

Court orders and judgements – 2024

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Non-refoulement

24th December,
2019
(AK)
85

W.P. 23644(W) of 2019

Abdur Sukur @ Adi Sukur & Anr.
Vs.
The State of West Bengal & ors.

Mr. Rachit Lakhmani
Mr. Indrojeet Dey

...For the Petitioners.

Mr. A.K. Nag

...For the State.

Affidavit-of-service filed in court today be kept on record.

Despite service, none appears on behalf of the proforma respondents, although the respondent nos. 1 to 5 are represented through counsel. The grievance of the petitioner is that the petitioners belong to the “Rohingya” Community, who are at present state-less in view of Myanmar having disowned them.

The plight of the petitioners is that they have, according to learned counsel for the petitioners, completed their sentence for the alleged offences against them upon being detained by the respondent nos. 1 to 5 and that the said respondents are now attempting to deport them to Myanmar.

It is argued that such deportation would tantamount to a death sentence against the petitioners, in view of the plight of the

petitioners in Myanmar, which country has the declared policy of an all-out onslaught on the said “Rohingya” Community.

Learned counsel for the respondent nos. 1 to 4 submits that the writ petition is vague as regards the period of sentence which has been undergone by the petitioners. It is further submitted that the Ministry of External Affairs of the Union of India is a necessary party and ought to be heard in this regard.

At this juncture, an adjournment is sought for on behalf of the Union of India.

However, in view of the imminent plight of the petitioners, who, despite having basic human rights in consonance with the Fundamental Rights provided by the Constitution of India as well as the U.N. Charter and the norms of any civilized society, a minimum protection ought to be given to the petitioners till the writ petition is decided, in order to uphold the spirit of humanity, if not the Fundamental Rights enshrined in the Constitution of India, which is the *grundnorm* of all Indian statutes.

Accordingly, the respondents are directed to file their affidavit(s)-in-opposition within January 10, 2020. Reply/replies, if any, shall be filed by the petitioners within January 17, 2020.

The respondents shall be restrained by an order of injunction from deporting the petitioners from India during pendency of the writ petition.

The respondents are further directed to ensure that the petitioners are provided with the basic amenities, compatible with a life worthy of respect. It is further clarified that, if the advocate-on-record and/or any other advocate, representing the petitioners, seeks leave to have access to the petitioners in the meantime, such advocate(s) will be granted such access by the respondents to the limited extent that the respondents might monitor the timing of such access and such access may be, at the discretion of the respondents, under the supervision of the respondents.

Let the matter appear next “For Hearing” on January 20, 2020.

(Sabyasachi Bhattacharyya, J.)

\$~3

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 15/2018

MOHAMMAD MUNIR FARAHMAND & ORS Petitioners
Represented by: Mr.Fidel Sbastian, Advocate

versus

UNION OF INDIA & ORS

Represented by:

..... Respondents

Mr.Ashim Sood, CGSC with
Mr.Rhythm B. and SI Abhimanyu, for
R-1 to R-3

Mr.Piyush Singhal, Advocate for
Mr.Ashish Aggarwal, ASC for the
State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

%

O R D E R
28.03.2019

Crl.M.A.No.4921/2019

By this application, the petitioners seek restoration of the writ petition and application for stay.

For the reasons stated in the application, writ petition and application are restored to their original position.

Application is disposed of.

W.P.(Crl.) No.15/2018 & Crl.M.A.No.59/2018

The petitioners had filed this petition inter-alia praying for a writ of mandamus to the respondent No.2 not to deport the petitioners to their native country i.e. Afghanistan and to grant LT Visa to the petitioners.

W.P.(CRL) 15/2018

page 1 of 2

Learned counsel for the petitioners submits that the petitioners have been granted US Visa and they will be leaving for USA on 25th April, 2019.

In view of this statement of learned counsel for the petitioners, no further orders are required to be passed in the writ petition except that no coercive action of deportation to Afghanistan will be taken against the petitioners till 25th April, 2019.

Petition is disposed of.

Order dasti.

MUKTA GUPTA, J.

MARCH 28, 2019

mamta

Certified Copy of order dt. 28/3/22

DOD - 28/3/22

HRNU01-001644-2022

Ridwan Versus State of Haryana & others.

CRR 166 of 2022

In the Court of Mohit Aggarwal, Additional Sessions Judge, Nuh.
(UID No. HR-0226).



C.I.S. No. : CRR/166/2022.
CNR No. HRNU01-001644-2022.
Date of Institution : 9.3.2022.
Date of Decision : 28.3.2022.

Ridwan son of Samsool Alam, aged 19 years, at present in Jail Custody at
Bhondsi. Revisionist.

Versus

1. State of Haryana.
2. United Nations High Commissioner for Refugees B-2/16, Vasant
Vihar, New Delhi, 110057.
3. Abdu Skakuur Rohingya Community Leader, Rohingya Refugees
Camp at Saddiq Nagar, Nuh, Nangli-II (Refugees Camp) Nuh, District
Nuh.

..... Respondents.

*Criminal Revision against the order dated
17.2.2022 passed by the Court of Shri
Kaushal Kumar Yadav, learned Judicial
Magistrate Ist Class, Ferozepur Jhirka, in
FIR No. 96 dated 4.8.2021, under section 14
of Foreigner's Act, 1946, P.S. Pinangwan.*

Present: Shri T.H. Ruparya and Shri Dilwar Hussain, counsel for the
revisionist.
Shri Honey, Public Prosecutor for the respondents No.1 & 2,
Respondent No.3 in person.

ORDER:

The present revision petition has been preferred by the above
said revisionist against the order dated 17.2.2022, passed by the Court of
Shri Kaushal Kumar Yadav, learned Judicial Magistrate Ist Class,
Ferozepur Jhirka, in FIR No. 96 dated 4.8.2021, under section 14 of

(Mohit Aggarwal)
Additional Sessions Judge,
Nuh. 28.3.2022.

ATTESTED
E.P. NAWAB
Dated 28/3/22

Foreigner's Act, 1946, Police Station Pinangwan by which the Superintendent of District Jail, Bhondsi was directed to make necessary arrangements to deport the revisionist/convict Mohd. Ridwan to his country immediately after completion of his sentence. It was prayed that the said order be set aside as the Magistrate had no power to order deportation of the revisionist.

2. The case of the revisionist is that he had been arrested by the police on 4.8.2021 on being found present in India without any passport, visa and identity proof etc. It is stated that after registration of the FIR, investigation was carried out and challan presented before the Court. It is further submitted that on being charge-sheeted by the trial court, the revisionist pleaded guilty and vide impugned order dated 17.2.2022, he was convicted and sentenced to imprisonment for the period already undergone by him in custody w.e.f. 5.8.2021 till 17.2.2022 (6 months 12 days). It is urged that while passing the order dated 17.2.2022, the learned trial court also directed the Superintendent of District Jail Bhondsi to make necessary arrangements to deport the revisionist Mohd. Ridwan to his country immediately after completion of his sentence if not required in any other case. It was submitted that passing of such an order of deportation was beyond the power of the Magistrate as it violates article 21 of the Constitution of India. It was stated that the revisionist could either have been convicted or acquitted by the trial court and no order beyond such conviction or acquittal could have been passed. It was averred that the revisionist belongs to Rohingya community and is registered with United Nations High Commissioner for Refugees (UNHCR) and his claim for grant of asylum is under consideration and his

Sd/-
(Mohit Aggarwal)
Additional Sessions Judge,
Nuh. 28.3.2022.

ATTESTED

Rajesh Kumar
Judge-S.C.J.
Mewat
P.28/3/22

UNHCR Asylum Seeker Certificate number is HCR/PL/513/21C00530 that was issued on 18.3.2021 and valid till 15.9.2022. Citing judgments of various Hon'ble Courts, a request was made for setting aside the impugned order dated 17.2.2022 as far as deportation of the revisionist was concerned and further for release of the revisionist from jail and to send him to the Refugee Camp where his family members/relatives were staying.

3. In response to the notice issued by the Court, the Superintendent of Prison, Gurugram on behalf of the respondent No.1 placed on record a copy of letter No.1986 dated 17.2.2022 addressed by him to the District Magistrate, Gurugram, whereby, a request was made for compliance of the order dated 17.2.2022 passed by the Court of Shri Kaushal Kumar Yadav, learned JMIC, Ferozepur Jhirkha. Permission was also sought to keep the revisionist/convict in confinement as a detenu in the detention centre (place earmarked in District Jail Gurugram) till his deportation to his country. A copy of order dated 18.2.2022 passed by DM, Gurugram has also been placed on record by way of which the revisionist-convict Mohd. Ridwan (resident of Dubai, P.S. Boli Bazar, District Momru, Mayanmar, Burma), as per letter memo No.25019/3/97-F-111 dated 2.7.1998 issued by the Government of India, Ministry of Home Affairs (Foreigner's Division) was ordered to be kept in confinement as a detenu in the detention centre in District Jail Gurugram with a direction that he will be free to move inside the jail premises and is to be kept there for one month w.e.f. 17.2.2022 or until arrangement of his eventual deportation is made, whichever is earlier. It was also ordered that the revisionist-convict would be entitled to 'E' class status as a prisoner. The

Sd/-
(Mohit Aggarwal)
Additional Sessions Judge,
Nuh. 28.3.2022.

ATTESTED
BENEFIT OF LAW
THE ATTORNEY GENERAL
MAY 2022
P 28/3/22

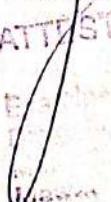
Superintendent of Prison sent another letter bearing No. 2485 dated 5.3.2022 to Superintendent of Police, Nuh requesting for making necessary arrangement for deportation of the revisionist-convict to his country immediately. A request was also made to the District Magistrate, Gurugram vide letter No. 2683 dated 14.3.2022 for extending the detention period of the revisionist/convict. Vide order dated 16.3.2022, the DM, Gurugram extended the detention period of the revisionist-convict. Directions were issued to the effect that he be kept in the detention centre in District Jail Gurugram for one month w.e.f. 16.3.2022 or until arrangement of his eventual deportation is made, whichever is earlier.

4. The respondent No.3 appeared in person and got his statement recorded to the effect that he is the community leader of Rohingya Refugee Camp set up at Sadliq Nagar, Nangli-III, Nuh. He further placed on record a copy of his UNHCR identity card No.305-12C01322 issued on 30.8.2020 valid till 29.8.2022 as Ex.A1. The original card was seen by the Court and returned to the respondent No.3. He further stated that he undertakes to keep the revisionist-convict Ridwan in the Refugee Camp in safe custody until his application seeking asylum in India is decided by the competent authorities.

Learned counsel for the revisionist placed on record a copy of the certificate issued by UNHRC, New Delhi as Ex.A2 showing that the application moved by the revisionist-convict seeking refugee status in India is under consideration which is valid till 15.9.2022.

5. I have heard Learned Counsel for the revisionist, learned Public Prosecutor for the respondents No.1 and 2 and the respondent No.3 in person and have perused the record carefully.


(Mohit Aggarwal)
Additional Sessions Judge,
Nuh. 28.3.2022.

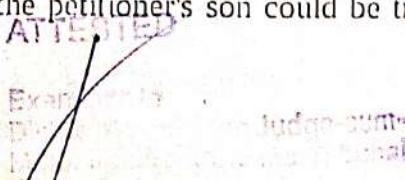
ATTESTED


Judge-Sunil
Kumar
28/3/22

6. The main issue that arises for consideration in this matter is as to whether the Court of Shri Kaushal Kumar Yadav, learned JMIC, Ferozepur Jhirka while passing the impugned order dated 17.2.2022 was competent to issue directions for deportation of the revisionist to his country after completion of his sentence. In this context, it would be relevant to go through some judgments placed on record by learned counsel for the revisionist. In a case titled as **Dr. Malavika Karlekar Versus Union of India and another bearing Writ Petition (Criminal) No. 583 of 1992 decided on 25.9.1992**, the question before the Hon'ble Supreme Court was as to whether the 21 persons whose names were mentioned in the petition could be deported from Andaman Islands to Burma while their applications for refugee status were pending determination. The Hon'ble apex court directed the concerned authorities to check as to whether the refugee status claimed by them is pending determination and if a prima-facie case is made out for the grant of refugee status and further if the said individuals pose no danger or threat to the security of the country, they may not be deported till the question of their status can be determined. The Hon'ble Court further held that if there is any other ground on which any or all of those persons are to be deported, the said order passed by the Court would not affect the same and so also it will not affect any case where refugee status has been denied or not claimed at all.

In the case of **Julaha @ Julaha Yusuf Versus Union of India and others bearing CRWP No. 7515 of 2020 decided on 15.1.2021** by the Hon'ble Punjab and Haryana High Court, the point for determination was as to whether the petitioner's son could be transferred


 (Mohit Aggarwal)
 Additional Sessions Judge,
 Nuh. 28.3.2022.


 ATTESTED
 Examined
 Dated
 28/3/22
 Judge Court
 Mohit Aggarwal

28/3/22

from detention centre, Amritsar to Chaudeni Rohingya Refugee Camp, Tehsil Nuh, District Mewat, Haryana, where his mother was also staying. The petition was allowed and the ADGP (Prisons), Punjab was directed to do the needful for arranging for the conveyance and for ensuring that the petitioner's son is taken from detention centre, Amritsar to the Refugee Camp in Nuh.

The Hon'ble High Court of Telangana in the case of Bailly Gui Landry Versus The State of Telangana bearing Criminal Writ Petition Nos. 4396 and 4400 of 2021 in its order dated 22.6.2021 in clear terms stated that the Magistrate does not have the power to order deportation of any foreign citizen even in case of violation of the provisions of Foreigners Act, 1946 and that the said Act is a special enactment and procedure for deportation of a foreign national is specifically mentioned therein.

7. From the above judgments, it is clear that the Magistrate had no power to order deportation of the revisionist while passing the order dated 17.2.2022. There is nothing from the side of the respondents No.1 and 2 to suggest that the presence of the revisionist in a refugee camp in India can probably pose a danger or threat to the security of our country. There is no such observation in the impugned order dated 17.2.2022. Hence, the impugned order dated 17.2.2022 passed by the Court of Shri Kaushal Kumar Yadav, learned JMIC, Ferozepur Jhirka is set aside to the extent whereby directions had been issued for deportation of the revisionist/convict to his country immediately after completion of his sentence. It is held that the concerned Magistrate had no power to order for such deportation.


(Mohit Aggarwal)
Additional Sessions Judge,
Nuh. 28.3.2022.


28/3/22

The Deputy Commissioner, Nuh is directed to make necessary arrangements himself or through any officer working under his control for handing over the custody of the revisionist/convict to the respondent No.3. The Superintendent of District Jail, Bhondsi is also directed to arrange for the conveyance and ensure that the revisionist is taken from the detention centre, District Jail Bhondsi to Rohingya Refugee Camp at Saddiq Nagar, Nangli-III, Nuh. The competent authorities under the Foreigners Act, 1946 are always at liberty to pass appropriate orders in consonance with the provisions of the Act including imposition of any restrictions on the movement of the revisionist till his application seeking asylum in India is decided by the UNHCR. A copy of this order alongwith relevant documents be sent to the Deputy Commissioner, Nuh and Superintendent, District Jail Bhondsi for necessary compliance. File be consigned to record-room after due compliance.

Announced in open Court.
28.3.2022.

Mohit Aggarwal
(Mohit Aggarwal)
Additional Sessions Judge,
Nuh, 28.3.2022.
UID No.HR-0226.

Note: This judgment consists of 07 pages and each page has been checked and signed by me.

Mohit Aggarwal
(Mohit Aggarwal)
Additional Sessions Judge,
Nuh, 28.3.2022.
UID No. HR-0226.

(Anand Mishra, Steno-II).

(Mohit Aggarwal)
Additional Sessions Judge,
Nuh, 28.3.2022.

Judge Sanctioned
Jharkhand High Court

028/3/22



IN THE COURT OF THE CHIEF JUDICIALMAGISTRATE,
IMPHAL WEST, MANIPUR.

CRIL. (P) CASE NO. 24 of 2018

Ref: F.I.R No. 26(1) 2018 SJM-PS, U/S 14 Foreigners Act,

The State of Manipur

-V-

Mohammad Faisal Khan @ Lay Zaw Myint, S/o (L) Abdul
Haq of Moreh Ward No.4.

.... Accused Person.

EXTRACT COPY OF THE ORDER DATED 19-02-2018:

A fine of Rs.2,000/- (Rupees two thousand) only is paid over vide T.R No. 256822-

B.C to deposit the same into State Account.

With accused/ convict Mohammad Faisal Khan @ Lay Zaw Myint, having paid the fine of Rs.2,000/- and having undergone the sentence imposed of 15 days since his remand into custody on 31/01/2018 till date, he be immediately released from custody, as no Deportation Order can be passed against the accused/ convict who is a holder now of a valid card of the United Nations High Commissioner for Refugees being Ref. No. 305-15C01701, individual No. 305-00102335 and as such under the mandate of International Law relating to Refugees and UNHCR, if his custody is not required in any other case.

Announced.

Thus disposed.

Send extract to S.P/MCJ-Sajiwa for compliance.

Cril. Asst. take step.

Sd/-
(Lamkhanpau Tonsing)
C.J.M., Imphal West.

Memo No. CJM/IW/2018/150

Dated, 19th February, 2018.

Copy to:

The S.P/MCJ-Sajiwa for information and necessary compliance.

(Lamkhanpau Tonsing)
C.J.M., Imphal West.
Chief Judicial Magistrate
Imphal West, Manipur

FIR No : 288/15
PS : Palam Village
State Vs Tshibangu Kalala

ROHIT GUJIA
Metropolitan Magistrate-01 (SW)
Court No. 213,
District Court Dwarka, New Delhi

12.01.2017.

Present: Ld. APP for the State.
Convict in person along with Ld counsel Sh Fazal Abdali.

ORDER ON SENTENCE

Arguments heard on the point of sentence. Ld. Counsel for the convict has submitted that the convict is national of Democratic Republic of Congo and he has fled from his country due of fear of persecution and he is staying in India for his survival. Further, it is submitted by the counsel for the convict that convict is mandate refugee with United Nations, High Commissioner For Refugee (UNHCR), India and is having issued UNHCR card no 305-12C 00983 which is valid till 21.02.2018. It is further submitted that convict is misrepresented as a foreigner under foreigners Act whereas he is recognized as a refugee under the mandate of UNHCR. It is submitted that there is no other criminal case pending against the convict and has prayed that a lenient view should be taken against him while passing order on sentence.

Ld. APP, on the other hand, has submitted that the convict was found without any legal documents for his stay in India and offence against him has been proved beyond reasonable doubt and has prayed for the maximum punishment to the convict.

I have heard the submissions and have perused the record. Perusal of the record shows that the convict was found without any valid document for his stay in India. Therefore, **convict is sentenced to the period of custody already undergone.**

However, whether convict is liable for deportation is to be consider at this stage. Ld counsel for the convict has submitted that he is a

mandate refugee with UNHCR, India and has been issued card by UNHCR which is valid till 2018 and has submitted that the convict cannot be deported. Ld counsel for the convict has relied upon the following judgments of Hon'ble Supreme Court and High Court:

- 1) Premanand & Anr Vs State of Kerala 2013 (3) KLJ;
- 2) Vishaka Vs State of Rajasthan, 1997;
- 3) Ktaer Abbas Habib Al Qutaiff Vs Union of India, 1999 Cri. L. J. 919;
- 4) Anthony OmandiOsino Vs FRRO, W P (Crl) 2033/2015.

All these decisions have stressed upon the point of special status of refugee and to consider them not as foreigner only, but has to consider their status in the light of mandate of UN conventions to which India has ratified.

In the Article of the UN Convention for Refugees 1951

..... owing to well founded fear of being prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

So, convict though included within the wider definition of foreigner as per foreigners act, but he has special status and for his safety he should not be deported to his original country. Hence, considering the above mentioned facts and circumstances, I am of the considered opinion that the convict shall not be deported to his original country.

Copy of the order on sentence be given to convict.

File be consigned to record room.

*Metropolitan Magistrate-01
Dwarka Courts, New Delhi*

(Rohit Gulia)
MM-01, Dwarka Courts,
New Delhi.
12.01.2017.

Right to life



W.P(MD)No.9068 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 21.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9068 of 2015

Athipathi

... Petitioner

Vs.

1. The Principal Secretary,
Health and Family Welfare Department,
State of Tamil Nadu, Secretariat,
Fort St.George, Chennai.
2. The Commissioner,
Commissioner of Refugees Rehabilitation,
Chepakkam, Chennai.
3. The District Collector,
Office of the District Collector,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to pay Rs.10,00,000/- compensation to petitioner's family members for the death of her daughter by name Saranya aged 11 years, she died due to demolition of Thiruvadavur refugees camp house on 12.05.2014, within the time stipulated by this Court.



WEB COPY

W.P(MD)No.9068 of 2015

For Petitioner : Mr.AV.Saha for Mr.R.Alagumani

For Respondents : Mr.N.GA.Nataraj
Government Advocate

ORDER

அகதி முகாம்

மழையில் வருகிறது

மன் மணம்!

Dinamani-editor Thiru.K.Vaidyanathan quoted the above lines of Arivumathi in his weekly column dated 09.10.2016 (Indha varam, Volume-5 by Kalarasigan). I am no Arundhathi Subramaniam to provide a lyrical translation. The poem captures the emotions of a refugee confined in a camp.

2.The petitioner is a Srilankan refugee. He has been housed in a camp along with his family members at Thiruvathavur in Melur Taluk, Madurai District. On 12.05.2014, there was a downpour. The side-wall collapsed. Saranya/the petitioner's daughter got caught under the debris. She was rushed to the Government Hospital, Melur. She died enroute.



W.P(MD)No.9068 of 2015

WEB COPY

3.The question is whether the Government is liable to pay compensation. The stand of the respondents was that the asbestos-roofing put up by the petitioner had fallen on Saranya and that led to her death. The learned counsel appearing for the petitioner disputed the said assertion. On my instructions, the learned Government Advocate furnished a copy of the First Information Report in Crime No.311 of 2014 registered on the file of Melur Police Station in the wake of the death of the child. The information lodged by the jurisdictional Village Administrative Officer clearly states that the child died due to injuries caused by the collapse of the side-wall.

4.It is not in dispute that the wall in question was put up only by the Government. The District Collector, Madurai submitted proposal way back in March 2012 seeking allotment of funds for enhancing the infrastructural facilities in the refugee camp. Unfortunately, the funds came to be allotted only in the year 2015-16. During the intervening period, the tragedy had occurred. It appears that the construction was put up in the year 1995. The officials obviously had doubts regarding the structural stability of the wall and that is why, proposal was mooted for reconstruction. Having housed the petitioner's family along with others in the camp, the government was obliged to assume responsibility for their safety and well-being.



W.P(MD)No.9068 of 2015

WEB COPY

5.The core issue is whether a refugee like the petitioner has any fundamental right. In ***Harina v. Regional Passport Officer, Trichirappalli*** (WP(MD)No.27893 of 2022 dated 30.01.2023) and ***Neyatitus v. the Regional Passport Officer, Madurai*** (WP(MD)No.2421 of 2023 dated 05.04.2023), I had catalogued quite a few rights of the Srilankan refugees. Article 21 of the Constitution of India is applicable to all persons, citizens and non-citizens alike. The Hon'ble Apex Court had held that the "Right to life" enshrined in Article 21 of the Constitution of India indicates something more than mere animal existence. Even non-citizens who had come here merely as tourists or in any other capacity will be entitled to protection of their lives in accordance with the Constitutional provisions. They also have a right to "Life" in this country. They have the right to Live so long as they are here with human dignity. The State is under an obligation to protect the lives of both citizens and non-citizens [(**2000) 2 SCC 465 (Chairman, Railway Board v. Chandrima Das**]. Earlier, a similar declaration was made in the case of Chakma refugees (vide **AIR 1996 SC 1234 (NHRC v. State of Arunachal Pradesh)**).

6.Sri Lankan refugees are living in camps at various places in Tamil Nadu for quite a few decades. They have been issued with identity cards. They have been allowed to pursue their avocations and earn their living. The



W.P(MD)No.9068 of 2015

doles handed out by the government can hardly be sufficient to keep one's body and soul together. However, there are serious restrictions in place. Even as the hearing was going on, one counsel stood up and informed that a person who came to paint his house told him that he had to leave by 05.30 P.M as he must report to the camp before the closing hours. Such restrictions will have an adverse bearing on their right to work. The Hon'ble Apex Court in ***Olga Tellis v. Bombay Municipal Corporation (AIR 1986 SC 180)*** held that the right to live and the right to work are integrated and independent and therefore, if a person is deprived of his right to work, his very right to life is put in jeopardy. Time has come to recognise the refugees' right to work without restrictions.

7.A refugee has to be housed in reasonably decent accommodation. The basic infrastructural facilities must be available. He or she must also have access to the fundamental amenities such as sanitation, health care, clean drinking water etc., When the right to shelter and housing has been recognised internationally as a human right, it cannot be denied to the refugees living in a camp. A camp houses a few hundred families. There are women and young girls. Their privacy has to be ensured. Otherwise, there is no meaning in declaring privacy as a fundamental right.

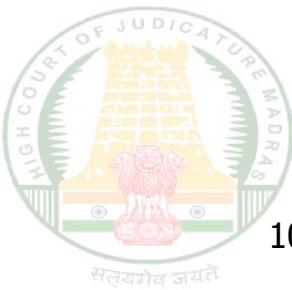


W.P(MD)No.9068 of 2015

WEB COPY

8.The legal maxim “res ipsa loquitur” clearly applies to the case on hand. The victim had not in any way contributed to the occurrence. The wall collapse affected a few other families also. Fortunately, others escaped with injuries. The petitioner's child was not lucky. The respondents cannot escape from their liability by attributing the occurrence to “act of god”. It is true that only on account of the heavy rains and wind, the untoward incident took place. But then, the construction must have been such as to withstand such eventualities. It is not the case of the respondents that what happened was an extraordinary or unforeseeable event. It was a normal heavy rainfall. Only because the wall was poorly constructed, it collapsed. The State has to assume absolute liability.

9.Next comes the question of compensation. The deceased was aged 11 years. She was studying in 6th Std. The loss of child is irreplaceable and no amount of money can compensate the parents. The Hon'ble Supreme Court in ***Latha Wadhwa (2001) 8 SCC 197*** had laid down the parameters for determining the quantum of compensation in cases involving deaths of children aged 10 to 15 years. Applying the ratio laid down in the aforesaid case, I hold that the State government is liable to pay a sum of Rs.5.00 lakhs as compensation.



W.P(MD)No.9068 of 2015

WEB COPY

10.I consciously refrain from directing the payment to be made to the petitioner. It is quite possible that he is a teetotaller. I would rather err on the side of caution. I am afraid that the compensation money will find its way back to the State government's coffers via TASMAC. I therefore direct the government to create a fixed deposit in favour of the wife of the petitioner for a period of three years. The petitioner's wife shall be entitled to draw interest every two months. At the end of the three year period, the fixed deposit can be withdrawn by her. The first respondent is given twelve weeks from the date of receipt of copy of this order to comply with this direction. In default, the State will have to pay interest at the rate of 6% p.a from the date of filing of this writ petition.

11.This writ petition is allowed on these terms. There shall be no order as to costs.

21.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
skm



W.P(MD)No.9068 of 2015

To

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1. The Principal Secretary,
Health and Family Welfare Department,
State of Tamil Nadu, Secretariat, Fort St.George,
Chennai.
2. The Commissioner, Commissioner of Refugees Rehabilitation,
Chepakkam, Chennai.
3. The District Collector, Office of the District Collector,
Madurai District.



W.P(MD)No.9068 of 2015

G.R.SWAMINATHAN, J.

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W.P(MD)No.9068 of 2015

21.08.2023

MANU/SC/0517/1981 **Equivalent Citation:** AIR1981SC746, [1982]52CompCas554(SC), 1981CriLJ306, 1981(1)SCALE79, (1981)1SCC608, (1981)SCC(Cri)212, [1981]2SCR516

IN THE SUPREME COURT OF INDIA

Writ Petition No. 3042 of 1980

Decided On: 13.01.1981

Appellants: **Francis Coralie Mullin**
Vs.

Respondent: **Administrator, Union Territory of Delhi and Ors.**

Hon'ble Judges/Coram:

P.N. Bhagwati and S. Murtaza Fazal Ali, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: N.M. Ghatate and S.V. Deshpande, Advs

For Respondents/Defendant: Hardayal Hardy, and M.N. Shroff, Advs.

Case Note:

Constitution - detention - Articles 14, 19 and 21 of Constitution of India - petitioner challenged restrictions imposed on interviews by prison authorities - detention order of prison authority prevented accused from interviews with family and legal adviser - restrictions found to be violative of Articles 19 and 21 - detenu entitled to interviews with family and legal adviser with permission of jail authority at reasonable hour - permission of District Magistrate not required - presence of customs officer not mandatory - petition allowed.

JUDGMENT

P.N. Bhagwati, J.

1. This petition under Article 32 of the Constitution raises a question in regard of the right of a detenu under the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act (hereinafter referred to as COFEPOSA Act) to have interview with a lawyer and the members of his family. The facts giving rise to the petition are few and undisputed and may be briefly stated as follows :

2. The petitioner, who is a British national, was arrested and detained in the Central Jail, Tihar under an Order dated 23rd November 1979 issued under Section 3 of the COFEPOSA Act. She preferred a petition in this Court for a writ of habeas corpus challenging her detention, but by a judgment delivered by this Court on 27th February 1980, her petition was rejected with the result that she continued to remain under detention in the Tihar Central Jail. Whilst under detention, the petitioner experienced considerable difficulty in having interview with her lawyer and the members of her family. Her daughter aged about five years and her sister, who was looking after the daughter, were permitted to have interview with her only once in a month and she was not allowed to meet her daughter more often, though a child of very tender age. It seems that some criminal proceeding was pending against the petitioner for attempting to smuggle hashish out of the country and for the purpose of her defence in such criminal proceeding, it was necessary for her to consult her lawyer, but even her lawyer

found it difficult to obtain an interview with her because in order to arrange an interview, he was required to obtain prior appointment from the District Magistrate, Delhi and the interview could take place only in the presence of a Customs Officer nominated by the Collector of Customs. This procedure for obtaining interview caused considerable hardship and inconvenience and there were occasions when, even after obtaining prior appointment from the District Magistrate, Delhi, her lawyer could not have an interview with her since no Customs Officer nominated by the Collector of Customs remained present at the appointed time. The petitioner was thus effectively denied the facility of interview with her lawyer and even her young daughter 5 years old could not meet her except once in a month. This restriction on interviews was imposed by the Prison Authorities by virtue of Clause 3 (b) Sub-clauses (i) and (ii) of the Conditions of Detention laid down by the Delhi Administration under an Order dated 23rd August 1975 issued in exercise of the powers conferred under Section 5 of the COFEPOSA Act. These two sub-clauses of Clause 3(b) provided inter alia as under:

3. The conditions of detention in respect of classification and interviews shall be as under :-

(a) ...

(b) Interviews : Subject to the direction issued by the Administrator from time to time, permission for the grant of interviews with a detenu shall be granted by the District Magistrate, Delhi as under :-

(i) Interview with legal adviser :

Interview with legal adviser in connection with defence of a detenu in a criminal case or in regard to writ petitions and the like, may be allowed by prior appointment, in the presence of an officer of Customs/Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who sponsors the case for detention.

(ii) Interview with family members :

A monthly interview may be permitted for members of the family consisting of wife, children or parents of the detenu....

The petitioner, therefore, preferred a petition in this Court under Article 32 challenging the constitutional validity of Sub-clauses (i) and (ii) of Clause 3(b) of the Conditions of Detention Order and praying that the Administrator of the Union Territory of Delhi and the Superintendent of Tihar Central Jail be directed to permit her to have interview with her lawyer and the members of her family without complying with the restrictions laid down in those sub-clauses.

3. The principal ground on which the constitutional validity of Sub-clauses (i) and (ii) of Clause 3(b) of the Conditions of Detention Order was challenged was that these provisions were violative of Articles 14 and 21 of the Constitution inasmuch as they were arbitrary and unreasonable. It was contended on behalf of the petitioner that allowing interview with the members of the family only once in a month was discriminatory and unreasonable, particularly when undertrial prisoners were granted

the facility of interview with relatives and friends twice in a week under Rule 559A and convicted prisoners were permitted to have interview with their relatives and friends once in a week under Rule 550 of the Rules set out in the Manual for the Superintendence and Management of Jails in the Punjab. The petitioner also urged that a detenu was entitled under Article 22 of the Constitution to consult and be defended by a legal practitioner of his choice and she was, therefore entitled to the facility of interview with a lawyer whom he wanted to consult or appear for him in a legal proceeding and the requirement of prior appointment for interview and of the presence of a Customs or Excise Officer at the interview was arbitrary and unreasonable and therefore violative of Articles 14 and 21. The respondents resisted the contentions of the petitioner and submitted that Sub-clauses (i) and (ii) of Clause 3(b) were not violative of Articles 14 and 21, since the restrictions imposed by them were reasonable, fair and just, but stated that they would have no objection if instead of a monthly interview, the petitioner was granted the facility of interview with her daughter and sister twice in a week as in the case of undertrial prisoners and so far as interview with the lawyer is concerned, they would not insist on the presence of a customs or excise officer at the interview. Though these two concessions were made on behalf of the respondents at the hearing of the petition before us, the question still remains whether Sub-clause (i) and (ii) of Clause 3(b) are valid and it is necessary that we should examine this question in the context of our constitutional values, since there are a large number of detenus under the COFEPOSA Act and the conditions of their detention in regard to interviews must be finally settled by this Court.

4. Now it is necessary to bear in mind the distinction between 'preventive detention' and 'punitive detention', when we are considering the question of validity of conditions of detention. There is a vital distinction between these two kinds of detention. 'Punitive detention' is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while 'preventive detention' is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society. The power of preventive detention has been recognised as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and there are many countries where it is not allowed to be exercised except in times of war or aggression. Our Constitution does recognise the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. Article 22 in Clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of preventive detention taken under such law must be in conformity with the restrictions laid down by those clauses on pain of invalidation. But apart from Article 22, there is also Article 21 which lays down restrictions on the power of preventive detention. Until the decision of this Court in *Maneka Gandhi v. Union of India* MANU/SC/0040/1978 : [1979]2SCR338, a very narrow and constricted meaning was given to the guarantee embodied in Article 21 and that article was understood to embody only that aspect of the rule of law, which requires that no one shall be deprived of his life or personal liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorising deprivation of life or personal liberty, it was supposed to meet the requirement of Article 21. But in Maneka Gandhi's case (supra), this Court for the first time opened-up a new dimension of Article 21 and laid down that Article 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be

reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. This Court expanded the scope and ambit of the right to life and personal liberty enshrined in Article 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in Maneka Gandhi's case became the starting point-the-spring-board-for a most spectacular evolution of the law culminating in the decisions in M.O. Hoscot v. State of Maharashtra MANU/SC/0119/1978 : 1978CriLJ1678 , Hussainara Khatoon's case MANU/SC/0119/1979 : 1979CriLJ1036 , the first Sunil Batra's case MANU/SC/0184/1978 : 1978CriLJ1741 and the second Sunil Batra's case MANU/SC/0184/1978 : 1978CriLJ1741 . The position now is that Article 21 as interpreted in Maneka Gandhi's case (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has therefore now to pass the test not only of Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the Courts, the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilised society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant to see that this power is not abused or misused. It must always be remembered that preventive detention is qualitatively different from punitive detention and their purposes are different. In case of punitive detention, the person concerned is detained by way of punishment after he is found guilty of wrong doing as a result of trial where he has the fullest opportunity to defend himself, while in case of preventive detention, he is detained merely on suspicion with a view to preventing him from doing harm in future and the opportunity that he has for contesting the action of the Executive is very limited. Having regard to this distinctive character of preventive detention, which aims not at punishing an individual for a wrong done by him, but at curtailing his liberty with a view to pre-empting his injurious activities in future, it has been laid down by this Court in Sampat Prakash v. State of Jammu and Kashmir MANU/SC/0055/1969 : 1969CriLJ1555 "that the restrictions placed on a person preventively detained must, consistently with the effectiveness of detention, be minimal."

