

Karnataka High Court Christian Chidieere Chukwu vs The State Of Karnataka
on 18 February, 2016 Author: A.V.Chandrashekar 1 R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF FEBRUARY 2016

BEFORE

THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

Cr1.P. NO. 7904/2015

BETWEEN: CHRISTIAN CHIDIEERE CHUKWU S/O SILVERNUS, AGED
28 YEARS C/O MOHAMAD YAKUB, 3RD CROSS ASHIRVAD LAY-
OUT, MARAGONDANA HALLI MAIN ROAD, T.C.PALYA K.R.PURA,
BANGALORE-560 036.

NATIVE OF:

PLOT NO.913, 6TH AVENUE FESTACT WOWN, LOGOS STATE NIGERIA.
... PETITIONER (BY SRI G.NAGARAJA GOWDA, ADV.)

AND:

- 1) THE STATE OF KARNATAKA BY K.R.PURAM POLICE STA-
TION BANGALORE. REP BY SPP HIGH COURT COMPLEX
BANGALORE-560001.
- 2) UNION OF INDIA, REPRESENTED BY MINISTRY OF EXTER-
NAL AFFAIRS, NEW DELHI. ... RESPONDENTS (BY SRI
A.S.PONNANNA, ADDL.ADVOCATE GENERAL FOR RESPON-
DENT NO.1; SRI KRISHNA S.DIXIT, ASST. SOLICITOR GENERAL
FOR RESPONDENT NO.2) 2

CRL.P FILED U/S.439 CR.P.C PRAYING THAT THIS HON'BLE
COURT MAY BE PLEASED TO ENLARGE THE PETITIONER ON
BAIL IN CRIME NO.602/15OF K.R.PURAM POLICE STATION,
BENGALURU CITY, FOR THE OFFENCES PUNISHABLE UNDER
SECS.376, 506, I.P.C. AND SECTION 14, FOREIGNERS ACT.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON
11.02.2016 AND COMING ON FOR PRONOUNCEMENT OF OR-
DERS, THIS DAY A.V.CHANDRASHEKARA, J., MADE THE
FOLLOWING:

ORDER

The present bail application is filed under Section 439, Cr.P.C. by the sole accused of a criminal case in Crime No.602/15 registered by K.R.Puram police station, Bengaluru, on 1.10.2015.

2. Initially the case was registered for the offences punishable under Sections 376 and 506, I.P.C. After concluding investigation, charge sheet is filed for the offences punishable under Sections 376 and 506, I.P.C. and Section 14 of the Foreigners Act, 1946.
3. Learned SPP representing the State has vehemently opposed bail on the ground that prima facie case is forthcoming in regard to the criminal intimidation of the first informant, a lady by name Ms.Sai Kumari by this petitioner and committing rape on her. It is argued that the petitioner is a foreign national belonging to the Federal Republic of Nigeria and has overstayed here in Bengaluru, though his visa obtained under the category 'medical attendant' expired on 13.4.2013. He has requested this court to take a serious view of the gross violation of the provisions of the Foreigners Act, Foreigners Order, 1948 and Registration of Foreigners Act, 1939. Hence he seeks dismissal of the bail application.
4. Heard learned counsel for the petitioner, Sri Nagaraje Gowda. He has submitted that no prima facie case is forthcoming in regard to the offence of rape alleged against the petitioner and that the maximum punishment contemplated for the offence punishable under Section 14 of the Foreigners Act, 1946, can extend up to 5 years of imprisonment and also liable to fine, and is exclusively triable by the JMFC Court-V. Therefore, he requests this court to take a lenient view. He has submitted that his client would undertake to abide by any condition which may be imposed upon him. It is his case that Section 376, I.P.C. is absolutely not applicable to the facts of this case, and at the best, it would amount to breach of promise to marry punishable under Section 417, I.P.C.
5. Since the Foreigners Act dealing with foreign nationals staying in India is attracted, learned counsel for the petitioner was directed to implead the Union of India as respondent no.2. Accordingly Union of India is impleaded. Mr.Krishna S.Dixit, Additional Solicitor General has taken notice of the petition and has submitted arguments at length, adverting to various facets of the present case in the light of serious violation of the provisions of the Foreigners Act, 1946, Passports Act and other allied legislations and statutory orders. He is assisted by Sri Ganesh, Foreign Regional Registration Officer.
6. Similarly Mr.Ponnanna, learned Addl. Advocate General has submitted his arguments on behalf of the State. His attention was drawn to the number of foreign nationals overstaying in Bengaluru and non- establishment of a detention centre in the city so as to enable foreign nationals to be detained till they are deported to their respective countries, after the expiry of visa.
7. This court also drew the attention of the learned Addl. Advocate General and learned SPP to the number of cases registered and investigated for

the offences punishable under the Foreigners Act and relevant Acts and pendency of cases before courts at Bengaluru and delay in regard to the same.

