

Mohammad Jamal And Ors vs Uoi And Ors on 26 May, 2020

Author: Vipin Sanghi

Bench: Vipin Sanghi, Rajnish Bhatnagar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P. (CRL.) 838/2020
MOHAMMAD JAMAL AND ORS. Petitioners
Through: Ms. Rebecca John, Sr. Adv. With Ms.
Ashima Mandla, Adv.
Mr. S. Hari Hara, Adv. For the
applicants in C.M. No. 6803/2020
versus
UOI AND ORS. Respondents
Through: Mr. Amit Mahajan, CGSC.
Mr. Rahul Mehra, Standing Counsel
and Mr. Chaitanya Gosain, Advocate
with Mr. Joy Turkey, DCP, Crime.
CORAM
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
ORDER
% 26.05.2020
CRL.M.A. Nos. 6804-05/2020

Exemptions allowed, subject to all just exceptions. The applications stands disposed of.

By this application the applicant seeks impleadment of the applicants in the writ petition.

For the reasons stated in the application, the application is allowed. The applicants are impleaded as party petitioners in the present petition. W.P. (CRL.) 838/2020 Issue notice. Notice is accepted by Mr. Mahajan, CGSC on behalf of the Union of India and by Mr. Mehra, Standing Counsel, GNCTD on behalf of respondent Nos. 2,3 and 4.

The petitioners have preferred the present petition to seek the issuance of a writ of mandamus to quash paragraph no. 5 of the order dated 09.05.2020 issued by respondent No.3 - Department Of Revenue Through Its Divisional Commissioner, Government Of (NCT) of Delhi , as being untenable in law and violative of Article 14,21 and 22 of the Constitution of India. The petitioners also seek a direction to the respondents to immediately release all the foreign nationals held by the respondents in institutional quarantine in Delhi, on the ground that they have tested negative for COVID-19 and quarantine in perpetuity shall tantamount to illegal detention, violative of Articles 14,21 and 22 of the Constitution of India.

The order dated 09.05.2020 issued by respondent No.5 reads as follows:

" OFFICE OF THE DIVISIONAL COMMISSIONER
REVENUE DEPARTMENT
GOVERNMENT OF NCT OF DELHI
5-SHAM NATH MARG:: DELHI-11054
No.F.1.479/DDMA(HQ)/Stranded Person/ Covid-19/2020/382 Dated 09.05.2020
To
All the Dy. Commissioners
Revenue Department
Government of NCT of Delhi

Sub: Release and Interstate movement of stranded persons related to Tabliqi Jamat Sir/ Maa'm, I am directed to convey that out of total 2446 corona suspects related to Markaz and other Masjids of Indian Nationals belonging to various States staying in various Quarantine Facilities, those who have turned negative and can be released as per the prescribed protocol/ SOP of the Ministry of Health and Family Welfare, Govt. of India and GNCT of Delhi, be returned to their respective States as per the prescribed SOP/ guidelines issued by the DDMA, MHA and Ministry of Health and Family Welfare, GOI in regard of shifting the stranded persons from Delhi to their respective States.

2. Out of such persons, persons belonging to Delhi who could be released as per prescribed SOP/ guidelines should be issued passes to travel from the quarantine centres. Under no circumstances the aforesaid persons should be allowed to stay in any other places including any Masjids etc. It should be ensured by the Nodal Officer appointed by DCs concerned and the area ACPs that the aforesaid persons reach their place of residence and the same is recorded and submitted to Dy. Commissioners concerned and Div. Com Office and a copy is also given to the Special Branch and Crime Branch Delhi Police.

3. In respect of the persons belonging to other states and who can be released as per the prescribed SOP/guidelines, the Dy. Commissioners concerned should obtain the requisite details and information from them in respect of their mode of journeys to their respective states and should also issue passes accordingly as per prescribed SOP/guidelines. Under no circumstances the aforesaid persons should be allowed to stay in any other places including any Masjids etc. It should be ensured by the Nodal Officer appointed by DCs concerned and the area ACPs that the aforesaid persons reach their place of residence and the same is recorded and submitted to Dy. Commissioners concerned and Div. Com Office. The DCs should also inform the respective Resident Commissioner of their states in respect of each and every movement of such persons from Delhi. A copy of the same should also be sent to the Special Branch and Crime Branch of Delhi Police by the Nodal Officer and area ACP respectively

4. Further DMs may also explore the possibility of sending them in buses to their designated places in other states, as per the prescribed social distance norms and other protocol and guidelines applicable

5. In respect of 567 foreign nationals related to markaz & other masjids, those who are found to be corona negative and staying in various institutional quarantine centres, concerned Dy

Commissioners should place them under the custody of Delhi Police as per the directions of Ministry of Home Affairs, Govt. of India This issues with the approval of the Competent Authority.