5. The question which then arises is whether a person preventively detained in a prison has any rights which he can enforce in a Court of law. Once his freedom is curtailed by incarceration in a jail, does he have any fundamental rights at all or does he leave them behind, when he enters the prison gate ? The answer to this question is no longer res integra. It has been held by this Court in the two Sunil Batra cases that "fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration." The prisoner or detenu has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration. Even before the two Sunil Batra cases, this position was impliedly accepted in State of Maharashtra v. Prabhakar Sanzgiri MANU/SC/0089/1965 : 1966CriLJ311 and it was spelt-out clearly and in no uncertain terms by Chandrachud, J. as he then was, in D.B. Patnaik v. State of Andhra Pradesh MANU/SC/0038/1974 : 1975CriLJ556 :

Convicts are not, by mere reason of the conviction, denuded of all the

fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails to by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.

This statement of the law was affirmed by a Bench of five Judges of this Court in the first Sunil Batra case (*supra*) and by Krishna Iyer, J. speaking on behalf of the Court in the second Sunil Batra case (*supra*). Krishna Iyer, J. in the latter case proceeded to add in his characteristic style; "The jurisdictional reach and range of this Court's writ to hold prison caprice and cruelty in constitutional leash is incontestable" and concluded by observing; "Thus it is now clear law that a prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials the law will respond to his distress signals through 'writ' aid. The Indian human has a constant companion—the Court armed with the Constitution." It is interesting to note that the Supreme Court of the United States has also taken the same view in regard to rights of prisoners. Mr. Justice Douglas struck a humanistic note when he said in Eve Pall's case 417 U.S. 817 : 41 L. ed. 2d 495. :

Prisoners are still persons entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of due process.

So also in Charles Wolff's case 41 L. ed. 2d 935, Mr. Justice White made the same point in emphatic terms.

But, though his rights may be diminished by environment, a prisoner is not wholly stripped off constitutional protections, when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country.

Mr. Justice Douglas reiterated his thesis when he asserted :

Every prisoner's liberty i.e. of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is then only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the system requires procedural safeguards.

Mr. Justice Marshall also expressed himself clearly and explicitly in the same terms :

I have previously stated my view that a prisoner does not shed his basic constitutional rights at the prison gate, and I fully support the court's holding that the interest of inmates in freedom from imposition of serious discipline is a 'liberty' entitled to due process protection.

What is stated by these learned Judges in regard to the rights of a prisoner under the

Constitution of the United States applies equally in regard to the rights of a prisoner or detenu under our constitutional system. It must, therefore, now be taken to be well-settled that a prisoner or detenu is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration, and if any of these rights are violated, the Court which is to use the words of Krishna Iyer, J., "not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope," will immediately spring into action and run to his rescue.

6. We must therefore proceed to consider whether any of the Fundamental Rights of the detenu are violated by Sub-clauses (i) and (ii) of Clause 3(b) so as to result in their invalidation wholly or in part. We will first take up for consideration the Fundamental Right of the detenu under Article 21 because that is a Fundamental Right which has, after the decision in Maneka Gandhi's case (*supra*), a highly activist magnitude and it embodies a constitutional value of supreme importance in a democratic society. It provides that no one shall be deprived of his life or personal liberty except according to procedure established by law and such procedure shall be reasonable fair, and just. Now what is the true scope and ambit of the right to life guaranteed under this Article ? While arriving at the proper meaning and content of the right to life, we must remember that it is a constitutional provision which we are expounding and moreover it is a provision enacting a Fundamental right and the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. The luminous guideline in the interpretation of a constitutional provision is provided by the Supreme Court of United States in *Weems v. U.S.* 54 L E 801.

Legislation, both statutory and constitutional is enacted, it is true, from an experience of evils, but-its general language should not, therefore, be necessarily confined to the form that evil had, therefore taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immorality as nearly as human institutions can approach it" The future is their care, and provisions for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a Constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into important and lifeless formulas. Rights declared in the words might be lost in reality. And this has been recognised. The meaning and vitality of the Constitution have developed against narrow and restrictive construction.

This principle of interpretation which requires that a Constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the Constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges, applies with greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.

7. Now obviously, the right to life enshrined in Article 21 can not be restricted to mere animal existence. It means something much more than just physical survival. In Kharak Singh v. State of Uttar Pradesh [1964] 1 S.C.R. 232 Subba Rao J. quoted with approval the following passage from the judgment of Field J. in Munn v. Illinois [1877] 94 U.S. 113 to emphasize the quality of life covered by Article 21 :

Sunil Batra v. Delhi Admn. p. 503 By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world.

and this passage was again accepted as laying down the correct law by the Constitution Bench of this Court in the first Sunil Batra case (supra). Every limb or faculty through which life is enjoyed is thus protected by Article 21 and a fortiori, this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article 21 may be total or partial, neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by Article 21, whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all: it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. It is therefore clear that any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to

the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detenu obviously cannot move about freely by going outside the prison walls nor can he socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

9. The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21, for the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that Article. The expression 'personal liberty' occurring in Article 21 has been given a broad and liberal interpretation in Maneka Gandhi's case (*supra*) and it has been held in that case that the expression 'personal liberty' used in that Article is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which "have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19". There can therefore be no doubt that 'personal liberty' would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21.

10. Now obviously when an undertrial prisoner is granted the facility of interviews with relatives and friends twice in a week under Rule 559A and a convicted prisoner is permitted to have interviews with his relatives and friends once in a week under Rule 550, it is difficult to understand how Sub-clause (ii) of Clause 3(b) of the Conditions of Detention Order, which restricts the interview only to one in a month in case of a detenu, can possibly be regarded as reasonable and nonarbitrary, particularly when a detenu stands on a higher pedestal than an undertrial prisoner or a convict and, as held by this Court in Sampath Prakash's case (*supra*) restrictions placed on a detenu must "consistent with the effectiveness of detention, be minimal." We would therefore unhesitatingly hold Sub-clause (ii) of Clause 3(b) to be violative of Articles 14 and 21 in so far as it permits only one interview in a month to a detenu. We are of the view that a detenu must be permitted to have atleast two interviews in a week with relatives and friends and it should be possible for a relative or friend to have interview with the detenu at any reasonable hour on obtaining permission from the Superintendent of the Jail and it should not be necessary to seek the permission of the District Magistrate, Delhi, as the latter procedure would be cumbrous and unnecessary from the point of view of security and hence unreasonable. We would go so far as to say that even independently of Rules 550 and 559A, we would regard the present norm of two interviews in a week for prisoners as furnishing a criterion of what we would consider reasonable and non-arbitrary.

11. The same reasoning must also result in invalidation of Sub-clause (i) of Clause 3(b) of the Conditions of Detention Order which prescribes that a detenu can have interview with a legal adviser only after obtaining prior permission of the District Magistrate, Delhi and the interview has to take place in the presence of an officer of Customs/Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who has sponsored the case

for detention. The right of a detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention of filing a writ petition or prosecuting any claim or proceeding, civil or criminal, is obviously included in the right to live with human dignity and is also part of personal liberty and the detenu cannot be deprived of this right nor can this right of the detenu be interfered with except in accordance with reasonable, fair and just procedure established by a valid law.

A prison regulation may, therefore, regulate the right of a detenu to have interview with a legal adviser in a manner which is reasonable, fair and just but it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview and if it does so, it would be violative of Articles 14 and 21. Now in the present case the legal adviser can have interview with a detenu only by prior appointment after obtaining permission of the District Magistrate, Delhi. This would obviously cause great hardship and inconvenience because the legal adviser would have to apply to the District Magistrate, Delhi well in advance and then also the time fixed by the District Magistrate, Delhi may not be suitable to the legal adviser who would ordinarily be a busy practitioner and, in that event, from a practical point of view the right to consult a legal adviser would be rendered illusory. Moreover, the interview must take place in the presence of an officer of Customs/Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who has sponsored the detention and this too would seem to be an unreasonable procedural requirement because in order to secure the presence of such officer at the interview, the District Magistrate, Delhi would have to fix the time for the interview in consultation with the Collector of Customs/Central Excise or the Deputy Director of Enforcement and it may become difficult to synchronise the time which suits the legal adviser with the time convenient to the concerned officer and furthermore if the nominated officer does not, for any reason, attend at the appointed time, as seems to have happened on quite a few occasions in the case of the petitioner, the interview cannot be held at all and the legal adviser would have to go back without meeting the detenu and the entire procedure for applying for an appointment to the District Magistrate, Delhi would have to be gone through once again. We may point out that no satisfactory explanation has been given on behalf of the respondents disclosing the rationale of this requirement.

12. We are therefore of view that a Sub-clause (i) of Clause 3 (b) regulating the right of a detenu to have interview with a legal adviser of his choice is violative of Articles 14 and 21 and must be held to be unconstitutional and void. We think that it would be quite reasonable if a detenu were to be entitled to have interview with his legal adviser at any reasonable hour during the day after taking appointment from the Superintendent of the Jail, which appointment should be given by the Superintendent without any avoidable delay. We may add that the interview need not necessarily take place in the presence of a nominated officer of Customs/Central Excise/Enforcement but if the presence of such officer can be conveniently secured at the time of the interview without involving any postponement of the interview, then such officer and if his presence cannot be so secured, then any other Jail official may, if thought necessary, watch the interview but not so as to be within hearing distance of the detenu and the legal adviser.

13. We accordingly allow the writ petition and grant relief to the extent indicated above.

R E V I S E D

ITEM NOS.33+13

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No. 859/2013

JAFFAR ULLAH & ANR.

Petitioners

VERSUS

UNION OF INDIA & ORS.

Respondents

WITH

W.P.(C) No. 793/2017 (X)

(and IA No.87282/2017-INTERVENTION APPLICATION NAME OF MR. TUSHAR MEHTA, ADVOCATE MAY BE SHOWN IN THE LIST and IA No.88305/2017-INTERVENTION/IMPLEADMENT and IA No.89024/2017-INTERVENTION/IMPLEADMENT and IA No.89100/2017-INTERVENTION/IMPLEADMENT and IA No.90627/2017-INTERVENTION APPLICATION and IA No.93032/2017-INTERVENTION/IMPLEADMENT and IA No.93270/2017-INTERVENTION/IMPLEADMENT and IA No.94489/2017-INTERVENTION/IMPLEADMENT and IA No.97090/2017-INTERVENTION APPLICATION and IA No.97091/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.100563/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.107396/2017-impleading party and IA No.107402/2017-INTERVENTION APPLICATION and IA No.130783/2017-INTERVENTION APPLICATION[D.NO.32692/2017 TO BE TAKEN UP WITH THIS MATTER] and IA No.132156/2017-INTERVENTION APPLICATION and IA No.14970/2018-CLARIFICATION/DIRECTION)

W.P.(C) No. 870/2017 (PIL-W)

(FOR ADMISSION)

W.P.(C) No. 886/2017 (PIL-W)

W.P.(C) No. 919/2017 (PIL-W)

(FOR ADMISSION and IA No.97138/2017-APPROPRIATE ORDERS/DIRECTIONS)

W.P.(C) No. 916/2017 (PIL-W)

W.P.(C) No. 924/2017 (PIL-W)

(FOR ADMISSION and IA No.104649/2017-INTERVENTION/IMPLEADMENT and IA No.104654/2017-INTERVENTION/IMPLEADMENT)

W.P.(C) No. 955/2017 (PIL-W)

(FOR ADMISSION and IA No.101081/2017-CLARIFICATION/DIRECTION)

Diary No(s). 32692/2017 (PIL-W)

W.P.(C) No. 1111/2017 (PIL-W)

(FOR ADMISSION and IA No.119942/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.119939/2017-PERMISSION TO FILE APPLICATION FOR DIRECTION)

W.P.(C) No. 262/2018 (PIL-W)

(FOR ADMISSION and IA No.33189/2018-GRANT OF INTERIM RELIEF and IA No.33187/2018-EXEMPTION FROM FILING O.T. and IA No.33186/2018-CONDONATION OF DELAY IN REFILING)

W.P.(C) No. 442/2018 (PIL-W)

(FOR ADMISSION and I.A. No. 66802/2018-CLARIFICATION/DIRECTION)

Signature Not Verified

Digital Signed by

DEEPMALA GUPTA

Date: 2018-05-14

14:24:31 IST

Reason:

Date : 11-05-2018 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioners

Mr. Colin Gonsalves, Sr. Adv.

Ms. Sneha Mukherjee, Adv.

Mr. Fazal Abdali, Adv.

Mr. Deepak Singh, Adv.

Ms. Jyoti Mendiratta, AOR

Mr. Prashant Bhushan, AOR

Ms. Cheryl D'Souza, Adv.

Mr. P.V. Surendra Nath, Sr. Adv.

Mr. Subhash Chandran K.R., Adv.

Ms. Resmitha R. Chandran, AOR

Ms. Yogamaya M.G., Adv.

Ms. Lekha, Adv.

Mr. P.V. Dinesh, AOR

Mr. Sindhu T.P., Adv.

Mr. Bijan Ghosh, Adv.

Mr. Purushottam Sharma Tripathi, AOR

Ms. Sangeeta Madan, Adv.

Mr. Mukesh Kumar Singh, Adv.

Mr. Ravi Chandra Prakash, Adv.

Ms. Vani Vyas, Adv.

Mr. L. Nidhiram Sharma, Adv.

Mr. Shantanu Jugtawat, Adv.

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Mr. Pratubhanu S. Kharola, Adv.

Mr. R.D. Upadhyay, AOR

Mr. Mehmood Pracha, Adv.

Mr. R.H.A. Sikander, Adv.
Mr. Prateek Gupta, Adv.
Mr. Mohd. Danish, Adv.
Mr. Mohd. Shakim, Adv.
Mrs. Sudha Gupta, AOR
Mr. A. Chariha, Adv.

Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.

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Mr. S.S. Shamshery, Adv.
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Mr. Gurmeet Singh Makker, AOR
Ms. Niranjana Singh, Adv.
Mr. S. Wasim Quadri, Adv.

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Mr. Parvez Bashista, Adv.
Ms. Alpana Sharma, Adv.

Mr. B.K. Satija, AAG, Haryana
Mr. Sanjay Kumar Visen, AOR

Ms. Sushma Suri, AOR

Ms. Archana Pathak Dave, AOR

Mr. Suvidutt M.S., AOR

Mr. Pranav Sachdeva, AOR

Mr. Lakshmi Raman Singh, AOR

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Mrs. Honey Verma, Adv.

Mr. Goldy Goyal, Adv.

Mr. Yatish Mohan, Adv.

Ms. Vinita Y. Mohan, Adv.

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Dr. K.N. Tripathy, Adv.

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Mr. Amit Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In pursuance of our earlier order, the compliance Report of the Committee on the present status of health facilities for the Rohingyas staying at Nuh Block, District Mewat, Haryana and Kanchankunj, Kalindikunj, Delhi has been filed. With regard to the habitation, health service delivery, water, sanitation, hygiene, electricity and education in respect of Nuh Block, District Mewat, Haryana, the Report states thus:-

"1. Habitation:

The members visited 2 (two) settlements of Rohingyas within Nuh Block of Mewat District i.e. Ferozpur Namak and Shahpur Nangli.

The members of the Rohingya community are residing in Camps made of neat rows of huts with

electricity connection and water provision. The hutments are made up of bamboo, plastic sheets (Tirpal) etc. There are open spaces all around and the camps are well spread out.

2. Health service delivery:

The settlements visited have following health facilities in and around the Nuh Block:

- Sub Centre (SC) Ferozpur Namak, which has recently been made functional as a Health & Wellness Center to provide comprehensive primary health care services (distance from Ferozpur Namak - 500 meters)
- Community Health Centre (CHC), Nuh (distance from Ferozpur Namak - 4 Kms distance)
- Primary Health Centre (PHC), Nuh (distance from Ferozpur Namak - 4 kms)
- Saheed Hasan Khan Mewati Medical College - 8 kms away from Ferozpur Namak.

The above health centres are providing all primary, secondary and tertiary health care services as per standard National/State guidelines. The Rohingyas have equal access to these health services as any other citizen in the district.

The ANM visits the camps once a week and provides basic primary health care like screening for communicable diseases, ante natal check-up, immunization etc. The ladies of the Rohingyas have home deliveries. On being enquired about its reason, it was stated that they prefer home

deliveries rather than going to the hospitals. Only in case of any complication, the pregnant women are taken to the hospitals.

The Health services are being provided by trained and competent health care providers. It was observed that the ANM providing outreach services at the visited sites had an experience of over 6 years and had adequate knowledge and skills to meet the health needs of the population. The Primary Health Centre Medical Officer and the Sub Centre ANM also had enough supplies of drugs required for providing outreach health camps.

The ANM had detailed knowledge and data of the population required for providing maternal, child health, family planning services. Eligible Couple list and 0-2 year age group children list were maintained by ANM. No Maternal Death or child death was reported.

Pregnant women, lactating mothers and children (6 months - 6 years) of the Rohingya community are registered with the Anganwadi worker and have availed benefits under the Supplementary Nutrition Programme (SNP), medicines like Albendazole, iron folic acid, etc. are being distributed by ANMs and Anganwadis.

Ferozepur Namak camp has a total population of 301, of which 43 children are in the age group of 0-2 years. Shahpur Nangli camp has a population of 507 of which 85 are in the age group of 0-2 years. So, the birth rate is quite high in the population. Even though family planning services are being provided to the eligible couples by the ANM, the usage of family

planning methods is low by the inhabitants.

Regular screening for communicable diseases are undertaken and no case of TB, Malaria or Dengue was reported from the sites visited. No disease outbreak was reported.

Health Camps, Routine immunization programme and intensified pulse polio programme were conducted for these population at monthly intervals and all records were maintained at the Sub Centre.

For example:

(a) Ferozepur Namak:

i. On 24.3.2018 Five Pregnant women and Eleven children were immunized.

ii. On 21.4.2018 One Pregnant woman and four children were immunized.

iii. Anganwadi: 25 got SNP, 35 immunizations, 13 pregnant women and 15 lactating mothers availed of other benefits.

(b) Shahpur Nangli:

i. On 21.4.2018 in the health camp, there was an OPD of 81 patients of which 21 females and 19 male patients were provided treatment.

ii. Anganwadi: 30 got SNP, 8 immunization, 6 pregnant women and 4 lactating mothers availed of other benefits.

The Rohingyas has access to the free ambulance services for health emergencies provided by the State Government.

3. Water, Sanitation and Hygiene:

The camp at village Ferozpur Namak has one piped water supply provided through the panchayat. The water was found to be potable and the site for water delivery was hygienic and well maintained. The waste water gets drained to a common drain (nullah) behind the camp. In village Shahpur Nangli camp, water supply is provided by tankers through the Panchayat and one water tank with 14000 liters capacity was found in the camp. The tanks were found to be clean and well maintained and no water seepage or water collection around the tank was observed. However, the community requested for one more water tank for summer season for the inhabitants of the Shahpur Rohingyas.

Each and every hut in the site visited had its own toilet and open defecation was not a practice. The overall hygiene of the visited camps was found to be good and there was no collection of garbage/solid waste in open/visible areas.

4. Electricity:

The camp at village Ferozpur Namak, and Shahpur Nangli both had electricity supply. The electricity was available for around 12 hours a day on an average. This was the pattern in the entire district based on the availability of power supply received by the district. Some of the huts had refrigerator, air cooler etc. One of the huts was also converted to a local shop for selling daily utilities which even had a computer installed.

5. Education:

The Committee visited Govt. Secondary School, Ferozpur Namak, where the children of the Rohingyas are studying. There are around 500 children and 19 teachers. In this primary school there are 41 Rohingya children who are studying and all the facilities are being provided to these children similar to Indian citizens without any discrimination. The Rohingya children are given the mid-day meals at-par with the local children. The school administration also provides them all facilities including free books, bags, etc.

In the Government Secondary School visited at Ferozepur Namak, 39 children in Class II, 6 children in Class III and one child in Class IV are pursuing their education. The Committee interacted with the class II girl children, who are regularly going to the school.

Shahpur Nangli Rohingya settlement had a Madrasa and many prefer to sent their children to Madarsa.

Copy of attendance register and relevant photographs are enclosed in Annexures.

The Committee also visited another slum in the vicinity, namely Madina Basti inhabited by local Indian citizens. In comparison to the Rohingyas, the overall hygiene and sanitation was not found to be satisfactory. There was no electricity connection. Water supply was scarce even though the inhabitants were living in the area for over 15 years. Outreach services for immunization and ante natal care are being

provided to the residents. Three children, present during that time of visit, were found to be home delivered. The inhabitants had valid Aadhaar card and Election ID card.

Concluding Remark:

The Committee had an overall observation that the Rohingyas are not being discriminated against despite being illegal migrants. They are being provided with basic facilities for health care, water, sanitation and education. The quality and comprehensiveness of the services provided are not less than those provided to the Indian citizens and are within the available infrastructure and resources of the District."

In respect of Kanchankunj, Kalindikunj, Delhi, the Committee has with regard to access to health care system, recorded its findings as under:-

"Access to health care system:-

A. List of Health facilities in the nearby locality is as under:-

- a) MCW Center Madanpur Khadar (MCD)
- b) Polyclinic Madanpur Khadar (Delhi Govt.)
- c) SPUHC. Abul Fazal (NRHM) 4 km (Delhi Govt.)
- d) AAMC Abul Fazal Part-2 (3 km) (Delhi Govt.)
- e) AAMC Shaheen Bagh 4 km (Delhi Govt.)
- f) DGD Batla House 7 km (Delhi Govt.)
- g) Rural Health Center of HAH Centenary Hospital (Majeedia) (Pvt.) (2-3 km)

- h) Safdarjung Hospital (10 km) (Central Govt.)
- i) Al Sifa Hospital (6 km) Abul Fazal
- j) Majeedia Hospital (10 km)
- k) Mobile van from Jamia Hamdard (Pvt.) visits the area once a week.

B. Immunization:- Every month Delhi Government Dispensary (DGD) Srinivaspuri conducts 10-12 sessions of immunization at 10 different sites covering all blocks of JJ Colony and Kanchankunj. Most of the children were found to have received age appropriate immunization. Cards of some children were also verified. ANMs visit the camp for vaccinations during pulse polio campaign. Routine Immunization services are mainly provided by the MCW Center Madanpur Khadar, nearby health center.

C. Maternal Health:- ANC care and investigations are being provided at nearby health facilities/Centers. Mother and child protection (MCP) Cards were examined and found to bear MCTS/RCH number (Mother and child tracking system). Birth certificates issued by MCD to the children were also examined.

However, most of the deliveries are taking place at home and only complicated cases go to Safdarjung Hospital, which is about 10 km away. When enquired about the factors for home deliveries, the response received was that they prefer not to go to any health facility for normal delivery.

D. Family Planning:- In spite of the access and availability of all family planning services

being provided by the local health authorities, acceptance of family planning methods was limited.

E. Outreach services:- ANM for Maternal and Family Planning Community Outreach services has also been made available by the local health authorities. In addition, Mobile Health Van comes once a week from Jamia Hamdard (Pvt.) centre to treat minor illness. For major illness, the inhabitants visit nearby public/trust/private health facilities.

There is no reported incidence of Maternal or Child death in the last 5 years."

It is submitted by Mr. Colin Gonsalves, learned senior counsel and Mr. Prashant Bhushan and Ms. Sneha Mukherjee, learned counsel appearing for the petitioners that school children are not getting books and other benefits. They have also projected that as far as the health care system is concerned, the facilities are denied to them, because of lack of proper identity.

Dr. Rajeev Dhawan, learned senior counsel would submit that human rights are extremely sacred and the same have to be given full play in the completest sense in respect of a non-citizen also, for Article 21 of the Constitution which embraces human rights and human rights correspondingly responds to the said article, and hence, there cannot be any discord between the two concepts.

Dr. Ashwini Kumar, learned senior counsel appearing for the petitioners in Writ Petition (Civil) No. 886/2017 would submit that India being a civilized and developed democracy has to stand by the fundamental concept and essential conception of human rights. Mr. P.V. Dinesh, learned counsel for the petitioners in Writ Petition (Civil) No. 262/2018 with anguish and concern, submitted his experience in a camp.

We do not intend to enter into all the issues that have been canvassed before us. We may clearly state that the same shall be addressed to at the time of final hearing of the writ petitions and the interlocutory applications.

However, for the present, we issue the following directions:-

(i) As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.

(ii) Parents or any relative or a guardian of

a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.

At this juncture, Mr. Kunal Chatterji, learned counsel for the West Bengal Commission for Protection of Child Rights submitted that there is difficulty in uniting the children of Rohingyas who are separated from their parents. Mr. Tushar Mehta, learned ASG shall obtain instructions in the matter and if there is any problem in this regard, the concerned authority of the Union of India can apprise the Commission so that an appropriate view can be taken.

Let the matter be listed on 23.8.2018.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar

ITEM NOS.33+13

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No. 859/2013

JAFFAR ULLAH & ANR.

Petitioners

VERSUS

UNION OF INDIA & ORS.

Respondents

WITH

W.P.(C) No. 793/2017 (X)

(and IA No.87282/2017-INTERVENTION APPLICATION NAME OF MR. TUSHAR MEHTA, ADVOCATE MAY BE SHOWN IN THE LIST and IA No.88305/2017-INTERVENTION/IMPLEADMENT and IA No.89024/2017-INTERVENTION/IMPLEADMENT and IA No.89100/2017-INTERVENTION/IMPLEADMENT and IA No.90627/2017-INTERVENTION APPLICATION and IA No.93032/2017-INTERVENTION/IMPLEADMENT and IA No.93270/2017-INTERVENTION/IMPLEADMENT and IA No.94489/2017-INTERVENTION/IMPLEADMENT and IA No.97090/2017-INTERVENTION APPLICATION and IA No.97091/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.100563/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.107396/2017-impleading party and IA No.107402/2017-INTERVENTION APPLICATION and IA No.130783/2017-INTERVENTION APPLICATION[D.NO.32692/2017 TO BE TAKEN UP WITH THIS MATTER] and IA No.132156/2017-INTERVENTION APPLICATION and IA No.14970/2018-CLARIFICATION/DIRECTION)

W.P.(C) No. 870/2017 (PIL-W)

(FOR ADMISSION)

W.P.(C) No. 886/2017 (PIL-W)

W.P.(C) No. 919/2017 (PIL-W)

(FOR ADMISSION and IA No.97138/2017-APPROPRIATE ORDERS/DIRECTIONS)

W.P.(C) No. 916/2017 (PIL-W)

W.P.(C) No. 924/2017 (PIL-W)

(FOR ADMISSION and IA No.104649/2017-INTERVENTION/IMPLEADMENT and IA No.104654/2017-INTERVENTION/IMPLEADMENT)

W.P.(C) No. 955/2017 (PIL-W)

(FOR ADMISSION and IA No.101081/2017-CLARIFICATION/DIRECTION)

Diary No(s). 32692/2017 (PIL-W)

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5. **Education:**

The Committee visited Govt. Secondary School, Ferozpur Namak, where the children of the Rohingyas are studying. There are around 500 children and 19 teachers. In this primary school there are 41 Rohingya children who are studying and all the facilities are being provided to these children similar to Indian citizens without any discrimination. The Rohingya children are given the mid-day meals at-par with the local children. The school administration also provides them all facilities including free books, bags, etc.

In the Government Secondary School visited at Ferozepur Namak, 39 children in Class II, 6 children in Class III and one child in Class IV are pursuing their education. The Committee interacted with the class II girl children, who are regularly going to the school.

Shahpur Nangli Rohingya settlement had a Madrasa and many prefer to sent their children to Madarsa.

Copy of attendance register and relevant photographs are enclosed in Annexures.

The Committee also visited another slum in the vicinity, namely Madina Basti inhabited by local Indian citizens. In comparison to the Rohingyas, the overall hygiene and sanitation was not found to be satisfactory. There was no electricity connection. Water supply was scarce even though the inhabitants were living in the area for over 15 years. Outreach services for immunization and ante natal care are being

provided to the residents. Three children, present during that time of visit, were found to be home delivered. The inhabitants had valid Aadhaar card and Election ID card.

Concluding Remark:

The Committee had an overall observation that the Rohingyas are not being discriminated against despite being illegal migrants. They are being provided with basic facilities for health care, water, sanitation and education. The quality and comprehensiveness of the services provided are not less than those provided to the Indian citizens and are within the available infrastructure and resources of the District."

In respect of Kanchankunj, Kalindikunj, Delhi, the Committee has with regard to access to health care system, recorded its findings as under:-

"Access to health care system:-

A. List of Health facilities in the nearby locality is as under:-

- a) MCW Center Madanpur Khadar (MCD)
- b) Polyclinic Madanpur Khadar (Delhi Govt.)
- c) SPUHC. Abul Fazal (NRHM) 4 km (Delhi Govt.)
- d) AAMC Abul Fazal Part-2 (3 km) (Delhi Govt.)
- e) AAMC Shaheen Bagh 4 km (Delhi Govt.)
- f) DGD Batla House 7 km (Delhi Govt.)
- g) Rural Health Center of HAH Centenary Hospital (Majeedia) (Pvt.) (2-3 km)

- h) Safdarjung Hospital (10 km) (Central Govt.)
- i) Al Sifa Hospital (6 km) Abul Fazal
- j) Majeedia Hospital (10 km)
- k) Mobile van from Jamia Hamdard (Pvt.) visits the area once a week.

B. Immunization:- Every month Delhi Government Dispensary (DGD) Srinivaspuri conducts 10-12 sessions of immunization at 10 different sites covering all blocks of JJ Colony and Kanchankunj. Most of the children were found to have received age appropriate immunization. Cards of some children were also verified. ANMs visit the camp for vaccinations during pulse polio campaign. Routine Immunization services are mainly provided by the MCW Center Madanpur Khadar, nearby health center.

C. Maternal Health:- ANC care and investigations are being provided at nearby health facilities/Centers. Mother and child protection (MCP) Cards were examined and found to bear MCTS/RCH number (Mother and child tracking system). Birth certificates issued by MCD to the children were also examined.

However, most of the deliveries are taking place at home and only complicated cases go to Safdarjung Hospital, which is about 10 km away. When enquired about the factors for home deliveries, the response received was that they prefer not to go to any health facility for normal delivery.

D. Family Planning:- In spite of the access and availability of all family planning services

being provided by the local health authorities, acceptance of family planning methods was limited.

E. Outreach services:- ANM for Maternal and Family Planning Community Outreach services has also been made available by the local health authorities. In addition, Mobile Health Van comes once a week from Jamia Hamdard (Pvt.) centre to treat minor illness. For major illness, the inhabitants visit nearby public/trust/private health facilities.

There is no reported incidence of Maternal or Child death in the last 5 years."

It is submitted by Mr. Colin Gonsalves, learned senior counsel and Mr. Prashant Bhushan and Ms. Cheryl D'Souza, learned counsel appearing for the petitioners that school children are not getting books and other benefits. They have also projected that as far as the health care system is concerned, the facilities are denied to them, because of lack of proper identity.

Dr. Rajeev Dhawan, learned senior counsel would submit that human rights are extremely sacred and the same have to be given full play in the completest sense in respect of a non-citizen also, for Article 21 of the Constitution which embraces human rights and human rights correspondingly responds to the said article, and hence, there cannot be any discord between the two concepts.

Dr. Ashwini Kumar, learned senior counsel appearing for the petitioners in Writ Petition (Civil) No. 886/2017 would submit that India being a civilized and developed democracy has to stand by the fundamental concept and essential conception of human rights. Mr. P.V. Dinesh, learned counsel for the petitioners in Writ Petition (Civil) No. 262/2018 with anguish and concern, submitted his experience in a camp.

We do not intend to enter into all the issues that have been canvassed before us. We may clearly state that the same shall be addressed to at the time of final hearing of the writ petitions and the interlocutory applications.

However, for the present, we issue the following directions:-

(i) As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.

(ii) Parents or any relative or a guardian of

a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.

At this juncture, Mr. Kunal Chatterji, learned counsel for the West Bengal Commission for Protection of Child Rights submitted that there is difficulty in uniting the children of Rohingyas who are separated from their parents. Mr. Tushar Mehta, learned ASG shall obtain instructions in the matter and if there is any problem in this regard, the concerned authority of the Union of India can apprise the Commission so that an appropriate view can be taken.

Let the matter be listed on 23.8.2018.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 11 of 2022

Mohammad Kamal; & Anr.

Petitioners

Vs.

State of Manipur; & Ors.

Respondents

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE MV MURALIDARAN**

20.07.2022.

Sanjay Kumar (C.J.):

Mr. M. Rakesh, learned counsel, appears for the petitioners.

Mr. Kh. Samarjit, learned ASG, appears for the Union of India.

Additional affidavit dated 14.07.2022 was filed by one Anath Mandal, Assistant Director, Bureau of Immigration, (MHA), Government of India, Kolkata, in purported compliance with the order dated 15.06.2022 passed by this Court. However, we find that neither this affidavit nor the earlier affidavit dated 08.06.2022 answer the queries of this Court, voiced in the orders dated 12.05.2022 and 15.06.2022. On the other hand, the affidavits manifest a confrontationist attitude, which is most unbecoming of an official of the Government of India when asked to respond to the questions posed by this Court. We need say no more.

It may be noted that, in the order dated 12.05.2022, this Court observed that there was no indication as to why the Central Government had permitted the United Nations High Commissioner for Refugees (UNHCR) to have an office at New Delhi if it did not wish to confer any status or rights upon persons claiming to be refugees, on the ground that India is not a signatory to the Geneva Convention of 1951. This Court also noted that it had not been spelt out as to whether the Central Government had taken a conscious decision to reject the proposal of the UNHCR to send the petitioners to Canada, which had agreed to give them asylum.

Thereafter, on 15.06.2022, this Court observed that the affidavit dated 08.06.2022 filed in response to the earlier order left a lot to be desired as the queries raised had not been addressed at all. This Court again pointed out that there was no indication as to whether the Government of India had taken a conscious decision not to send the petitioners to Canada though the said country was willing to give them asylum and as to whether such a decision would be in keeping with the Global Compact on Refugees, which was endorsed by India along with 192 other member-countries of the UN General Assembly on 17.12.2018. It was in this context that this Court directed a responsible senior official to file an affidavit explaining the clear policy and stand of the Government of India with regard to rehabilitation of refugees in host countries, which were willing to accept them, through the office of the UNHCR, New Delhi.

It may be noted that in 1989, one Ms. Zothansangpuii, a Burmese woman, who had illegally entered India and suffered conviction and imprisonment under our domestic laws was thereafter given political asylum by Australia and she

was sent to Australia through the office of the UNHCR, New Delhi. Pursuant to the orders of the Gauhati High Court, one Bogyi, an under-trail Burmese detenu, was settled in Norway by the UNHCR, New Delhi; one Khy-Htoon and others, refugees of Burmese origin, were sent to various other countries through the UNHCR, New Delhi. The Imphal Bench of the Gauhati High Court also dealt with this issue in Civil Rule No. 516 of 1991 and pursuant to the order passed therein, two Burmese refugees, *viz.*, U. Myat Kyaw and Nayzin, were also settled abroad by the UNHCR, New Delhi.