8. Sri Krishna S.Dixit, learned Addl. Solicitor General has submitted a list of foreigners overstaying in Bengaluru City nation-wise. He has submitted that in fact police as well as the Government of India have been soft towards foreign nationals staying here in spite of their long and unjustified overstay in Bengaluru and other parts of the state and that the same must not be misused by them (foreign nationals) in any manner either by violating the provisions of the Passports Act or Foreigners Act or other penal statutes of the state or country.
9. Mr.Ponnanna has brought to the notice of this court few cases in which the trial courts have imposed flea-bite sentence on accused persons who are accused of violating the provisions of Foreigners Act, 1946, and Foreigners Order, 1948. He has brought to the notice of this court that even in cases of long overstay of foreign nationals, one day's simple imprisonment and fine of Rs.10,000/- is imposed and too lenient view is taken by the courts. Therefore, he has requested this court to lay down clear guidelines in regard to the approach to be adopted by the trial court whenever foreign nationals plead guilty to the charges leveled against them or whenever they are convicted, after contest.
10. Mr.Charan Reddy, Addl. Commissioner of Police, Bengaluru City, is also present. He has furnished certain information through learned Addl. Advocate General relating to the number of cases registered in Bengaluru against foreign national division-wise, right from 2013 to 2016. A copy of the passport of this petitioner containing visa stamping by the authorities is furnished by Mr.Nagaraje Gowda, learned counsel for the petitioner for perusal of this court.
11. After going through the records and hearing the learned counsel for the parties, the following points arise for consideration of this court:
 - 1) Whether the case on hand is fit to grant regular bail under Section 439, Cr.P.C. to the petitioner under the facts and circumstances of the case?
 - 2) Whether any directions/communications are required in the present case to the concerned? REASONS
12. Point no.(1): Petitioner is a Nigerian national born on 2.2.1986. He has obtained valid passport from the Federal Republic of Nigeria. The date of issue of passport is 17.1.2013 and it would be valid upto 16.1.2018. Visa stamping made by the Republic of India shows that he is permitted to come to Bengaluru as a 'medical attendant' and was permitted to stay from 28.2.2013 to 13.4.2013.
13. The petitioner arrived in Bengaluru International Airport on 23.3.2013 and a seal is affixed to that effect. The case against him came to be registered on the basis of first information lodged on 1.10.2015 at 8.45 p.m. by a

lady (name not mentioned) aged 19 years, daughter of Venkatesh, resident of No.226, 2nd floor, 9th Cross, beside Maramma temple, Bhattarahalli, Virgonagar Post, Bengaluru. On the basis of the first information, a case is registered in Crime No.602/15 for the offences punishable under Sections 376 and 506, I.P.C. The gist of the allegations made against this petitioner is that the victim had been to the house of one lady named Christeen along with a friend by name Sherin on 23.9.2015. At that point of time, Sherin was engaged in cooking food. The first informant had sat in the hall of the said house belonging to Christeen. Then this petitioner came there and introduced himself and after some time, he wanted her to go to his room in the said house. She refused to accompany him to the room. Hence she was forcibly taken to his room and he closed the door and locked it from inside. Then he closed her mouth and forcibly raped her. He is stated to have threatened her with dire consequences to her life if she were to disclose about the same to anybody. After some days, the victim intimated the incident to Sherin who took her to the petitioner and asked as to why he had done so. Since the first informant had a lot of pain, she took treatment in Government Hospital at K.R.Puram on 28.9.2015, and contacted the petitioner over phone. He avoided her telling that she should not meet him since media and police people would follow her. She thought that if she were to disclose the same, her esteem would come down in the eyes of the public. Often she was talking to the petitioner over phone and he was feeling guilty about what was done to her by him. Later, he had assured to marry her and asked her to come on 1.10.2015 near his house and he would marry her since his parents had come from Nigeria.

