:-

FIRST CHARGE

BSF ACT, 1968

Section-46

COMMITTING A CIVIL OFFENCE THAT IS

TO SAY USING CRIMINAL FORCE TO A

WOMEN INTENDING TO OUTRAGE HER

MODESTY PUNISHABLE U/S 354 OF IPC

in that he,

at Govt. Qtr No. 71/Type-I of HQ 177 Bn BSF, Hisar, on 05.06.2022 at about 0100-0130 hrs used criminal force to Smt W/o No. 120808586 Const (GD) of 177 Bn BSF intending to outrage her modesty.

SECOND CHARGE

BSF ACT, 1968

Section-46

COMMITTING A CIVIL OFFENCE THAT IS
TO SAY HOUSE TRESPASS PUNISHABLE
U/S 448 IPC

in that he,

at Bn HQr 177 Bn BSF, Hisar on 05.06.2022 in the night at about 0100-0130 hrs, unauthorisedly entered Govt. Qtr No. 71/Type-I, the residence of No. 120808586 Const (GD) of 177 Bn BSF, and thereby committed house trespass."

5. In furtherance of the aforesaid charges, a GSFC was convened, where the petitioner pleaded 'Not Guilty' to both the charges. In support of its case, the prosecution examined sixteen witnesses, and the defence examined two witnesses. The petitioner also submitted an unsworn written statement. Upon comprehensive appreciation of the evidence led before it, the GSFC returned a finding of guilt and sentenced the petitioner "to suffer Rigorous Imprisonment for two years and to be dismissed from service".

6. The said findings and sentence of the GSFC were confirmed by the Additional DG (Special Operations), Command Headquarters, BSF (CG) on 27.09.2024. The petitioner was subsequently committed to custody at Central Jail, Coimbatore on 05.10.2024 to undergo the sentence awarded.

7. The petitioner, being aggrieved, preferred a statutory petition dated 09.12.2024 under section 117(2) of the BSF Act, along with an application under Section 130(1) of the BSF Act seeking suspension of sentence.

8. In the statutory petition, the petitioner raised several grounds, inter alia:

- a. The statement of the victim is not of sterling quality and could not have formed the sole basis of conviction.
- b. The initial complaint dated 05.06.2022 in Telugu did not name the petitioner and did not disclose use of criminal force.
- c. The second complaint dated 05.06.2022 in Hindi suffers from material contradictions and was filed with the intent to falsely implicate the petitioner.
- d. Reasonable doubt exists as to the identity of the perpetrator.
- e. The condition of the wire mesh does not indicate fresh tampering but reflects natural wear and tear.
- f. No injury was found on the petitioner's hands, whereas a witness sustained injuries while attempting to open the same wire mesh.
- g. Non-compliance with Rule 93(2) of the BSF Rules as incriminating evidence was not put to the petitioner during trial.

- h. The conviction is based on no evidence.
- i. Contradictions exist in the narration of events and mode of recognition of the petitioner.
- j. Statements of the victim and her husband suffer from embellishments.
- k. The petitioner has been framed by Constable Y and his wife due to personal rivalry.
- l. Testimony of defence witness Preeti Godara was improperly discarded.

9. The statutory petition filed by the petitioner was rejected by the Director General, BSF, vide detailed order dated 18.02.2025. The relevant portion of the said order reads as under:

"13. In view of the evidence discussed as aforesaid in respect of the points raised in the statutory petition, it can be safely concluded that petitioner executed his plan of sexual assault on Mrs 'X' in a meticulous manner. Being security assistant of Sh K K Sharma, Adjnt, 177 Bn BSF where Ct 'Y' also worked as security Asstt, knew that Ct 'Y' was away on a temporary duty to a distant location at 95 Bn BSF, Bhondsi on the date of incident. The petitioner therefore, in the dead of the night at about 0100-0130 hrs cut open the iron wire mesh of the front door and opened the latch of the door. He silently entered inside her house and assaulted her sexually by catching hold her hand, touching her neck and face with his mouth, rubbing her breast and private part by his hand. Since, the victim lady Mrs 'X' reacted quickly and pushed the petitioner away, the petitioner had no option but to flee from the spot. The findings of the Court are based on evidence on record and petitioner has rightly been sentenced to undergo 'two years of rigorous imprisonment' and 'to be dismissed from service'.

xxx

20. The DG has also found that an offence of outraging modesty of a women carries a sentence of imprisonment of minimum of one year which is extendable upto five years. Thus, the sentence awarded by the Court is just and proper and errs on the side of leniency. For all the above reasons, the DG has concluded that the statutory petition submitted by the petitioner being devoid of merits and has, accordingly, rejected the same.