It is therefore manifest that when the UNHCR makes a recommendation to settle persons of foreign origin, who entered India illegally and seek asylum in other countries which are willing to accept them as refugees, the Government of India facilitated their movement to those countries through the UNHCR even though it is not a signatory to the Geneva Convention.

That being so, when the case on hand presents an identical situation as Canada has come forward to accept the petitioners and the UNHCR made a recommendation to that effect, it is for the Government of India to explain as to why a different stand is being taken. It is in this context that the 'clear policy' of the Government and its stand in the present case need to be disclosed to this Court. The right to life and liberty under Article 21 of the Constitution is not limited to citizens of India and, therefore, even a foreigner who seeks protection from persecution of such rights would be entitled to approach this Court under Article 226 of the Constitution.

Further, though the Global Compact on Refugees endorsed by India on 17.12.2018 may not be enforceable through a Court of law, it may be noted that Article 51 of the Constitution requires the State to endeavour to foster respect for international law and treaty obligations. It is therefore not to open the Additional Director at Kolkata to blithely brush aside this obligation of the State.

Given the fact that we are unable to get any clear answers as to what the 'policy' of the Government of India is on the aforestated aspects from officials at Kolkata, it would be appropriate that a senior Secretary in the Ministry of Home Affairs, Government of India, at New Delhi, dealing with immigration issues and familiar with the scope of operations of the UNHCR, file an affidavit addressing all these aspects and spelling out in clear detail the policy of the Government of India on the issue.

Advance copy thereof shall be furnished to the counsel opposite.

Post on 25.08.2022.

JUDGE

Sapana

CHIEF JUSTICE

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P. (C) No. 11 of 2022

Mohammad Kamal; & Anr.

Petitioners

Vs.

State of Manipur; & Ors.

Respondents

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR JUSTICE LANUSUNGKUM JAMIR**

12.05.2022

Sanjay Kumar (C.J.):

Mr. J. Hillson, learned counsel, appears for the petitioners.

The affidavit-in-opposition filed by respondent No. 3 leaves a lot to be desired as the stand of the Central Government has not even been spelt out in clear terms. There is no indication as to why the Central Government has permitted the United Nations High Commissioner for Refugees (UNHCR) to have an office at New Delhi, if it does not wish to confer any status or rights upon persons claiming to be refugees as India is not a signatory to the Geneva Convention of 1951. It is not also spelt out as to whether the Central Government has taken a conscious decision to reject the proposal of the UNHCR to send Mohammad Kamal and Abdul Rashid to Canada, which is stated to have agreed to give them asylum. If any such conscious decision has been taken, it is for the Government to justify its proposal to repatriate them to their country of origin against their will though there is a possibility of their being prosecuted there.

Mr. Kh. Samarjit, learned ASG, appearing for respondent No. 3, seeks time to file an additional affidavit explaining the stand of the Central Government on all these and any other relevant issues in clear terms.

Post on 13.06.2022.

JUDGE

Sandeep

CHIEF JUSTICE



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12272/2023**

SOCIAL JURIST, A CIVIL RIGHTS GROUP Petitioner

Through: **Mr. Ashok Agarwal, and Mr. Manoj Kumar, Advocates**

versus

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through: **Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Ms. Vidhi Jain and Ms. Shreya V. Mehra, Advocates for UOI**

Ms. Beenashaw N. Soni, SC, MCD with Ms. Mansi Jain, Advocate for R-1 and 2

Mr. Chandra Prakash, Advocate for R-3

Mr. Ramesh Babu MR with Ms. Nisha Sharma, Ms. Manisha Singh and Ms. Tanya, Advocates for R-4/RBI

Mr. Santosh Tripathi, Standing Counsel with Mr. Arun Panwar, Mr. Pradyuman Rao, Mr. Utkarsh Singh, Mr. Kartik Sharma, Ms. Prashansa Mr. Rishabh and Ms. Nikita, Advocates, for GNCTD/R-5.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

%

**O R D E R
12.01.2024**



1. The present Petition being a Public Interest Litigation (PIL) has been filed on the account of the non-disbursal of the cash benefits to certain students studying in Respondent No. 2 School. The details of the concerned students have been set out in paragraph 8 of this petition.

2. In the year 2018, the Central Government, Ministry of Education launched the Samagra Shiksha Scheme ('Scheme') as an integrated scheme for school education applicable from pre-primary to senior secondary classes. This Scheme is implemented as a Centrally Sponsored Scheme by the concerned Department through single State Implementation Societies (SIS) at the State/UT level. The Scheme treats school education as a continuum and is in accordance with Sustainable Development Goal for Education (SDG-4). The Scheme not only provides support for the implementation of the Right of Children to Free and Compulsory Education Act, 2009 but has also been aligned with the recommendations of National Education Policy, 2020 to ensure that all children have access to quality education with an equitable and inclusive classroom environment which should take care of their diverse background, multilingual needs, different academic abilities and make them active participants in the learning process.

3. In the facts of this case, the reason for the non-disbursal of the cash benefits (admissible under the Scheme) to these students is on the account of the fact that these students do not have any bank accounts in their names that would enable the transfer of funds/cash benefits to their respective bank accounts. The students are children of Afghanistan refugees and are foreign nationals and are therefore unable to open a bank account in their names.

4. The Indian Overseas Bank (IOB)/Respondent No. 3 and Reserve Bank of India (RBI)/ Respondent No. 4 have explained the difficulty in



opening of bank accounts in the name of these students.

5. Keeping in mind the aforesaid situation, all the parties herein have agreed upon the following course of action for disbursal of funds/cash benefits to these forty-six (46) students, so as to achieve the object of the Scheme: -

- (i) The funds/monies shall be transferred by the Government of NCT of Delhi to the bank account of the Respondent No. 2 School i.e. MCD Primary School, Jangpura Extension, New Delhi-110014 (School Id: 1958020). The details of the bank account of the school are as under: - Account No. - 0147000108096367 and the authorized signatory of the said bank account is the Principal of the Respondent No. 2 School.
- (ii) The Principal, MCD Primary School, Jangpura Extension, New Delhi - 110014 shall issue ‘bearer cheque’ in the name of the concerned student.
- (iii) Parents of the concerned student holding the ‘bearer cheque’ issued by the Principal, MCD Primary School, Jangpura Extension, New Delhi - 110014 shall be entitled to encash the said bearer cheque from Indian Overseas Bank, Masjid Road, Bhogal, Jangpura, Delhi- 110014/ Respondent No. 3.
- (iv) The Indian Overseas Bank, Masjid Road, Bhogal, Jangpura, Delhi-110014/ Respondent No. 3 shall ensure that the bearer cheque presented to it by the parents of the concerned student is encashed/honoured.



6. With the aforesaid agreed directions, the present petition along with the applications is disposed of with the consent of the parties.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 12, 2024/hp/MG

[Click here to check corrigendum, if any](#)

28-01-2021
ct no. 13
Sl.1+2
sp

**WPCRC 40 of 2020
In
WPA 9799 of 2018**

Wali Aham @ Ahmad Oly
-Versus-

Ravi Gupta & Ors.
(Via Video Conference)

Mr. Kishore Mokherjee
.... for the petitioner

**Mr. Y.J. Dastoor, ld. A.S.G.,
Ms. Rajashree Venket Kundalia,
Ms. Rittwika Banerjee**
...for the alleged contemnor no. 2

The personal presence of the alleged contemnors is dispensed with.

The learned Additional Solicitor General submits that repeated requests have been made to the Government of Telangana by the Union to provide a facility to accommodate the petitioner post completion of his sentence. The reasons, therefore, are already available in the order of which contempt is alleged.

This Court appreciates the submissions of Mr. Dastoor, learned A.S.G, on behalf of the Union that further contempt would be made by the Ministry of Home Affairs to contact and take the Government of Telangana into confidence to

ensure that the petitioner would be accommodate somewhere in any facility that the Government of Telangana may provide to accommodate the petitioner.

It now appears from the submission of the Ld. ASG that the Govt. of Burma has recognized the petitioner as their National. However, the Union Govt., has not decided to deport the petitioner given his age and health. It is also understandable that the petitioner who is 77 years old, has a few relatives in Hyderabad who he wishes to be closer and accessible to at this age.

Article 21 of the Constitution of India is available to both citizens and non-citizens and it is reasonably expected that the Ministry of Home Affairs shall take up the matter with the Telangana Government.

Let this matter stand adjourned and be listed in the monthly list of April, 2021.

Mr. Arup Saha, representative of the Ministry of External Affairs is present in Court.

(Rajasekhar Mantha, J.)

Bail

**IN THE COURT OF THE XXVI ADDL. CITY CIVIL &
SESSIONS JUDGE, AT MAYO HALL, BENGALURU
(CCH.20)**

Present:

**Sri.D.S.Vijaya Kumar, B.Sc, LL.B.,
XXVI Addl. City Civil & Sessions Judge, Bengaluru**

Dated this the 25th day of November, 2020.

Crl.Misc.No.25928/2020

Petitioner:-

Rose Echick Andeh
D/o Andeh, Aged about 34
years, R/a Camaroon Nation
No2 at No.595, Nagamma Road,
2nd Cross, Reddy Layout, Neharu
Road, Kammanahalli,
Bengaluru.

[By Sri.J.M-Advocate]

Vs.

Respondent

:- The State of Karnataka,
By Banaswadi Police Station,
Bengaluru

[By Public Prosecutor]

O R D E R

Petitioner has filed this petition under section-
439 of the Cr.P.C., praying for granting an order of

Regular bail in respect of the offences alleged under section-14 of Foreigners Act, 1946, in Crime No.472/2020 of the Respondent-Banaswadi Police Station, Bengaluru.

2. Brief facts of the bail petition are as under:-

That the Petitioner has been falsely implicated in a false case. She undertakes to abide by any conditions that may be imposed by the court. She is a women came from Camaroon having valid passport and also asylum seeker certificate valid till 3.8.2021. She will not tamper or hamper the prosecution case. On these grounds, Petitioner has sought for granting bail in her favour.

3. Objection filed by the prosecution to the petition, is as under:-

That on the basis of the suo moto complaint of the Police Inspector of the Respondent Police Station, Respondent Police have registered a case in Crime No.472/2020 for the offence under section-14 of the Foreigners Act, against the Accused Nos. 1 & 2. Accused persons have committed the offences alleged. If the Petitioner is granted Regular Bail, there is likelihood of Petitioner tampering the prosecution evidence and threatening the witnesses and she may abscond from trial and cause obstruction to the court proceedings and also she may flew away from the country. Therefore, Petitioner is not entitled to an order of regular bail as sought for. Hence, the learned Public Prosecutor has sought for rejection of the bail petition.

4. Heard arguments and also perused the records.

5. In the circumstances, the following points arise for determination are:

1. Whether Petitioner is entitled to an order of Regular Bail, as sought for?
2. What order?

6. My findings to the above points are under:

Point No.1 :- In the **affirmative**

Point No.2 :- As per final order for the following:-

R E A S O N S

7. Point No.1:- Petitioner/Accused No.1 has produced certified copy of the Order sheet in Crime No.472/2020, FIR, Remand application dtd. 06.11.2020, Application filed by her under section 437 of Cr.P.C. for regular bail before the Learned

Magistrate and Order dtd. 11.11.2020 passed on the said bail petition. She has also produced copies of her Passport bearing No.0983164 issued by Republic of Cameroon and Certificate/Letter dtd. 14.11.2019 issued by United Nation High Commissioner for Refugees, New Delhi and originals thereof.

8. From the above documents, it is seen that on 5.11.2020 I.O. by claiming that there was credible information about some foreign nationals residing at Reddy Layout, Kammanahalli, Bangalore, without valid documents, has visited said house for verification and found two women foreign nationals in the house and on enquiry they did not produce Passport and VISA and hence they were arrested with the help of woman police constable. Thus, on the said allegation, suomoto FIR has been registered

for the offence punishable under section 14 of Foreigners Act, 1946.

9. By Order dtd. 11.11.2020 learned Magistrate has rejected the bail petition of the petitioner/Accused No.1 on the ground that offence is non-bailable and petitioner has not produced copy of the Passport or valid VISA as on the date of the alleged offence; and copy of Certificate/Report issued by UNHCR is produced which shows that petitioner's application seeking asylum in India is under consideration, but, there is no concept of refusing to consider (sic) with bail application and prima facie petitioner has committed the offence under section 14 of the Foreigners Act, 1946.

10. As can be seen from the said Order, although petitioner has produced Certificate issued

by UNHCR for India, as according to which, her application for Asylum in India is under consideration, without expressing any opinion as to why the same was not considered while rejecting her bail petition, by merely holding that prima facie offence is made out and there is no concept of refusing to consider (sic) with bail application, bail petition has been rejected.

11. Letter issued by UNHCR , New Delhi reads as below:-

"UNHCR
United Nations High
Commissioner for Refugees

B-2/16, Vasant Vihar
New Delhi-110057,
India.

HCR/PL/513/19C03075 Date of Issue: 14 Nov. 2019
Valid from : 14 Nov.2019
Valid until : 03 Aug. 2021

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Ms. Rose Echick ANDEH, country of origin Cameroon, has been registered as an asylum seeker with United Nations High

Commissioner for Refugees, India. Her application for refugee status is under consideration.

Any assistance provided to her would be highly appreciated.

Sd/-
Signature verified UNHCR, New Delhi"

12. Further, passport of the petitioner shows the same is valid till June 2024 and Letter/Certificate issued by UNHCR New Delhi is valid until 03.08.2021. Prim facie, above letter/certificate issued by UNHCR, New Delhi shows that petitioner has not entered the country illegally, but she has approached the UNHCR, New Delhi seeking Asylum in India and UNHCR has registered her as such and kept the application, for granting status of refugee, under consideration. I.O. has not obtained any information from UNHCR, New Delhi as to whether petitioner was not permitted to stay in India until 3.8.2021 till

when said Letter issued is valid. In these circumstances, I am of opinion that by imposing appropriate conditions, petitioner deserves to be released on bail. Offence alleged is not punishable with imprisonment for life or death and petitioner is in judicial custody since 06.11.2020. Consequently, Point No.1 is answered in **affirmative**.

13. Point No.2: On the above findings, I proceed to pass the following:-

O R D E R

Bail petition filed by Petitioner under Sec.439 of the CR.P.C **is hereby allowed.**

Petitioner/Accused No.1 in Crime No.472/2020 of Banaswadi Police Station, Bengaluru, is hereby enlarged

on bail for the offence under section 14
of Foreigners Act, 1946, subject to the
following conditions:-

1) Petitioner shall give
attendance before the I.O.,
Banaswadi Police Station, on every
alternative Sunday from 10 a.m. to
2 p.m. for two months, from today.

2) Petitioner shall not threaten
the prosecution witnesses or
tamper with the prosecution
evidence and shall attend the case
on hearing dates without fail.

3) Petitioner shall co-operate in
the investigation of the case.

4) Petitioner shall execute personal bond for a sum of Rs.50,000/- with one surety in like sum to the satisfaction of the Learned M.M.T.C-I, Mayo Hall Unit, Bengaluru.

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(Dictated to the Stenographer, transcribed by him and computerized and then corrected and pronounced by me in the open court on this the **25th day of November, 2020**)

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(D.S.VIJAYA KUMAR)

XXVI Addl.CC & SJ, Mayo Hall Unit
Bengaluru.

vk.

(Order pronounced vide separate order)

ORDER

Bail petition filed by Petitioner under Sec.439
of the CR.P.C **is hereby allowed.**

Petitioner/Accused No.1 in Crime No.472/2020
of Banaswadi Police Station, Bengaluru, is hereby
enlarged on bail for the offence under section 14
of Foreigners Act, 1946, subject to the following
conditions:-

- 1) Petitioner shall give attendance before
the I.O., Banaswadi Police Station, on every
alternative Sunday from 10 a.m. to 2 p.m.
for two months, from today.
- 2) Petitioner shall not threaten the
prosecution witnesses or tamper with the
prosecution evidence and shall attend the
case on hearing dates without fail.
- 3) Petitioner shall co-operate in the
investigation of the case.
- 4) Petitioner shall execute personal bond
for a sum of Rs.50,000/- with one surety in
like sum to the satisfaction of the Learned
M.M.T.C-I, Mayo Hall Unit, Bengaluru.

(D.S.VIJAYA KUMAR)
XXVI Addl.CC & SJ, Mayo Hall Unit
Bengaluru.

IN THE COURT OF FAST TRACK SPECIAL SESSIONS JUDGE FOR TRIAL AND
DISPOSAL OF CASES UNDER POCSO ACT, RANGA REDDY DISTRICT
AT L.B. NAGAR.

Wednesday, the 16th day of February, 2022

Present: Smt.Y. Padma,
Special Sessions Judge for Trial of cases
under POCSO Act-cum-IX Addl. District & Sessions
Judge (FTC), Ranga Reddy District at L.B. Nagar.
FAC. Special Sessions Judge for Trial and Disposal of cases
under POCSO Act, Ranga Reddy District at L.B. Nagar.

Crl.M.P.No.194 of 2022

in

Cr.No. 518 of 2021

Between:

Mohammed Arif @ Mohammed Akram, S/o.Noor Mohammad,
Aged 19 years, Occ: Labour,
R/o.Camp No.07, Royal colony,
Balapur Mandal, RR District.

... Petitioner/Accused

A N D

The State of Telangana through Police,
P.S.Balapur Rep. by Public Prosecutor.

...Respondent/complainant

This petition is coming before me today for final hearing in the presence of Sri A. Ramesh Babu, Advocate for the petitioner/accused and Smt. S.Komalatha, Additional Public Prosecutor for the State and upon hearing both sides and perusing the material on record and having stood over for consideration till this day, the Court made the following:

:: ORDER ::

This Petition is filed by the petitioner/accused under Section 439 of the Code of Criminal Procedure (for short 'the Code') for granting of bail, in Cr.No.518 of 2021 of Balapur, Police Station, for the offence under Section 366- A of the Indian Penal Code and Section 11 read with Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

2. It is a case of petitioner/accused that basing on the complaint of the defacto complainant Police arrested him on 11.12.2021 and remanded to judicial custody and since then he is in jail. Entire investigation is completed and prayed to enlarge him on bail.

3. Learned Additional Public Prosecutor received notice but not filed counter, however opposed the petition.

4. Heard both sides and perused the record.

5. Now the point for determination is whether the petitioner/accused is entitled for

grants of bail as prayed for?

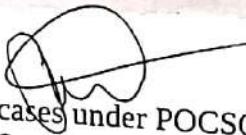


6. POINT:

As seen from the record, accused was arrested on 11.12.2021 and he is in jail for the past more than 60 days and accused is facing allegations for the commission of offence punishable U/Sec.366-A of IPC which is punishable with imprisonment of ten years and Sec.11 r/w.12 of POCSO Act which is punishable with imprisonment which may extend to three years. As per the representation of the learned Additional Public Prosecutor, charge sheet is not filed. Therefore, accused is entitled for bail as a matter of right.

In the result, the Criminal Miscellaneous Petition filed by the petitioner/ accused is allowed and accused is enlarged on bail, on his executing a personal bond for Rs.10,000/- with two sureties for like sum each to the satisfaction of V Additional Metropolitan Magistrate, Cyberabad at LB Nagar. (b) Accused further directed to attend before the SHO concerned on every Saturday between 10.00 am to 05.00 pm till filing of charge sheet or 30.03.2022, whichever is earlier.

Typed to dictation by the Stenographer, after correction, pronounced by me, on this the 16th day of February, 2022.


 Special Judge for Trial of cases under POCSO
 Act-cum-IX Addl.Dist. & Sessions Judge (FTC),
 Ranga Reddy District at L.B. Nagar.
 FAC. Special Sessions Judge for Trial and Disposal of cases
 under POCSO Act, Ranga Reddy District at L.B. Nagar.

Copy to:

1. The counsel for the petitioner/ accused.
2. The SHO, Balapur.



Sr. Superintendent
 Spl. Sessions Court,
 For Trial and Disposal of Pocso Act
 cases. R. R. Dist. at L B Nagar.



DISN0198/2022
 16/02/22

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
CHURACHANDPUR**



FIR No. 38 (03) 2021 CCP-PS u/s 14 Foreigners Act

State of Manipur

-vs-

Wimminhtay and 22 others

... Accused persons

| | | |
|------------------------|---|---|
| Present | : | Sorokhaibam Sadananda <i>Chief Judicial Magistrate, Churachandpur</i> |
| For the State | : | Hangzamoi Tonsing, Ld. APP |
| For the Accused | : | Grace, Ld. LAC |

ORDER
15.11.2022

All the 23 accused persons are not produced before me.

From the case records, it is apparent that they have been in staying in the custody of the state for more than one year now. They were initially arrested on 31.03.2021.

Ld. LAC, thus, orally prays that they may be released on bail as the statutory period of detention is already over.

All the accused in c/w this FIR, along with 5 minor children, are staying at the ***Sadbhava Mandop, Churchandpur which***

[Signature]
Chief Judi. Magistrate
Churachandpur, Manipur



is declared by the Government of Manipur as "Detention Centre" for the detention of the Myanmar nationals till their deportation. All 23 Accused had been transferred to this Detention Centre by the Home/ Prisons Department on 07.04.2021, when this Court had remanded all of them to judicial custody pending the investigation of the case.

In any case, it is an admitted fact that all of the 23 Accused are Myanmar nationals, who claimed to have fled Myanmar because of the prevailing situation of Myanmar at that time and came to Manipur in search of their livelihood.

No charge-sheet or final report has been submitted till date. However, for similar cases registered in the year 2022, charge-sheet has been duly submitted and the cases disposed of after trial.

It appears that the investigating agencies have not gone ahead with the investigation of this case as all the 23 accused are staying at the Detention Centre pending their deportation; and thus it may be inferred that the investigating agencies are more occupied with their deportation proceedings. This may perhaps be a plausible explanation of non-submission of charge-sheet/ final report till date.

Further, the case registered against the present 23 Accused is only u/s 14 of the Foreigners Act, which is similar to the other cases registered and disposed of in 2022.

In any case, if we are to draw an analogy, all the Accused in other cases had been sentenced to 5 months simple imprisonment and with fine, after they pleaded guilty to the

Chief Judl. Magistrate
Churachandpur, Manipur



charge framed against them, i.e., s. 14 of the Foreigners Act. Further, they were directed to be kept at the designated detention centres, after their period of imprisonment were completed; pending their deportation proceedings.

In the instant case, all the Accused have been in custody for more than a year and six months, notwithstanding that they are in Detention Centre for the said period. It has also come to light that most of them are engaging in handloom/ weaving activities, and are utilising their time/ stay in a productive manner.

Thus, the only question which remains is that if all the Accused are released on bail, can they continue to stay in India legally, without any documents? Further, would such continuing stay in India, pending their trial or deportation, constitute fresh offence under section 14 of the Foreigners Act?

Hence, to avoid all such legal complications, it occurs that they have to stay in India in only such designated places, which are either detention centres or refugee camps as declared by the Government of India; or in the alternative, to apply for asylum. Lest their liberty are to be restrained to some degree in the absence of any valid documents for their stay in India.

Situated thus, all the 23 Accused, namely, **Wimminhtay, Thulu, Yu Min, Thun Thun Awng, Auh Tan U, Chhan Ngui, Ngei Ngei, Mukhai, E Min, Han Ni U, Mam Mam Lui, Nghiisa, Khiemyo Lun, Sasa Theu, Ma Khai, Zawmu Thun,**


Chief Jud. Magistrate
Churachandpur, Manipur



Zawmu U, Nuni Nuai Awang, Zinnmar, Mawla, Ma Ni Tan,
Ma Eii and Ma Myint Age are to be released on bail subject to-

- (i) Depositing a sum of Rs. 2000/- each to this Court, in lieu of them executing a bond.
- (ii) As they are having no valid documents for staying in India, they are to be provided shelter at the Detention Centre, pending their deportation proceedings or their trials, as the case may be.
- (iii) Not to get involved or commit any offences under the Indian laws
- (iv) To appear before this Court as and when directed.

The deposited money is to be kept in the custody of the Nazir/ Superintendent of Accounts of Churachandpur Sessions Division, or any such person as the Hon'ble Sessions Judge, Churachandpur may nominate in this behalf; until such further orders of this Court.

Further, the five minor children to be allowed to stay with their parents at the Centre.

An extract of this order be sent to-

- (i) The Chief Secretary (Home), Govt of Manipur for issuing such directions
- (ii) The Registrar (Judicial), High Court of Manipur for information
- (iii) The Sessions Judge, Churachandpur, for information and for issuing such directions as necessary


Chief Judl. Magistrate
Churachandpur, Manipur

- (iv) The Member Secretary, MASLSA for continuing flow of information
- (v) The Superintendent of Police, Churachandpur for information and for such action as necessary
- (vi) The SDO, Churachandpur, who is in charge of the Detention Centre, Sadbhavna Mandap, Churachandpur

Announced.



S
(Sorokhaibam Sadananda)
Chief Judicial Magistrate
Churachandpur
Chief Judl. Magistrate
Churachandpur, Manipur

IN THE COURT OF ADDITIONAL SESSIONS JUDGE JAMMU

UT OF J&K vs Mohd. Younis.

U/S 420/467/468/471/34 IPC

F.I.R. 124/2022 P/P Narwal, P/s Trikuta Nagar
Jammu.

TO

Incharge/ Superintendent
District Jail
Amphalla

Whereas in the above said case, accused namely Mohd. Younis S/o Akhtar Hussain R/o Burma A/p- Beeru Plot Narwal, Karyani Talab Jammu has been granted interim bail till 25-06-2022 by this court vide order dt 08-06-2022, subject to the furnishing of bail bond of Rs 50,000/- with two surety and the personal bond of the same like amount. Bail bond has been furnished in the court. You are therefore directed to release the above said accused from your custody forthwith after accepting the personal bond of Rs 50,000 from the accused if he is not required in any other offence/ F.I.R. However bail is with the condition that accused shall co- operate with the I.O. for next two days in the investigation and remain present before him as and when directed, shall not jump over the bail bond, shall not influence the prosecution witnesses or temper with the prosecution evidence , shall participate in trial without any fail,shall not repeat the offence while on bail or against the U/T or the nation and shall not leave the territorial jurisdiction of this Union territory without obtaining permission of this court. In case accused is found in any criminal activity the concession of bail granted to the accused shall ceased to operate.

[Signature] 9/6/22
Additional Sessions Judge

Jammu
(JK00086)

CNR No: HRFB030078412022

CIS No: CHA/305/2022

STATE OF HARYANA VS MOHAMMAD ALAM S/O MOHAMMAD HUSSAIN etc.

Present: Ms. Pragati Dahiya, Ld. APP for the State.
Sh. Bhim Chandila, counsel for Mohd. Alam.

Today the case was fixed for arguments on the bail application of accused Mohd. Alam. Arguments heard. Accused Mohd. Alam is alleged to have committed an offence punishable under Section 3 Passport Act 1920 Foreigner Act 1946. Accused is not required for custodial interrogation in the present case. Conclusion of trial will take sufficient time. As such, no useful purpose would be served by detaining the accused behind the bars.

Therefore, without commenting on the merits of the case, the said accused Mohd. Alam is admitted to the concession of bail on furnishing of bail bonds in the sum of Rs. 50,000/- with one surety in the like amount.

Requisite bonds on behalf of accused Mohd. Alam not furnished. Till then accused be kept in judicial custody and be again produced before the court on **04.08.2022** the date already fixed for presence of accused through VC.

Date of Order: 03.08.2022.

Pranav Nandi

Chavi Goel
Judicial Magistrate 1st Class,
Faridabad UID No. 0377

30.11.2021

Present : Ld. APP for the State.
Ld. Counsel for accused/applicant alongwith brother of
the accused/applicant.

This is an application under Section 437 of Cr.P.C on behalf of applicant/accused namely Benjamin Johnson wherein it has been submitted that the accused person is in JC since 24.11.2021, and that the allegations against the accused are baseless as the accused is residing in India as a refugee and is having a valid certificate duly issued by UNHCR, New Delhi Office.

IO of this case has filed reply. Perusal of reply shows that there is allegation of under Section 14 & 14C of Foreigners Act against the accused/applicant.

Heard.

Considering the fact that the brother of the accused has produced original certificate, duly issued by UNHCR, New Delhi mentioning therein that the accused/applicant has been registered as an asylum seeker with UNHCR, India, the stay of accused in India, prima facie cannot be termed as illegal.

In view of the same, the accused/applicant namely Benjamin Johnson is admitted to interim bail for a period of 60 days, subject to furnishing of Bail Bond and Surety Bond in the sum of Rs.15,000/- each and further subject to the following conditions :-
1. that accused person (s) shall attend the Court as per conditions of bond to be executed ;

2. that accused person (s) shall not commit similar offence and ;
3. that accused person (s) shall not directly/indirectly induced, give threat, or in any way dissuade the witnesses/persons acquainted with the facts of this case and also shall not tamper with the evidence.
4. that the original certificate, issued by UNHCR, India shall be deposited in the Court and the same shall be forwarded to the IO for verification.

Bail bond and Surety Bond would be accepted only after verification through IO of this case.

Copy of the order be given dasti to Ld. Counsel for accused/applicant.

Copy of order be also sent to the IO concerned for his

— 61 —
(PUNEET NAGPAL)

**IN THE COURT OF DR. PANKAJ, ADDITIONAL SESSIONS
JUDGE, FARIDABAD. (UID-HR0485)**

HRFB010079062022



Date of Institution: 02.06.2022

Date of decision : 10.06.2022

Mohammad Alam, aged 28 years, son of Mohammad Hussain, resident of Village Shilkhali, District Rasidon, Mayanmar.

...Applicant/petitioner.

Versus

State of Haryana.

...Respondent

Application for grant of regular bail under Section 439 Cr.P.C.

FIR No. 433 dated 17.12.2021,

U/S 370/370A IPC, 14 Foreigner Act, 1946

Police Station Kheripul, Faridabad.

Present: Sh. Bhim Chandila, Advocate for petitioner.

Sh. N.K. Bhukkal, Public Prosecutor for the State.

ORDER:

Vide this order, this Court is deciding the application filed on behalf of petitioner for grant of regular bail in the aforesaid case.

2. Learned counsel for the petitioner submitted that totally false FIR has been got registered. The petitioner is quite innocent person and he has not committed any offence and has no concern with the commission of any alleged offence as alleged by the prosecution. No recovery has been effected from the accused. Investigation of the case has already been completed and the challan has been filed in the court. The case is fixed for prosecution evidence and conclusion of trial will take long time. The petitioner is in custody since 17.12.2021. Learned counsel prayed for grant of bail.

3. Reply to the bail application filed.

4. Learned Public Prosecutor opposed the bail application and argued that present petitioner has committed heinous crime. In case he is released on bail, he may commit same offence again. Although challan has been filed in the court, but merely filing of challan is not a ground to grant bail to the accused. With these submissions he prayed that bail application be dismissed.

5. I have heard learned counsel for the petitioner and learned Public Prosecutor for the State and perused the record of the case.

6. Investigation in this case has already been completed as challan has been filed. Accused has also been charge-sheeted on 04.05.2022 and case is fixed for prosecution evidence. Accused is in

custody since 17.12.2021 and conclusion of trial will take long time. No useful purpose would be served by confining the petitioner in custody, the court is of the view that petitioner deserves to be released on bail. Hence, the petitioner be released on bail on furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of court, subject to following conditions:

- i) He will not leave India without prior permission of this court.
- ii) He will mark his presence in Police Station Kheripul, Faridabad after every 15 days. In case he has to go out of station, he will give intimation in the concerned police station in writing alongwith his address of visiting place.
- iii) At the time of furnishing bail bonds, he will submit his mobile number and will not change the same. In case he changes his mobile number, he will given intimation to this court.

7. The observation made in the order is only for the purpose of decision of the bail application and would not effect the case on merit.

8. Papers be tagged with main file after due compliance.

PRONOUNCED:

(Dr. Pankaj),
Additional Sessions Judge,
Faridabad (UID No. HR0485).

Date of order: 10.06.2022.

Muksh Kumar.

Proceedings conducted through VC

Bail Matter: 5142/2021
State v/s Franck Koffi
FIR No: 792/2021
U/s: 14A of Foreigner's Act
PS: Uttam Nagar

06.01.2022

Present: Sh. Aditya Kumar, ld. Addl. PP for State.
IO/SI Rohit Kumar has appeared through VC.

Sh. Dilwar Singh, ld. Counsel for accused who is stated to be in J/C since 29.10.2021.

Quite contrary to the submission made on the previous date of hearing, today it has been submitted by ld. Counsel for accused that accused is enjoying his status as that of a UN Refugee, during his stay in India and has also shown his refugee card on camera.

He is directed to provide the same to the IO during the course of the day today itself.

Keeping in view the aforesaid facts and circumstances, accused is admitted to bail on his furnishing personal bond in the sum of Rs. 15,000/- with one surety in the like amount, to the satisfaction of ld. MM/ ld. Link MM/ ld. Duty MM, as the case may be.

Application is disposed of accordingly.

LOKESH Digitally signed
KUMAR by LOKESH
SHARMA KUMAR
 SHARMA
 Date: 2022.01.06
 14:35:17 +0530

(Lokesh Kumar Sharma)
ASJ (SFTC) Dwarka Courts
06.01.2022

Muqdam Saad Hassan Vs. State of Haryana.

CNR No.HRGR01-012642-2022

1/6

CIS No.BA-5217-2022

**IN THE COURT OF ABHISHEK PHUTELA,
ADDITIONAL SESSIONS JUDGE, GURUGRAM
(UID No. HR0220)**

| | |
|--------------------|-----------------------|
| Case type | Bail application. |
| Institution Number | 267 dated 10.08.2022. |
| CNR Number. | HRGR01-012642-2022. |
| CIS Number | BA-5217-2022. |
| Date of Order | 16.08.2022. |

Muqdam Saad Hasan son of Alsabeeb Hasan Issa, respondent of Babal Iraq.

..... Applicant-Accused.

Versus

State of Haryana.

..... Respondent.

| | | |
|------------------|---|--|
| F.I.R. No. | : | 439 dated 04.08.2022. |
| Under Section(s) | : | 14 of Foreigners Act,1946 & Section 12(1A) of Passport Act, 1967 |
| Police Station | : | Sadar, Gurugram. |

**APPLICATION FOR BAIL UNDER SECTION 439
OF THE CODE OF CRIMINAL PROCEDURE, 1973.**

Argued by : Shri Vinod Kataria, Advocate for the applicant-accused.

Shri Ashok Kumar, Public Prosecutor for the State,
Assisted by ASI Jaswant Singh.

ORDER :

This is to dispose of bail application filed on behalf of applicant-accused Muqdam Saad Hasan under Section 439 of the Code of Criminal Procedure, 1973 in case arising out of FIR No.439 dated

04.08.2022, registered for the commission of offences punishable under Sections 14 of Foreigners Act and Section 12(1A) of Passport Act, Police Station Sadar, Gurugram.

2. Tensely put, the factual back ground is that the police party headed by ASI Dharam Singh received a secret information that in a hotel at plot No.551, Sector-39, Gurugram a foreign nationals are residing without any passport and visa. Believing the information to be reliable a raid was conducted wherein the accused Muqdam Saad Hasan was found. He showed the photocopy of his passport and visa as per which the passport No.A4775739 was valid from 25.09.2013 to 24.09.2017, visa No.AP4515852 was valid from 7.7.2014 to 1.1.2015 and the UNHRC Card No.305-14C02884 is valid from 10.08.2021 to 09.08.2023. It was alleged that since the passport and visa have expired, the accused has committed the offences punishable under Section 12(1A) of the Passport Act and Section 14 of the Foreigners Act. The accused was formally arrested.