14. Believing the words of the petitioner herein, she went near his house on 1.10.2015 at 10.00 a.m. and in the said house, there was nobody except the petitioner and he took her to his room and presented a ring and told her that he was her husband and again raped her. After thinking over the incident, she chose to lodge the complaint.
15. During the course of investigation, the respondent police have come to know that this petitioner is a foreign national who has overstayed in India and it is in this regard Section 14 of the Foreigners Act is invoked. Section 14 of the said Act imposes penalty for contravention of the provisions of the Act. It was amended by Act No.16 of 2004 in the year 2004 and the amendment has come into effect from 20.4.2004. Section 14 of the Foreigners Act, 1946, as amended reads as follows:
16. Penalty for contravention of provisions of the Act, etc. - Whoever-
 - (a) remains in any area of India for a period exceeding the period for which the visa was issued to him;
 - (b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;
 - (c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which

no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty should not be paid by him. Explanation- For the purposes of this section, the expression “visa” shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920) The original passport was submitted for perusal of this court and after comparing the same with the xerox copy of the passport, the original is been returned to Mr.Nagaraje Gowda, learned counsel for the petitioner.

16. Admittedly visa stamping done by the Republic of India discloses that the petitioner was entitled to stay in India from 28.2.2013 to 13.4.2013 and he has not got his visa extended, though it had expired on the midnight of 13.4.2013, Nothing is placed on record to show that in the meanwhile he had approached the authorities with a request to extend his visa.
17. Visa would be issued by this country to a foerign national holding a passport for specific purposes only, viz., (i) education, (ii) tourism, (iii) medical treatment, (iv) business and (v) employment. The period for which visa would be issued would be mentioned and anybody who stays beyond the said period mentioned in the visa, will contravene the provisions of the Foreigners Act, attracting the penal provision of Section 14 of the Act. The sentence of imprisonment for overstay could extend to five years and he shall also be liable to pay fine.
18. The Foreigners Order, 1948, is a statutory order issued by the executive in exercise of powers conferred under Section 3 of the Foreigners Act, 1946. Order 7 of the Foreigners Order, 1948, speaks about the restriction of sojourn in India. Order 7 has three sub-clauses and it is extracted below:
19. Restriction of sojourn in India.-
 - (1) Every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passports Act, 1920 (XXXIV of 1920), shall obtain from the Registration Officer having jurisdiction, “either at the place at which the said foreigner enters India or at the place at which he presents a registration report in accordance with Rule 6 of the Registration of Foreigners Rules, 1939, a permit indication the period during he is authorized to remain in India and also indicating the place or places for stay in India, if any, specified in the visa. In granting such permit, the said Registration Officer may restrict the stay of the foreigner to any of the places specified in the visa.
 - (2) Every foreigner to whom the provisions of sub-paragraph (1) do not apply shall obtain a permit indicating the period during which he is authorized to remain in India from the Rgistration Officer to whom he presents a reg-

istration report in accordance with Rule 6 of the Registration of Foreigners Rules, 1939.

(3) Every foreigner to whom a permit is issued under sub-paragraph (1) or sub-paragraph (2):-

- (i) shall not, if the permit indicates the places unless the place or places for stay in India, visit any other place unless the permit is extended by the Central Government to such other places:
- (ii) shall, if the permit indicates the place or places for stay in India, report in person or in writing his arrival at, and departure from, any such place to the Registration Officer having jurisdiction at such place, within twenty-four hours after arrival, or as the case may be, before his intended departure; and
- (iii) shall, unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period; and at the time of the foreigner's departure from India, the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs.

19. Sri Krishna Dixit, learned Addl. Solicitor General has submitted that the purpose for which visa is issued once would not be converted at any cost. He has submitted that if a person has obtained visa under the category 'medical attendant,' he cannot be permitted to do business in India. He has brought to the notice of this court sub-clause (iii) of sub-order 3 of Order 7 which specifically states that a foreign national to whom permit is issued in sub-clause (i) of sub-order (2) of Order 7, the visa holder is not expected to remain in India and the period indicated in the original visa could be extended, provided permission is extended before the expiry of the visa.
20. Nowhere in the petition filed under Section 439, Cr.P.C. anything is mentioned about the profession that the petitioner is pursuing here in Bengaluru and the reason for his long overstay in Bengaluru.
21. The Registration of Foreigners Act, 1939, has come into force on 8.4.1939. This Act deals with the registration of foreigners in India. Section 4 of the said Act speaks about burden of proof. If any question arises as to whether a person is a foreigner or not, the onus of proof that such a person is or is not a foreigner of a particular class or description, as the case may be, would lie upon such person. Section 4 of the Foreigners Act is relevant and is extracted below: "4. Burden of proof- If any question arises with reference to this Act or any rule made thereunder, whether any person is or is not a foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person. Section 5 of the Registration

of Foreigners Act, 1939, provides for penalties. It is extracted below:"5. Penalties- Any person who contravenes, or attempts to contravene, or fails to comply with, any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five thousand rupees." Section 6 of the Registration of Foreigners Act, 1939, is still in force and it is also applicable to the facts of this case. Of course investigating authorities have not taken note of the same. Nothing comes in the way of the court to take this Act also into consideration with reference to the facts of this case, while framing appropriate charges.