21. Above disposal of the statutory petition is in compliance of the directions of Hon'ble High Court of Delhi dated 27.01.2025 passed in WP(C) No. 467/2025 titled, 'Rohitas Kumar Godara Vs Border Security Force'.

22. It is to certify that the DG BSF has considered the statutory petition in detail in Law Dte: Litigation Branch, FHQ BSF, New Delhi File No. 06/39/2024/SP/CLO/ Lit Br/BSF and has passed the above order. The undersigned, being the Staff Officer at the HQ DG BSF, New Delhi, is communicating disposal of the statutory petition by the DG by issuing this order on behalf of the DG BSF."

10. In his application for suspension of sentence dated 09.12.2024, the petitioner urged that he had already undergone approximately eight months of custody, amounting to one-third of the sentence imposed; that suspension of sentence ought to be considered liberally; that under Section 430(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, he was entitled to such suspension; and that he had a strong case on merits.

11. The said application was rejected by the DG BSF vide order dated 18.02.2025, the relevant portions of which read:

"25. The DG has noted that considering the nature of offence, the manner in which the offences were committed by the petitioner inside the family lines of the Battalion, the petitioner does not deserve any leniency where sentence awarded to him needs to be suspended. Reliance placed on provisions of Section 430(3) of the BNSS, 2023 by the petitioner is not tenable for the fact that the BNSS, 2023 is not applicable on the Special Acts in view of Section 5 of the BNSS, 2023.

26. The DG has also noted that Hon'ble Supreme Court has held that in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of Guilt and the question of presumption of innocence does not arise. Nor is the principal of bail being the rule and jail an exception attracted, once there is conviction upon trial. The Hon'ble Supreme Court has held that rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors.

27. For all above reasons and the settled position of law, the DG has concluded that the application for suspension of sentence lacks merit and has, accordingly, rejected the same.

28. Above disposal of the application for suspension of sentence is in compliance of directions of the Hon'ble High Court of Delhi dated 27.01.2025 passed in WP No. 467/2025 titled, 'Rohitas Kumar Godara Vs BSF'.

29. It is to certify that the DG BSF has considered the statutory petition in detail in Law Dte: Litigation Branch, FHQ BSF, New Delhi. File No. 06/39/2024/SP/CLO/Lit Br/BSF and has passed the above order. The undersigned, being the Staff Officer at the HQ DG BSF, New Delhi, is communicating disposal of the statutory petition by the DG by issuing this order on behalf of the DG BSF."

12. The petitioner, having exhausted his departmental remedies, and being aggrieved by the impugned orders dated 18.02.2025, has approached this Court under Article 226 of the Constitution of India, seeking quashing of the findings and sentence dated 30.07.2024, as well as the consequential orders of rejection, with a further prayer for reinstatement in service along with all consequential benefits.

13. The learned counsel for the petitioner, Dr. S.S. Hooda submits that there is no material on record to establish the petitioner's culpability in the alleged offence. The initial complaint of the victim, written in Telugu, does not name/

identify the Petitioner as the assailant.

14. He submits that there exists neither direct nor circumstantial evidence to link the Petitioner with the alleged act of cutting the wire mesh. No instrument capable of cutting was recovered. Further, on inspection by Shri K.K. Sharma, Deputy Commandant the following day, no injuries were found on the hands of the Petitioner, whereas SI(GD) Biswas sustained injuries when attempting to open the same mesh, suggesting that any person accessing the house through it would have suffered similar injuries.

15. The plea of the Respondents that the Petitioner might have worn gloves is speculative and untenable, as no such allegation was made by the victim nor were any gloves recovered. No such reasoning was recorded by the GSFC.