3. The applicant contends that he is a Iraqi national who fled his country in fear of persecution. He is a refugee registered with UNHCR under case no.305-14C02884. The UNHCR issued a letter dated 08.08.2022. The applicant is suffering from epilepsy since 2015. There are more than 64,000 refugees and asylum seekers registered by UNHCR,

residing peacefully in India. A fact sheet was issued by UNHCR in January, 2022. The applicant has applied for the fresh passport with the Embassy of the Republic of Iraq in New Delhi on 04.08.2022 and on 08.08.2022 the Embassy of the Republic of Iraq New Delhi has issued a letter regarding the same. The applicant is a peace loving and hard working person. He had been residing peacefully in India since the year 2015. No prejudice could be caused to the State by granting relief to the applicant. The custody of the applicant is not necessary for the conduct of the investigation, trial or inquiry. Nothing is to be recovered from the applicant.

4. In response, ASI Jaswant Singh has filed the reply wherein the bail application is opposed on the ground that in case the applicant is released on bail he may abscond. That the first bail application of the applicant was dismissed by the Court of learned ACJM, Gurugram on 06.08.2022.

5. During the course of arguments, the learned counsel for the applicant-accused has placed on record a copy of letter dated 29.07.2022 issued by Jamia Hamdard University, New Delhi whereby the applicant-accused was provisionally admitted in B.Pharma Ist year course for the academic session 2022-23. The learned counsel also placed on record the copy of UNHCR Card issued on 10.08.2021 and expiry on 09.08.2023. A

copy of letter dated 09.08.2021 issued by UNHCR has also been placed, as per which the applicant has been registered on 14.01.2016. A copy of certificate issued by the Paras Hospital, Gurugram has been placed as per which the applicant had taken treatment for epilepsy during the year 2015 to 2018. A copy of letter dated 04.08.2022 issued by Embassy of Iraq has been placed as per which the applicant and his family members have applied for renewal of the passport. A copy of letter dated 08.08.2022 issued by Embassy of Iraq has been placed as per which the Embassy had not started issuing Iraqi passport since 2016. Learned counsel also placed on record a copy of letter No.1049 dated 14.08.2022 issued by Embassy of Republic of Iraq and addressed to this Court wherein it is requested that the personal appearance of the applicant is required for the renewal of the passport. The learned counsel also placed on record a copy of migration certificate issued on 12.08.2022 by the Iraqi School, Vasant Kunj, New Delhi, as per which the applicant has completed the final examination for class 12th during the academic year 2020-21. Learned counsel also placed on record the copy of the PAN card of the father of the applicant.

6. I have heard arguments advanced by the learned counsel for the applicant-accused and the learned Public Prosecutor, assisted by the investigating officer.

7. The invocation of Sub Section (1A) of Section 12 of the Passport Act would be debatable and is likely to be a moot point during trial. The applicant who is Iraqi national appears to have a sufficiently long stay in the country with the status of a refugee. The applicant has been studying in the Iraqi school and has now recently been provisionally admitted by the Jamia Hardard University for the academic year 2022-23. The applicant has clean antecedents and is not shown to be involved in any criminal case. The UNHCR card of the applicant is valid till 09.08.2023. The application for renewal of the passport is pending with Embassy of Republic of Iraq. No useful purpose would be served by keeping the applicant-accused in judicial custody. There are no circumstances before this Court to resort to the exception of refusal of bail.

8. For the aforesaid reasons, the bail application of applicant-accused Muqdam Saad Hasan is hereby allowed and he be released on bail in this case on furnishing bail bond in the sum of **₹ 1 lac** with one surety in the like amount to the satisfaction of learned Area Magistrate/Duty Magistrate, Gurugram. Additionally the original passport of the applicant-accused shall be deposited in the Court of learned Area Magistrate/trial Court and shall be released only at the conclusion of trial or earlier only under the order passed by the trial Court.

Muqdam Saad Hassan Vs. State of Haryana.

CNR No.HRGR01-012642-2022

6/6

CIS No.BA-5217-2022

A copy of this order be sent to the trial Court/Area Magistrate for information. No expression of this order shall be construed to be an opinion upon the merits of the case.

File be consigned to the record room after due compliance.

Announced in open Court.
16.08.2022.

Mamta

(Abhishek Phutela)
Additional Sessions Judge,
Gurugram. (UID No.HR0220)

NOTE :- Certified that all the page of this order have been checked and signed by me.

(Abhishek Phutela)
Additional Sessions Judge,
Gurugram.(UID No.HR0220)

(Abhishek Phutela)
Additional Sessions Judge,
Gurugram (UID : HR0220)
16.08.2022

विश्वाल गोग्ने
VISHAL GOGNE
अधिकारी वार्षा क्रमांक-01
Additional Cell No. 200-04
भौति 11
Court No.
दस्तिक 1004
South Delhi
New Delhi

Bail Matters No. 4720/2021
STATE Vs. AJAYI OMON IKHARO
FIR No. 645 /2021
PS Mohan Garden
U/s 14A Foreigners Act

21.12.2021

All matters are taken up in terms of the order No. 798/RG/DHC/2021 dated 29.10.2021 of the Hon'ble High Court of Delhi.

Present: Sh. Yogendra Adari, Ld. APP for the State.
Sh. Anup Kumar Gupta, Ld. Counsel for applicant/
accused.
SI Sunita is present on behalf of IO.

The counsel has filed a copy of the application for extension of the Visa.

The passport has previously been handed over to the IO.

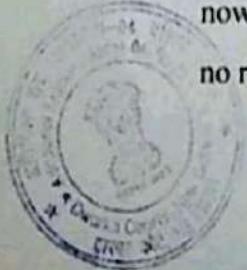
Submissions heard on the present bail application under Section 439 Cr.PC.

The allegations relate to apprehension of the accused by the staff of PS Mohan Garden when he failed to submit a valid passport and Visa on being asked.

The Ld. Counsel for accused submits that since the document relating to identity are now seized by the IO, he is no longer required for detention.

The court would observe that notwithstanding the alleged infringement of the passport/ Visa regulation, the applicant is not accused of any other offence/ grave offence. Since the passport is now deposited with the IO and the Visa has been applied for, there are no reasonable grounds to continue his judicial custody.

The application under Section 439 Cr.PC is allowed.



Accused Ajayi Omon Ikharo is admitted to bail on furnishing of PB & SB in sum of Rs. 25,000/- subject to the satisfaction of the Ld. CMM/Trial Court/Duty MM having jurisdiction over the concerned PS. The surety shall be a local resident of Delhi.

The applicant shall record his presence before the SHO PS Mohan Garden once in two weeks till the charge sheet is filed/investigation is completed.

Let a copy of this order be given dasti to the counsel for the accused and be also sent to Superintendent, Central Jail, Tihar.



Sd -
(Vishal Gogne)
ASJ-04(SW)/Dwarka Courts
21.12.2021

नवी दिल्ली राज्य न्यायालय-०४
Additional Sessions Judge-04
दक्षिण पश्चिम नियुक्ति, द्वारका न्यायालय,
South West District, Dwarka Courts
नई दिल्ली
New Delhi

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, JAMMU

File No. IA/2024 of 10067/2014

Date of Instn- 14-05-2024

Date of Order-29-05-2024

1. Noor Fatima W/O Aziz Ul Rehman
 2. Mabd Haroon S/O Abu Kasim
Both R/O Mayanmar A/P Malik Market, Narwal, Jammu
- VERSUS

UT, through P/S Bahu Fort, Jammu

F.I.R No- 93/2024 U/Ss 14-A, 14-C of Foreigner Act.
Main Challan Title: UT VS Mohd Haroon and Anr



DOCKET TO- I/C District Jail, Jammu.

In the above cited case FIR/offences only and not in any other case matter, the above mentioned accused person has been admitted interim bail upto 27-07-2024. As per the directions their surety bonds to the tune of Rs One Lakh/each have been furnished today, some have been accepted by this Court. As such, you are hereby directed to release the above mentioned accused person from your custody, after obtaining personal bond of like amount from him. Accused person is directed not to leave the jurisdiction of the UT of J&K without prior permission from this court. Accused person is further directed not to intimidate or influence the prosecution witnesses and shall not try to tamper or hamper the prosecution evidences/witnesses, in any manner, whatsoever. Accused shall remain present before the court on each and every date of hearing fixed and shall not involve themselves in any kind of criminal activities. Accused persons are also directed to mark their presence before I/C P/S Bahu Fort, Jammu on every 15th day of Month between 9 AM to 4PM.

Given under my hand and the seal of this court today on 30-05-2024.

(Neerak Sethi)
Additional Sessions Judge Court
Jammu
by

**IN THE COURT OF SH. ATUL KUMAR GARG :
ADDITIONAL SESSIONS JUDGE : SOUTH DISTT. :
SAKET COURTS : NEW DELHI**

(THROUGH VIDEO CONFERENCING)

FIR No. 76/2021
PS Maidan Garhi
U/s 14 Foreigners Act
Dieu Merci Sango Avene vs. State

05.06.2021

Present: Sh. Ashesh Kumar, Ld. Addl. PP for the State.
Ms. Anshdeep Kaur, Ld. Counsel for the applicant/ accused.

This is an application for bail under Section 439 Cr.PC seeking modification of the bail condition imposed by the Ld. Metropolitan Magistrate in its order dated 15.04.2021 while granting the bail.

Ld. Counsel for the applicant submits that applicant was walking on the road on 02.04.2021 when he was asked to show his papers by the police persons. He could not produce the valid visa and passport because he is a national of the Republic of Congo, and has a claim that he cannot go back to his country due to fear of persecution and is an asylum-seeker registered with the United Nations High Commissioner for Refugees (UNHCR) India under case no. 513-19C02050. He had also annexed Under Consideration Certificates (UCC) issued to him by UNHCR. Ld. Counsel for the applicant states that the applicant is in possession of a valid passport and had applied for a renewal of his Indian visa in 2017 but the FRRO informed him that he has to go back to Congo in order to renew his visa. The applicant could not go back to Congo, due to the aforementioned situation of conflict prevalent in the country, which has forced his entire family to flee from Congo and seek refuge in various places across Africa and the rest of the world. It is further his case that while considering the regular bail application, the Ld. Metropolitan Magistrate erred in holding that since India is not a party to the 1951 Convention on the Status of Refugees or its 1967 Protocol, even if petitioner has applied for seeking status of refugee with UNHCR that is of no consequence. That refugees and asylum seeker are not equivalent to illegal immigrants which has been held to be so by the Hon'ble Supreme Court of India as well as various Hon'ble High Courts. Ld. Metropolitan Magistrate granted regular bail to the petitioner vide an order dated 15.04.2021 but imposed a condition that the petitioner remain in a detention centre till the conclusion of trial. This condition is unreasonable and in fact renders nugatory the order of granting bail. As such he has sought the modification in the order passed by the Ld. Magistrate where he was forced to go to the detention centre till the conclusion of the trial. She submits that it is very difficult for the UNHCR officials to contact the applicant in detention centre for the purpose of seeking asylum.

On the other hand, Ld. Addl. PP for the State has opposed the bail application stating that on 02.04.2021 police had checked two foreign nationals and asked that foreigners to show their passport and visa but they could not produce the same. After that they took both guys at PS Maidan Garhi and gave the applicant enough time to produce the documents but they have failed in doing so after which the following case was registered and present applicant was sent to JC. He was granted bail and transferred from jail to detention centre through FRRO. He further submits that in **Babul Khan vs. State of Karnataka**, a judgment has been rendered by Hon'ble Karnataka High Court and it dealt at length with matters of Foreigners Act including bail, trial and deportation process. He further submits that bail should not be granted because he has not any permanent residential address and has no valid visa.

I have heard the arguments at bar and gone through the record of the case.

Ld. Magistrate vide order dated 15.04.2021 considering in length of the judgment passed by the Karnataka High Court in CRLP No. 6578/2019 had granted the bail to the applicant, however, his liberty was further curtailed / restricted by transferring him from jail to detention centre. It is a matter of fact that currently there is a pandemic prevail in the country and physical hearing of the cases have been suspended by the Hon'ble High Court and it will take long time to conclude the trial and the fact that the applicant has applied for refugee status in the UNHPR, the condition of keeping the applicant in detention centre is modified to the extent that instead of keeping the applicant in detention centre, he be released on bail subject to furnishing of personal bond of Rs.40,000/- with one surety of the like amount for a period of three months. During this period, applicant will pursue his application seeking refugees and asylum with the UNHCR. After releasing from detention centre, he will furnish a mobile number and residential address to the SHO of the PS and will mark his attendance after every two weeks i.e. on 15th as well as 30th of the month.

With this, the application stands disposed off.

ATUL KUMAR
GARG

(ATUL KUMAR GARG)
ADDITIONAL SESSIONS JUDGE (SOUTH)
SAKET COURTS/ New Delhi/05.06.2021

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Reg No. 427/2022
STATE Vs. EGEONU IKENA TOBECHI
FIR No. 571 /2021
P.S Neb Sarai

07.03.2022

Present : Sh. Anil Kumar, Id. Addl. PP for State
Ms. Nisha Dhaka, Id. Counsel for applicant/accused
IO SI Narendra Singh is present.

This is an application u/s 439 of CrPC for grant of bail filed on behalf of accused Egeonu Ikena Tobechi.

Ld. Counsel for applicant/accused submits that present FIR was registered for offence punishable u/s 14 of Foreigners Act against applicant/accused. He has not committed any offence. He is a Nigerian national and is an asylum seeker holding a valid asylum seeker certificate issued by United Nations High Commissioner for refugees vide reference no. HCR/513-21C00399. He holds a valid Nigerian passport. It is submitted that applicant/accused is in custody since 13.12.2021. He undertakes to abide by all the terms and conditions imposed by this Court. On these grounds, a prayer was made that applicant/accused be released on bail.

On the other hand, Ld. Addl. PP for the State submits that Visa of applicant/accused has already expired. He was residing illegally in India till 05.03.2021 when he applied for asylum seeker. He should have applied for asylum seeker during his valid visa period in between 09.09.2021 and 08.12.2019.

It is evident from report of IO that on 13.12.2021 police officials were present in the area patrolling duty and tenant verification duty. During patrolling in Jawahar Park, Neb Sarai, at about 3.50 PM when they reached at Rastogi Jewellers, Jawhar Park, New Delhi and saw a person who seems to be African national. Upon seeing the police, the said person started walking swiftly, when he was told to stop he started running and thereafter he was apprehended. As per report, applicant/accused failed to provide his details as well as documents i.e. ID proof / passport, Visa etc. Thereafter, present FIR was registered against him.

As per report, chargesheet has been filed before the concerned court of Ld. MM, South, Saket. Passport of applicant/accused was got verified from concerned authority. The date of issue of passport is 28.03.2019 and date of expiry is 27.03.2024. The report further mentions that request letter was written to UNHCR to verify status of applicant/accused as asylum seeker (refugee). It was confirmed by the authorities that

applicant/accused is an asylum seeker registered with their office. He has been issued certificate on 05.03.2021 which is valid upto 31.10.2022.

Keeping in view report filed by IO, nature of allegations and further that applicant/accused has no previous involvement as per SCRB report and duration of custody, the applicant/accused Egeonu Ikena Tobechi is admitted to bail on his furnishing personal bond in the sum of Rs. 50,000/- with two local sureties of the like amount to the satisfaction of Ld. MM/Ld. Link MM/ Ld. Duty MM with the following conditions:

- i) The passport of the applicant shall continue to remain in the custody of IO / Court of concerned Ld. MM.
- ii) Applicant shall disclose to IO/SHO concerned the address at which he will reside during the period of trial from time to time and also furnish his mobile number.
- iii) Applicant shall not leave the National Capital Region without the prior permission of concerned Court.
- iv) Applicant at the time of release shall intimate the mobile number to the Jail Supdt as well as to the Investigating Officer which he would be keeping during this period of bail. The accused would keep his phone fully charged and it should be switched on at all the times so that he shall be available for verification by Investigating Officer;
- v. Applicant shall appear before IO/SHO, PS. Neb Sarai at 10 AM on every Wednesday and Saturday.
- vi. Applicant shall drop a pin on Google map to ensure that his location is available to the investigating officer;
- vii) The applicant shall take necessary steps to get his Visa extended and shall fulfill the formalities as per requirement of FRRO, Delhi; and
- viii) Applicant shall not directly or indirectly make any inducement, threat or promise to complainant or any witness during the trial or tamper with evidence.

A copy of this order be given dasti to ld. Counsel for applicant/accused. Copy of order be uploaded on the website of the District Court, Saket Courts, New Delhi.

(Vineeta Goyal)
ASJ/Spl. FTC/South District/07.03.2022

FIR No. 23/2022
STATE Vs. EGEONU IKENA TOBECHI
FIR No. 571/2021
PS-Neb Sarai

01.04.2022

Today this Court is looking after the work of Ld. Link Court of Ms. Vineeta Goel, Ld. ASJ/Spl. FTC/South District, Saket Courts, New Delhi as the Hon'ble Court is on training today.

This is an application seeking modification of the bail order dated 07.03.2022 passed by Ld. Predecessor.

Present :- Mr. Nischal Singh, Ld. Addl. PP for State.

Ms. Gunjan Gupta along with Ms. Aanchal, Ld. Counsel for applicant/accused.

It is prayed in this application that although the accused was granted bail on 07.03.2022, he is still behind bars as he is a foreign national and is unable to arrange local surety according to the terms of the bail order.

Thus, it is prayed in this bail order that instead of two local sureties, the terms of the bail order be modified to permit the accused to be released on his furnishing cash amount to the tune of surety amount.

Indeed the accused is a foreign national. His passport is valid and he has been granted the status of asylum seeker by UNHRCR which is valid up to 31.10.2022.

FIR No. 571/2021
PS-Neb Sarai

-2-

It is common knowledge that foreign nationals are unable to furnish local sureties quite often for want of family/relatives in India.

In such circumstances, the application is allowed.

The accused be released on his depositing the cash surety amount of Rs. 1,00,000/- (Rupees One Lakh Only) cash. Rest of the terms of order dated 07.03.2022 shall remain the same. Dasti.

(Monika Saroha)
Special Judge-NDPS/ASJ (South)
Saket Courts/01.04.2022



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 20th April, 2023

Pronounced on: 26th May, 2023

+ W.P.(CRL) 550/2022

(46) EMECHERE MADUABUCHKWU Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Prasanna
& Mr. Ujwal Ghai, Advs.

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Ms. Rupali Bandopadhyay, ASC
(Crl.) with Mr. Akshya & Mr.
Abhijeet Kumar, Advs. for the State.
Ms. Manisha Agrawal Narain and
Mr. Sandeep Singh, Advs. for R2.
SI Virender Singh, Central Distt.

+ W.P.(CRL) 827/2022

(47) EMECHERE MADUABUCHKWU Petitioner

Through: Mr. Chetan Bhardwaj, Adv.

versus

FOREIGNERS REGIONAL REGISTRATION OFFICE DELHI

..... Respondent

Through: Ms. Rupali Bandopadhyay, ASC
(Crl.) with Mr. Akshya & Mr.
Abhijeet Kumar, Advs. for the State
with SI Virender Singh, Central
Distt.

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Ms. Manisha Agrawal Narain and
Mr. Sandeep Singh, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. These petitions have been filed by the petitioner who is a Nigerian national seeking setting aside order dated 14th July, 2021 passed by the Foreigners Regional Registration Officer (FRRO) (respondent herein) by which petitioner was restricted to move out of Sewa Sadan, Lampur, Narela, Delhi until his travel arrangements were made. The issue under consideration is essentially the grant of bail to a foreign national but with conditions of being sent to a detention centre, considering that the visa of stay in India of such a national had expired. The factual background relating to this matter is as under.

Factual background

2. The petitioner came to India in November, 2014 and got married to Ms. Rinkoo Tripathi in the month of December, 2015 and started residing with his wife in Delhi. Petitioner was running an African kitchen at H. No. 102 B, 50 Foota, Vijay Laxmi Park, Nilo thi Extn., New Delhi-110041 to earn his livelihood. As per the case of the prosecution, a police team in April, 2021 while patrolling received secret information that the petitioner is running an African Kitchen in that area where some suspicious people come, drink liquor and create nuisance. After receiving this information, the police team went to the kitchen and noticed an African man coming

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outside from the kitchen, carrying a white *katta* (bag) in his hand, got on a scooty and started going on it, then as he reached near the police, they stopped the vehicle and restrained him. On checking the bag, 24 sealed beer bottles were found and when search was made at the kitchen, 42 more sealed beer bottles were found.

3. An FIR No. 249/2021 was registered on 06th April, 2021 under Sections 33/38/58 of the Delhi Excise Act, 2009 and Section 14 of the Foreigners Act, 1946 at PS Nihal Vihar. The petitioner was also arrested and moved an application under Section 437 Cr.P.C. seeking regular bail before the Court of Ld. MM, West District, Tis Hazari Courts. By order dated 24th April, 2021, the Ld. MM allowed the bail application of the petitioner, however, directed that the petitioner would be transferred from the jail to the Detention Centre by the IO/SHO where he will be kept till the conclusion of the trial of the present case and will be produced before the Court as and when required.

4. The petitioner moved an application under Section 439 Cr.P.C. before Ld. ASJ, West District, Tis Hazari Courts. Ld. ASJ by order dated 25th June, 2021 allowed the application and admitted him on bail by releasing him from Detention Centre subject to furnishing a personal bond and surety bond of Rs. 1 Lac. The petitioner did furnish the surety of the respective amounts but has still not been released from the said detention centre.

5. When the petitioner's wife approached the detention centre with the order of the Ld. ASJ, the centre was not convinced to release the petitioner. A visit was made on 23rd November, 2021 by an advocate at the FRRO

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Detention Centre *in lieu* of directions passed by this Court in order dated 07th October, 2016 in W.P.(C) No.4663/2008. The petitioner communicated the difficulty being faced by him for release and wrote a letter dated 23rd November, 2021 in order to seek assistance in Visa Extension and released from the detention centre and handed over the copy to the visiting counsel.

6. The petitioner's visa has been declined multiple times without assigning any reasons, and a simple message is received on the mobile stating that the visa extension application has been closed. The petitioner filed W.P. (CRL)No.550/2022 (one of the two petitions adjudicated herein). Reply dated 24th March, 2022 was filed by the FRRO where the order dated 14th July, 2021 impugned in Writ Petition 827/2022 (the other petition being adjudicated herein) was filed.

7. As per the said order passed by the FRRO, it was directed that the petitioner would not move out of Sewa Sadan, Lampur till the travel arrangements are made and such restrictions were imposed under Section 3(2)(e) of the Foreigners Act, 1946 and para 11(2) of the Foreigners Order, 1948.

8. It is contended that it has been close to two years since the order has been passed by the Ld. ASJ granting release of the petitioner from the FRRO detention centre, but he is still facing incarceration, and, therefore, pleads for setting aside of the impugned order of the FRRO restricting him to the detention centre.

Submissions by the Petitioner's Counsel

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9. The learned counsel for the petitioner submitted *inter alia* that: **firstly**, the impugned order dated 14th July, 2021 was without application of mind, unreasonable, non-speaking, and in violation of principles of natural justice. The said order was never communicated to the petitioner and only when the first W. P. 550/2020 was filed. The said impugned order was appended as part of the counter affidavit. The petitioner had never been notified of the said order and a decision had been taken *ex parte*. No show-cause notice was issued to him and despite the order's stating that "*reasonable time has been provided for the same*", there was no opportunity given;

secondly, the invocation of provisions of Section 3(2) of the Foreigners Act was also untenable, since while Section 3(1) of the Foreigners Act empowers the Central Government to make provisions generally with respect to foreigners or any class of foreigners for prohibiting, regulating or restricting the entry or departure into India or from India, Section 3(2) of the Foreigners Act provided specific illustrations or possibilities of the kinds of orders which could be made. In particular, Section 3(2)(d) of the Foreigners Act provided that such an order may prescribe that the foreigner "*shall remove himself to, and remain in, such area in India as may be prescribed*". Further, Section 3(2)(e) of the Foreigners Act provided that orders against such foreigners could also require him to "*reside in a particular place*" or "*impose any restrictions on his movements*". Section 3(2)(f) of the Foreigners Act provided the possibility of an order prescribing that the foreigner "*shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions*". It was,

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therefore, submitted that the authorities had power to pass such orders under the Foreigners Act that were not adverted to or taken into account while passing directions restricting such foreigners to detention centre. Even though, Section 3(2)(e) of the Foreigners Act was being applied by the impugned order, it did not state why in particular that provision was being invoked instead of others which also provided for a bond or a surety or being located of the foreigner in a particular place;

thirdly, it is contended by the learned counsel for the petitioner that restrictions cannot be interpreted with detention and the same logic will not apply to both these concepts. Even in cases of bail, some restrictions are made as part of bail conditions but they do not come close to detention. This forms part of the grain of Article 21 of the Constitution of India and to move freely within the country as provided in Article 19(1)(d) of the Constitution of India;

fourthly, the petitioner was no longer a prisoner and he had been granted the benefit of regular bail and any detention would be exaggerating the powers conferred by law. The legislative purpose of Section 3 of the Foreigners Act was merely to curb movements of the foreigner and keep a vigil in order that some unlawful activity may not be committed but not of a mandatory detention;

fifthly, para 11 of Foreigners Order, 1948 was also adverted to which prescribed the power to impose restrictions on movements and the foreigner could be asked to comply with such conditions in respect of his place of residence, his movements, his association with any person or class



of persons as specified and his possession of such articles as may be specified in the order;

sixthly, reliance was placed on the decisions of the Karnataka High Court in ***Babul Khan and Another v. State of Karnataka***, 2020 SCC OnLine Kar 3438, where certain guidelines were passed *inter alia* that if a Court grants bail or anticipatory bail to an offender who is a foreign national and the visa is cancelled or lapsed or they have no passport or they are illegal immigrants then the Court can order to keep them in a detention centre “unless the competent authority has passed any order under Section 3(2)(a) to (f) of the Foreigners Act, 1946”. As per the learned counsel for the petitioner, there is a possibility of such orders being passed for restrictions as opposed to simpliciter sending the foreigner to the detention centre.

Submissions by the FRRO's Counsel

10. The learned counsel for the FRRO refuting the allegations of the petitioner submitted that the petitioner had arrived in India in November, 2014 on a Nigerian Passport No. A02377740 valid from 24th September, 2010 till 23rd September, 2015 and an Indian Medical Visa No. VJ2039458 issued on 15th October, 2014 and valid till 14th January, 2015. As per record, he did not approach any hospital for treatment and after expiry of the visa on 15th January, 2015 he did not approach the FRRO for registration or further visa extension till 15th May, 2021 and he had already overstayed for about six years as an illegal migrant. Pursuant to the order by the Ld. MM of 24th April, 2021, FRRO issued communication dated 05th May, 2021 noting the bail condition of being in the detention centre.

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Thereafter, pursuant to the order of the Ld. ASJ dated 25th June, 2021, the impugned order was passed according to the FRRO this was necessitated since the Ld. ASJ has noted that detaining a person through an order of grant of bail was not in consonance with law and restriction. Further detention of a foreign national aside from the bail order has to be by a decision of the Competent Authority.

11. It was stated further that in the absence of a valid visa, the petitioner was an illegal immigrant and his visa applications dated 15th May, 2021, 17th July, 2021 and 30th July, 2021 were rejected and closed after application of mind. The reasons stated in the counter affidavit was that he was being tried for the violation of the provisions of the Foreigners Act and visa norms and contravention of Excise Act and that his passport expired as well, and not renewed.

12. On 12th July, 2021, his passport was revalidated by the High Commission of Nigeria till 11th July, 2026 purportedly for the purposes of deportation. FRRO, therefore, stated that to allow a foreign national to move around freely in the country even after committing the offence would make a mockery of the provisions of the Foreigners Act.

13. Releasing him from the detention centre cannot ensure that he would not get involved in illegal activities again. Reliance was placed on a decision of this Court in *Pascal v. Union of India, FRRO Delhi & Anr.* W.P.(CRL) 2276/2021, where it was held that since the petitioner did not have a valid visa which is required to get him deported, his movements were required to be restricted by keeping him in a detention centre.



14. Learned counsel for the petitioner, however, refuted this since it did not decide the question of law under Section 3(2) of the Foreigners Act. Moreover, the petitioner was not being deported but was an under trial and, therefore, Section 3(2) of the Foreigners Act would apply. It was further stated that the issue of overstay of foreign nationals facing criminal charges and their subsequent restriction and deportation was pending before a larger Bench of this Court in CRL. REF. No.02/2021.

Analysis

15. To place it in perspective, the petitioner was arrested under the FIR under Sections 33/38/58 of the Delhi Excise Act, 2009. It may be noted that Section 33 relates to penalty for unlawful import, export, transport, manufacture, possession, sale etc. of intoxicant and it is punishable by imprisonment of the period not less than 6 months but may extend to three years plus fine not less than Rs.50,000/-, but which may extend to Rs.1,00,000/-. Section 38 imposes penalty for possession of spurious liquor unlawfully imported and duty not paid, punishable with imprisonment for a term which may extend to six months and fine which may extend to Rs.1,00,000/-. Section 58 provides for confiscation of any intoxicant which is unlawfully imported, transported, sold etc. Violation of Section 14 of the Foreigners Act, 1946, if convicted, triggers an imprisonment which may extend to five years plus fine.

16. These facts can be better assessed by appreciating them in the following silos. **First**, there is the allegation of an offence being committed by the foreign national; **second** is the release of the foreign national on bail as an undertrial (as in this case) or otherwise on a suspension of sentence/

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parole as a convict; *third*, is the inability to have a valid visa due to the period of incarceration; *fourth* is the process and possibility of getting a visa considering the trial/conviction; and *fifth* is the options which are possible in order to monitor the movement of such a foreign national.

17. Since, no view can be expressed on the offence itself, at this stage, till a trial has resulted in a conclusive order, it would be worthwhile to examine the situation of foreign national released on bail as an undertrial. The fact that the Trial Court grants bail to a foreign national in the context of a pending proceeding, inures to the advantage of the foreign national since a competent court has legitimately allowed him to be free from custody. If such being the case, then the question arises whether the foreign national is to be then sent to a detention centre if he does not have a valid visa or travel documents. Or alternatively be subject to a procedure which specifically deals with such cases and consider grant of some permit/visa/travel documents which would ensure that the petitioner is not in a detention centre and will be able to enjoy his liberty but at the same time has to continue to be in India to face the trial.

18. These possibilities are provided by enabling provision Section 3(1) (in general terms) and Section 3(2) (in specific terms) of the Foreigners Act, 1946. Section 3(1) enables the Central Government to make a provision generally with respect to all foreigners, or with respect to a particular foreigner, or a prescribed class of a foreigner in order to: (i) prohibit; (ii) regulate; or (iii) restrict entry/departure/presence/continuing presence, in or from India. The scope and purview of this provision is expansive in its breath and purposeful in spirit.

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19. The Central Government has, therefore, an option to not just prohibit but possibly regulate or restrict the presence or continued presence of such an undertrial in India. In a situation that is being dealt with as regards the petitioner, where the continued presence is necessary for the completion of the trial, various options can be exercised under provisions of Section 3(2) of the Foreigners Act *inter alia* to remain in such area as may be prescribed in Section 3(2)(d); to reside in a particular place as in Section 3(2)(e)(i); imposing a restriction on the movements as per Section 3(2)(e)(ii) or entering into a bond with or without sureties for the observance of such prescribed conditions as in Section 3(2)(f). These options are aside from the simpliciter option of detention. The question that would be presented before the Central Government is whether in such cases of foreigners being undertrials, the only blanket option to be exercised was detention or other options could also be considered. This would be relevant keeping in mind the specific facts and circumstances, since Section 3(1) of the Foreigners Act empowers the Central Government to deal with specific cases of an individual or a category of persons and not just generally with respect to all foreigners.

20. Merely pointing towards all such foreign nationals who are undertrials or suspended post conviction and are a security concern, would not be consonance with the letter and spirit of these provisions. Granting such persons, a special permit/visa/travel document would not legitimize their earlier offence of having overstayed in violation of the provisions of the Foreigners Act, but would in fact ensure that they are not confined in a detention centre at state expense, but instead are restricted to a place on conditions as may be prescribed and furnish bond/sureties to ensure

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compliance of such conditions. Further, restrictions could be made for restricting the possibility of travelling out of India without permission. This would ensure a judicious balance between recognizing liberty, and a human right, and ensuring the presence of the foreign nationals for the purpose of trial and being subject to restrictions/regulations/conditions.

21. To further unravel this conundrum, it would be useful to have a snapshot view of some relevant decisions of the Hon'ble Supreme Court, this Court and other High Courts, to be usefully aware of the nature of directions passed in analogous situations.

Judicial precedents

22. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India*, (1994) 6 SCC 731, the Hon'ble Supreme Court in dealing with cases of undertrials passed certain directions regarding release of such undertrials whose trials were still to get completed applying the principle of the constitutional right of speedy trial under Article 21. One of the directives related to undertrials who were foreigners, the Hon'ble Supreme Court directed that in such cases “*the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner/accused belongs, that the said accused shall not leave the country and shall appear before the Special Court, as and when required*”. Reference to this direction is being made for the purposes that there are methods and modalities which are available to the State to ensure



that an undertrial who is a foreigner can be released on bail subject to these special conditions of impounding of passport and a certificate of assurance.

23. The Karnataka High Court in *Christian Chidieere Chukwu v. The State of Karnataka by K.R. Puram Police Station, Bangalore and Anr.*, (2016) SCC OnLine Kar 439 dated 18th February, 2016, in a petition for bail of a foreign national who had overstayed and had been accused of a crime under Sections 376/506 IPC and in addition for overstay in India, Section 14 of the Foreigners Act had been invoked. The Court noted that in these situations, if bail is granted to persons who have violated the provisions of the Foreigners Act, such persons cannot stay in India even for a day without valid passport and visa, therefore, and an undertrial has to await the result of the trial in respect of the case registered against him and after the conclusion of the criminal case, steps have to be taken to deport such foreign national for staying beyond the expiry of the visa. If there is a delay in conducting the trial, it would be as good as allowing such foreign national to be in India even after the expiry of the visa period.

24. In *Bathlomew Lkechukwu @ Charles v. Union of India & Ors.*, W.P. (CRL) 2146/2019 order dated 30th January, 2020, this Court in dealing with a petitioner who was a foreign national and had been acquitted of an offence against which an appeal had been filed by the NCB, observed that the petitioner could not be detained indefinitely in a deportation camp. The said foreign national was either required to be issued a visa or is required to be deported. Even if the person's presence was required in India on account of the appeal filed by the NCB, an appropriate visa was required to be issued to him. Directions were, therefore, issued to either

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deport the petitioner or release him after providing proper visa within a period of three months.

25. In ***Efrance Namatende v. State***, BAIL APPLN. 2214/2022 by order dated 09th January, 2023, this Court noted that for violation of Section 14 of the Foreigners Act there was no requirement that the person is to be confined in an observation home. The bail condition that he would remain in an observation home till he is granted a visa was deleted. A similar order was passed in ***Frank Boadu v. State of Govt. of NCT of Delhi***, BAIL APPLN. 1897/2022 order dated 03rd March, 2023.