22. Registration of Foreigners Rules, 1992, is also in force. Rule 6 speaks about the report of a foreigner and his address in India. Rule 6 is relevant and is extracted below:
23. Report by a foreigner of his address in India, etc. (1) Every foreigner entering India or resident in India shall present in person or through an authorized representative to the appropriate Registration Officer specified in Rule 7, a report (hereinafter referred to as a registration report) within the time specified in that rule; Provided that no such report shall be necessary in the case of a foreigner who enters India on a visa valid for a period of not more than one hundred and eighty days and who does not remain in India beyond the said period.
24. Every registration report shall be made in writing in English or in Hindi language and in quadruplicate and shall contain a true statement of the foreigner's address in India and of the other particulars specified in Items 2 of 10 in Para IV of Form A and such of the particulars specified in Items 12 to 16 thereof, as may be appropriate.
25. For the purpose of sub-rule (2), a foreigner's address in India shall be -
 - (a) The place of his residence, or
 - (b) If he has no residence, the place at which, at the time of making his registration report he is for the time being living or at which he first intends to live after his arrival in India. Provided that, subject to the approval of the Registration Officer, any foreigner who has no residence in India may, with the consent previously obtained of an Indian citizen residing in India, being a banker or a person having the management of hotel or of a tourist or travel agency, report as his address in India the name and address of a said Indian citizen and such name and address shall, for so long as the provisions of sub- rule (4) are complied with, be deemed to be the foreigner's address in India; Provided further that in the case of a foreigner who has no residence in India, whose occupation is such as to necessitate frequent traveling, who is not likely to return within a reasonable time to the district in which he is at any time living and who is unable to avail himself of the provision of the foregoing proviso, the office of the Registration Officer of the district in which he has first registration upon his arrival in India shall be deemed to be his address in India.

4. In any case to which the proviso to sub-rule (3) applies, it shall be the duty
 - (a) of the foreigner to keep the Indian citizen informed of his current address; and
 - (b) of the Indian citizen to furnish all such information in his possession relating to the foreigner as may be demanded for any of the purposes of the Act or of these rules by any Registration Officer, magistrate or police officer not below the rank of head constable.
5. Copies of Form-A may be obtained on application from any Registration Officer. Rule 7 of Registration of Foreigners Rules, 1992, speaks about the procedure for registration. Even if a person were to be absent from the earlier given address, a report has to be made as per Rule 11 to the concerned authorities if he is absent for a continuous period of 8 weeks or more. Even change of address should also be intimated. Rule 9 speaks about proof of identity and Rule 8 speaks about the validity of the certificate of registration. These are all statutory rules.
6. In the case of JANARAJAN @ KRISHNAMURALI .v. STATE OF TAMIL NADU ([2005] 5 CTC 762 (Madras), it is reiterated by the Hon'ble Madras High Court that if bail is granted to persons who have violated the provisions of the Foreigners Act, such person cannot stay in India even for a day without valid passport and visa. Therefore, it is held that an under trial has to wait the result of the trial in respect of the case registered against him. Even after conclusion of the criminal case, steps must be taken by the authorities to deport such foreign national for staying beyond the expiry of visa. It is in this regard the decision of the Hon'ble apex court rendered in the case of BISHRAT ALI .v. UNION OF INDIA ([2013] 12 SCC 315 is relevant.
7. Both Mr.Krishna Dixit, learned Addl.Solicitor General and Mr.P.M.Nawaz, learned Addl. Advocate General have submitted that if bail is granted in the present case, it is as good as legalizing the illegal stay of the petitioner who is a foreign national having violated the stringent provisions of the Foreigners Act, 1946, Passports Act, 1967, Foreigners Order, 1939 and Registration of Foreigners Act, 1939. There is a lot of force in the submission of learned SPP and learned ASG.
8. Thus, viewed from any angle, the facts of the present case do not make out a case for granting bail to the present petitioner. Insofar as the applicability of Section 376, I.P.C. is concerned, it is for the concerned court to take an appropriate decision while framing charges indicating as to whether the facts of the case would come within 'rape' as contemplated under Section 375, I.P.C. Suffice to state that a serious allegation is made by the first informant that she was virtually persuaded to physically co-operate with him on the assurance of marriage. This cannot be lightly ignored.
9. Normally, while considering a bail application, criminal courts will see forum of trial and whether they are punishable with death or imprisonment

for life. But in cases of over stay of a foreign national in India, it amounts to illegal stay till he is deported and if he/she is released and trial takes a lot of time, on the basis of the order of bail, he will be allowed to stay in India till the conclusion of the trial and this would be contrary to the provisions of Section 14 of the Foreigners Act, 1946.