16. The learned counsel submits that the testimony of the victim is inconsistent and not of sterling quality. There are material contradictions in her statements in the first complaint in Telugu, second complaint in Hindi and the testimony before the GSFC. While SI(GD) Biswas and HC Chiman Bhai deposed that the victim identified the intruder in the light from the streetlamp, the victim deposed before the GSFC that she switched on the lights and then identified the Petitioner. This version is inconsistent with her initial complaint where she claimed to have been restrained from switching on the light. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Rai Sandeep v. State(NCT of Delhi)* (2012) 8 SCC 21, wherein the Court explained the standard of a 'sterling witness'.

17. The counsel for the petitioner also places reliance on *Hariprasad @ Kishan Sahu v. State of Chhattisgarh* 2023 (14) SCR 214, wherein the Hon'ble Supreme Court held that the FIR being the earliest version must be given high probative value, as there is minimal scope for embellishment or tutoring. The non-mention of crucial details in the FIR, such as identity and nature of offence, seriously undermines the case.

18. Further he submits that the claim of the victim in the GSFC that she fell and sustained injuries during the incident is a subsequent embellishment not found in either her initial complaint or the GSFC proceedings. Even her husband Constable 'Y' introduced this aspect only during the GSFC. These improvements were not put to the Petitioner during his examination under Rule 93(2) of the BSF Rules, 1969 "BSF Rules", thereby vitiating the trial.

19. The counsel for the Petitioner contends that there is a complete violation of Rule 93(2) of the BSF Rules, which is parimateria to Section 313 of the Code of Criminal Procedure, 1973. The circumstances appearing in evidence and relied upon for conviction were not put to him, depriving him of an opportunity to explain the same.

20. It is specifically contended that the GSFC, instead of complying with the mandate of Rule 93(2) of the BSF Rules, called upon the petitioner to enter his defence while simultaneously putting questions, i.e., Questions No. 7, 8, and 9,

which impermissibly amalgamated both steps and prejudiced the petitioner. It is urged that the petitioner was neither apprised of the material circumstances found incriminatory nor afforded a meaningful opportunity to furnish any explanation thereto.

21. He further contends that he has been falsely implicated by Constable 'Y' and his wife due to rivalry over a preferential posting as Security Aide to Shri K.K. Sharma, DC. The Petitioner was the regular aide, while Constable 'Y' used to substitute in his absence. It is alleged that with an intent to oust the Petitioner and secure the position permanently, Constable 'Y', in connivance with his wife, concocted the incident.

22. On the other hand, the learned counsel for the respondents, Mr. Abhishek Khanna, SPC submits that the proceedings before the GSFC were conducted in accordance with the procedure established by law and that the petitioner was afforded full opportunity to defend himself.

23. It is contended that the findings of guilt returned by the GSFC are supported by cogent oral and documentary evidence, including the testimony of the victim, corroborated by other witnesses, which establish the culpability of the petitioner beyond reasonable doubt.

24. The learned counsel further submits that the discrepancies or variations pointed out in the testimony of the victim do not go to the root of the case and are minor in nature, which do not discredit the overall credibility of the prosecution case.

25. It is argued that the petitioner was duly charged, tried and convicted for the offence under Section 354 of the Indian Penal Code, 1908 "IPC" read with Section 40 of the BSF Act, and that all procedural safeguards were complied with, including the provisions of Rule 93 of the BSF Rules.

26. Learned counsel for the respondents further contends that the plea of bias or false implication due to rivalry over a Security Aide posting is an afterthought and has no factual basis or evidentiary support. It is further submitted that no motive for false implication by the victim or her husband has been established.

27. It is also urged that the findings of the GSFC are based on appreciation of evidence, which this Court in exercise of its writ jurisdiction ought not to re-appreciate or substitute with its own opinion, unless perversity or patent illegality is demonstrated, which is not the case here. He therefore, contends that the punishment awarded is commensurate with the gravity of the offence and does not warrant interference.

28. Having considered the rival submissions advanced by the learned counsel for the parties and upon a comprehensive examination of the pleadings, evidence, and material available on record, this Court proceeds to analyse the sustainability of the findings rendered in the impugned orders.

29. It is necessary at this stage to delineate the parameters that govern the High Court's oversight of a Security Force Court. A GSFC is not amenable to the High Court's power of superintendence are unquestionably subject to judicial review under Article 226 of the Constitution. Interference is justified only where: (a) the court-martial is improperly convened or constituted; (b) mandatory statutory procedure or principles of natural justice are violated; or (c) the findings are perverse, i.e. wholly unsupported by evidence or against the weight of evidence. This doctrine has been consistently affirmed by the Hon'ble Supreme Court and several High Courts.