26. In ***Rajesh Datta @ Raj v. The State & Anr.***, W.P.(C) 1565/2023 order dated 07th February, 2023, this Court in dealing with a petition for issue of directions to the FRRO to grant an extension of stay visa till pendency of the trial, directed that the petitioner would continue to apply to the FRRO for an extension of the visa on a periodic basis, and such extension applications after being duly verified shall be granted till the final adjudication of the case. In this case, the order noted that the visa had already been extended, but the Court gave the above directions for subsequent possibilities for extension.

27. In ***Izuchukwu Joseph v. Foreigners Regional Registration Officer, Delhi & Anr.***, W.P.(C) 2106/2023 order dated 15th March, 2023, this Court had noted the submission of the FRRO through a status report, that due to misuse of visas by foreign nationals by involving themselves in criminal activity, visas were not being granted. As also grant of visa to a foreign national who is already in violation of the Foreigner's Act may be not be appropriate. Visas can be granted to foreign nationals when an appeal has

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been preferred by the State against an acquittal order of a Lower Court or if the Court itself orders for grant of such a visa on an appeal filed by the foreign national against order of the Lower Court or of the FRRO. Besides a concept of entry visa (X-Misc. category) is also available which is granted to an accused foreign national facing criminal charge/trial proceedings in order to facilitate the foreign national to face such proceedings before the Ld. Trial Court or appear before the investigating agency pending investigation. Such a visa is usually co-terminus with the date of hearing in the case or as per directions which may be issued by the Courts.

28. In **Bailly Gui Landry v. The State of Telangana**, CRL. P. No.4396 & 4400/2021 of the High Court of the State of Telangana at Hyderabad, it was held that the Magistrate after conducting a full-fledged trial, acquitting the petitioner does not have the power to order deportation of any foreign citizen even in case of violation of the provisions of the Act. The Magistrate has to confine his findings with the regard to either acquittal or conviction, and not directing any deportation of foreign citizen.

29. In **James Pascal v. Narcotic Control Bureau**, CRL.A. 548/2020 order dated 21st September, 2022, this Court on 21st September, 2022 for suspension of sentence of a foreign national in an NDPS case had directed as part of the condition that the petitioner could apply for visa within a week from the date of his release and his application would be considered in accordance with law and relevant procedure.

30. Finally, and most importantly, in **Ana Parveen & Anr. v. Union of India & Ors.**, W.P.(CRL) No. 43/2022, the Hon'ble Supreme Court was

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dealing with a foreign national detained and lodged at the detention centre in Delhi pending deportation after having been convicted and completed his sentence under Section 14 of the Foreigners Act. The person in question was a Pakistani national who came to India married an Indian citizen in 1989 had five children who were born in India. A representation had been submitted by him to the Ministry of Home Affairs for release from detention centre and to be allowed to stay at his home on long term visa or any other permit. Seven years had elapsed since he had served out his sentence following the conviction under the Foreigners Act. The Hon'ble Supreme Court directed that it would be appropriate if the Foreigner's Division of the Union Ministry of Home Affairs takes a decision on the representation for grant of a visa/long term visa having regard to all facts and circumstances of the case. Further, in light of mandate of Article 21 of the Constitution, it was directed that since there was no security threat or adverse impact on national security, he should be released on furnishing a personal bond of Rs.5,000/- with two sureties of Indian citizens in the like amount. The detenu would furnish the place address of permanent residence where he proposed to reside and would report to the local police station on the seventh day of every month.

Conclusions

31. In this context, and in the background of all these decisions of various courts and the Hon'ble Supreme Court, the submission of the FRRO that by allowing permission to be released would legitimize their past offence is too simplistic a view in the matter. In the considered opinion of this Court, these situations do present themselves before courts on multiple occasions, require more calibrated treatment.

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32. In any event what must be clarified is that a Court or Magistrates or a Sessions Court cannot as part of enlarging foreign national on bail can also direct the said person to be sent to a detention centre. The Court is not competent to pass such a direction when granting bail as has been conclusively held in various decisions. Detention centres are not for judicial custody but a place where a foreign national is detained on an executive order and is the prerogative of the competent authority under the Foreigners Act.

33. Therefore, what the Ld. ASJ directed by order dated 25th June, 2021 was apposite, by allowing the bail application and admitting him on bail by releasing him from Detention Centre subject to furnishing a personal bond and surety bond of Rs. 01 Lac. Despite that the petitioner was not released on account of the intransigent stand taken by the FRRO in not granting him a visa or permit and issuing the impugned order. This denial was in the teeth of a judicial order of Ld. ASJ, which is not merited considering there was no challenge to the said order by the State. The petitioner once being enlarged on bail cannot be detained without due process of law. The fact that he is facing trial for offences under the Excise Act and the Foreigners Act cannot be held against him, considering he still is to be proved guilty post trial. Right now, is the issue of his freedom.

34. The impugned order was therefore untenable on two counts – one, is that no opportunity was ever given to the petitioner to show cause or even a possibility of a hearing/or representation; and two, that other provisions of the Foreigners Act were not considered i.e. order could have been passed under any provision of section 3(2) of the Foreigners Act. Even **Babul Khan** (*supra*) holds that such foreigners without visa may be kept in

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detention centres “unless the competent authority has passed any order under Section 3(2)(a) to (f) of the Foreigners Act, 1946”. There is no reason why the FRRO cannot consider other possibilities under these provisions i.e. requiring him to be at a particular place (not necessarily a detention centre), imposing restrictions on his movements (like restricting him to an area), regulating his conduct and association with persons; reporting requirements to an authority. There is a vast menu of options available for the FRRO to apply, which may be more in consonance with rights under Article 21, than a summary, plain vanilla order of continuing in the detention centre. Also, there is no reason, as has been observed by the Hon’ble Supreme Court, to not consider grant of a special visa/stay permit to the petitioner, which recognizes that he is an undertrial of an overstay offence and has to continue in this country for the purpose of trial or otherwise, in case that is not required, choose to deport him.

35. The petitioner has already spent 2 years in confinement in detention centre when the offences that he is charged with under the Excise Act trigger sentence of about 6 months and maximum may extend to 3 years. Even as regards the Foreigners Act offence, he may at the maximum be sentenced for 5 years, of which he has now already been in *de facto* custody for 2 years.

36. Considering that the petitioner now has a valid passport (having been extended by the Nigerian Embassy), the FRRO/any other competent authority of the UOI is directed to consider his application for visa and /or representation for an appropriate order under the Foreigners Act, in light of what has been stated above by this Court. The said decision may be taken



within a period of 8 weeks, with due compliance of principles of natural justice, providing him an opportunity to represent.

Criminal Reference

37. It has been brought to the attention of this Court that a Crl. Ref. No.2/2021 is pending adjudication before the Hon'ble Division Bench of this Court since September, 2021. The said Crl.Ref. was received from Ld. MM-04, Saket Courts, and Mr. Harsh Prabhakar, Advocate was appointed as *Amicus Curie* to assist the Court by order dated 21st September, 2021. Thereafter, the matter has been listed before the Hon'ble Division Bench on 30th September, 2021 and subsequent dates, and is now listed for 6th September, 2023.

38. The order of reference by the Ld. MM dated 13th September, 2021, was passed while haring an application seeking bail moved by a Nigerian national who has overstayed his visa and proceedings have been initiated against him under the Foreigners' Act. The contentions before the Ld. MM on behalf of the accused as well as the State related to similar issues of whether bail can be granted to a foreign national who did not have any valid visa and what conditions ought to be imposed. In this regard the Ld. MM framed three questions for reference :

- a. *Would releasing the accused/foreign national by granting unconditional bail to such a foreign national not tantamount to legalizing his future stay in India without valid visa, which is otherwise an offence under section 14 of Foreigners Act, 1946?*

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- b. Should the matters of foreign nationals, who are accused of offence u/s 14 of Foreigners Act, 1946, and particularly where accused himself concedes expiry of his visa before date of his apprehension, be not treated differently than other criminal cases?*
- c. Whether any condition can be imposed upon a foreign national while bail being granted to him so as to ensure that he does not flee away from the course of justice and can be kept in detention till completion of the trial?*

Directions

39. Considering that the reference is still to be decided by the Hon'ble Division Bench of this Court, at this stage it would be improper to retain a foreign national in detention centre despite a clear judicial order of bail being granted by the Ld. ASJ, subject to conditions. On being enlarged on bail, the petitioner would still be in constructive custody of the Court. These directions are being passed taking guidance from the Hon'ble Supreme Court's decision adverted to in para 30 (supra). As regards the impugned order passed by the FRRO, on the basis of which the petitioner is being retained in the detention centre, it is set aside, and as directed above to be reconsidered in light of the observations made in this order, in particular in paras 18 to 20 (supra).

40. In the interest of justice, therefore, the directions passed by the Ld. ASJ are reiterated and endorsed, and the petitioner be released from the detention centre on satisfaction that he has furnished personal bond and surety bond in the sum of Rs. 1 lac each to the satisfaction of the Ld.

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MM/Duty MM (West), who subject to furnishing and acceptance of the bail bonds, issue release warrants from the detention centre where he is detained. Further, to this condition the petitioner shall furnish a permanent residence address that he proposes to reside at and would report to the local police station every Saturday at 4:00 p.m. Further, he would surrender his passport with the Ld. Trial Court and would not leave the NCT of Delhi during the said period. Considering that the petitioner is married to an Indian national, Ms. Rinkoo Tripathi, he would also provide the mobile number of his wife and her identity details to the Ld. Trial Court.

41. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
42. A copy order be also sent to the FRRO Detention Centre, Sewa Sadan, Lampur, Narela, Delhi and the petitioner be intimated of this order
43. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
44. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MAY 26, 2023/MK

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 20th April, 2023

Pronounced on: 26th May, 2023

+ W.P.(CRL) 550/2022

(46) EMECHERE MADUABUCHKWU Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Prasanna & Mr. Ujwal Ghai, Advs.

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Ms. Rupali Bandopadhyay, ASC (Crl.) with Mr. Akshya & Mr. Abhijeet Kumar, Advs. for the State. Ms. Manisha Agrawal Narain and Mr. Sandeep Singh, Advs. for R2. SI Virender Singh, Central Distt.

+ W.P.(CRL) 827/2022

(47) EMECHERE MADUABUCHKWU Petitioner

Through: Mr. Chetan Bhardwaj, Adv.

versus

FOREIGNERS REGIONAL REGISTRATION OFFICE DELHI

..... Respondent

Through: Ms. Rupali Bandopadhyay, ASC (Crl.) with Mr. Akshya & Mr. Abhijeet Kumar, Advs. for the State with SI Virender Singh, Central Distt.

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Ms. Manisha Agrawal Narain and
Mr. Sandeep Singh, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. These petitions have been filed by the petitioner who is a Nigerian national seeking setting aside order dated 14th July, 2021 passed by the Foreigners Regional Registration Officer (FRRO) (respondent herein) by which petitioner was restricted to move out of Sewa Sadan, Lampur, Narela, Delhi until his travel arrangements were made. The issue under consideration is essentially the grant of bail to a foreign national but with conditions of being sent to a detention centre, considering that the visa of stay in India of such a national had expired. The factual background relating to this matter is as under.

Factual background

2. The petitioner came to India in November, 2014 and got married to Ms. Rinkoo Tripathi in the month of December, 2015 and started residing with his wife in Delhi. Petitioner was running an African kitchen at H. No. 102 B, 50 Foota, Vijay Laxmi Park, Nilo thi Extn., New Delhi-110041 to earn his livelihood. As per the case of the prosecution, a police team in April, 2021 while patrolling received secret information that the petitioner is running an African Kitchen in that area where some suspicious people come, drink liquor and create nuisance. After receiving this information, the police team went to the kitchen and noticed an African man coming

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outside from the kitchen, carrying a white *katta* (bag) in his hand, got on a scooty and started going on it, then as he reached near the police, they stopped the vehicle and restrained him. On checking the bag, 24 sealed beer bottles were found and when search was made at the kitchen, 42 more sealed beer bottles were found.

3. An FIR No. 249/2021 was registered on 06th April, 2021 under Sections 33/38/58 of the Delhi Excise Act, 2009 and Section 14 of the Foreigners Act, 1946 at PS Nihal Vihar. The petitioner was also arrested and moved an application under Section 437 Cr.P.C. seeking regular bail before the Court of Ld. MM, West District, Tis Hazari Courts. By order dated 24th April, 2021, the Ld. MM allowed the bail application of the petitioner, however, directed that the petitioner would be transferred from the jail to the Detention Centre by the IO/SHO where he will be kept till the conclusion of the trial of the present case and will be produced before the Court as and when required.

4. The petitioner moved an application under Section 439 Cr.P.C. before Ld. ASJ, West District, Tis Hazari Courts. Ld. ASJ by order dated 25th June, 2021 allowed the application and admitted him on bail by releasing him from Detention Centre subject to furnishing a personal bond and surety bond of Rs. 1 Lac. The petitioner did furnish the surety of the respective amounts but has still not been released from the said detention centre.

5. When the petitioner's wife approached the detention centre with the order of the Ld. ASJ, the centre was not convinced to release the petitioner. A visit was made on 23rd November, 2021 by an advocate at the FRRO

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Detention Centre *in lieu* of directions passed by this Court in order dated 07th October, 2016 in W.P.(C) No.4663/2008. The petitioner communicated the difficulty being faced by him for release and wrote a letter dated 23rd November, 2021 in order to seek assistance in Visa Extension and released from the detention centre and handed over the copy to the visiting counsel.

6. The petitioner's visa has been declined multiple times without assigning any reasons, and a simple message is received on the mobile stating that the visa extension application has been closed. The petitioner filed W.P. (CRL)No.550/2022 (one of the two petitions adjudicated herein). Reply dated 24th March, 2022 was filed by the FRRO where the order dated 14th July, 2021 impugned in Writ Petition 827/2022 (the other petition being adjudicated herein) was filed.

7. As per the said order passed by the FRRO, it was directed that the petitioner would not move out of Sewa Sadan, Lampur till the travel arrangements are made and such restrictions were imposed under Section 3(2)(e) of the Foreigners Act, 1946 and para 11(2) of the Foreigners Order, 1948.

8. It is contended that it has been close to two years since the order has been passed by the Ld. ASJ granting release of the petitioner from the FRRO detention centre, but he is still facing incarceration, and, therefore, pleads for setting aside of the impugned order of the FRRO restricting him to the detention centre.

Submissions by the Petitioner's Counsel

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9. The learned counsel for the petitioner submitted *inter alia* that: **firstly**, the impugned order dated 14th July, 2021 was without application of mind, unreasonable, non-speaking, and in violation of principles of natural justice. The said order was never communicated to the petitioner and only when the first W. P. 550/2020 was filed. The said impugned order was appended as part of the counter affidavit. The petitioner had never been notified of the said order and a decision had been taken *ex parte*. No show-cause notice was issued to him and despite the order's stating that "*reasonable time has been provided for the same*", there was no opportunity given;

secondly, the invocation of provisions of Section 3(2) of the Foreigners Act was also untenable, since while Section 3(1) of the Foreigners Act empowers the Central Government to make provisions generally with respect to foreigners or any class of foreigners for prohibiting, regulating or restricting the entry or departure into India or from India, Section 3(2) of the Foreigners Act provided specific illustrations or possibilities of the kinds of orders which could be made. In particular, Section 3(2)(d) of the Foreigners Act provided that such an order may prescribe that the foreigner "*shall remove himself to, and remain in, such area in India as may be prescribed*". Further, Section 3(2)(e) of the Foreigners Act provided that orders against such foreigners could also require him to "*reside in a particular place*" or "*impose any restrictions on his movements*". Section 3(2)(f) of the Foreigners Act provided the possibility of an order prescribing that the foreigner "*shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions*". It was,

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therefore, submitted that the authorities had power to pass such orders under the Foreigners Act that were not adverted to or taken into account while passing directions restricting such foreigners to detention centre. Even though, Section 3(2)(e) of the Foreigners Act was being applied by the impugned order, it did not state why in particular that provision was being invoked instead of others which also provided for a bond or a surety or being located of the foreigner in a particular place;

thirdly, it is contended by the learned counsel for the petitioner that restrictions cannot be interpreted with detention and the same logic will not apply to both these concepts. Even in cases of bail, some restrictions are made as part of bail conditions but they do not come close to detention. This forms part of the grain of Article 21 of the Constitution of India and to move freely within the country as provided in Article 19(1)(d) of the Constitution of India;

fourthly, the petitioner was no longer a prisoner and he had been granted the benefit of regular bail and any detention would be exaggerating the powers conferred by law. The legislative purpose of Section 3 of the Foreigners Act was merely to curb movements of the foreigner and keep a vigil in order that some unlawful activity may not be committed but not of a mandatory detention;

fifthly, para 11 of Foreigners Order, 1948 was also adverted to which prescribed the power to impose restrictions on movements and the foreigner could be asked to comply with such conditions in respect of his place of residence, his movements, his association with any person or class



of persons as specified and his possession of such articles as may be specified in the order;

sixthly, reliance was placed on the decisions of the Karnataka High Court in ***Babul Khan and Another v. State of Karnataka***, 2020 SCC OnLine Kar 3438, where certain guidelines were passed *inter alia* that if a Court grants bail or anticipatory bail to an offender who is a foreign national and the visa is cancelled or lapsed or they have no passport or they are illegal immigrants then the Court can order to keep them in a detention centre “unless the competent authority has passed any order under Section 3(2)(a) to (f) of the Foreigners Act, 1946”. As per the learned counsel for the petitioner, there is a possibility of such orders being passed for restrictions as opposed to simpliciter sending the foreigner to the detention centre.

Submissions by the FRRO's Counsel

10. The learned counsel for the FRRO refuting the allegations of the petitioner submitted that the petitioner had arrived in India in November, 2014 on a Nigerian Passport No. A02377740 valid from 24th September, 2010 till 23rd September, 2015 and an Indian Medical Visa No. VJ2039458 issued on 15th October, 2014 and valid till 14th January, 2015. As per record, he did not approach any hospital for treatment and after expiry of the visa on 15th January, 2015 he did not approach the FRRO for registration or further visa extension till 15th May, 2021 and he had already overstayed for about six years as an illegal migrant. Pursuant to the order by the Ld. MM of 24th April, 2021, FRRO issued communication dated 05th May, 2021 noting the bail condition of being in the detention centre.

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Thereafter, pursuant to the order of the Ld. ASJ dated 25th June, 2021, the impugned order was passed according to the FRRO this was necessitated since the Ld. ASJ has noted that detaining a person through an order of grant of bail was not in consonance with law and restriction. Further detention of a foreign national aside from the bail order has to be by a decision of the Competent Authority.

11. It was stated further that in the absence of a valid visa, the petitioner was an illegal immigrant and his visa applications dated 15th May, 2021, 17th July, 2021 and 30th July, 2021 were rejected and closed after application of mind. The reasons stated in the counter affidavit was that he was being tried for the violation of the provisions of the Foreigners Act and visa norms and contravention of Excise Act and that his passport expired as well, and not renewed.

12. On 12th July, 2021, his passport was revalidated by the High Commission of Nigeria till 11th July, 2026 purportedly for the purposes of deportation. FRRO, therefore, stated that to allow a foreign national to move around freely in the country even after committing the offence would make a mockery of the provisions of the Foreigners Act.

13. Releasing him from the detention centre cannot ensure that he would not get involved in illegal activities again. Reliance was placed on a decision of this Court in *Pascal v. Union of India, FRRO Delhi & Anr.* W.P.(CRL) 2276/2021, where it was held that since the petitioner did not have a valid visa which is required to get him deported, his movements were required to be restricted by keeping him in a detention centre.

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14. Learned counsel for the petitioner, however, refuted this since it did not decide the question of law under Section 3(2) of the Foreigners Act. Moreover, the petitioner was not being deported but was an under trial and, therefore, Section 3(2) of the Foreigners Act would apply. It was further stated that the issue of overstay of foreign nationals facing criminal charges and their subsequent restriction and deportation was pending before a larger Bench of this Court in CRL. REF. No.02/2021.

Analysis

15. To place it in perspective, the petitioner was arrested under the FIR under Sections 33/38/58 of the Delhi Excise Act, 2009. It may be noted that Section 33 relates to penalty for unlawful import, export, transport, manufacture, possession, sale etc. of intoxicant and it is punishable by imprisonment of the period not less than 6 months but may extend to three years plus fine not less than Rs.50,000/-, but which may extend to Rs.1,00,000/-. Section 38 imposes penalty for possession of spurious liquor unlawfully imported and duty not paid, punishable with imprisonment for a term which may extend to six months and fine which may extend to Rs.1,00,000/-. Section 58 provides for confiscation of any intoxicant which is unlawfully imported, transported, sold etc. Violation of Section 14 of the Foreigners Act, 1946, if convicted, triggers an imprisonment which may extend to five years plus fine.

16. These facts can be better assessed by appreciating them in the following silos. **First**, there is the allegation of an offence being committed by the foreign national; **second** is the release of the foreign national on bail as an undertrial (as in this case) or otherwise on a suspension of sentence/

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parole as a convict; *third*, is the inability to have a valid visa due to the period of incarceration; *fourth* is the process and possibility of getting a visa considering the trial/conviction; and *fifth* is the options which are possible in order to monitor the movement of such a foreign national.

17. Since, no view can be expressed on the offence itself, at this stage, till a trial has resulted in a conclusive order, it would be worthwhile to examine the situation of foreign national released on bail as an undertrial. The fact that the Trial Court grants bail to a foreign national in the context of a pending proceeding, inures to the advantage of the foreign national since a competent court has legitimately allowed him to be free from custody. If such being the case, then the question arises whether the foreign national is to be then sent to a detention centre if he does not have a valid visa or travel documents. Or alternatively be subject to a procedure which specifically deals with such cases and consider grant of some permit/visa/travel documents which would ensure that the petitioner is not in a detention centre and will be able to enjoy his liberty but at the same time has to continue to be in India to face the trial.

18. These possibilities are provided by enabling provision Section 3(1) (in general terms) and Section 3(2) (in specific terms) of the Foreigners Act, 1946. Section 3(1) enables the Central Government to make a provision generally with respect to all foreigners, or with respect to a particular foreigner, or a prescribed class of a foreigner in order to: (i) prohibit; (ii) regulate; or (iii) restrict entry/departure/presence/continuing presence, in or from India. The scope and purview of this provision is expansive in its breath and purposeful in spirit.

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19. The Central Government has, therefore, an option to not just prohibit but possibly regulate or restrict the presence or continued presence of such an undertrial in India. In a situation that is being dealt with as regards the petitioner, where the continued presence is necessary for the completion of the trial, various options can be exercised under provisions of Section 3(2) of the Foreigners Act *inter alia* to remain in such area as may be prescribed in Section 3(2)(d); to reside in a particular place as in Section 3(2)(e)(i); imposing a restriction on the movements as per Section 3(2)(e)(ii) or entering into a bond with or without sureties for the observance of such prescribed conditions as in Section 3(2)(f). These options are aside from the simpliciter option of detention. The question that would be presented before the Central Government is whether in such cases of foreigners being undertrials, the only blanket option to be exercised was detention or other options could also be considered. This would be relevant keeping in mind the specific facts and circumstances, since Section 3(1) of the Foreigners Act empowers the Central Government to deal with specific cases of an individual or a category of persons and not just generally with respect to all foreigners.

20. Merely pointing towards all such foreign nationals who are undertrials or suspended post conviction and are a security concern, would not be consonance with the letter and spirit of these provisions. Granting such persons, a special permit/visa/travel document would not legitimize their earlier offence of having overstayed in violation of the provisions of the Foreigners Act, but would in fact ensure that they are not confined in a detention centre at state expense, but instead are restricted to a place on conditions as may be prescribed and furnish bond/sureties to ensure

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compliance of such conditions. Further, restrictions could be made for restricting the possibility of travelling out of India without permission. This would ensure a judicious balance between recognizing liberty, and a human right, and ensuring the presence of the foreign nationals for the purpose of trial and being subject to restrictions/regulations/conditions.

21. To further unravel this conundrum, it would be useful to have a snapshot view of some relevant decisions of the Hon'ble Supreme Court, this Court and other High Courts, to be usefully aware of the nature of directions passed in analogous situations.

Judicial precedents

22. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India*, (1994) 6 SCC 731, the Hon'ble Supreme Court in dealing with cases of undertrials passed certain directions regarding release of such undertrials whose trials were still to get completed applying the principle of the constitutional right of speedy trial under Article 21. One of the directives related to undertrials who were foreigners, the Hon'ble Supreme Court directed that in such cases “*the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner/accused belongs, that the said accused shall not leave the country and shall appear before the Special Court, as and when required*”. Reference to this direction is being made for the purposes that there are methods and modalities which are available to the State to ensure



that an undertrial who is a foreigner can be released on bail subject to these special conditions of impounding of passport and a certificate of assurance.

23. The Karnataka High Court in *Christian Chidieere Chukwu v. The State of Karnataka by K.R. Puram Police Station, Bangalore and Anr.*, (2016) SCC OnLine Kar 439 dated 18th February, 2016, in a petition for bail of a foreign national who had overstayed and had been accused of a crime under Sections 376/506 IPC and in addition for overstay in India, Section 14 of the Foreigners Act had been invoked. The Court noted that in these situations, if bail is granted to persons who have violated the provisions of the Foreigners Act, such persons cannot stay in India even for a day without valid passport and visa, therefore, and an undertrial has to await the result of the trial in respect of the case registered against him and after the conclusion of the criminal case, steps have to be taken to deport such foreign national for staying beyond the expiry of the visa. If there is a delay in conducting the trial, it would be as good as allowing such foreign national to be in India even after the expiry of the visa period.

24. In *Bathlomew Lkechukwu @ Charles v. Union of India & Ors.*, W.P. (CRL) 2146/2019 order dated 30th January, 2020, this Court in dealing with a petitioner who was a foreign national and had been acquitted of an offence against which an appeal had been filed by the NCB, observed that the petitioner could not be detained indefinitely in a deportation camp. The said foreign national was either required to be issued a visa or is required to be deported. Even if the person's presence was required in India on account of the appeal filed by the NCB, an appropriate visa was required to be issued to him. Directions were, therefore, issued to either

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deport the petitioner or release him after providing proper visa within a period of three months.

25. In ***Efrance Namatende v. State***, BAIL APPLN. 2214/2022 by order dated 09th January, 2023, this Court noted that for violation of Section 14 of the Foreigners Act there was no requirement that the person is to be confined in an observation home. The bail condition that he would remain in an observation home till he is granted a visa was deleted. A similar order was passed in ***Frank Boadu v. State of Govt. of NCT of Delhi***, BAIL APPLN. 1897/2022 order dated 03rd March, 2023.

26. In ***Rajesh Datta @ Raj v. The State & Anr.***, W.P.(C) 1565/2023 order dated 07th February, 2023, this Court in dealing with a petition for issue of directions to the FRRO to grant an extension of stay visa till pendency of the trial, directed that the petitioner would continue to apply to the FRRO for an extension of the visa on a periodic basis, and such extension applications after being duly verified shall be granted till the final adjudication of the case. In this case, the order noted that the visa had already been extended, but the Court gave the above directions for subsequent possibilities for extension.

27. In ***Izuchukwu Joseph v. Foreigners Regional Registration Officer, Delhi & Anr.***, W.P.(C) 2106/2023 order dated 15th March, 2023, this Court had noted the submission of the FRRO through a status report, that due to misuse of visas by foreign nationals by involving themselves in criminal activity, visas were not being granted. As also grant of visa to a foreign national who is already in violation of the Foreigner's Act may be not be appropriate. Visas can be granted to foreign nationals when an appeal has

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been preferred by the State against an acquittal order of a Lower Court or if the Court itself orders for grant of such a visa on an appeal filed by the foreign national against order of the Lower Court or of the FRRO. Besides a concept of entry visa (X-Misc. category) is also available which is granted to an accused foreign national facing criminal charge/trial proceedings in order to facilitate the foreign national to face such proceedings before the Ld. Trial Court or appear before the investigating agency pending investigation. Such a visa is usually co-terminus with the date of hearing in the case or as per directions which may be issued by the Courts.

28. In **Bailly Gui Landry v. The State of Telangana**, CRL. P. No.4396 & 4400/2021 of the High Court of the State of Telangana at Hyderabad, it was held that the Magistrate after conducting a full-fledged trial, acquitting the petitioner does not have the power to order deportation of any foreign citizen even in case of violation of the provisions of the Act. The Magistrate has to confine his findings with the regard to either acquittal or conviction, and not directing any deportation of foreign citizen.

29. In **James Pascal v. Narcotic Control Bureau**, CRL.A. 548/2020 order dated 21st September, 2022, this Court on 21st September, 2022 for suspension of sentence of a foreign national in an NDPS case had directed as part of the condition that the petitioner could apply for visa within a week from the date of his release and his application would be considered in accordance with law and relevant procedure.

30. Finally, and most importantly, in **Ana Parveen & Anr. v. Union of India & Ors.**, W.P.(CRL) No. 43/2022, the Hon'ble Supreme Court was

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dealing with a foreign national detained and lodged at the detention centre in Delhi pending deportation after having been convicted and completed his sentence under Section 14 of the Foreigners Act. The person in question was a Pakistani national who came to India married an Indian citizen in 1989 had five children who were born in India. A representation had been submitted by him to the Ministry of Home Affairs for release from detention centre and to be allowed to stay at his home on long term visa or any other permit. Seven years had elapsed since he had served out his sentence following the conviction under the Foreigners Act. The Hon'ble Supreme Court directed that it would be appropriate if the Foreigner's Division of the Union Ministry of Home Affairs takes a decision on the representation for grant of a visa/long term visa having regard to all facts and circumstances of the case. Further, in light of mandate of Article 21 of the Constitution, it was directed that since there was no security threat or adverse impact on national security, he should be released on furnishing a personal bond of Rs.5,000/- with two sureties of Indian citizens in the like amount. The detenu would furnish the place address of permanent residence where he proposed to reside and would report to the local police station on the seventh day of every month.

Conclusions

31. In this context, and in the background of all these decisions of various courts and the Hon'ble Supreme Court, the submission of the FRRO that by allowing permission to be released would legitimize their past offence is too simplistic a view in the matter. In the considered opinion of this Court, these situations do present themselves before courts on multiple occasions, require more calibrated treatment.

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32. In any event what must be clarified is that a Court or Magistrates or a Sessions Court cannot as part of enlarging foreign national on bail can also direct the said person to be sent to a detention centre. The Court is not competent to pass such a direction when granting bail as has been conclusively held in various decisions. Detention centres are not for judicial custody but a place where a foreign national is detained on an executive order and is the prerogative of the competent authority under the Foreigners Act.

33. Therefore, what the Ld. ASJ directed by order dated 25th June, 2021 was apposite, by allowing the bail application and admitting him on bail by releasing him from Detention Centre subject to furnishing a personal bond and surety bond of Rs. 01 Lac. Despite that the petitioner was not released on account of the intransigent stand taken by the FRRO in not granting him a visa or permit and issuing the impugned order. This denial was in the teeth of a judicial order of Ld. ASJ, which is not merited considering there was no challenge to the said order by the State. The petitioner once being enlarged on bail cannot be detained without due process of law. The fact that he is facing trial for offences under the Excise Act and the Foreigners Act cannot be held against him, considering he still is to be proved guilty post trial. Right now, is the issue of his freedom.

34. The impugned order was therefore untenable on two counts – one, is that no opportunity was ever given to the petitioner to show cause or even a possibility of a hearing/or representation; and two, that other provisions of the Foreigners Act were not considered i.e. order could have been passed under any provision of section 3(2) of the Foreigners Act. Even **Babul Khan** (*supra*) holds that such foreigners without visa may be kept in

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detention centres “unless the competent authority has passed any order under Section 3(2)(a) to (f) of the Foreigners Act, 1946”. There is no reason why the FRRO cannot consider other possibilities under these provisions i.e. requiring him to be at a particular place (not necessarily a detention centre), imposing restrictions on his movements (like restricting him to an area), regulating his conduct and association with persons; reporting requirements to an authority. There is a vast menu of options available for the FRRO to apply, which may be more in consonance with rights under Article 21, than a summary, plain vanilla order of continuing in the detention centre. Also, there is no reason, as has been observed by the Hon’ble Supreme Court, to not consider grant of a special visa/stay permit to the petitioner, which recognizes that he is an undertrial of an overstay offence and has to continue in this country for the purpose of trial or otherwise, in case that is not required, choose to deport him.

35. The petitioner has already spent 2 years in confinement in detention centre when the offences that he is charged with under the Excise Act trigger sentence of about 6 months and maximum may extend to 3 years. Even as regards the Foreigners Act offence, he may at the maximum be sentenced for 5 years, of which he has now already been in *de facto* custody for 2 years.

36. Considering that the petitioner now has a valid passport (having been extended by the Nigerian Embassy), the FRRO/any other competent authority of the UOI is directed to consider his application for visa and /or representation for an appropriate order under the Foreigners Act, in light of what has been stated above by this Court. The said decision may be taken



within a period of 8 weeks, with due compliance of principles of natural justice, providing him an opportunity to represent.

Criminal Reference

37. It has been brought to the attention of this Court that a Crl. Ref. No.2/2021 is pending adjudication before the Hon'ble Division Bench of this Court since September, 2021. The said Crl.Ref. was received from Ld. MM-04, Saket Courts, and Mr. Harsh Prabhakar, Advocate was appointed as *Amicus Curie* to assist the Court by order dated 21st September, 2021. Thereafter, the matter has been listed before the Hon'ble Division Bench on 30th September, 2021 and subsequent dates, and is now listed for 6th September, 2023.

38. The order of reference by the Ld. MM dated 13th September, 2021, was passed while haring an application seeking bail moved by a Nigerian national who has overstayed his visa and proceedings have been initiated against him under the Foreigners' Act. The contentions before the Ld. MM on behalf of the accused as well as the State related to similar issues of whether bail can be granted to a foreign national who did not have any valid visa and what conditions ought to be imposed. In this regard the Ld. MM framed three questions for reference :

- a. *Would releasing the accused/foreign national by granting unconditional bail to such a foreign national not tantamount to legalizing his future stay in India without valid visa, which is otherwise an offence under section 14 of Foreigners Act, 1946?*

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- b. Should the matters of foreign nationals, who are accused of offence u/s 14 of Foreigners Act, 1946, and particularly where accused himself concedes expiry of his visa before date of his apprehension, be not treated differently than other criminal cases?*
- c. Whether any condition can be imposed upon a foreign national while bail being granted to him so as to ensure that he does not flee away from the course of justice and can be kept in detention till completion of the trial?*

Directions

39. Considering that the reference is still to be decided by the Hon'ble Division Bench of this Court, at this stage it would be improper to retain a foreign national in detention centre despite a clear judicial order of bail being granted by the Ld. ASJ, subject to conditions. On being enlarged on bail, the petitioner would still be in constructive custody of the Court. These directions are being passed taking guidance from the Hon'ble Supreme Court's decision adverted to in para 30 (supra). As regards the impugned order passed by the FRRO, on the basis of which the petitioner is being retained in the detention centre, it is set aside, and as directed above to be reconsidered in light of the observations made in this order, in particular in paras 18 to 20 (supra).

40. In the interest of justice, therefore, the directions passed by the Ld. ASJ are reiterated and endorsed, and the petitioner be released from the detention centre on satisfaction that he has furnished personal bond and surety bond in the sum of Rs. 1 lac each to the satisfaction of the Ld.