10. In fact, the question as to whether the concerned judge dealing with the case filed for violation of Section 14 of the Foreigners Act, 1946, could direct the concerned authorities to deport a foreign national who has overstayed is considered by this court in the case of *EL MUSTAFA EL FATHI .v. STATE OF KARNATAKA* (ILR 2004 KAR 4603). As per the facts of the said case, after conviction of the accused therein, the learned judge of MMTC-I in C.C.407/04 had directed the State to take steps to deport the foreign national after the expiry of the sentence. This direction had been questioned by filing a petition under Section 482, Cr.P.C. While dealing with the said aspect, this court has held that the magistrate is justified in giving such a direction to the State and concerned authorities to take appropriate steps to deport the accused after serving the sentence. The relevant finding of this court is found in paragraph 7 at page 4605 and is extracted below: '7. Every country, in its laws provides for restrictions on entry of foreigners into such country and rules regulating their stay in the country for the period permitted. Measures governing the foreigners are found in the Foreigners Act, 1946 and the Foreigners Order, 1948. Among other things, they provide for expulsion of foreigners, whose entry into India is unauthorized or whose permit for stay in India has expired. They also provide for the detention of such persons pending removal and ban on their re-entry after removal. A court convicting a foreigner for his illegal entry or his over stay in India has a duty to direct for requisite steps for deportation of such foreigner, unless requisite permit to stay in India is granted by the competent Authority. It cannot therefore be said that the Court convicting a foreigner for an offence under Section 14(C) of the Foreigner Act committed an illegality in directing for requisite steps for deportation of such person from India.'
11. In the light of the present petitioner overstaying in India for more than 2 years 9 months without a valid visa and without taking any steps for extension of visa, and indulging himself in having physical contact with a grown up girl and assuring to marry her and later on backing out of his promise, he is not entitled to be released on bail. Apart from this, the petitioner has not placed any material to show that he is living in a particular address and the same had been reported to the jurisdictional police and FRRO.
12. Point no.(2): Learned SPP, Mr.P.M.Nawaz has submitted a list containing the number of cases registered against foreign nationals in Bengaluru City during the years 2013, 2014, 2015 and up to 7.2.2016. In all, 330 criminal cases have been registered against various foreign nationals under various provisions of the Indian Penal Code and special statutes of this country like Foreigners Act, NDPS Act, etc. The cases registered year-wise are

as follows: 2013 : 131 2014 : 114 2015 : 78 2016 : 07 Out of them, 61 cases pertain to Nigerian nationals, 31 to Bangladesh nationals, 36 cases pertain to Ivory Coast nationals, 12 in respect of Uganda nationals, 12 in respect of Nepal nationals, 12 in respect of Congo nationals, 5 cases in respect of Tanzanians and 33 cases pertaining to Iranians.