30. In *Syed Yakoob v. K.S. Radhakrishnan & Ors.* 1963 SCC OnLine SC 24, the Hon'ble Supreme Court authoritatively expounded the limits of the High Court's jurisdiction to issue a writ of certiorari under Article 226. The relevant paragraphs are reproduced below:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article

226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* (1955) 1 SCR 1104 *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* (1958) SCR 1240 and *Kaushalya Devi v. Bachittar Singh* AIR 1960 SC 1168

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

31. Notwithstanding procedural latitude available to military courts, the provisions of the Indian Evidence Act regarding relevance, admissibility, burden, and standard of proof guide the Inquiry. The GSFC has the same responsibility as an ordinary criminal court to protect the rights of the accused.

32. This Court, therefore, confines itself to examining whether the decision-making process is vitiated by illegality, irrationality, procedural impropriety, or perversity.

33. The foundational basis of the disciplinary action against the petitioner, in the present case, rests upon the allegation of sexual misconduct, as stated by the complainant. The principal question that arises for consideration is whether the disciplinary findings, based solely on the allegation of sexual misconduct as levelled by the complainant, are sustainable in law. While it is well settled that in appropriate cases, the statement of the complainant may, if found credible and

consistent, form the sole basis for adverse action, it remains incumbent upon the Court to assess whether the conclusions drawn by the disciplinary authority are supported by cogent reasoning, whether the material relied upon inspires confidence, and whether the proceedings as a whole satisfy the minimum standards of procedural fairness and reasonableness.

34. During cross-examination, the complainant candidly admitted that her initial complaint, written in Telugu, did not contain any description of the alleged intruder, nor did it refer to his physical appearance or purported state of intoxication. She attempted to explain this omission by stating that the complaint was drafted "in short for her own reference". Moreover, while she asserted that the intruder pulled her hands back, thereby preventing her from switching on the light immediately, she also admitted that she was able to switch it on shortly thereafter, yet, strikingly, she still did not mention any identifying details in her initial complaint.

35. At this stage, it is pertinent to state the relevant portion of the testimony of Ms. X, the complainant, which reads as:

"On 03.06.2022 at about 0530-0600 hrs, while I was staying in Quarter No. 71/ Type-I at BSF camp Hisar, I came downstairs from my Quarter to see off my husband Constable 'Y' who was proceeding for guard duty at Delhi. After seeing him off, I went back to my Quarter.

On 04.06.2022, I finished off my household work including dinner by about 2000-2030 hrs. I made my two years old son to watch TV in bedroom. Thereafter, I completed remaining household chores. I joined my son in the bed room and after some time he fell asleep. Thereafter, I bolted doors of kitchen, adjacent room and washroom of my house from inside. The first entrance door of the house which was made of iron wire mesh was bolted from middle latch from inside by me and the second door which was made of wood was just shut by me as it was not having any latch. I came back to my bedroom and left the light of my bedroom switched on. Thereafter, I slept on my bed which was made by joining two plywood cots. There was some illumination coming inside the bed room from the only glass window. While entering the bedroom from outside my bed was towards the left side and while sleeping my head was towards the window and my son was sleeping on my right side.

On 05.06.2022 at about 0100-0130 hrs, when I turned on my bed from right to left side due to hot weather, I felt the presence of a person who was lying next to me on my bed facing towards me. I noticed that there was no light in my bedroom but there was some illumination of the street light entering inside the bedroom through the window. He suddenly pounced on me and placed his one hand on my mouth forcibly and from the other hand, he held my right hand. Then, he tried to molest me by touching my neck and face with his mouth. At that time he smelled of liquor. Then, I pushed him away and he fell down from the cot. Thereafter, I immediately ran towards the switch board to switch on the