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MM/Duty MM (West), who subject to furnishing and acceptance of the bail bonds, issue release warrants from the detention centre where he is detained. Further, to this condition the petitioner shall furnish a permanent residence address that he proposes to reside at and would report to the local police station every Saturday at 4:00 p.m. Further, he would surrender his passport with the Ld. Trial Court and would not leave the NCT of Delhi during the said period. Considering that the petitioner is married to an Indian national, Ms. Rinkoo Tripathi, he would also provide the mobile number of his wife and her identity details to the Ld. Trial Court.

41. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
42. A copy order be also sent to the FRRO Detention Centre, Sewa Sadan, Lampur, Narela, Delhi and the petitioner be intimated of this order
43. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
44. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MAY 26, 2023/MK

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1/2023/11/31-7-2023
U/s 7 of Foreign Act,
12(A) of Passport Act
PS-Sadar, Gyan.

CRM-693-2023

CNR No.HRGR01-013615-2023

Abdul Rehman Ibrahim Dawelnovr versus State of Haryana

Present: Sh. Pawan Singh Rao, Advocate for applicant-accused.
Sh. Ashok Kumar Ld. PP for the State.

Arguments on the application under Section 439(1)(B) to modify the condition of detailing the applicant in the detention center after release on regular bail advanced.

The counsel for the applicant has drawn attention of this Court to the bail Order dated 20.09.2022 passed by the Ld. Predecessor Court and submits that even though the bail was granted to the accused, a condition was imposed on him to transfer him to Detention Center, till the trial is concluded. He also submitted that the applicant has already furnished bail bonds in the sum of Rs.50,000/- with one surety in the like amount and Ld. Trial Court directed the P.S. Sadar to detain the applicant in Detention Center. He further submitted that he has been detained in the Detention Center on 03.02.2023 and during that period, he has been produced in the Court only once out of fifteen times. Therefore the case is on the same stage i.e. framing of charge. He undertakes to abide by any other special condition to be imposed by this Court. Ld. Counsel prayed that the application may be allowed.

Ld. PP for the State filed reply. He opposed the application and prayed that the same may be dismissed.

The Ld. counsel has placed on record the Judgment passed by the Hon'ble High Court of Delhi in W.P. (Crl) No. 550/2022 and 827/2022 dated 26.05.2023. Perusal of the same shows that the law point considered by the Hon'ble Court was with respect to grant of bail by the Court to a foreign national but with condition of sending such accused to a Detention Center.

The Judgment of the Hon'ble High Court of Delhi in W.P. (Crl) 2276/2021, Pascal Vs. Union of India, FRRO Delhi & Anr. has also been considered in this Judgment and it has been observed that a Court or Magistrate or a Sessions Court cannot as part of enlarging foreign national on bail can also direct the said person to be sent to a Detention Center as the Courts are not competent to pass any such directions. It has been clarified that Detention Centers are not for judicial custody but a place where a foreign national is detained on an Executive Order and it is only the prerogative of the Competent Authority under the Foreigners Act to give such directions. It is further clarified that even if such an accused is facing trial under



Foreigners Act, it cannot be held against him and sending him to Detention Center after grant of bail would affect his right to freedom. It has also been observed that without considering the possibilities given u/s 3 (2) (a) to (f) of the Foreigners Act, 1946 by the FRRO, the accused should not be detained in Detention Center.

What transpires from the said judgment is that any condition imposed by a Court while granting bail under Foreigners Act, 1946, sending the accused to Detention Center is not permissible. Considering the view laid down by the Hon'ble High Court of Delhi in W.P. (Crl) No. 550/2022 and 827/2022 dated 26.05.2023 , the application moved on behalf of the accused/applicant Abdul Rehman Ibrahim Dawelnovr is allowed and the bail order is modified to the extent that the accused need not be detained in Detention Center. The FRRO is always at liberty to consider the provision of Section 3(2) of Foreigners Act and to pass necessary directions in this matter. Copy of the order be sent to the accused to Detention Center through FRRO with direction to release him immediately. Copy of this order be also given dasti to Ld. counsel for the accused/applicant.

File be consigned to records after due compliance.



—*Sd*—
(Sunil Kumar Dewan)
ASJ, Gurugram
(UID No.HR-0237)

Date of Order: 16.09.2023

Nitin Chawla

No. 591, Dated 18-9-2023
This order sent to the Detention Center for information & necessary action.

P
Reader to
Addl. District Judge,
Gurugram
18/9/2023

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

.....

HCP No.252/2017

Date of Decision: 29.11.2017

Ishfaq Ahmad Kumar

v.

State of J&K and others

Coram:

Hon'ble Mr Justice Tashi Rabstan, Judge

Appearing counsel:

For petitioner(s): Mr Wajid Haseeb, Adv vice Mr Mir Shafqat Hussain, Advocate
For respondent(s): Mr Asif Maqbool, GA

| | |
|---|------------|
| <i>Whether to be reported in Digest/Journal?</i> | Yes |
|---|------------|

1. Impugned is order no.71/DMB/PSA/2017 dated 17th July 2017, whereby District Magistrate, Baramulla (respondent no.2), has, in exercise of powers under clause (a) of Section 8 of J&K Public Safety Act, 1978, placed one *Shri Ishfaq Ahmad Kumar @ Ishfaq son of Abdul Majeed Kumar resident of Kumar Mohalla, Khanpora, District Baramulla* (for brevity “detenu”) under preventive detention and directed his lodgement in Central Jail Koteshbulwal, on the grounds, submissions and averments enumerated in writ petition.

2. The case set up by petitioner in petition on hand is that detenu was arrested by security forces in the month of November 2016 from his home and taken to some security camp, where he was detained for many days and thereafter he was shifted to police station Baramulla, where he was implicated in case FIR no.266/2016. Bail, beseeched for, was granted by court of competent jurisdiction on 15th November 2017. Bail Order, it is next pleaded, was served upon concerned quarters and detenu was released from custody. However, thereafter, detenu was called to police station Baramulla in the first week of July 2017. He in compliance to bail condition went to police station,

but he was detained for several days and consequently implicated in case FIR no.259/2016. Detenu is averred to implored for bail. He was enlarged on bail by court of competent jurisdiction vide order dated 15th July 2018. Bail order was served upon police station, but, as claimed by petitioner, detenu was not released and was shifted to Central Jail Kotebhalwal, Jammu, which was followed by detention order, impugned herein. This has forced petitioner to knock at portals of this Court with petition on hand beseeching quashment of impugned detention order.

3. Counter Affidavit has been filed by respondents. Detenu, according to respondents, has been detained in pursuance of impugned order of detention as he is an incorrigible anti-social element, who has been involved with anti-national elements and voluntarily got indulged in stone pelting incidents in various areas of Baramulla as and when there is an opportunity, particularly whenever there is a call for Hartal/protest given by separatist amalgam. It is insisted that detenu is mainly responsible for organizing anti government protests and also instigating the youth of old Town Baramulla and its adjacent areas to create an atmosphere of fear and chaos among the people of the area. Detenu is stated to be involved in case FIR nos.259/2016, 266/2016, 323/2013 registered in police station Baramulla. Consequently, police concerned is stated to have prepared a dossier and while finding that activities of detenu are prejudicial to maintenance of public order and normal law of land is not sufficient to deter detenu from his nefarious activities and forwarded dossier along with record to respondent no.2 with the recommendations to order preventive detention of detenu. While examining dossier and after perusing material, it was found that detenu's activities were prejudicial to maintenance of public order, as such, in the facts and circumstances of the case, preventive detention of detenu was found necessitated by detaining authority, is the contention that has been made by respondents in the Reply. As a result whereof, order of detention, impugned in this petition, was issued, with a view

to prevent him from acting in any manner which is, according to respondents, threat to the maintenance of public order. The warrant is averred to have been forwarded to Senior Superintendent of Police, Baramulla, in duplicate for execution under Section 9 of the Act of 1978 and pursuant to the detention order, warrant was executed through ASI Bashir Ahmad no.EXK/ 811245 on 17th July 2017, who on 18th July 2017, handed over detenu to Deputy Superintendent, Central Jail, Jammu Kot Bhalwal, who took over the detenu against proper receipt and lodged him in the said Jail. It is claimed by respondents that grounds of detention were read over, explained and served to the detenu along with a communication no.DMB/PSA/2017/ 441-45 dated 17th July 2017, whereunder he was made aware about his preventive detention and he was informed that he had a right to file representation to the Government against the detention, which as per record shows not to have been filed by detenu.

4. Heard and considered.

5. Learned counsel for petitioner, to bolster what has been submitted and averred in petition on hand, states that the cases mentioned in the grounds of detention have no nexus with the detenu and have been fabricated by police in order to justify its illegal action of detaining detenu and that the case FIRs in which petitioner was arrested, had been registered in the month of July-September 2016 and for seven long months no effort was made by police to arrest detenu in the cases otherwise than he had been arrested and admitted to bail, though he was all along available. He, thereafter, asserts that allegations made in grounds of detention are vague, non-existent and no prudent man can make a representation against such allegation and passing of detention on such grounds is unjustified and unreasonable and that detaining authority has mentioned two FIRs in grounds of detention, but, according to learned counsel, the allegations against detenu are far from reality. The allegations as reflected in the grounds of detention, as vehemently maintained by learned

counsel for petitioner, are vague and do not justify passing of detention order on the basis of such allegations and that detaining authority has not given any reasonable justification to pass detention order, and therefore, impugned order suffers from complete non-application of mind on part of detaining authority. His next averment is that detention order has been passed after delay of more than ten months from the date the alleged criminal activity, which has been made basis for satisfaction for passing of impugned order of detention and during the period of delay no fresh activity has been attributed to detenu. The unexplained delay has snapped proximity of detention order with the time its alleged requirement arose and detaining authority has not given any explanation for the delay in passing impugned order of detention. His next contention is that detenu was already admitted to bail in case FIR no.266/2016 and 259/2016 and despite being aware that detenu has been released from custody and is at large detaining authority has not attributed any fresh activity which would have warranted passing of order of detention and detaining authority has in mechanical manner mentioned that normal law has not proved sufficient whereas his own grounds negate this contention. Learned counsel proceeds to further avow that detenu was arrested in the month of November 2016 and was thereafter implicated in two cases and was afterwards admitted to bail and released from custody and that all cases, mentioned in grounds of detention, relate to the point of time prior to his arrest, the grounds of detention as such, lack reasonable necessity to pass detention order when in normal course detenu has been arrested and thereafter released. If on these grounds no necessity was felt in the month of November 2016, then there is no reasonable ground to pass order of detention now on these grounds. Learned counsel for petitioner asserts that respondent no.2 has not furnished relevant material, like copy of dossier, order of detention and so-called connected material as per record furnished to detaining authority by police and relied upon by detaining authority for passing impugned order of

detention, nor relevant material, like copy of FIR, statement under Section 161 Cr. P.C. of the cases mentioned in the grounds of detention, seizure memos, arrest memos, bail orders have been furnished to detenu to enable him to make an effective representation by giving his version of facts attributed to him and make an attempt to dispel apprehensions nurtured by detaining authority concerning alleged involvement of detenu in alleged activities, against the said order to the competent authority of detenu in alleged activities, against the said order to competent authority since filing of an effective representation is a constitutional right and to enable detenu to file such a representation it is necessary to provide him copies of dossier, connecting material to detenu, therefore, constitutional right guaranteed to detenu under Article 22(5) of the Constitution of India stands infringed.

6. *Per contra* learned counsel for respondents states that the material, which was relied by detaining authority, was furnished to detenu besides grounds of detention along with order of detention was supplied to detenu against proper receipt and grounds of detention are precise, proximate, pertinent and relevant and that there is no vagueness or staleness in grounds coupled with definite indications as to the impact thereof, which has been precisely stated in the grounds of detention and the incidents clearly substantiate subjective satisfaction arrived at by detaining authority.

7. The reverence of life is inseparably concomitant with the dignity of a human being who is basically divine, not obsequious. A human personality is induced with potential infinitude and it blossoms when dignity is sustained. The sustenance of such dignity has to be the superlative concern of every sensitive soul. The essence of dignity can never be treated as a momentary spark of light or, for that matter, “a brief candle”, or “a hollow bubble”. The spark of life gets more splendiferous when man is treated with dignity *sans* humiliation, for every man is expected to lead an honourable life which is a splendid gift of “creative intelligence”. When a dent is created in the

reputation, humanism is paralysed. Reverence for the nobility of a human being has to be the cornerstone of a body polity that believes in orderly progress. But, some, the incurable ones, become totally oblivious of the fact that living with dignity has been enshrined in our Constitutional philosophy and it has its ubiquitous presence and the majesty and sacrosanctity dignity cannot be allowed to be crucified in the name of precautionary incarceration. *Albert Schweitzer*, highlighting on Glory of Life, pronounced with conviction and humility, “the reverence of life offers me my fundamental principle on morality”. The aforesaid expression may appear to be an individualistic expression of a great personality, but, when it is understood in the complete sense, it really denotes, in its conceptual essentiality, and connotes, in its macrocosm, the fundamental perception of a thinker about the respect that life commands.

8. Article 22(3)(b) of the Constitution of India, which vouchsafes preventive detention, is only an exception to Article 21 of the Constitution. An exception is an exception and cannot ordinarily nullify the full force of main rule, which is right to liberty in Article 21 of the Constitution. Fundamental rights are meant for protecting civil liberties of people and not to put them in immurement for a long period shorn of recourse to a lawyer and without a trial. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in essence a detention order of three months, or any other period(s), is a punishment of that particular period’s incarceration. What difference is it to detenu whether his immurement is called preventive or punitive? Besides, in cases of preventive detention no offence is proved and justification of such detention is suspicion or reasonable probability, and there is no conviction that can only be warranted by legal evidence. Preventive detention is every so often described as a ‘*jurisdiction of suspicion*’, Detaining authority passes detention order on subjective satisfaction. Preventive detention is, by nature,

repugnant to democratic ideas and an anathema to rule of law. Since Clause (3) of Article 22 specifically excludes applicability of clauses (1) and (2), detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with procedural safeguards, howsoever technical, is mandatory and vital.

9. The Supreme Court in ***Rekha v. State of Tamil Nadu AIR 2011 SCW 2262***, while making reference to law laid down in ***Kamleshwar Ishwar Prasad Patel v. Union of India and Others (1995) 2 SCC 51***, observed that history of liberty is history of procedural safeguards. These procedural safeguards are required to be zealously watched and enforced by the Court and their rigour cannot be allowed to be diluted on the basis of nature of alleged activities of detenu. The Supreme Court quoted with approval the observation made in ***Ratan Singh v. State of Punjab and others 1981 (4) SCC 481***, emphasising need to ensure that the Constitutional and Statutory safeguards available to a detenu were pursued in letter and spirit observed: “*But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenu's.*”

10. Procedural requirements are only safeguards available to a detenu, for the reason that the Court is not expected to go behind subjective satisfaction of detaining authority. As laid down by the Supreme Court in ***Abdul Latif Abdul Wahab Sheikh v. B. K. Jha and another (1987) 2 SCC 22***, procedural requirements are, therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the Constitutional rights guaranteed to him in that regard.

11. From the above overview of case law on the subject of preventive

detention, the baseline, that emerges is that whenever preventive detention is called in question in a court of law, first and foremost task before the Court is to see whether procedural safeguards guaranteed under Article 22(5) of the Constitution of India and Preventive Detention Law pressed into service to slap the detention, are adhered to.

12. Preventive detention is a serious invasion of personal liberty and meagre safeguards that the Constitution provides against improper exercise of the power, must be jealously watched and enforced by the Court, has been said by the Supreme Court in ***Dr. Ram Krishan Bhardwaj v. The State of Delhi and ors 1953 SCR 708***. Detenu has a right, under Article 22(5), to be furnished with particulars of grounds of his detention, sufficient to enable him to make a representation, which on being considered may give relief to him. This Constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, and if same has not been done, detention cannot be held to be in accordance with the procedure established by law within meaning of Article 21. The detenu is, therefore, entitled to be released and set at liberty.

13. The right which detenu enjoys under Article 22(5) is of immense importance. In order to properly grasp submissions of petitioner avowed in petition on hand, Article 22(5) is gainful to be reproduced hereunder:

“22(5). When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

14. This Article of the Constitution can be broadly classified into two categories: (i) the grounds on which the detention order is passed must be communicated to the detenu as expeditiously as possible; and (ii) proper opportunity of making representation against order of detention be provided.

15. The Constitution Bench of the Supreme Court, more than six decades ago, has interpreted Article 22(5) of the Constitution in ***Dr Ram Krishan Bhardwaj v. The State of Delhi and others, 1953 SCR 708***, observed as under:

“.....Preventive detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In this case, the petitioner has the right, under article 22(5), as interpreted by this Court by majority, to be furnished with particulars of the grounds of his detention “sufficient to enable him to make a representation which on being considered may give relief to him.” We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under clause (6) of article 22. That not having been done in regard to the ground mentioned in sub-paragraph (e) of paragraph 2 of the statement of grounds, the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of article 21. The petitioner is therefore entitled to be released and we accordingly direct him to be set at liberty forthwith.”

16. In ***Shalini Soni (Smt.) & Others v. Union of India and Others (1980) 4 SCC 544***, it was aptly observed that the accused must have proper opportunity of making an effective representation. The Court observed thus:

“...Communication of the grounds presupposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in

to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second facet of Article 22(5). An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is dear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds'.

17. In *Icchu Devi Choraria (Smt.) v. Union of India and others (1980) 4 SCC 531*, the Supreme Court dealt with in great detail significance of clause (5) of Article 22 and subsection 3 of Section 3 of COFEPOSA Act. The court observed:

"Now it is obvious that when Clause (5) of Article 22 and Sub-section (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five or fifteen days, as the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenu. If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated, in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to Clause (6) of Article 22 in order to constitute compliance with Clause (5) of Article 22 and Section 3,

Sub-section (3) of the COFEPOSA Act. One of the primary objects of communicating the grounds of detention to the detenu is to enable the detenu, at the earliest opportunity, to make a representation against his detention and it is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention. There can therefore be no doubt that on a proper construction of Clause (5) of Article 22 read with Section 3, Sub-section (3) of the COFEPOSA Act, it is necessary for the valid continuance of detention that subject to Clause (6) of Article 22 copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu alongwith the grounds of detention or in any event not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. If this requirement of Clause (5) of Article 22 read with Section 3, Sub-section (3) is not satisfied, the continued detention of the detenu would be illegal and void.”

18. The Supreme Court in *Khudiram Das v. State of West Bengal and others (1975) 2 SCC 81*, observed that Article 22(5) insists that all basic facts and particulars which influenced detaining authority in arriving at requisite satisfaction leading to passing of order of detention, must be communicated to detenu. Para 13 of said judgement is seemly to be reproduced hereunder:

“..... Section 8(1) of the Act, which merely re-enacts the constitutional requirements of Article 22 (5), insists that all basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu, so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to

produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority.”

19. In *Vakil Singh v. State of J&K and another (1975) 3 SCC 545*, the Supreme Court clarified that grounds mean materials on which order of detention was primarily based, that is to say, all primary facts though not subsidiary facts or evidential details. In *Ganga Ramchand Bharvani v. Under Secretary to the Government of Maharashtra and others (1980) 4 SCC 624*, the Supreme Court observed at paragraph 16 in the following terms:

“The mere fact that the grounds of detention served on the detenu are elaborate, does not absolve the detaining authority from its constitutional responsibility to supply all the basic facts and materials relied upon in the grounds to the detenu. In the instant case, the grounds contain only the substance of the statements, while the detenu had asked for copies of the full text of those statements. It is submitted by the learned Counsel for the petitioner that in the absence of the full texts of these statements which had been referred to and relied upon in the grounds 'of detention', the detenus could not make an effective representation and there is disobedience of the second constitutional imperative pointed out in *Khudiram's* case. There is merit in this submission.”

20. In *S. Gurdip Singh v. Union of India and others (1981) 1 SCC 419*, The Supreme Court, while reiterating legal position, observed that failure to furnish documents or materials which formed the basis of detention order along with grounds of detention and even on demand subsequently made by detenu, would amount to failure to serve grounds of detention and, therefore, would vitiate detention order and make it void *ab initio*.

21. In *Khudiram Das's* case (supra), Article 22 has been succinctly analysed. The Supreme Court observed that detaining authority cannot whisk away a person and put him behind bar at its own sweet will. It must have grounds for doing so and those grounds must be communicated to detenu as expeditiously as possible, so that he can make effective representation against order of detention. It was further observed that Article 22 provides various

safeguards calculated to protect personal liberty against arbitrary restraint without trial. These safeguards are essentially procedural in character and their efficacy depends on the care and caution and the sense of responsibility with which they are regarded by the detaining authority. These are barest minimum safeguards which must be strictly observed by an executive authority.

22. A four-Judge Bench of The Supreme Court in ***Golam alias Golam Mallick v. State of West Bengal (1975) 2 SCC 4***, reiterated the legal position. The Supreme Court observed as under:

“No doubt, Clause (5) of Article 22 of the Constitution and Section 8 of the Act do not, in terms, speak of 'particulars' or 'facts', but only of 'grounds' to be communicated to the detenu. But this requirement is to be read in conjunction with and subservient to the primary mandate: “and shall afford him the earliest opportunity of making a representation against the order”, in the aforesaid Clause (5). Thus construed, it is clear that in the context, 'grounds' does not merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of Section 3 of the Act; nor is its connotation restricted to a bare statement of conclusions of fact. It means something more. That 'something' is the factual constituent of the 'grounds' on which the subjective satisfaction of the authority is based. All the basic facts and material particulars, therefore, which have influenced the detaining authority in making the order of detention, will be covered by “grounds” within the contemplation of Article 22(5) and Section 8, and are required to be communicated to the detenu unless their disclosure is considered by the authority to be against public interest.”

23. In ***Mohd. Alam v. State of West Bengal, (1974) 4 SCC 463***, the Supreme Court observed that the non-communication of material was violative of Article 22(5) of the Constitution and the Act, inasmuch as it did not intimate to detenu full grounds or material to enable him to make an effective representation.

24. In ***Kirit Kumar Chaman Lal Kundaliya v. Union of India and others (1981) 2 SCC 436***, it was observed that once the documents are referred to in the grounds of detention it becomes bounden duty of detaining authority to

supply the same to detenu as part of grounds or *pari passu* grounds of detention. In the case of ***Ramachandra A. Kamat v. Union of India and others (1980) 2 SCC 270***, the Supreme Court clearly held that even the documents referred to in the grounds of detention have to be furnished to the detenu.

25. In ***Tusha Thakker (Shri) v. Union of India and others (1980) 4 SCC 499***, the Supreme Court mentioned that the detenu had a Constitutional right under Article 22(5) to be furnished with copies of all the materials relied upon or referred to in the grounds of detention, with reasonable expedition.

26. In ***Ram Baochan Dubey v. State of Maharashtra and Another (1982) 3 SCC 383***, this Supreme Court reiterated the legal position and observed that mere service of the grounds of detention is not a compliance of the mandatory provisions of Article 22(5) unless the grounds are accompanied with the documents which are referred to or relied on in the grounds of detention. Any lapse would render the detention order void. In ***Sophia Mohd. Bham v. State of Maharashtra and others (1999) 6 SCC 593***, it was observed that effective representation by the detenu can be made only when copies of the material documents which were considered and relied upon by the Detaining Authority in forming his opinion were supplied to him.

27. In ***District Collector, Ananthapur & Another v. V. Laxmanna (2005) 3 SCC 663***, the Supreme Court again reiterated that the documents and materials relied upon by the detaining authority must be supplied to the detenu for affording him opportunity to make effective representation.

28. It may be mentioned here that preventive detention law makes room for detention of a person without a formal charge and without trial. The person detained is not required to be produced before the Magistrate within 24 hours, so as to give an opportunity to the Magistrate to peruse the record and decide whether the detenu is to be remanded to police or judicial custody or allowed to go with or without bail. The detenu cannot engage a lawyer to represent

him before the detaining authority. In the said background it is of utmost importance that whatever procedural safeguards are guaranteed to the detenu by the Constitution and the preventive detention law, should be strictly followed. Right to liberty guaranteed by Article 21 implies that before a person is imprisoned a trial must ordinarily be held giving him full opportunity of hearing, and that too through a lawyer, because a layman would not be able to properly defend himself except through a lawyer. The importance of a lawyer to enable a person to properly defend himself has been elaborately explained by the Supreme Court in *A.S. Mohd. Rafi Vs. State of Tamilnadu AIR 2011 SC 308* and *Md. Sukur Ali Vs. State of Assam, JT 2011 (2) SC 527*. As observed by *Mr Justice Sutherland* of the U.S. Supreme Court in *Powell Vs. Alabama, 287 U.S. 45 (1932)* “*Even the intelligent and educated layman has small and sometimes no skill in the science of law*”, and hence, without a lawyer he may be convicted though he is innocent. Article 22(1) of the Constitution makes it a fundamental right of a person detained to consult and be defended by a lawyer of his choice. But Article 22(3) specifically excludes the applicability of clause (1) of Article 22 to cases of preventive detention. Therefore, we must confine the power of preventive detention to very narrow limits, otherwise the great right to liberty won by our Founding Fathers, who were also freedom fighters, after long, arduous, historical struggles, will become nugatory. In *State of Maharashtra & Ors. Vs. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613* this Supreme Court observed:

“...Personal liberty is a precious right. So did the Founding Fathers believe because, while their first object was to give unto the people a Constitution whereby a government was established, their second object, equally important, was to protect the people against the government. That is why, while conferring extensive powers on the government like the power to declare an emergency, the power to suspend the enforcement of fundamental rights or the power to issue ordinances, they assured to the people a Bill of Rights by Part III of the

Constitution, protecting against executive and legislative despotism those human rights which they regarded as fundamental. The imperative necessity to protect these rights is a lesson taught by all history and all human experience. Our Constitution makers had lived through bitter years and seen an alien Government trample upon human rights which the country had fought hard to preserve. They believed like Jefferson that “an elective despotism was not the Government we fought for”. And, therefore, while arming the Government with large powers to prevent anarchy from within and conquest from without, they took care to ensure that those powers were not abused to mutilate the liberties of the people. (vide *A.K. Roy Vs. Union of India (1982) 1 SCC 271, and Attorney General for India Vs. Amratlal Prajivandas, (1994) 5 SCC 54.*”

29. The Constitution Bench of the Supreme Court in ***M. Nagaraj & ors. Vs. Union of India & ors. (2006) 8 SCC 212***, observed:

“It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race.”

30. The Nine Judge Constitution Bench of the Supreme Court in ***I.R. Coelho (dead) By LRs. Vs. State of T.N., (2007) 2 SCC 1***, observed:

“It is necessary to always bear in mind that fundamental rights have been considered to be the heart and soul of the Constitution..... Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as & “transcendental”, & inalienable, and primordial”;

31. In the present case, averment of learned counsel for respondents is that there are very serious allegations against detenu as he has always been in the lead role in stone pelting incidents and has been creating law and order problem in old town and its adjacent areas and in order to accomplish antisocial agency, he resorted to stone pelting and has turned into a notorious stone pelter. And in this connection, criminal cases are already going on against detenu under various provisions of the Ranbir Penal Code and if he is found guilty, he will be convicted and given appropriate sentence. Maybe, offences allegedly committed by detenu attract punishment under prevailing

laws but that has to be done under prevalent laws and taking recourse to preventive detention laws would not be warranted. Detention cannot be made a substitute for ordinary law and absolve investigating authorities of their normal functions of investigating crimes, which detenu may have committed. After all, preventive detention cannot be used as an instrument to keep a person in perpetual custody without trial. The Supreme Court in ***Rekha's*** case (supra), while emphasising need to adhere to procedural safeguards, observed:

“It must be remembered that in case of preventive detention no offence is proved and the justification of such detention case is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as “jurisdiction of suspicion”, The Detaining Authority passes the order of detention on subjective satisfaction. Since Clause (3) of Article 22 specifically excludes the applicability of Clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital.”

32. The Constitution of India – Article 22(5) and Section 13, J&K Public Safety Act 1978, guarantee two important safeguards to detenu – first that detenu is informed of grounds of detention that prompted detaining authority to pass detention order and second that detenu is allowed to represent against his detention immediately after order of detention is made or executed. The Constitutional and Statutory safeguards guaranteed to detenu are to be meaningful only if detenu is handed over material referred to in grounds of detention that lead to subjective satisfaction that preventive detention of detenu is necessary to prevent him from acting in any manner prejudicial to the security of the State or public order and further it is ensured that the grounds of detention are not vague, sketchy and ambiguous so as to keep the

detenu guessing about what really weighed with the detaining authority to make the order.

33. Learned counsel for petitioner states, and rightly so, that respondents have not tendered explanation whatsoever as to why order of detention has been issued after such a long inasmuch as there is delay of more than ten months from the date of alleged criminal activity, which has been made edifice for satisfaction to pass impugned order of detention and during the period of delay no fresh activity has been attributed to detenu. The unexplained delay has snapped proximity of detention order with the time its alleged requirement arose and detaining authority has not given any explanation for the delay in passing impugned order of detention. The question qua delay in issuing order of detention has been held to be a valid ground for quashing an order of detention. The question whether prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when order of detention is made or live-link between prejudicial activities and purpose of detention is snapped, depends on the facts and circumstances of each case. However, when there is undue and long delay between prejudicial activities and passing of detention order, the court has to scrutinise whether detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case. The delay caused in the present case in issuing the order of detention has not been explained. In fact, no reason has been assigned at all by detaining authority while passing impugned order of detention, which vitiates impugned order of detention. As a sequel thereto, impugned order of detention is liable to be quashed. [See: **T.A.Abdul Rahman v. State of Kerala (1989) 4 SCC 741** and **Rajinder Arora v. Union of India and others (2006) 4 SCC 796**].

34. It is germane to point out here that individual liberty is a cherished right that is one of most valuable fundamental rights guaranteed by our Constitution to citizens of the country. In the scheme of Constitution, utmost importance has been given to life and personal liberty of individual. Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established. In the matter of preventive detention, there is deprivation of liberty, therefore, safeguards provided by Article 22 of the Constitution of the India, have to be scrupulously adhered to. Procedural reasonableness, which is invoked, cannot have any abstract standard or general pattern of reasonableness. The nature of the right infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, all provide the basis for considering the reasonableness of a particular provision. The procedure embodied in the Act has to be judged in the context of the urgency and the magnitude of the problem, the underlying purpose of the restrictions and the prevailing conditions.

35. The history of liberty has largely been the history of observance of procedural safeguards. The procedural sinews strengthening the substance of the right to move the Court against executive invasion of personal liberty and the due dispatch of judicial business touching violations of this great right is of great importance. Personal liberty protected under Article 21, is so sacrosanct and so high in the scale of constitutional values that it is the obligation of detaining authority to show that impugned detention meticulously accords with the procedure established by law. However, the constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of State's security, public order, disruption of national economic discipline etc. being envisaged as a necessary evil to be administered under strict constitutional restrictions. In a case of preventive

detention, no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But at the same time, when a person's greatest of human freedoms, i.e. personal liberty, is deprived, the laws of preventive detention are required to be strictly construed, and a meticulous compliance with the procedural safeguards, howsoever technical, has to be mandatorily made. Reference in this regard is made to ***Haradhan Saha v. The State of West Bengal & Others, (1975) 3 SCC 198*** and ***Union of India v. Paul Manickam & Another, (2003) 8 SCC 342***.

36. It may not be out of place to mention here that preventive detention is not a quick alternative to normal legal process, is the saying of the Supreme Court in ***V. Shantha v. State of Telangana & ors, AIR 2017 SC 2625***. The Supreme Court has held that *preventive detention of a person by a State after branding him a ‘goonda’ merely because the normal legal process is ineffective and time-consuming in ‘curbing the evil he spreads’, is illegal* and that detention of a person is a serious matter affecting the liberty of the citizen. Preventive detention cannot be resorted to when sufficient remedies are available under the general laws of the land for any omission or commission under such laws, the Supreme Court observed. Recourse to normal legal procedure would be time consuming and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities in the business of spurious seeds, affecting maintenance of public order, and that there was no other option except to invoke the provisions of the preventive detention Act as an extreme measure to insulate. To classify the detenu as a ‘notorious stone pelter’ cannot be sufficient to invoke the statutory powers of preventive detention. No doubt the offences alleged to have been committed by detenu are such as to attract punishment under the prevailing laws but that

has to be done under the said prevalent laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention cannot be used as an instrument to keep a person in perpetual custody without trial. My views are fortified by the judgements rendered in ***Rekha's*** case and ***V. Shantha v. State of Telangana*** case (supra) and ***Sama Aruna v. State of Telengana AIR 2017 SC 2662.***

37. For the reasons discussed above, the petition is allowed and detention order no.71/DMB/PSA/2017 dated 17th July 2017, passed by District Magistrate, Baramulla – respondent no.2, directing preventive detention of *Ishfaq Ahmad Kumar @ Ishfaq son of Abdul Majeed Kumar resident of Kumar Mohalla, Khanpora, District Baramulla*, quashed. Respondents are directed to set detenu at liberty if not required in any other offence. **Disposed of.**

(Tashi Rabstan)
Judge

Sirnagar

29th November 2017

Ajaz Ahmad



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S). OF 2024
(Arising out of SLP(Cr1.) NO(S). OF 2024)
(D.No. 42896/2023)

PRABIR PURKAYASTHA

....APPELLANT(S)

VERSUS

STATE(NCT OF DELHI)

...RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Leave granted.
2. The instant appeal by special leave is preferred on behalf of the appellant for assailing the order dated 13th October, 2023 passed by learned Single Judge of the High Court of Delhi whereby the learned Single Judge dismissed the Criminal Miscellaneous Case No. 7278 of 2023 filed by the appellant seeking the following

Signature Not Verified

Digital signature by
Narendra Pusad
Date: 2024-05-15
12:29:10 IST
Reason:

Directions: -

"A. Declare the arrest of the Petitioner as illegal and in gross violation of the fundamental rights of the Petitioner guaranteed under Article 21 and 22 of the Constitution of India in relation to FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police;

B. Declare and set aside the Remand Order dated 04.10.2023 passed by the Ld. Special Judge, Patiala House Court as null and void as the same being passed in complete violation of all constitutional mandates including failure to consult and to be defended by legal practitioner of his choice during the Remand Proceedings, being violative of Petitioner's right guaranteed under Article 22 of the Constitution of India.

C. Direct immediate release of the Petitioner from custody in FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police."

Brief Facts: -

3. The officers of the PS Special Cell, Lodhi Colony, New Delhi carried out extensive raids at the residential and official premises of the appellant and the company, namely, M/s. PPK Newsclick Studio Pvt. Ltd. ("said company") of which the appellant is the Director in connection with FIR No. 224 of 2023 dated 17th August, 2023 registered at PS Special Cell, Lodhi Colony, New Delhi for the offences punishable under Sections 13, 16, 17, 18, 22C of the Unlawful Activities(Prevention) Act, 1967(for short "UAPA") read with Section 153A, 120B of the Indian Penal Code, 1860(hereinafter being referred to as the 'IPC'). During the course of the search and seizure proceedings, numerous documents and digital devices belonging to the appellant, the company and other

employees of the company were seized. The appellant was arrested in connection with the said FIR on 3rd October, 2023 vide arrest memo(Annexure P-7) prepared at PS Special Cell, Lodhi Colony, New Delhi.

4. It is relevant to mention here that the said arrest memo is in a computerised format and does not contain any column regarding the ‘grounds of arrest’ of the appellant. This very issue is primarily the bone of contention between the parties to the appeal.