13. On going through the list of cases registered against foreign nationals in Bengaluru City, it is seen that in few cases, foreign nationals are booked for violation of several penal statutes of India including NDPS Act, IPC., etc. Many cases of overstay have come to the notice of the police only when investigation is taken up for other offences like 497, 420, 399 and 402, I.P.C. and Section 20 of NDPS Act, Information and Technology Act and Immoral Traffic Protection Act, Karnataka Excise Act, etc. Few cases have been registered under the relevant provisions of the Passports Act also.
14. It is submitted by Sri Krishna Dixit, learned Addl.Solicitor General, on instructions from Mr.Ganesh, FRRO, that about 23,708 foreign nationals were staying in the state of Karnataka as on 31.12.2015 and out of them, 1,165 are reported to be staying beyond the period mentioned in the visa issued to them in Bengaluru itself and they belong to 68 nations. The list containing overstay of foreign nationals of 68 countries country-wise as on 1.1.2016 is also submitted by him. Amongst them, 33 are Afghanistan nationals, 36 from Bangladesh, 100 from Congo, 100 from Ivory Coast, 212 from Sudan, 13 from Tanzania, 39 from Uganda, 99 from Yemen, 54 from Iraq, 55 from Iran, 26 from South Sudan, 22 from Republic of Rwanda and 12 from Male.
15. On going through the list submitted by the learned Addl. Solicitor General, it appears that there is no proper and effective co-ordination between the FRRO and the police. A large number of foreign nationals are over-staying here and the period of overstay is not forthcoming. In the present case, the petitioner herein has been overstaying in India for over 2 years 9 months. It is in this regard a proper and effective co-ordination between FRRO and local police is an absolute requirement. This court expects that there would be periodical meeting of the senior representatives of the Police Department and the concerned ministry of the Central Government in order to exchange the data and to take appropriate legal action without undue delay.
16. It is submitted by Mr.Krishna Dixit, on instructions from Mr.Ganesh, FRRO, that no detention centre is established in Bengaluru City. A letter addressed by the Additional Chief Secretary, Department of Home, Government of Karnataka, to the Director General and Inspector General of Police on 7.8.2014 discloses that a meeting had been convened on 8.8.2014 in regard to the establishment of Foreigners Detention Centre at Bengaluru which would help the authorities to detain the foreign nationals overstaying here before they are deported. In the letter addressed by the FRRO, Bengaluru, on 17.7.2014 to the Director General of Police, it is seen that steps will have to be taken to establish a Foreigners Detention

Centre at Bengaluru at the earliest. A meeting had been held on 21.8.2012 itself to consider the issue to establish such a Centre. This court hopes all steps would be promptly taken to establish such a Centre without undue delay.

17. In the meeting held on 21.8.2012 in the chambers of the Principal Secretary to Government, Department of Home, an issue regarding foreign nationals getting admission to various educational institutions in Karnataka without proper procedure, was also discussed. A doubt was raised in the said meeting as to whether the institutions which are admitting foreign nationals are really recognized institutions to admit such foreign students and to issue bona fide certificates. In fact, the Principal Secretary had requested the FRRO to furnish a list of such educational institutions so that suitable legal action could be initiated against such institutions.
18. As rightly pointed out in the meeting held on 21.8.2014, thorough verification is to be made in respect of the competence of certain educational institutions to admit foreign students and issue bona fide study certificates. If some of the institutions are not authorized to admit foreign students, it need not be reiterated that the Central and State Governments will have to find out as to how foreign students are admitted to such institutions and whether there is any racket in such admission. Even authorized educational institutions which admit foreign nationals and issue bona fide certificates are expected to intimate FRRO as well as the police, if it comes to their notice about the overstay of such foreign students who are studying in their institutions.
19. If a student has come on a student visa to Bengaluru or any place in Karnataka, he has to go back to his/her country within the period mentioned in the visa. If for any reason it is not possible to go back within the said stipulated period for compelling reasons, all steps must be taken to get the visa extended even before the expiry of the visa period. Let us assume that a foreign national is permitted to study in India upto July 2016 and the examination would conclude within the said period. If for any reason the examinations are postponed, a request is to be made by the concerned foreign student to extend the visa, and a decision must be taken by the concerned at the earliest, lest, it would become a clear case of overstaying beyond the visa period, thus amounting to violation of the relevant Foreigners Act and attracting the penal provisions of Section 14 of the said Act.
20. Similarly if a patient has come to India for medical treatment and if he/she is expected to go back within April 2016 and medical attendant visa is also issued, both of them should go back to their respective country. If for any reason, medical treatment is to be extended for any period beyond their control, visa must be got extended well in time. Cross-checking must also be made as to whether the person to whom he was attendant, had really gone back to his/her country. These are only two instances mentioned for the purpose of clarity. It is understandable as to how a medical attendant, as in the present case, could overstay here in Bengaluru after

his visa expired by the end of April 2013.