light. As I switched on the light, in the meantime the intruder also came towards me. Then, I identified the intruder as Constable Rohtash Kumar Godara. He was wearing white T-shirt and Navy blue or black colored half pant. He held me from my neck and placed his hand forcibly over my mouth to prevent me from shouting. Then, he switched off the light of the bedroom. Thereafter, he kept holding my mouth forcibly with his one hand and started rubbing my breast and private parts from other hand. I managed to remove his hand from my mouth and shouted "help, help". I pushed him away and came out from my bedroom towards verandah and shouted "help, help" from the window present there. A medium size plastic body cooler was placed there at the entrance door of the bedroom and it was already turned aside of the entrance door of the bedroom by him. The said cooler was placed on a wheeled iron stand for easy movement. Some illumination of light was entering into verandah through the window as one LED bulb was lit on the backside of the ground floor quarter, opposite to our quarter on rear side. In the meantime, my son also woke up and started crying. At this time, I once again identified him as Constable Rohtash Kumar Godara from the light entering the verandah. While I was shouting "help, help", he pushed me away and ran out of the entrance door of my house. Due to the push made by Constable Rohtash Kumar Godara, I got hit against the refrigerator on the right side of my abdomen. Then, I moved towards wire mesh front entrance door of my house and I noticed that said door was bolted from outside. Then, I also bolted the wire mesh door from inside and switched on all the lights of the house. Thereafter, once again I went towards the wire mesh front entrance door by holding my son in my arms to check how Constable Rohtash Kumar Godara has entered my house. I found that the wire mesh entrance door was cut in 'L' shape near the latch. Thereafter, I made a call to my husband Constable 'Y' and started crying. Then, he asked me what happened. I narrated him the complete incident that has just happened with me and told him that I am 100% sure that it was Constable Rohtash Kumar Godara who has entered into our house. I further told him that I am feeling scared staying alone in the house and told him to send somebody for help."

36. The testimony of the complainant as recorded in the proceedings further complicates the narrative. Her statement regarding the alleged events, particularly the time at which she saw off her husband and the sequence of events thereafter, lacks coherence when juxtaposed with the allegations made initially. These discrepancies are not minor inconsistencies that may be attributable to lapse of memory or emotional distress. Furthermore, no plausible explanation has come from the side of complainant for not naming the petitioner in the complaint in her first complaint written in Telugu, her vernacular language.

37. In allegations involving sexual assault, particularly when occurring within a residential setting and where the opportunity to observe the assailant exists, as is claimed in the present case, the omission to furnish even a basic description of the perpetrator or refer to his conduct in material terms in the initial complaint casts a serious doubt on the genuineness of the allegations. The subsequent

embellishments in oral testimony suggest an attempt to fill material gap and lend retrospective credibility to a weak foundation.

38. The Hon'ble Supreme Court in *B.S. Hari v. Union of India & Ors.* (2023) 13 SCC 779, reiterated that the High Court, while exercising jurisdiction under Article 226 of the Constitution, is empowered to examine whether the findings recorded are based on any rational evidence or whether the proceedings stand vitiated by perversity, arbitrariness, or procedural unfairness. The constitutional power of judicial review is not fettered by technicalities and may be invoked where injustice is apparent on the face of the record.

39. The first charge against the petitioner seeks to bring his conduct within the ambit of Section 354, IPC which criminalises assault or use of criminal force on a woman with the intent to outrage her modesty. The provision reads as under:

"Assault or criminal force to woman with intent to outrage her modesty:Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of wither description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

40. It is also material to note that in her cross-examination, the complainant admitted that no physical description of the alleged intruder was mentioned in her application, nor was there any reference to the intruder's alleged intoxication. The explanation tendered, that the application was made "in short" for her own reference, is wholly unconvincing, particularly when weighed against the gravity of the allegation. The omission of core facts, which would reasonably be expected in a genuine narration, detracts from the reliability of the complaint and raises serious doubt about the veracity of the prosecution's version. The relevant extracts of the complainant's testimony (cross-examination) are reproduced below:

"....The description of the intruder was not mentioned in Telugu application as it was written in short for my reference.

It is correct to suggest that the physical appearance of the intruder was not mentioned in my application in Telugu.

It is correct to suggest that the intoxication of the intruder was not mentioned in my application in Telugu.

The witness further clarifies that since the application in Telugu was written in short for her reference, the complete description was not mentioned.

It is correct to suggest that Physical appearance, intoxication, clothes, illumination of lights, non-functionality of latches of iron wire mesh door and wooden door, name of intruder were not mentioned in my application in Telugu."