5. The appellant was presented in the Court of Learned Additional Sessions Judge-02, Patiala House Courts, New Delhi(hereinafter being referred to as the ‘Remand Judge’) on 4th October, 2023, sometime before 6:00 a.m. which fact is manifested from the remand order(Annexure P-1) placed on record of appeal with I.A. No. 217857 of 2023. The appellant was remanded to seven days police custody vide order dated 4th October, 2023.

6. The proceedings of remand have been seriously criticized as being manipulated by Shri Kapil Sibal, learned senior counsel for the appellant and aspersions of subsequent insertions in the remand order have been made. Hence, it would be apposite to reproduce the remand order dated 4th October, 2023 in pictorial form so as to form a part of this judgment.

7 ANNEXURE P-1

डॉ. हरदीप कौर
Dr HARDEEP KAUR
अतिरिक्त सत्र न्यायाधीश-02
Additional Sessions Judge
कामरा नं. 15, प्रधान राज पुस्तकालय
Room No. 15, First Floor, Main Building
पटियाला हाउस कोर्ट,
Pattiala House Courts
नई दिल्ली
New Delhi

- Present :- Sh. Atul K. Srivastava LD APP for the State
IO in person
Accused persons present with Remand
counsel Sh. Umakant Katare
Sh. Archdeep Singh Khurana counsel for accused
persons. (Mob.No. 9971140092) through telephone
call

An application has been moved by the IO
seeking police custody remand of accused Prabir
Purkayastha and Amit Chakraborty for a period of
15 days. copy of remand application sent through what's app
to counsel for accused persons.

- Heard. Record Perused.

considering the intricate nature of investigation
required in the instant matter, accused Prabir Purkay-
astha and Amit Chakraborty are remanded to police
custody for a period of 7 days i.e till 10th Oct.

Application is disposed of accordingly.

Accused persons must be medically examined
every 48 hours during their police custody remand.



अतिरिक्त सत्र न्यायाधीश-02
Additional Sessions Judge-02
नई दिल्ली
New Delhi
4 Oct 2023, Time 6:00 AM
अतिरिक्त सत्र न्यायाधीश-02
Additional Sessions Judge-02
नई दिल्ली
New Delhi

7. The appellant promptly questioned his arrest and the police custody remand granted by the learned Remand Judge vide order dated 4th October, 2023 by preferring Criminal Miscellaneous Case No. 7278 of 2023 in the High Court of Delhi which stands rejected by the learned Single Judge of the High Court of Delhi vide judgment dated 13th October, 2023. The said order is subjected to challenge in this appeal by special leave.

Submissions on behalf of the appellant: -

8. Shri Kapil Sibal, learned senior counsel representing the appellant canvassed the following submissions in order to question the proceedings of arrest and remand of the appellant: -

- (i) That the FIR No. 224 of 2023(FIR in connection of which appellant was arrested) is virtually nothing but a second FIR on same facts because prior thereto, another FIR No. 116 of 2020 dated 26th August, 2020 had been registered by PS EOW, Delhi Police("EOW FIR") alleging violation of Foreign Direct Investment(FDI) regulations and other laws of the country by the appellant and the company, thereby

causing loss to the exchequer. A copy of the said FIR was, however, not provided to the appellant. By treating the EOW FIR as disclosing predicate offences, the Directorate of Enforcement(for short “ED”) registered an Enforcement Case Information Report(for short ‘ECIR’) for the offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002(for short ‘PMLA’). The ED carried out extensive search and seizure operations at various places including the office of the company-M/s. PPK Newsclick Studio Pvt. Ltd., of which the appellant is the Director.

- (ii) The company assailed the ECIR by filing Writ Petition(Crl.) Nos. 1129 of 2021 and 1130 of 2021 wherein interim protection against coercive steps was granted by High Court of Delhi on 21st June, 2021. The appellant was also provided interim protection in an application seeking anticipatory bail vide order dated 7th July, 2021.
- (iii) The FIR No. 224 of 2023 has been registered purely on conjectures and surmises without there being any substance in the allegations set out in the report. The contents of the FIR which were provided to the appellant

at a much later stage discloses a purely fictional story without any fundamental facts or material warranting registration of the FIR.

- (iv) Admittedly, the copy of FIR No. 224 of 2023 was neither made available in the public domain nor a copy thereof supplied to the appellant until his arrest and remand which is in complete violation of the fundamental Right to Life and Personal Liberty enshrined in Articles 20, 21 and 22 of the Constitution of India.
- (v) Shri Sibal pointed out that the learned Remand Judge, vide order dated 5th October, 2023, allowed the application filed by the appellant seeking certified copy of the said FIR which was provided to the learned counsel for the appellant in the late evening on 5th October, 2023, i.e., well after the appellant had been remanded to police custody.
- (vi) That the grounds of arrest were not informed to the appellant either orally or in writing and that such action is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973(hereinafter being referred to as the ‘CrPC’).

(vii) Reliance was placed by the learned senior counsel on the judgment of this Court in ***Pankaj Bansal v. Union of India and Others***¹ and it was contended that the mere passing of successive remand orders would not be sufficient to validate the initial arrest, if such arrest was not in conformity with law. Learned senior counsel urged that this Court in the case of ***Pankaj Bansal(supra)*** interpreted the provision of Section 19(1) of PMLA which is *pari materia* to the provisions contained in Section 43B(1) of the UAPA. Thus, the said judgment fully applies to the case of the appellant.

(viii) Shri Sibal referred to the observations made in the judgment of ***Pankaj Bansal(supra)*** and urged that since the grounds of arrest were not furnished to the appellant at the time of his arrest and before remanding him to police custody, the continued custody of the appellant is rendered grossly illegal and a nullity in the eyes of law because the same is hit by the mandate of Article 22(1) of the Constitution of India.

¹ 2023 SCC OnLine SC 1244

(ix) Shri Sibal further urged that the view taken by a two-Judge Bench of this Court in **Ram Kishor Arora v. Directorate of Enforcement**² holding the judgment in **Pankaj Bansal**(*supra*) to be prospective in operation would also not come in the way of the appellant in seeking the relief. He pointed out that the judgment in the case of **Pankaj Bansal**(*supra*) was pronounced on 3rd October, 2023 whereas the illegal remand order of the appellant was passed on 4th October, 2023 and hence, the law laid down in the case of **Pankaj Bansal**(*supra*) is fully applicable to the case of the appellant despite the interpretation given in **Ram Kishor Arora**(*supra*).

- (x) That the arrest of the appellant is in gross violation of the provisions contained in Article 22 of the Constitution of India, hence, the appellant is entitled to seek a direction for quashment of the remand order and release from custody forthwith.
- (xi) That the action of the Investigating Officer in arresting and in seeking remand of the appellant is not only *mala fide* but also fraught with fraud of the highest order.

² 2023 SCC OnLine SC 1682

(xii) Referring to the remand order dated 4th October, 2023, it was contended that the appellant was kept confined overnight by the Investigating Officer without conveying the grounds of arrest to him. He was presented in the Court of the learned Remand Judge on 4th October, 2023 in the early morning without informing Shri Arshdeep Khurana, the Advocate engaged on behalf of the appellant who was admittedly in contact with the Investigating Officer because he had attended the proceedings at the Police Station Lodhi Colony, post the appellant's arrest. In order to clandestinely procure police custody remand of the appellant, the Investigating Officer, presented the appellant at the residence of learned Remand Judge before 6:00 a.m. by informing a remand Advocate Shri Umakant Kataria who had never been engaged by the appellant to plead his cause.

(xiii) Learned Remand Judge remanded the accused to police custody at 6:00 a.m. sharp as is evident from the remand order(*supra*). Shri Arshdeep Khurana, the appellant's Advocate was informed about the order granting remand by a WhatsApp message at 7:07 a.m. but the same was an

exercise in futility because there was no possibility that the learned Advocate could have reached the residence of the learned Remand Judge in time to oppose the prayer for remand.

- (xiv) That, as a matter of fact, the remand application had already been accepted at 6:00 a.m. which fact is manifested from the time appended at the end of the remand order(*supra*). The learned Remand Judge signed the proceedings by recording the time as 6:00 a.m. Hence, there is no escape from the conclusion that the remand order was passed without supplying copy of the grounds of arrest to the appellant or the Advocate engaged by him. The appellant was intentionally deprived from information about the grounds of his arrest and thereby he and his Advocate were prevented from opposing the prayer of police custody remand and from seeking bail.

- (xv) He further urged that the stand taken by the respondent that the grounds of arrest were conveyed to the learned counsel for the appellant well before the learned Remand Judge passed the remand order is unacceptable on the face of the record because the time of passing the remand

order is clearly recorded in the order dated 4th October, 2023 as 6:00 a.m. Admittedly, the grounds of arrest were conveyed to Shri Arshdeep Khurana, Advocate for the appellant well after 7:00 a.m. It was contended that the noting made by the learned Remand Judge in the order dated 4th October, 2023 that the learned counsel for the appellant was heard on the application for remand is a subsequent insertion clearly visible from the remand order. The fact of subsequent insertion of these lines is fortified from the fact that the appellant had already been remanded to police custody by the time the Advocate was informed and the copy of the remand application containing the purported grounds of arrest was transmitted to him.

- (xvi) That the foundational facts in the FIR No. 224 of 2023 are almost identical to the allegations set out in the EOW FIR. The appellant had been granted protection against arrest by the High Court of Delhi in the EOW FIR. Owing to this protection, the *mala fide* objective of the authorities in putting the appellant behind bars was not being served and, therefore, a new FIR No. 224 of 2023 with totally

cooked up allegations came to be registered and the appellant was illegally deprived of his liberty without the copy of the FIR been provided and without the grounds of arrest being conveyed to the appellant.

9. On these grounds, Shri Sibal implored the Court to accept the appeal, set aside the impugned orders and direct the release of the appellant from custody in connection with the above FIR.

Submission on behalf of the respondent: -

10. *Per contra*, Shri Suryaprakash V. Raju, learned ASG, appearing for the respondent vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant and made the following pertinent submissions:-

- (i) He urged that the judgment in the case of **Pankaj Bansal**(*supra*) has been held to be prospective in operation by this Court in the case of **Ram Kishor Arora**(*supra*).
- (ii) The appellant was remanded to police custody on 4th October, 2023 whereas the judgment in the case of **Pankaj Bansal**(*supra*) was uploaded on the website of this Court in the late hours of 4th October, 2023 and hence, the arresting officer could not be expected to ensure compliance of the

directions given in the said judgment. He thus urged that the alleged inaction of the Investigating Officer in furnishing the grounds of arrest in writing to the appellant cannot be called into question as the judgment in **Pankaj Bansal**(*supra*) was uploaded and brought in public domain after the remand order had been passed.

(iii) Without prejudice to the above, learned ASG urged that as per the appellant's version set out in the pleadings filed before the High Court of Delhi, he was actually remanded to the police custody after 7:00 a.m. With reference to these pleadings, Shri Raju contended that the appellant cannot be heard to urge that he was remanded to the police custody in an illegal manner and without the grounds of arrest having been conveyed to him in writing.

(iv) Learned ASG referred to the provisions contained in Articles 22(1) and 22(5) of the Constitution of India and urged that there is no such mandate in either of the provisions that the grounds of arrest or detention should be conveyed in writing to the accused or the detenue, as the case may be.

(v) He urged that the right conferred upon the appellant by Article 22(1) of the Constitution of India to consult and to be defended

by a legal practitioner was complied with in letter and spirit because the relative of the appellant, namely, Shri Rishabh Bailey, was informed before producing the appellant before the learned Remand Judge. Admittedly, Shri Rishabh Bailey had intimated the appellant's Advocate, Shri Arshdeep Khurana regarding the proposed proceedings of police custody remand of the appellant.

(vi) He urged that the Advocate transmitted a written objection against the prayer for police custody remand over WhatsApp through the Head Constable Rajendra Singh and the learned Remand Judge has taken note of the said objection opposing remand in the remand order dated 4th October, 2023 and thus it would be futile to argue that the order granting remand is illegal in any manner.

(vii) Learned ASG further contended that now the investigation has been completed and charge sheet has also already been filed and, thus, the illegality/irregularity, if any, in the arrest of the appellant and the grant of initial police custody remand stands cured and hence, the appellant cannot claim to be prejudiced by the same.

(viii) He vehemently urged that there are significant differences in the language employed in Section 19 of the PMLA and Section 43A and 43B of the UAPA and, thus, the law as laid down by this Court in ***Pankaj Bansal***(*supra*) does not come to the aid of the appellant in laying challenge to the remand order.

(ix) Learned ASG further urged that there is a presumption regarding the correctness of acts performed in discharge of judicial functions and hence, the noting recorded in the remand order dated 4th October, 2023 that the Advocate for the appellant had been heard on the remand application and that the grounds of arrest had been conveyed to the appellant cannot be questioned or doubted. He thus implored the Court to dismiss the appeal and affirm the order passed by the High Court of Delhi.

Rejoinder on behalf of learned counsel for the appellant: -

11. Shri Sibal, learned senior counsel for the appellant submitted that the argument advanced by learned ASG that the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA operate in different spheres, is misconceived. He urged

that language of both the provisions is *pari materia* and hence, the law laid down in **Pankaj Bansal**(*supra*) fully covers the controversy at hand.

12. Shri Sibal emphasised that on a plain viewing of the order dated 4th October, 2023, it is clear that the lines indicating the sending of the copy of the remand application to the learned counsel for the appellant and the opportunity of hearing provided to the Advocate through telephone call have been subsequently inserted in the order. He thus urged that the plea advanced by Shri Raju, learned ASG that there is a presumption regarding the correctness of judicial proceedings cannot be accepted as a gospel truth in the peculiar facts of the case at hand. He contended that applying the same principle to the remand order dated 4th October, 2023 is counter productive to the stand taken by learned ASG inasmuch as, the order records the time of passing as 6:00 a.m. whereas the Advocate was admittedly informed after 7:00 a.m. Thus, there was no possibility of the remand application being sent to the Advocate or he being heard before passing of the remand order. He, thus, reiterated his submissions and sought acceptance of the appeal.

Discussion and conclusion: -

13. We have given our thoughtful considerations to the submissions advanced at bar and have gone through the material placed on record.

14. Since, learned ASG has advanced a fervent contention regarding application of ratio of ***Pankaj Bansal*(supra)** urging that there is an inherent difference between the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA, it would first be apposite for us to address the said submission.

15. In the case of ***Pankaj Bansal*(supra)**, this Court after an elaborate consideration of the provisions contained in PMLA, CrPC and the constitutional mandate as provided under Article 22 held as below: -

“32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not

guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. **Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.**

36. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable *ipse dixit* of the authorized officer.

37. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji* (supra) are placed on record and we find that the same run into as many as six pages.

The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. **The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.**

38. We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), which hold to the contrary, do not lay down the correct law. **In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of**

Section 19(1) of the Act of 2002. Further, as already noted *supra*, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.”

(emphasis supplied)

16. Section 19 of the PMLA and Sections 43A, 43B and 43C of the UAPA are reproduced hereunder for the sake of ready reference: -

Section 19 of the PMLA

“19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court.”

Sections 43A, 43B and 43C of the UAPA

“43A. Power to arrest, search, etc.—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

43C. Application of provisions of Code. —The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.”

17. Upon a careful perusal of the statutory provisions (reproduced *supra*), we find that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section

43B(1) of the UAPA which can persuade us to take a view that the interpretation of the phrase ‘inform him of the grounds for such arrest’ made by this Court in the case of **Pankaj Bansal**(*supra*) should not be applied to an accused arrested under the provisions of the UAPA.

18. We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of the UAPA is verbatim the same as that in Section 19(1) of the PMLA. The contention advanced by learned ASG that there are some variations in the overall provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of the UAPA at the earliest because as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes. As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of

committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied.

19. We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of **Pankaj Bansal**(*supra*) on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA.

20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the

fundamental right guaranteed under Article 22(1) of the Constitution of India.

21. The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in the case of **Roy V.D. v. State of Kerala**³:

“7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.”

Thus, any attempt to violate such fundamental right, guaranteed by Articles, 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality

³ (2000) 8 SCC 590

committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

23. Learned ASG referred to the language of Article 22(5) of the Constitution of India and urged that even in a case of preventive detention, the Constitutional scheme does not require that the grounds on which the order of detention has been passed should be communicated to the detenu in writing. *Ex facie*, we are not impressed with the said submission.

24. The contention advanced by learned ASG based on the language of Article 22(5) of the Constitution of India persuaded us to delve deeper on the issue as to whether it is mandatory to communicate the grounds of arrest or detention in writing to the accused or the detenu, as the case may be, even though the constitutional mandate under Articles 22(1) and 22(5) of the Constitution of India does not explicitly require that the grounds should be communicated in writing.

25. A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of ***Harikisan v. State of Maharashtra and Others***⁴ and held that the communication of the grounds of detention to the detenu in

⁴ 1962 SCC OnLine SC 117

writing and in a language which he understands is imperative and essential to provide an opportunity to detenu of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted hereinbelow:

“ 7. clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. **In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him.** Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu **would not amount to communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the Order of Detention is based.**

(emphasis supplied)

26. Further, this Court in the case of **Lallubhai Jogibhai Patel v. Union of India and Ors.**⁵, laid down that the grounds of

⁵ (1981) 2 SCC 427

detention must be communicated to the detenu in writing in a language which he understands and if the grounds are only verbally explained, the constitutional mandate of Article 22(5) is infringed. The relevant para is extracted hereunder: -

“20. “Communicate” is a strong word. It means that sufficient knowledge of the basic facts constituting the “grounds” should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the “ground” to the detenu is to enable him to make a purposeful and effective representation. **If the “grounds” are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.....”**

(emphasis supplied)

27. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in ***Harikisan(supra)***, wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

28. Thus, there is no hesitation in the mind of this Court that the submission of learned ASG that in a case of preventive detention,

the grounds of detention need not be provided to a detenu in writing is *ex facie* untenable in eyes of law.

29. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the ‘grounds’ of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned.

30. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

31. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in **Pankaj Bansal**(*supra*) laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.

32. Now, coming to the facts of the case at hand. Indisputably, FIR No. 224 of 2023 came to be registered on 17th August, 2023. Copy of the FIR was never brought in public domain as the same was not uploaded on the website by the Investigating Agency. Admittedly, the copy of the FIR was not provided to the appellant despite an application having been made in this regard on his behalf till after the order of police custody remand was passed by the learned Remand Judge.

33. The copy of the FIR was provided to Shri Arshdeep Khurana, learned Advocate representing the accused for the first time on 5th October, 2023 and hence, till the time of being deprived of liberty, no communication had been made to the appellant regarding the grounds on which he had been arrested.

34. The accused was arrested on 3rd October, 2023 at 5:45 p.m. as per the arrest memo(Annexure P-7). As per Section 43C of the UAPA, the provisions of CrPC shall apply to all arrests, search and seizures made under the UAPA insofar as they are not inconsistent with the provisions of this Act. As per Section 57 CrPC read with Section 167(1) CrPC, the appellant was required to be produced before the concerned Magistrate within twenty-four hours of his arrest. The Investigating Officer, therefore, had a clear window till 5:44 p.m. on 4th October, 2023 for producing the appellant before the Magistrate concerned and to seek his police custody remand, if so required. There is no dispute that Shri Arshdeep Khurana, learned Advocate, engaged on behalf of the appellant had presented himself at the police station on 3rd October, 2023 after the appellant was arrested and the mobile number of the Advocate was available with the Investigating Officer. Inspite thereof, the appellant was presented before the learned Remand Judge at his residence sometime before 6:00 a.m. on 4th October, 2023. A remand Advocate, namely, Shri Umakant Kataria was kept present in the Court purportedly to provide legal assistance to the appellant as required under Article 22(1) of the Constitution of India. Apparently, this entire exercise was done in a clandestine

manner and was nothing but a blatant attempt to circumvent the due process of law; to confine the accused to police custody without informing him the grounds on which he has been arrested; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice so as to oppose the prayer for police custody remand, seek bail and also to mislead the Court. The accused having engaged an Advocate to defend himself, there was no rhyme or reason as to why, information about the proposed remand application was not sent in advance to the Advocate engaged by the appellant.

35. It is apparent that the appellant had objected to the appearance of the remand counsel before the learned Remand Judge and this is the reason, the Investigating Officer undertook a charade of informing of the Advocate engaged by the appellant on mobile. The learned Remand Judge recorded the presence of Shri Arshdeep Khurana, Advocate, mentioning that he had been informed and heard on the remand application through telephone call. The initial information about the accused appellant being presented before the learned Remand Judge was sent by the arresting officer to the appellant's relative Shri Rishab Bailey at around 6:46 a.m. and he, in turn, informed the Advocate Shri

Arshdeep Khurana around 7:00 a.m. These facts are manifested from perusal of the call logs presented for the perusal of the Court. Thus, by the time, the Advocate engaged by the accused appellant had been informed, the order of remand had already been passed. Unquestionably, till that time, the grounds of arrest had not been conveyed to the appellant in writing.

36. The learned ASG had argued that the grounds of arrest were set out in the remand application which was transmitted through WhatsApp to Advocate Shri Arshdeep Khurana. However, the fact remains that the remand application was transmitted to the Advocate Shri Arshdeep Khurana after the remand had been granted by the learned Remand Judge which was at 6:00 a.m. as per the recording made in the remand order(reproduced *supra*). The contention of the learned ASG that there is variance in time of passing of the remand order as per the pleadings made on behalf of the accused appellant before the High Court of Delhi does not impress us in view of the time recorded in the remand order.

37. Learned Single Judge of the High Court of Delhi held at para No. 31 of the impugned order that the respondent had taken a categoric stand that the grounds of arrest were informed to the appellant orally and the same were also conveyed in writing as per

the details set out in the memo of arrest. However, learned ASG fairly did not advance any such argument based on the arrest memo.

38. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column No. 9 of the arrest memo(Annexure P-7) which is being reproduced hereinbelow simply sets out the ‘reasons for arrest’ which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the ‘grounds of arrest’ would be personal in nature and specific to the person arrested.

“9. Reason for arrest

- a. Prevent accused person from committing any further offence.
- b. For proper investigation of the offence.
- c. To prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner.
- d. To prevent such person from making any inducement threat or promise to any person acquainted the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer.
- e. As unless such person is arrested, his presence in the Court whenever required cannot be ensured.”

39. The remand order dated 4th October, 2023(reproduced *supra*) records that the copy of the remand application had been sent to the learned Advocate engaged by the accused appellant through shriApp. A bare perusal of the remand order is enough to satisfy us that these two lines were subsequently inserted in the order because the script in which these two lines were written is much finer as compared to the remaining part of the order and moreover, these two lines give a clear indication of subsequent insertion. It is quite possible that the learned Remand Judge may have heard the learned counsel for the appellant after signing the remand order and thus, these lines were inserted later without intending any harm or malintention but the fact remains that the order of remand had already been passed at 6:00 a.m. and hence, the subsequent opportunity of hearing, if any, provided to the counsel was nothing but an exercise in futility.

40. Learned ASG had argued that the copy of the remand application forwarded over WhatsApp to the learned counsel for the accused appellant gives a complete picture about the grounds of arrest. We feel that any comment on the contents of the remand application and whether the same actually conveyed intelligible grounds of arrest to the accused or whether the same are so vague

that it would be impossible to understand, may prejudice the trial of the case.

41. We may, however, briefly mention that the grounds of arrest as conveyed to the Advocate are more or less a narration of facts picked up from the FIR which in itself does not indicate any particular incident or event which gave rise to the alleged offences. However, the law is well settled that the FIR is not an encyclopaedia and is registered just to set the process of criminal justice in motion. The Investigating Officer has the power to investigate the matter and collect all relevant material which would form the basis of filing of charge sheet in the Court concerned.

42. Extensive arguments were advanced by Shri Sibal, with reference to the stipulations made in Sections 13, 16, 17, 18, 22C of the UAPA in order to contend that even if the FIR and the grounds set out in the remand application are taken to be true on the face of the record, apparently, the same convey just a fictional web spun around conjectures and surmises. It was contended that though a reference is made in the FIR that the appellant and one Neville Roy Singham, a foreign national were found to be discussing how to create a map of India without Kashmir and to show Arunachal Pradesh as a disputed area but the fact remains

that no such map was prepared or published or was found in possession of the appellant or on his devices till the date of his arrest.

43. Shri Sibal had also argued that the appellant was arrested without any indication as to how he was connected with the alleged incorrect map of India. He also urged that the FIR refers to farmers' agitation without justifying as to how the appellant was connected with those incidents. He contended that not a single incident is mentioned in the FIR or the remand application which can give rise to the offences alleged and that the FIR was registered without any plausible reason or basis just to victimise the appellant.

44. We do not feel persuaded to examine these aspects at this stage because the same would require entering into the merits of the case. This would be within the domain of the Court examining the matter after the filing of the charge sheet. The core issue in this appeal is regarding the illegality of the process whereby the appellant was arrested and remanded to police custody which does not require examining the merits of the case.

45. It was the fervent contention of learned ASG that in the case of **Ram Kishor Arora**(*supra*), a two-Judge Bench of this Court

interpreted the judgment in the case of **Pankaj Bansal**(*supra*) to be having a prospective effect and thus the ratio of **Pankaj Bansal**(*supra*) cannot come to the appellant's aid. Indisputably, the appellant herein was remanded to police custody on 4th October, 2023 whereas the judgment in the case of **Pankaj Bansal**(*supra*) was delivered on 3rd October, 2023. Merely on a conjectural submission regarding the late uploading of the judgment, learned ASG cannot be permitted to argue that the ratio of **Pankaj Bansal**(*supra*) would not apply to the present case. Hence, the plea of Shri Raju, learned ASG that the judgment in **Pankaj Bansal**(*supra*) would not apply to the proceedings of remand made on 4th October, 2023 is misconceived.

46. We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India.

47. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the Investigating Officer.

48. We have carefully perused the arrest memo(Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a proforma indicating the formal ‘reasons’ for which the accused was being arrested.

49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest’. The ‘reasons for arrest’ as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested

accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the ‘grounds of arrest’ would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’ which are general in nature.

50. From the detailed analysis made above, there is no hesitation in the mind of the Court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel before passing of the order of remand dated 4th October, 2023 which vitiates the arrest and subsequent remand of the appellant.

51. As a result, the appellant is entitled to a direction for release from custody by applying the ratio of the judgment rendered by this Court in the case of **Pankaj Bansal**(*supra*).

52. Accordingly, the arrest of the appellant followed by remand order dated 4th October, 2023 and so also the impugned order passed by the High Court of Delhi dated 13th October, 2023 are hereby declared to be invalid in the eyes of law and are quashed and set aside.

53. Though we would have been persuaded to direct the release of the appellant without requiring him to furnish bonds or security but since the charge sheet has been filed, we feel it appropriate to direct that the appellant shall be released from custody on furnishing bail and bonds to the satisfaction of the trial Court.

54. We make it abundantly clear that none of the observations made above shall be treated as a comment on the merits of the case.

55. The appeal is allowed in these terms.

56. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

New Delhi;
May 15, 2024

Sess. Case No. 82 of 2017 (CIS 90 of 17)

CNR Number : WBDD01-000748-2017

Present: Shri. Ajayendra Nath Bhattacharya, Additional District & Sessions Judge 3rd
Court, Dakshin Dinajpur at Balurghat. (JO Code: WB00819)

Order No. 41 dt. 07.06.2023

Four accused persons namely 1) Zubair Alam, 2) Shomshonar, 3) Islam Noor and 4) Nurahbas are produced from J/C. Today is fixed for production and order on the application for bail.

Ld. Adv for the accused persons submits that a report has been received from UNHCR through the office of Ld. Secretary, DLSA, Dakshin Dinajpur, wherefrom it appears that the accused persons facing trial in this case have been granted refugee status within the territory of India and UNHCR refugee cards have been issued in their names. Accordingly Ld. Counsel for the accused persons pray for releasing the accused persons on bail.

Ld. PP in-charge submits that necessary order may be passed by this court but raises apprehension regarding appearance of the accused before this court on the future dates of trial.

I have considered the submissions of both the sides. This is the case where charge has been framed u/s 14A(b) of the F. Act against the accused persons. However, considering the fact that the accused persons have been granted refugee status within the territory of India as such a *prima facie* presumption regarding the Innocence of the accused persons appears before this court. Moreover, the accused persons are in custody since 24.4.2016 and as such they are in custody for a period of more than 07 years in this case. The maximum punishment prescribed under the law for the offence u/s 14A(b) F. Act is 08 years and accordingly the accused persons are also entitled for grant of bail u/s 436A CrPC.

Considering the facts noted above I am inclined to release the accused persons on furnishing bail of Rs. 5000/- with two sureties of Rs. 2500/- each i.d. to JC till the next date.

Fix **23.11.2023** for evidence of CSW 1 and 2.

Dictated & corrected by me

Addl. Sess. Judge, 3rd Court,
Dakshin Dinajpur at Balurghat.

Addl. Sess. Judge, 3rd Court,
Dakshin Dinajpur at Balurghat.

Access to asylum procedures

GAHC010262042017



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/3576/2017

SAIDUR RAHMAN and 9 ORS.
S/O LT. BARU MIA

2: MAHMAD ULLA
S/O LT. BARU MIA

3: MRS. TAHARA BEGU
W/O MD. SAIDUR RAHMAN

4: MRS. RUMANA BEGUM
W/O MAHMD ULLA

5: YESMEEN AKTAR
D/O MD. SAIDUR RAHMAN

6: ABU TALEK
S/O MD. SAIDUR RAHMAN

7: JASMEEN AKTAR
D/O MD. SAIDUR RAHMAN

8: TAHMINA AKTAR
D/O MAHMAD ULLA

9: MD. RIDWAN
S/O MAHMAD ULLA

10: TASMINA AKTAR
D/O MAHMAD ULLA ALL ARE RESIDENT OF VILL- COUNDANG P.S.
BOCHIDANG DIST. BOCHIDANG
MYANMA

VERSUS

THE UNION OF ASSAM and 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF HOME AFFIRS
DISPUR GUWAHATI- 781006.

3:THE INSPECTOR GENERAL OF PRISON

ASSAM
KHANPARA
GUWAHATI-22.

4:THE SUPERINTENDENT

CENTRAL JAIL
TEZPUR
DIST. SONITPUR
ASSAM

5:THE SUPERINTENDENT OF POLICE BORDER
DIST. SONITPUR
ASSAM

6:THE DEPUTY COMMISISONER

DIST. SONITPUR
ASSAM

Advocate for the Petitioner : MR. E AHMED

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

**HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE NANI TAGIA
ORDER**

**31-03-2022
[N. Kotiswar Singh, J]**

Heard Ms. T. Poddar, learned counsel for the petitioners. Also heard Mr. R.K. Dev

Choudhury, learned Asstt. SGI appearing for respondent no.1, Ms. A. Verma learned Special Standing Counsel, F.T. appearing for respondent nos.3, 4 & 5 and Ms. U. Das, learned Additional Senior Government Advocate, Assam appearing for respondent nos. 2 & 6.

2. In this petition the matter pertains to repatriation of the 10 (ten) petitioners after having served the sentence of 2 (two) years after being convicted under Sections 14 A(b) of the Foreigners Act, 1946 and Rule 6 of the Passport (Entry into India) Rules, 1950 by the competent Court of law. The petitioners except the petitioner no.6 are presently detained in Transit Camp, Tezpur, awaiting repatriation to their country in origin i.e. Myanmar.

3. Mr. J. Paying, learned Special Standing Counsel, F.T. submits that out of the 10 petitioners, the petitioner no.6, namely, Md. Abu Taleb has already been repatriated to Myanmar on 12.11.2020 and the nationality verification has already been completed and confirmed by the Myanmarese authorities in respect of petitioner nos.1, 2 & 3. However, in respect of the remaining petitioners i.e. the petitioner nos. 4, 5, 7, 8, 9 & 10, the nationality verification process is pending and in that regard, a regular communication is going on between Indian Authorities and Myanmarese Authorities. Mr. J. Paying further submits that since, all the petitioners belong to the same family, in view of the incomplete nationality verification of some of the petitioners, the repatriation process has been delayed as it is the desire of the Authorities that the entire family members be repatriated together and not in batches.

4. Ms. T. Poddar, learned counsel for the petitioners submits that unfortunately, the process is taking a long period and considering the apprehension of the petitioners that they may not get fair treatment after being repatriated to Myanmar, they are seeking to apply for

refugee status from the United Nations High Commissioner for Refugees (UNHCR) at New Delhi and accordingly, she has prayed before this Court to pass an appropriate order to facilitate the petitioners' application to the UNHCR for grant of "refugee status".

5. We are of the view that even though the petitioners are presently detained in the Transit Camp, Tezpur, they have already served out the sentence and as such, there is no element of criminality attached to them except for the fact that being foreigners, they are liable to be deported to the country of their origin. However, at the same time, if they desire to seek refugee status from the UNHCR, we are of the view that the right to seek the same cannot be denied.

6. Under the circumstances, we direct the concerned authorities in the State as well as in the Centre to facilitate applications to be made by the petitioners, except for the petitioner no.6, presently lodged in Transit Camp, Tezpur, to seek refugee status to UNHCR, for which purpose, if any Video Conferencing facility is required, the authorities, more particularly, the respondent nos. 2 to 6 will provide such facility positively to the petitioners. We are aware that for the aforesaid purpose the petitioners may require regular and competent legal assistance and since Ms. T. Poddar has submitted that she and her team would provide the same, the authorities will also facilitate interaction of the aforesaid petitioners with the legal team for the aforesaid purpose. If, for any reason, the physical presence of the aforesaid petitioners is necessary in Delhi from the end of the UNHCR, the same may be placed on record before us, so that the appropriate order can be passed.

7. A copy of this order be furnished to Mr. J. Payeng and Ms. U. Das for informing the concerned authorities about this order.

8. List the matter again on 24.05.2022.

JUDGE

JUDGE

Comparing Assistant

07.01.2021

Item no. 47

Dd/aloke

(Through Video Conference)

WPA 22311 of 2019

**Nur Muhammad & Ors.
Vs.
Union of India & Ors.**

Mr. S. G. Chowdhury, adv.

Mr. Argha Das, adv.

... ... For the Petitioners

Mr. Amitesh Banerjee, sr. standing counsel

Mr. Biswabrata Basu Mallick, adv.

Mr. Suddhadev Adak, adv.

... ...For the State

Mr. Partha Ghosh

Mr. Tarunyoti Tewari

.. ...For the UOI

This writ petition is filed seeking issuance of a writ in the nature of habeas corpus in relation to four persons who are not Indian nationals.

It is submitted by the learned counsel for the petitioners that the petitioners hail from Myanmar and had slipped into India. This resulted in their facing prosecution for offences punishable under the Foreigners Act. They have undergone the sentence imposed on them. There is no other count of criminal law under which they have been convicted and sentenced. After suffering out the entire sentence, they continue to be housed in the Dum Dum correctional home. Their plea is that they may be moved to an open jail or be provided some modalities to be saved from continued incarceration.

The fact of the matter remains that the West Bengal Correctional Services Act, 1992 excludes the facility of open jails in such a way that persons who

are not residents of West Bengal cannot be housed in open jails. This has been brought on record through a report in the form of an affidavit on behalf of the OSD & Ex-Officio DG & IG, Correctional Services, West Bengal.

Learned counsel for the petitioners relies upon the order dated 21.02.1997 of the Punjab and Haryana High Court in the case of **Shah Ghazai & Anr. vs. Union of India & Ors. (Criminal Writ Petition No. 499 of 1996)** and the order dated 04.12.1997 of Delhi High Court in the case of **Mst. Khadija vs. Union of India & Ors. (CWP No. 658 of 1997)**.