21. As already stated, The Foreigners Act, 1946, is a central legislation and it confers powers on the Central Government in respect of foreigners. Statutory rules have also been framed under this Act. The Foreigners Order, 1948, is a subordinate legislation made under Section 3 of the Foreigners Act, 1946. Any violation of Order 7 of the Foreigners Order, 1948, provides for penal action. In fact Order 11 enables the civil authority to impose conditions in respect of the place of residence, association with any persons or class of persons, possession of articles by a foreign national, etc. Order 10 creates a restriction on employment of a foreign national in India. The Foreign (Internment) Order, 1952, provides for arrest and detention of suspected foreign nationals.
22. In fact, Order 2 of the Foreigners (Report to Police) Order, 2001, mandates that 'where any person who has reason to believe that a foreigner has entered India without valid document(s), or is staying in the country beyond the authorized period of stay, accommodates such foreigner in a premises, occupied, owned or controlled by him, for whatever purpose, it shall be the duty of such person to inform the nearest police station, within 24 hours, about the presence of such foreigner.'
23. Section 5 of the Registration of Foreigners Act provides for penalties in case of contravention of any of the provisions of the said Act. The Registration of Foreigners Rules, 1992, casts several obligations on foreign nationals staying in India in regard to the reporting of time of their arrival in India, their address, procedure for registration, period of validity of certificate of registration, production of proof of identity, report of absence from the address, change in registered address, surrender of certificates of registration on departure, etc. Taking into consideration the various statutes, Orders and Rules made thereunder, this court is of the opinion that many cases of long overstay of foreign nationals have remained unchecked and it need not be reiterated that the authorities concerned including the police will have to conduct a thorough check to find out such serious lapses and to take appropriate action.
24. Mr. Krishna Dixit, learned Addl. Solicitor General, on instructions from Mr. Ganesh, FRRO, has submitted that as many as 23,708 foreign nationals were residing in Bengaluru City as on 31.12.2015. It is submitted that the list of such overstaying foreign nationals is shared with the concerned State Intelligence wing of the police department every month to initiate appropriate legal action. It is also submitted that at frequent intervals, circulars are circulated to the officers posted at airports, seaports and check posts. It is submitted that once a foreign national is located, LIN is issued as per clause (c) of sub-section (2) of Section 3 of the Foreigners Act, 1946 and penal fee is recovered as per official memorandum issued by the Ministry of Home Affairs bearing O.M.25018:718/12 F. C.C. dated 12.3.2014. Soon after collecting penal fee, the overstaying foreign national would be sent back to his/her country and blacklisted as per the category of overstay. As many as 253 persons were deported in the year 2013

and blacklisted for overstay. In view of large number of foreign nationals overstaying, quicker and effective steps must be taken by all the concerned.

25. Mr.Ponnanna, learned Addl. Advocate General has brought to the notice of this court an official memorandum issued by the Ministry of Home Affairs dated 12.3.2014 relating to the blacklisting of foreign nationals overstaying here and the penalty to be collected before deporting them. The relevant portion of the said circular in paragraph 3 deals about fine to be imposed with reference to the number of days of overstay by foreign nationals before taking steps to blacklist them. The same is extracted below: S.No. Period of overstay Penal Fee

- | | |
|--------------------------------------|---|
| 1) For overstay of 00 to 90 days | US\$ 30 (or equivalent amount in Indian rupees) |
| 2) For overstay of 91 to 2 years | US\$ 130 (or equivalent in Indian rupees) |
| 3) For overstay of more than 2 years | US\$ 230 (or equivalent in Indian rupees) |

What is argued by Mr.Ponnanna is that this official memorandum runs counter to the statutory provisions of the Foreigners Act, 1946, as well as Foreigners Order, 1948. He has submitted that if a person is allowed to stay in India without a valid visa for 2 years by collecting some fine, the penal provision found in Section 14 of the Foreigners Act, 1946, will virtually become otiose. There appears to be a lot of force in the said submission. It is for the concerned Ministry to rethink as to whether such a long period of overstay could be condoned by collecting some fine instead of booking such persons for violation of Section 14.

26. In the memorandum dated 12.3.2014, the category and detention period is also indicated with reference to the number of days of overstay. In case a person overstays beyond 91 days but below 2 years, the detention period would be 2 years. In respect of overstay for more than 2 years, the detention period would be 5 years. They are treated as blacklist category C-1, C-2, C- 3 respectively.
27. If one were to look to the penal fee to be collected in respect of overstay of foreign nationals in India by the FRRO, it is clear that even if a foreign national overstays for more than 2 years, it could be legalized by receiving 230 USD or equivalent in Indian currency. Then he would be blacklisted and sent back to his/her country. As rightly pointed out by Mr.Ponnanna, learned Addl. Advocate General, if no legal action is taken as per the Foreigners Act, 1946, or Foreigners Order, 1948, there would be lot of cases of overstay and they would be happy to pay the amount to the FRRO and go back. It is his argument that if the above official memorandum issued by the Ministry of Home Affairs dated 12.3.2014 is followed, it would be as good as enabling foreign nationals to violate important legislations like

the Foreigners Act, 1946, or Foreigners Order, 1948, and allied statutes with impunity. There is a lot of force in the said submission and it is for the Ministry of Home Affairs to reconsider the same.