41. A close scrutiny of the evidence, particularly the statements of the complainant in Telugu, in Hindi and her testimony recorded before the GSFC,

discloses material omissions and contradictions that seriously undermine the prosecution's case. Rather, they go to the root of the allegation and are indicative of an evolving version of events, which militates against the credibility of the witness. Therefore, this Court is of the considered opinion that the allegations, emerging from the complaint and subsequent statement, suffer from material inconsistencies and omissions, and do not inspire confidence so as to justify the adverse action taken against the petitioner.

42. As regards the second charge of committing a civil offence of Trespass punishable under Section 448 IPC, the foundational allegation is that the petitioner unlawfully entered the complainant's residence by cutting the wire mesh of the front door. The petitioner, however, contends that the prosecution failed to establish this fact beyond reasonable doubt.

43. There is no eyewitness to the alleged act of cutting the wire mesh. Even the complainant admitted that she did not hear any noise indicative of such cutting. No, cutting tool or implement was recovered from the petitioner, nor was any forensic or material evidence led to show that he had the means or opportunity to tamper with the mesh. In the absence of direct, circumstantial, or forensic evidence proving the petitioner's unauthorised entry through the said mesh, the charge of house trespass too cannot be sustained in law.

44. The petitioner has alleged violation of Rule 93(2) of the BSF Rules. The said provision reads thus:

"(2) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the court may, at any stage of trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence"

45. Rule 93(2) of the BSF Rules, when read in its entirety, reflects a procedural safeguard intended to afford the accused a fair opportunity to respond to the circumstances appearing in evidence. While the first limb of the Rule uses the word "may", clearly indicating that the power to put questions to the accused is discretionary and not mandatory, the second limb, though couched in mandatory language, must be interpreted in harmony with the broader scheme of court-martial proceedings, which allow for a degree of procedural flexibility. Rule 93(2) of the BSF Rules is intended to ensure that the accused is afforded a fair opportunity to explain any incriminating circumstances arising from the prosecution evidence. While the Rule mandates that the accused shall be generally questioned on the case after the prosecution witnesses have been examined and before he is called upon to enter his defence, the ultimate test in assessing any alleged procedural irregularity is whether it has resulted in prejudice to the accused or has occasioned a failure of justice.

46. In the present case, the record discloses that upon conclusion of the

prosecution evidence, the petitioner was expressly afforded an opportunity to lead defence evidence or to make a statement in his defence, which he availed by furnishing an unsworn statement under Rule 55 of the BSF Rules. There is nothing on record to suggest that the petitioner was in any manner unaware of the circumstances requiring explanation, or that he was denied an effective opportunity to respond to the case against him. No specific prejudice has been demonstrated by the petitioner as arising from the manner in which the requirements of Rule 93(2) were observed. In the absence of any such prejudice, the contention that the proceedings stand vitiated on this ground cannot be sustained.

47. The contention of the respondents that the findings of the General Security Force Court are immune from judicial review is misconceived. The Constitution Bench of the Hon'ble Supreme Court in *S.N. Mukherjee v. Union of India* (1990) 4 SCC 594, has categorically held that while courts-martial are not required to record detailed reasons for their findings or sentence, their proceedings are nonetheless subject to judicial review under Article 226 and Article 32 of the Constitution. The Court observed that such review is permissible in cases where the proceedings are vitiated by legal or procedural infirmities, or where a fundamental right is infringed. It was further held that although the court-martial is a specialized forum, its decisions are not beyond the pale of constitutional scrutiny, especially where there exists an error of law apparent on the face of the record, or where the finding is manifestly perverse or arbitrary. The relevant portion of the said judgment is reproduced below:

"42. Before referring to the relevant provisions of the Act and the Rules it may be mentioned that the Constitution contains certain special provisions in regard to members of the Armed Forces. Article 33 empowers Parliament to make law determining the extent to which any of the rights conferred by Part III shall, in their application to the members of the Armed Forces be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them. By clause (2) of Article 136 the appellate jurisdiction of this Court under Article 136 of the Constitution has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces. Similarly clause (4) of Article 227 denies to the High Courts the power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces. This Court under Article 32 and the High Courts under Article 226 have, however, the power of judicial review in respect of proceedings of courts martial and the proceedings subsequent thereto and can grant appropriate relief if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record."