Yours Faithfully Sd/-

(KS Meena, IAS) SPLCEO(DDMA) (Emphasis Supplied)"

Status reports have been filed by the Delhi Police and the SDM HQ- V(Legal and Judicial). The same have been perused.

As per the status report filed by the Delhi Police, the passports and Visa Application Forms of the overseas quarantined Tablighi Jamat participants were examined, and it was found that they had obtained Tourist Visa/ E-Visa on their arrival in India. It is alleged that the participation of these foreign nationals in the Tablighi Jamat is in violation of the Visa Manual, 2019 and contravenes Section 14 of the Foreigners Act, 1946. Non

-compliance of orders issued under The Epidemic Diseases Act and Disaster Management Act, 2005 has been alleged against, inter alia, these foreign nationals.

The status report discloses that FIR 63/2020, dated 31.03.2020 under Section 3 of The Epidemic Diseases Act, 1897, read with Section 51/58(1) of the Disaster Management Act, 2005, and Sections 188/269/270/271/120B of the IPC was registered at PS, Crime Branch and investigation was taken up by the Crime Branch. During investigation, Section 14 (b) of the Foreigners Act read with Sections 308/304 IPC was also added to the case.

In compliance with the directions issued in Arnesh Kumar Vs State of Bihar & Anr in Crl. Appeal 1277 of 2014, the Tablighi Jamat participants were served notice under Section 41(a) Cr.P.C. All of them have given an undertaking that they would not violate the conditions u/s 41(a) CRPC and abide by the terms of the notice. They were also examined with the help of a questionnaire and they have admitted in writing that they had arrived in India on Tourist/E-Visa.

The report also discloses that in order to substantiate the legitimacy of their visit to India, passports of 723 accused foreigners, and Identity Cards of 23 accused Nepal Nationals have been taken into possession through seizure/handing over memos. Some of the accused foreign nationals were unable to provide / produce their passports. Efforts are being made to account for all the passports in this regard.

The Delhi Police stated that no one has been arrested in the case so far, and that no one has been detained by the Delhi Police in the said case. More than 900 foreign Tablighi Jamaat attendees, including the petitioners, have joined investigation in the case. The status report discloses that investigation is being conducted on a day to day

basis, and that efforts are being made to finalise the investigation and submit the final report under Section 173 Cr.P.C. before the Court.

Mr. Mehra, on instructions, states that the final report would be filed before the concerned court within this week.

Another status report filed by the SDM HQ-V(Legal and Judicial), which discloses that many of the foreign nationals who participated in the Tablighi Markaz in March, 2020 are still living in various quarantine homes established across Delhi. It appears that, there are 955 foreign nationals belonging to 35 different nationalities. The Department of Revenue has not kept these persons in any type of custody. The said Department is looking after the said foreign nationals, and providing them all possible facilities as well. The status report also explains the communication dated 09.05.2020 issued by Spl. CEO, DDMA to all DCs, Department of Revenue, GNCTD regarding the handing over of 567 foreign nationals to police custody. It is stated that on the same day, Principal Secretary cum Divisional Commissioner, Department of Revenue, GNCTD also wrote a letter to Commissioner of Police, Delhi on the same issue. These communications imply that custody of all the foreign nationals may be given to Delhi Police, if required by the Delhi Police.

Mr. Mehra has submitted that the foreign nationals, who are presently housed at the quarantine facilities, are not under detention, or arrest.

In view of the aforesaid statement and status reports, Ms. Rebecca John, learned senior counsel for the petitioners states, on instructions, that the petitioners confine the relief sought in the present petition to only pray that these foreign nationals may be moved to other better facilities, which have been identified by the community. She submits that she would provide the particulars of the said facilities, and also place them on record, and that the facilities could be inspected by the respondents. She submits that the foreign nationals and the community will make all the arrangements for the said facilities at their own expense. Ms. John submits that there is no impediment in the movement of the said foreign nationals to other facilities, since they have repeatedly tested negative for COVID-19.

Mr. Amit Mahajan, who appears for the Union of India states, as an officer of the Court, that since the said foreign nationals are not under detention or arrest, and the relief for allowing the said foreign nationals to fly back to their respective home countries has not been pressed - as a case has been registered and the charge sheet is also about to be filed, he would not object to the limited prayer being made by the petitioners. Accordingly, let the counsel for the petitioner place on record, and share with Mr. Mehra as well as Mr. Mahajan, the particulars of the facilities identified by the community for shifting of these foreign nationals during the course of the day. The respondents shall report back on the said locations/ facilities on the next date.

List on 28.05.2020.

VIPIN SANGHI, J RAJNISH BHATNAGAR, J MAY 26, 2020 N.Khanna