28. Though the FRRO and few police officers working in the Intelligence Wing of the police department, Government of Karnataka share their respective data, there should be periodical meeting to share the information collected and to take appropriate action against foreign nationals found to be over-staying and also to get information from the concerned quarters like places where they are employed, places where they are staying and studying, etc.
29. Though a passport is issued by the country from which a foreign national comes to India, visa stamping will be done by our country and it is a solemn document authorizing foreign nationals to stay in India upto a particular period only and the purpose for which visa is given should not be misused in any manner. If foreign nationals are allowed to stay beyond the visa period without those persons taking any prompt steps for extension of their stay before the expiry of visa period, it would speak in volumes against the concerned.
30. India is already facing serious threats of terrorism and security to the nation is on the top priority. This fact must also kept in mind in order to ensure strict compliance of the provisions of the above laws. Whenever the provisions of the Foreigners Act or Foreigners Order, 1948, and other allied Acts are violated, the investigating agency will have to seize the passport containing visa since it would be the prime document to be produced as evidence before any court. A certificate can be given to the concerned foreign national to that effect. If there are any other means of producing evidence other than seizing the passport containing visa stamping, the IO will have to adopt the same. Thus thorough investigation must be done and it should be completed as early as possible and final report must be submitted before the concerned court. Investigation done in respect of foreign nationals must, preferably be vetted by a senior police officer not below the rank of Deputy Commissioner of Police or Superintendent of Police, and then only final reports must be submitted before the court.
31. In the event of filing charge sheet against any foreign national for violation of the relevant provisions of the Foreigners Act, 1946, or any other Act or penal provisions of the local laws, the concerned criminal court will have to take up such cases for trial on top priority, whether the foreign national is on bail or in judicial custody. If there is delay in conducting trial, it would be as good as allowing such foreign national to be in India even after expiry of the visa period. The registry of this court may, in consultation with the Hon'ble Chief Justice, also think of issuing a circular directing the presiding officers of all criminal courts in the state to dispose of criminal cases in which foreign nationals are involved, on top priority.
32. The concerned prosecutor should also bring to the notice of the court and request the court to take up the case on priority and examine all relevant witnesses without undue delay and thereby enable the court to pronounce its verdict at the earliest. It need not be reiterated that when once a

foreign national is convicted and he is sentenced to undergo imprisonment, steps must be necessarily taken to deport him by the concerned.

33. Insofar as trial of cases in which foreign nationals are involved, it need not be reiterated that criminal courts should take up such matters on priority and dispose of the same without any undue delay as per the mandate of Section 309, Cr.P.C. Apart from this, while convicting a foreign national, either on the basis of such national pleading guilty or the court finding him guilty after contest, the court will have to take into consideration the mitigating and aggravating circumstances, while imposing sentence. A positive attempt must be made by the judges of criminal courts dealing with foreign nationals by writing judgments, preferably in English and also recording evidence in English. This court expects that there should not be any flea-bite sentence and the courts can use discretion in exceptional cases to impose lesser punishment and there must be exceptional grounds to adopt such a course.
34. Whenever passports are seized by the investigating agency and are produced before court or when passports are ordered to be produced before any criminal court, while executing bail bonds, they must not be stitched in any manner with the records of the case; but must be kept in safe custody and if possible, a certificate should be given to the passport holder that such passport is produced before the IO along with the charge sheet, or the same is produced in compliance with bail conditions. This would enable the foreign national to show to anybody as to why he is not in possession of the original passport containing visa details.
35. It is also the bounden duty of the concerned prosecutors to assist the court in disposing of the case at the earliest. It need not be reiterated that the department of police can think of establishing a cell headed by a police officer not below the rank of Deputy Commissioner of Police or Superintendent of Police to hear genuine grievances, if any, of foreign nationals and also to consider genuine grievances against them and to vet final report that would be submitted by the IO after concluding investigation. It need not be reiterated that the investigation should be thorough and effective.
36. In the result, the following order is passed: ORDER The petition filed under Section 439, Cr.P.C. is dismissed. The concerned criminal court before which charge sheet is filed, shall commit the case to the sessions court without undue delay and thereafter, the concerned sessions court to take up the case for trial by framing appropriate charges. Prosecution to examine all witnesses whom it intends to examine, at the earliest. Learned counsel for the petitioner and learned SPP to co-operate with the judge in disposal of the matter without undue delay, keeping in mind the mandate of Section 309, Cr.P.C. and other observations made in this order vide point no.2. Sd/- JUDGE vgh*