48. Applying the said principle to the facts of the present case, this court finds that the conviction of the petitioner is founded solely on the testimony of the

complainant, which, for reasons already noted above, is riddle with inconsistencies, improvements, material contradictions, and unexplained improvements. In absence of any corroborative material or forensic evidence, the findings of guilt appear not only legally unsustainable but also perverse. This is further compounded by the fact that the alleged incident took place within a secured compound, yet no CCTV footage, electronic evidence, has been placed on record which, in ordinary course, would have been expected to be available and adduced. Moreover, although the complainant claims to have raised an alarm during the incident, no independent testimony of any neighbour who may have heard or witnessed anything has been brought forth, save for vague hearsay. These glaring irregularities, going to the root of the matter, cannot be overlooked by this Court while exercising its writ jurisdiction.

49. In the present case, the contradictions noted herein are neither incidental nor superficial, they pertain to essential aspects such as the identity of the assailant, the manner of the alleged intrusion, and the absence of any spontaneous or consistent account of events. These material inconsistencies substantially erode the credibility of the complainant's version and render the findings of guilt against the petitioner unsustainable in law.

50. This Court also finds merit in the reliance place by Mr. Hooda on the judgment Rai Sandeep (*supra*). The relevant extract from the said decision is reproduced hereinbelow for ready reference:

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such

similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

51. In the considered view of this Court, the impugned order dated 18.02.2025 is legally unsustainable and stands vitiated by serious infirmities. A conjoint reading of the material on record reveals material inconsistencies and contradictions in the complainant’s version, which go to the root of the prosecution’s case and render the findings of guilt arbitrary and perverse as are founded on reasons which are wrong in law. The following discrepancies are particularly glaring:

i. Identification of the alleged intruder: In her initial complaint written in Telugu, the complainant did not disclose the name of the alleged intruder. It is only in the subsequent complaint, written in Hindi, a language in which she admittedly lacks proficiency, that the petitioner was named. This casts serious doubt on the credibility and spontaneity of the allegation.

ii. Authorship and content of the second complaint in Hindi: The second complaint dated 05.06.2022 was admittedly not written independently by the complainant. In her cross-examination, she deposed as under:

“I have not mentioned the name of that person in my application dated 05.06.2022 (in Hindi) with whose help I have written the same.

It is incorrect to suggest that the application dated 05.06.2022 was written on the instigation of my husband Constable ‘Y’.

The application in Hindi dated 05.06.2022 was written with the help of someone when my husband was with me and by incorporating the details of the incident that has happened with me and the same were also known to my husband.

My application in Hindi dated 05.06.2022 was written in short mentioning the actual details of whatever happened with me.”

iii. Contradiction regarding use of lights: In the initial version of the complaint, the complainant stated that she was unable to switch on the lights at the time of the incident. However, during her deposition, she stated that she did in fact switch on the bedroom lights. This inconsistency raises serious questions about the veracity of her narrative and the actual sequence of events.

iv. Alleged injury not mentioned earlier: No reference to any physical injury was made in either of the written complaints. However, during the course of her oral testimony, the complainant deposed:

“...While I was shouting “help, help”, he pushed me away and ran out of the

entrance door of my house. Due to the push made by Constable Rohtash Kumar Godara, I got hit against the refrigerator on the right side of my abdomen.”

The omission of such a material detail in the contemporaneous complaints, coupled with its belated introduction during testimony, severely diminishes reliability of her deposition.

52. Therefore, in the exercise of extraordinary jurisdiction under Article 226 of the Constitution, this Court is compelled to intervene to prevent a palpable miscarriage of justice.

53. In view of the foregoing discussion, the writ petition is allowed. The impugned order dated 18.02.2025 is hereby quashed and set aside. As a consequence, the petitioner shall stand exonerated of all charges and be reinstated to the post from which he was dismissed. The petitioner shall be entitled to all consequential service benefits on a notional basis from the date of dismissal till the date of reinstatement, including continuity of service for all purposes, restoration of seniority, and fixation of pay with notional increments, as if no break in service had occurred. These notional benefits shall be reckoned for the purposes of pension, gratuity, and other terminal dues, subject to any lawful adjustment or verification, but shall not entail payment of back wages or arrears of salary for the intervening period. The necessary consequential orders shall be issued and the notional benefits accorded to the petitioner within a period of twelve weeks from the date of this judgment.

54. All pending application(s), if any, stand disposed of.