In the aforesaid facts and circumstances, noticing in particular that the petitioners have not been found guilty or sentenced on any other count except under the Foreigners Act, we are of the view that it is for the Government of the State of West Bengal and the Government of the Union of India to take requisite steps to move the United Nations High Commissioner for Refugees (UNHCR) to consider the cases of the four petitioners for appropriate ameliorative action at that end.

In the result, we dispose of this writ petition directing the authorities of the Government of the State of West Bengal and the authorities of the Government of Union of India to take requisite earnest action to have the case of the petitioners brought to the attention of the UNHCR at the earliest. We are sure that the Governments will take up the matter with due earnestness.

Learned counsel appearing for the petitioner is hereby granted leave to move the UNHCR for refugees pointing out the plight of the petitioners. This will enable appropriate liaisoning of the

different representations from the different ends moving through the State and the Union as well.

The writ petition is disposed of leaving open all the contentions.

[Thottathil B. Radhakrishnan, C.J]

[Arijit Banerjee, J.]

Discharge, acquittal and release

Order No. 10, Dt. 01/03/2023

Today is fixed for passing order. The accused persons namely **Mohammad Safiq** and **Shamshul Alam** are produced from J/C.

The record is taken up for passing order on the application under section 227 of Cr.P.C. praying for discharge of the accused persons from the charge under section 14A of Foreigners Act.

Heard both sides on 02.02.2023 on the application dated 19.11.2022 under section 227 of Cr.P.C.

Perused the materials on record and in the case diary.

It is submitted by the Ld. Advocate for the accused persons that both the accused persons namely **Mohammad Safiq** and **Shamshul Alam** are original resident of Mayanmar and as they faced cruelty in their country, they have been granted refugee status in India by UNHCR, New Delhi by issuing refugee cards bearing numbers 305-14C00288 and 305-17C02182 which are valid till 23.03.2024 and 02.02.2024 respectively. As such both the accused persons are recognized by UNHCR, New Delhi as refugee and charge for the offence under section 14A of the Foreigners' Act can not be framed against them.

He further submits that in the charge-sheet, the investigating officer has also mentioned that the status of both the accused persons named above as refugee in India has been confirmed by UNHCR, New Delhi and it is also mentioned that the conditions in Mayanmar is not yet conducive for their returned into their own country and UNHCR, New Delhi requested not to deport any of them to their own country and release them from detention and to allow to live in India.

In support of his contention, the Ld. Defence Advocate has submitted photocopies of UNHCR refugee card receipts of both the accused persons and one decision of the Hon'ble High Court at New Delhi passed in WP (CRL) No. 1884/2015.

I have gone through the documents and the referred decisions. It appears that the referred decision was not in respect of any charge of offence under section 14A of Foreigners' Act, rather it was in respect of an initiative of Ministry of Home Affairs, Government of India regarding deportation of the concerned subjects. In the referred decision, the Hon'ble Court was pleased to refuse the order of deportation of the subjects to their own country considering their refugee status given by UNHCR, New Delhi.

In the instant case on hand, I find that the investigating officer in the charge-sheet has clearly mentioned that during investigation he sent a prayer to the UN Refugee Agency, B-2/16, Basant Bihar, New Delhi 110057 for verification of the refugee status of the accused persons given by UNHCR, New Delhi and after verification, the UNHCR, New Delhi has confirmed their refugee status mentioning that the conditions in Mayanmar are not conducive for safe and voluntary return of these two accused persons to their own country which is Mayanmar and also requested for their release from detention.

Continued.....

Ld. P.P. in-charge, on the other hand submitted that admittedly the accused persons are given the status of refugee in India by UNHCR, New Delhi, but they were supposed to stay within a notified area in India and their movement near the Indo-Bangladesh Border at Changrabandha creates reasonable doubt about their actual intention.

Considered the submissions of both sides.

From the materials on record, it is crystal clear that both the accused persons have taken refuge in India as they faced reasonable threat and fear in their own country. This fact has been confirmed by UNHCR, New Delhi. From the document issued by UNHCR, New Delhi, I do not find anything which restricts the movement of the refugees within the Territory of India.

Be that as it may, I do not find any material to frame charge against both the accused persons namely Mohammad Safiq and Shamshul Alam for committing offence punishable under section 14A of Foreigners' Act.

Accordingly both the above named accused persons are entitled to be discharged from this case.

Hence, it is

ORDERED

that the petition dated 19.11.2022 under section 227 of Cr.P.C. is allowed.

Both the accused persons namely **Mohammad Safiq and Shamshul Alam** are hereby discharged from this case under section 227 of Cr.P.C. and be released at once, if not wanted in any other case.

The Sessions Case No. 123/2022 is thus disposed of.

Seized alamats if any, be returned to the persons from whom seized.

Dictated & Corrected.

Additional Sessions Judge
Mekhliganj, CoochBehar

Additional Sessions Judge
Mekhliganj, CoochBehar

**IN THE COURT OF SESSIONS JUDGE DIMA HASAO, HAFLONG.
PRESENT:SHRI ABUBAKKAR SIDDIQUE, AJS, SESSIONS JUDGE,
DIMA HASAO.**

**DATE OF ORDER: 20.03.2023
(SESSIONS CASE NO. 25/2022)
(G.R. CASE NO. 77/2022)
(BADARUPUR GRPS CASE NO. 41/2022)**

COMPLAINANT: ASI DIPAK GHARTI.

**REPRESENTED BY: AJOY CHOKROBORTY,
LD. PP, DIMA HASAO.**

ACCUSED: **Noorul Amin**
S/O Md. Yunus
Vill: Ismailpur, Barodi
PS: Baribrahmna
Dist: Samba.
State: Jammu **(Accused)**

REPRESENTED BY: MRS. MUMTAZ KHAN, LD. ADVOCATE.

Date of offence: **01.05.2022.**

Date of FIR: **02.05.2022.**

Date of Charge-sheet: **30.05.2022.**

Date of Order: **20.03.2023.**

ORDER**FACT OF THE CASE**

1. The prosecution case in a nutshell is that on 02.02.2023, the complainant, namely, ASI, Dipak Gharti lodged an FIR before the OC, Badarpur GRPS stating that on the night of 01.05.2022 at around 8:25 PM, a secret information was received from reliable sources stating that the below named person suspected to be a national of Myanmar (Rohingya) was travelling in train no. 01666 UP (Rani Kamlapati SF Special), Coach No. A-1, seat no. 08, without ticket from Badarpur Railway Station Side. Hence, after arrival of the aforesaid train at P.F. no.1 of New Haflong Railway Station, The complainant along with UBC/565 Ajit hojai, HG Chandu Mahajan of New Haflong GRP accompanied by SI R. Ramyohing, ASI A. Roy and other on duty staff of RPF/New Haflong proceeded to the aforesaid coach of the train and found the below named accused person. During questioning, the accused person identified himself as Rohingya citizen of Myanmar but could not produce his any travel documents e.g. passport, visa etc. Hence, the accused person was detained at New Haflong Railway Station for further interrogation.

INVESTIGATION

2. On receipt of the FIR, Badarpur GRPS case No. 41/2022 U/S 14 of Foreigners Act R/W Section 12(1)(C) P.P Act was registered and started investigation. During the course of investigation, the I/C New Haflong GRPS handed over the accused to O/C Badarpur GRPS as it

falls under the jurisdiction of Badarpur GRPS. The I/O interrogated the complainant and the accused. The accused stated before the I/O that his original residence is at Myanmar. Then the accused went to Bangladesh and stayed there for 5 years and then the accused entered into India. On being searched (i) One OPPO Mobile Phone, (ii) Train ticket, (iii) Mobile charger, (iv) Canara bank ATM card, (v) UNHCR card no. 305-11C01500, had been recovered. The I/O prepared the seizure list and submitted the court. The I/O also seized Rs. 11500/- from the accused. After completion of the investigation the I/O submitted the charge-sheet U/S 14 of Foreigners Act R/W Section 12(1) (C) Passport Act against the accused person. The I/O did not collect the Prosecution sanction regarding Section 12(1)(C) Passport Act. Therefore that Ld. Court below took cognizance only under Section 14 of the Foreigners Act. The Ld. Court below passed the order dated 06.07.2022 as follows:

"Therefore, after considering all the material on record, mandate of prior prosecution sanction under Passport Act along with the submission of the IO wherein he has failed to provide a tentative date by which sanction shall be obtained, this Court is of the considered opinion that there exists prima facie ground to proceed against the accused person, Noorun Amil, only under Section 14 of Foreigners Act. Accordingly, cognizance is taken under Section 14 of the Foreigners Act against the accused person."

3. Thereafter vide order dated 10.10.2022 the case is committed to this Court with the order as follows:

"I have perused the case record including the charge-sheet and the other materials available on record. Upon perusal it is seen that there are materials that attracts provision 14 A of Foreigners Act. Offence is under Section 14 A of Foreigners Act is triable exclusively by Hon'ble Court of Session."

4. On receiving the record vide order dated 21.10.2022 this Court took cognizance U/S 14 A of the Foreigners Act for trial against the accused, Noorul Amin. Thereafter the case was posted for Consideration of Charge. On hearing the argument advanced by the Ld. PP, this Court thought fit to examine the Investigation Officer before framing charge. Accordingly, summon was issued to the Investigation Officer. On appearance the statement of the Investigation Officer is as follows:

5. PW-1 is Lakhi Kalita. This witness deposed that on 01.05.2022, he was posted as I/C GRP at Silchar Railway Station. On that day, the I/C New Haflong GRPS apprehended one accused namely, Noorul Amin as he could not show any proper documents of Indian citizen. Then, the I/C New Haflong GRPS handed over the accused to O/C Badarpur GRPS as it falls under the jurisdiction of Badarpur GRPS. Thereafter O/C Badarpur GRPS endorsed me to investigate the case. Then he interrogated the complainant ASI Dipak Ghaorti and the accused. The accused stated before him that his original residence is at Myanmar.

Then he went to Bangladesh and stayed there for 5 years and then he entered into India.

On being searched, the following items have been recovered from accused:-

1. One OPPO mobile phone,
2. Train ticket
3. Mobile charger
4. Canara Bank ATM Card
5. UNHCR Card No. 305-11C01500.

He had prepared a seizure list. ***Ext-P1/PW-1*** is the seizure list and ***Ext-P1(1)/PW-1*** is his signature thereon and ***Ext-P1(2)/PW-1*** is the signature of accused, Noorul Amin. The accused had also an amount of Rs. 11,500/- which was seized vide MR No. 148/22 and prepared a seizure list. ***Ext-P4/PW-1*** is the seizure list and ***Ext-P4(1)/PW-1*** is his signature thereon.

He had recorded the statement of the seizure witnesses ASI, Dipak Gharti and Abhisek Chandra and other witnesses namely, UBC565 Ajit Hojai, HG Chandu Mahajan, ASI Aurobinda Roy and HC Choto Dol Roy.

After completion of investigation, he found materials against the accused person and submitted charge sheet ***U/S 14 of Foreigner Act R/W Sec. 12(1)(c) of Passport Act***. He did not collect the Prosecution Sanction in respect of ***Sec. 12(1) (c) of Passport Act*** as required U/S 15 of the Passport Act. With regard to UNHCR card,

the O/C Badarpur GRPS told him that this card is not applicable in India. That is why he arrested the accused and forwarded the accused for trial.

In his reply to the Court question, this witness deposed that O/C Badarpur GRPS did not mention any Act/Law/Circulation/Guideline etc. that this card is not valid in India.

After examining the IO the accused is examined. The accused denied that he is a foreigner. The accused further states as follows:

"Q: Do you want to say anything?

Ans: I am not a foreigner nor I had entered illegally in India. I am a refugee card holder issued by the UNHCR, the UN Refugee Agency, B-2/16, Vasant Vihar, New Delhi. Validity of my card is up to 14.08.2023. Kindly release and allow me to go to my native village at Jammu."

6. During argument Ld. PP submits that the accused is a Rohingya and not an Indian National. Hence, the accused has committed offence U/S 14 A of the Foreigners Act by entering into India.

7. Ld. Counsel appearing for the accused submits that the accused is not a foreigner but a refugee card holder. The accused has been allowed to remain in India vide Refugee Card bearing No. 305-11C01500 and the card is valid till 14.08.2023. Since the card is issued by United Nations High Commissioner for Refugees and the card is valid till 14.08.2023, the accused cannot be branded as foreigner. Therefore, Section 14A of the Foreigners Act is not

applicable in this case. Hence, the accused is liable to be discharged U/S 227 Cr. PC.

8. Heard arguments advanced by both sides. Perused the case records including various documents like FIR, 161 Statement, Arrest Memo, Forwarding report, seizure list, etc. submitted along with this case. Now let us see whether there is sufficient material/grounds to frame charge against the accused person or not.

9. Now the question is whether the accused is a foreigner and he illegally entered into India as per Section 14 A of the Foreigners Act or not.

10. During investigation the Ld. Court below directed the OC, Badarpur GRPS regarding the validity of refugee card. The OC, Badarpur GRPS vide letter dated 21.11.2022 submitted the report before this Court with annexing the report received from Superintendent of Railway Police, Pandu, Assam vide letter under Memo. No. 305-11C01500 which speaks as follows:

*"GOVERNMENT OF ASSAM
OFFICE OF THE SUPERINTENDENT OF RAILWAY POLICE:::::::
ASSAM:::::PANDU*

GUWAHATI-12

Memo No. GRP/CR/SR/104/2022/4251 Dated: 10/11/2022

To,

*Officer-In-Charge,
Badarpur GRPS.*

Sub: UNHCR Verification report of Noorul Amin.

Ref: Badarpur GRPC Case No. 41/2022, U/S 14 of Foreigner Act, R/W Section 12(i)(c) of P. P. Act.

Enclosed find herewith the copy of E-Mail received from UNHCR Org., New Delhi from their Gmail ID indne@unher.org in response to query regarding verification of Refugee Card issued to Noorul Amin in connection with Badarpur GRPC Case No. 41/2022, U/S- 14 of Foreigner Act, R/W Sec. 12(i)(c) of P. P. Act which is self-explanatory for your information and necessary action.

Enclo: As stated above.

*Superintendent of Railway Police,
Assam::::Pandu:::: Pandu"*

11. As per the aforesaid letter the enclosure found with the aforesaid letter which speaks as follows:

"Dear Mr. Yada,
This is in reference to the query received from SRP Assam on 06 October 2022 regarding verification of the UNHCR document issued to Mr. Noorul Amin in connection with GRPS Case No. 41/2022 U/S 14 of Foreigners Act R/W Sec. 12(i)(c) of PP Act.

In this regard, we would like to inform that Noorul Amin is a refugee registered with UNHCR. He was issued Refugee Certificate No. 305-11C01500, which is valid till 14th August 2023. A copy of his UNHCR issued document is attached herewith as Annexure A.

We would also like to inform that Mr. Noorul Amin has sought asylum in India due to a well-founded fear of human rights violation in Myanmar. Given that the conditions in Myanmar are not yet conducive for safe and voluntary return, we would be

grateful if he is released from detention and allowed to remain in India.

Thank you for your continued cooperation and support.

Yours Sincerely,

UNHCR-Protection."

12. On perusal of the various documents it is found that that accused is a Rohingya refugee who has obtained United Nations High Commissioner for Refugees (UNHCR) Card bearing No. 305-11C01500 and the card is found valid till 14.08.2023. Since the card is valid till 14.08.2023, the accused cannot be called as foreigner. Since, the accused is not a foreigner therefore the question of illegally entering into India does not arise.

13. Considering the entire facts and circumstances and upon hearing the Ld. PP and the Defence Counsel, this Court is of the opinion that there is no sufficient ground to proceed against the accused person U/S 14 A of the Foreigners Act, 1946.

14. Thus summing up the entire materials of the prosecution, this Court is inclined to hold that there is no sufficient ground to proceed against the accused person. Hence, the accused person, namely, Noorul Amin is discharged. The accused has been languishing in the Haflong Sub-Jail, the accused is set at liberty on executing a PR Bond of Rs. 25,000/-.

15. From the seizure list it is found that (i) One OPPO Mobile Phone, (ii) Train ticket, (iii) Mobile charger, (iv) Canara bank ATM card, (v)

UNHCR card no. 305-11C01500, (vi) an amount of Rs. 11500/- had been seized while the accused was arrested. The Prosecuting Inspector is directed to release the seized articles.

16. From the order dated 06.07.2022 passed by the Ld. JMFC it is found that the amount had been deposited to Haflong Treasury under Refundable Head. Therefore the Ld. CJM is directed to issue necessary challan for the release of the amount.

17. Since the accused is a Rohingya Refugee, his free movement in this area may be a detrimental to the safety and security, therefore the SP, Dima Hasao is directed to make necessary arrangement for his safe passage to his native place at the State of Jammu.

18. Send a copy of this order to District Magistrate, Dima Hasao, SP, Dima Hasao, Ld. CJM, Dima Hasao for necessary and follow up action.

19. In view of the aforesaid order the case is disposed off accordingly.

**Sessions Judge
Dima Hasao.**

In the court of S.M. 3rd Court, Bank. Msd.

G.R 219 of 2015

02-6-16
Order dated 20.05.2016.

Today is the date fixed for production and appearance.

Two(2) accused persons namely Bittu Das@ somnath and Rup Kr Saha on court bail are present by filing hazira. Five remaining accused persons in J/C namely-Nuresha Khatun, Md Alam, Jalal Ahmed, Abdul Karim, Hamid Hossain are not produced today.

Id lawyer for the above named accused persons, five in nos, who are in J/C moved their petition under Section 239, Cr.p.c dated 28.3.16 which has not been disposed of earlier.

Heard Id lawyer for the accused persons, who, inter-alia, submitted that the petitioners are Rohingya muslims who have fled from their country due to fear of persecution, who are registered as mandate refugee with United Nations High Commissioner for Refugee(UNHCR), India and is presently inmates of the Berhampore Central Correctional Home, West Bengal. The petitioners are misrepresented as a foreigner and charged under Section of Foreigners Act, 1946 whereas they are registered as mandate refugees under United Nations High Commissioners of Refugee(UNHCR), India having its registered office at Delhi. The UNHCR, India in its letter dated 17th February, 2015 has addressed the Joint Secretary(F), Ministry of Home Affairs, copy supplied to Superintendent, Berhampore Central Correctional Home that the petitioners are recognised refugee and will be grateful if they are released and allowed to remain in India.

The petitioners relied upon the following decisions-

- (1) Premanand & Anr Vs State of Kerala 2013(3) KLT
- (2) Vishaka Vs State of Rajasthan, 1997
- (3) Ktaer Abbas Habib Al Qutaifi vs Union of India, 1999 Cri.LJ 919
- (4) Anthony OmandiOsino vs TRBO, W.P. (Cri.) 2033/2015

All these decisions stressed upon the point of special status of refugees and to consider them not as foreigners only, but has to consider their status in the light of mandate of United Nations Conventions to which India has ratified.



....owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

So, refugee though included within the wider definition of foreigner as per foreigners act, but they have special status and for their safety they should not be deported to their original country.

From perusal of the documents filed I find that UNHCR issued identity cards in favour of all the five accused persons named above. Myanmar Rohingya Refugee Committee, Jammu and Kashmir, India also issued certificate and letter that the accused persons are resident of Jammu and Kashmir for the past two years before their arrest. I also find that UNHCR, New Delhi issued certificates in their favour that they are refugees and they should be protected from arbitrary detention and forced return.



In 1982, Myanmar passed a new citizenship law that did not recognize Rohingyas as "one of the national races" and required them, as well as anyone else who sought citizenship, to submit "conclusive evidence" of their ancestral links to the country. This put the onus of proof on the applicant and left the decision entirely in the hands of government authorities.

Sheikh Abdul Aziz vs State NCT of Delhi case, based upon the direction of the High Court, the Government determined the status of the accused as stateless. The court then issued the rule that the accused persons are to be issued identity certificates on the basis of which they could apply for long term visas.

But in the present case, the accused persons already have such identity cards issued by UNHCR valid in India and on the basis of which they could apply for visas to be enabled to stay in India. They have not entered India or Bangladesh as emigrant for economic reasons but they were forced to leave their country and they are not recognised by their home country as its residents.

As such, I think they are not in the sense foreigners as per the definition of Foreigner as per Foreigner in wider connotation of the term.

So, I think these five accused persons should be discharged and released from this case as early as possible.

Hence, it is,

ORDERED

That the petition under Section 239 of Cr.p.c be considered and allowed on contest but without cost.

All these five accused persons, namely-Nuresha khatun, Md Alam, Jalal Ahmed, Abdul karim, Hamid Hossain, are discharged of the case under Section 239 of Cr.p.c as the charge against the accused persons found to be baseless which is discussed in the foregoing paragraphs in the body of the order.

Accordingly, issued release warrant at once.

SD/- (Indrajit Deb)

**S. M. 3rd Court
Berhampore, Murshidabad**





No. ३४९ - ५५

Dated, Dharmanagar
The 29th day of March 2018

Copy of order dated 29.03.2018 in c/w Case no PRC (WP) 21 of 2018 is forwarded to:

1. The District Magistrate & Collector, North Tripura, Dharmanagar, for his kind information.
2. The SP (DIB), North Tripura, Dharmanagar for his kind information and for the needful.
3. Sri T R Dhar, Ld APP.
4. Sri T K Paul, Ld Remand Advocate.
5. The Court Inspector, Dharmanagar, North Tripura, for information and compliance.
6. The accused persons for their ready reference.

R
.. 29.03.2018
Chief Judicial Magistrate
North Tripura, Dharmanagar.
Chief Judicial Magistrate
North Tripura : Dharmanagar



Present: S. Nath
Chief Judicial Magistrate
North Tripura, Dharmanagar

Case No. Misc Juv 02 of 2018
(PRC (WP) 21 of 2018)
The State of Tripura Vs Md Ibrahim and another

| | |
|---------------------|----------------------------------|
| For the Prosecution | Sri T R Dhar, Ld APP |
| For the Defence | Sri T K Paul, Ld Remand Advocate |

29.03.2018

Received the charge sheet from DGR PS vide DGR PS C/S No.01/2018 dated 29.03.2018 against [1] Md Ibrahim, [2] Md Ashin, [3] Md Jahangir, [4] Dilwara, [5] Nur Fatema and [6] Janna Tara US '3 of IPP Act' r/w S 14 of the Foreigners Act.

Entries in GR is made vide no GR 11 of 2018.

Cognizance is taken US 3 of the Passport (Entry into India) Act, 1920, and US 14 of the Foreigners Act, 1946.

Amongst the said persons Md Ashin and Md Ibrahim as it appears from the charge sheet are adult and shall come under the purview of the proceedings in this Court.

Other afore named persons as it appears from the charge sheet are minor and shall come under the purview of the proceedings in the Juvenile Justice Board.

As the priority of the children in conflict with law comes first hence the case should have been first dealt by the Juvenile Justice Board, but the IO submitted charge sheet in this Court.

However, for avoiding unnecessary delay the case is dealt with first in this Court against the accused persons Md Ashin and Md Ibrahim.

The said accused persons are produced.

Prosecution copies are furnished to the accused persons.

Ld APP is present.

Ld Remand Counsel Sri T K Paul appears and submit a petition bearing no for discharge of the accused persons.

In support of the said petition Ld Remand Counsel submitted to appointment notification dated 22.03.2018 of UNHCR whereby the said accused persons and the other children in conflict with law are assigned to appear for

- - Contd - -

interview on 11.05.2018 for refugee status determination before UNHCR OCM Delhi.

Ld Remand Counsel submits original refugee identity card issued to Etahan, Amar Faruk and Md Abdul Shukur, the next kin of the said accused persons and the children in conflict with law.

Moving the above petition Ld Remand Counsel submitted as follows:

i) The said accused persons were made target of mass persecution with their family members in Myanmar in the civil war in the said country.

ii) The next kith and kin as mentioned of the said accused persons and the children in conflict with law are given refugee status by UNHCR and they are residing in India and to avail this shield the said accused persons and the children in conflict with law entered into India and are given appointment by UNHCR for interview to determine refugee status, the interview being assigned to be held in Delhi Office of UNHCR and the accused persons and the children in conflict with law were traveling to avail the same.

iii) The offences alleged are baseless and as the said accused persons and the children in conflict with law under the circumstances of the case are victims of mass violence in their country and are seekers of status of refugee in the country and under the UN mandate they were in the process of getting the status of refugee from appropriate authority.

With these submissions Ld Remand Counsel prayed for discharge of the accused persons.

Prosecution opposed the prayer for discharge and submitted that if it is decided hurriedly that there is no material under the offences alleged the same may be detrimental to the provisions of law as the trial only can reveal the fact.

Considering the materials on record and submissions of both the sides I am of the following opinion:

(i) S 14 of the Foreigners Act, 1946, lays down that

"Whoever—

(a) remains in any area in 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 subsection (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him."

S 3 (2) of the Passport (entry into India Act), 1920, lays down as follows:

"Without prejudice to the generality of the foregoing power such rules may

(a) prohibit the entry into India or any part thereof of any person who has not in his possession a passport issued to him;

(b) prescribe the authorities by whom passports must have been issued or renewed, and conditions with which they must comply, for the purposes of this Act; and

(c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provided of such rules"

S 3 (3) of the Passport (Entry into India Act), 1920, lays down that "Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both."

(ii) From the documents submitted by the defence it appears that the accused persons were traveling to attend interview of refugee status determination process in the UNHCR Registration Centre, C-543, Vikaspuri, New Delhi-110018, and there is no reason why the same should not be relied upon.

(iii) Thus it appears that no element of offence reflects under the offences alleged in the record and in the opinion of the Court if the prosecution case remains

without rebuttal the same shall not automatically lead to conviction of the accused persons.

Hence, the accused persons are discharged.

The seized money and the personal property of the accused persons be handed over to them.

Make entries.

The accused persons being in the fringe age group of adulthood hence they may be allowed to go with their brothers aforesaid.

On query the accused persons happily informed that they would go with their brothers aforesaid.

The proceedings against the children in conflict with law shall be dealt with by the Juvenile Justice Board.

Send the record to the Juvenile Justice Board for the needful.

Annex the supplementary case record initiated with the main record.

As the matter involves international refugee issues hence send copy of order to the Ld District Magistrate, North Tripura, Dharmanagar, for his kind information.

For protection of the accused persons and the children in conflict with law and related issues as to security send copy of order for information regarding the matter to the SP (DIB), North Tripura, Dharmanagar.

Provide a copy of this order free of cost to the prosecution, Ld Remand Counsel and the accused persons, as under the circumstances of the case the Court deems it proper to provide quick information thereby.

Inform the Court Inspector, Dharmanagar, North Tripura, for the needful regarding the seized money and personal property.

Comply immediately.

As dictated.

Sel-

Sel -
(S Nath)

अर्जंट / साधा
अर्ज नंबर 104/२०१८
एकूण पाने ७
लिहिणावळ ४
एकूण रुपये २८/-

अर्जदार T. G. Gain
यांना नक्कल दिली

नक्कलेचा अर्ज. २०११/२०१८
अर्जाची पूरता २३/१/२०१८
प्रमाणे

१०४

सहा. अधीक्षक
प्रथम वर्ग न्यायादंडाधिकारी फौजदारी
न्यायालय क्र. ३

दिनांक १ FEB 2018

नक्कल तयार दिनांक १ FEB 2018

१०४

सहा. अधीक्षक
प्रथम वर्ग न्यायादंडाधिकारी फौजदारी
न्यायालय क्र. ३ पुणे

१ FEB 2018

१०४

सहा. अधीक्षक
प्रथम वर्ग न्यायादंडाधिकारी फौजदारी
न्यायालय क्र. ३ पुणे

१ FEB 2018



Accused :

Thiotros Girme Gain
Age: 39 yrs, Occ: Service
R/at: A-31, Ragvilas Society,
Koregaonpark, Pune.

Offence Punishable Under Sections 14 of the Foreigner's Act

Appearance : Learned A. P. P. Shri. A. K. Pacharne for the State.
Learned advocate Shri. Sanjay K. Gandhi for the accused.

JUDGMENT

(Delivered on this 16th day of January 2018)

The accused is facing trial for the offence punishable under sections 14 of the Foreigner's Act.

2) Prosecution case is summarized as under -

That the informant police hawaldar Ajay Gangaram Pawar has lodged the FIR against the accused on 05/07/2010 alleging that the

P. Gain

Instituted on : 01/01/2011
 Registered on : 01/01/2011
 Decided on : 16/01/2018
 Duration : 07Y,0M,15D

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
(COURT NO.3), PUNE.
 (Presided over by Shri. P. T. Gotey)

RCC No. 1/2011
CNR NO: MHPU04-000552-2011

Exh. 26

Prosecution : State of Maharashtra,
 Through Police Station Officer,
 Bundgarden Police Station, Pune

- VERSUS -

Accused : Thiotros Girme Gaien
 Age:39 yrs, Occ: Service
 R/at: A-31, Ragvilas Society,
 Koregaonpark, Pune.

Offence Punishable Under Sections 14 of the Foreigner's Act

Appearance : Learned A. P. P. Shri.A. K. Pacharne for the State.
 Learned advocate Shri. Sanjay K. Gandhi for the accused.

JUDGMENT

(Delivered on this 16th day of January 2018)

The accused is facing trial for the offence punishable under sections 14 of the Foreigner's Act.

2) Prosecution case is summarized as under -

That the informant police hawaldar Ajay Gangaram Pawar has lodged the FIR against the accused on 05/07/2010 alleging that the

Gotey

accused is Foreigner and he was found residing illegally at P-31, Ragvilas society, Koregaon Park, Pune. As per secret information police Hawalwar Ajay Pawar along with the other employees have visited the above address of the accused and on inquiry with the accused he was not having passport, visa and residential permit. The accused is residing in India since 1992. On the basis of FIR crime no. 3324/2010 is registered against the accused.

- 3) Investigation of the said crime is carried out by API S.A.Mahadik During investigation, he arrested the accused, recorded statements of concerned witnesses and after completion of investigation submitted charge-sheet against the accused for the offence punishable under sections 14 of the Foreigner's Act.
- 4) The charge is framed against the accused at Exh 11. Contents of the charge were read over and explained to the accused to which he pleaded not guilty and claimed to be tried vide his statement recorded at Exh.12. The prosecution has examined in all two witnesses. Statement of the accused as required by section 313 of the Code of Criminal Procedure is recorded at Exh.22. Defence of the accused is of total denial. As per his defence he is refugee and also having passport, visa and residential permit. He has filed on record those verified documents, however, he has not examined any defense witness.
- 5) Heard learned APP Shri. Pacharne for the State and learned advocate Shri. Sanjay K. Gandhi for the accused. Considering the charge, prosecution evidence and submissions of both parties following points

arise for determination. I recorded my reasoned findings against them as follows -

| Sr. No. | Points | Findings |
|---------|---|--------------------|
| 1 | Does the prosecution prove that, accused being foreigner entered in India without valid passport, visa and residing at Koregaon Park without residential permit and thereby committed an offence punishable under section 14 of Foreigners Act 1946 ? |No. |
| 2 | What Order ? | As per final order |

REASONS

BOTH POINTS TOGETHER:-

- 6) In order to prove the guilt of accused prosecution has examined following witnesses.

| | | | |
|---|----------------------|---------|---------|
| 1 | Ajay Gangaram Pawar | Witness | Exh.14 |
| 2 | Shankar Aana Mahadik | Witness | Exh. 31 |

- 7) As per evidence of Ajay Pawar (Pw1) on 05/07/2010 he was working as Police Head Constable, at Special branch, Foreigner's registration department. On that date he has received the information that the citizen of Eritrea country is residing illegally at Koregaon Park. He has produced information to police inspector Prakash Shah. Thereafter, he along with the other employees went to the society as stated in the information where the accused is found. They inquired about the accused about his passport, visa and residential permit. However, the accused was not having anything. Thereafter, they

Pawar

brought the accused at their office. The senior officers of police have also inquired about the accused. The accused is residing at Koregon park since 1992. He used to change his residence. Therefore, Ajay Pawar (Pw1) has lodged the report against the accused (Exh.15).

8) The report of Ajay Pawar (Pw1) is taken by Mahadik (Pw2), the then API serving at Koregaon Police chowky. On the basis of report printed FIR (Exh.20) is registered. Mahadik (Pw2) has arrested the accused and submitted the report to senior police inspector vide Exh.21. He has recorded the statements of witnesses and submitted the charge sheet against accused.

9) As per the case of prosecution the accused is the citizen of Eritrea country but residing illegally in India without passport, visa and residential permit. It is admitted by Ajay Pawar (Pw1) that he has not prepared any panchanama at the place where the accused was residing. So also , the statement of neighbors also not recorded. He has also not inquired about the entry of the passport of the accused in their office. So also, he has not inquired about the accused at the office at Embassy at Eritrea. Mahadik (Pw2) has also not recorded the statements of neighbors of accused. He has also not inquired about the accused at the Embassy of Eritrea .

10) As per the defence of the accused he is refugee having the identity card issued by United Nations High Commissioner for Refugees. So also, he has filed on record Refugees certificate, verified copy of his passport as well as residential permit. On his perusal it appears that the accused is residing in India since 1992 as refugee and having passport as well as residential permit extended time to time.

11) Ld. APP Shri Pacharne submitted that the accused being

citizen of Eritrea found illegally residing at Koregoan park without passport, visa and residential permit. He further submitted that at the time of inquiry by Ajay Pawar (Pw1) no documents were found with the accused. He further submitted that the burden with the accused to prove his innocence as it is within his knowledge. He further submitted that the prosecution has proved the offence through the evidence of prosecution witnesses. Accordingly, he prayed for conviction of the accused.

12) On the other hand ld. advocate Shri Gandhi submitted that the accused is a refugee and having passport, visa and residential permit. He further submitted that the police have shown all the documents at the time of inspection. However, Ajay Pawar (Pw1) has lodged false report. He further submitted that no doubt the accused is a foreigner but he being the refugee his protected from the legal action under the passport act. He has relied on the Judgment of Kerala High Court in case of Premanand and another Vs. State of Kerala reported in 2013 (3)KLJ 543. In this case it was held that;

'Where a person is forced to leave his mother country for the reason of being persecuted for one or other reason stated under the above definition, and takes refugee in our country a number of factors have to be taken into account in considering the applicability of the laws like Foreigners Act and the Orders thereunder against such person though he too falls within the definition. "foreigner" as not as citizen of India. He stands on a different footing from a foreigner or any illegal emigrant who entered the country without valid passport or travel document. Though the definition 'foreigner' under the Foreigners Act takes in a refugee also the circumstances under which he was forced to leave his mother country and

Hately

given the status of refugee on entry into the country, necessarily have to be country and given the status of refugee on entry into the country, necessarily have to be given due consideration taking note that every single situation pertaining to refugees is given due consideration taking note that every single situation pertaining to refugees replete with human rights as well. But all the same too much humanitarian consideration in the case of refugees is also not possible without having regard to the considerations of national security. We cannot overlook the security aspects involved, more so in the present scenario where external agencies with the aid of anti national elements inside the country are making attempts of destabilise the foundation of the republic. A dispassionate view having regard o the security considerations and also human rights issues involved has to be taken in matters connected with the refugees by the law enforcement agencies and more so by the courts when any issue relating to them arise for consideration.'

13) No doubt as per the oral evidence of prosecution witnesses the accused was found residing at Koregaon park on 05/07/2010. However, he accused has filed on record verified copies of his passport, residential permit, refugee certificate and identity card. The residential permit of accused is extended by time to time by the local police. He is refugee. Therefore, as per the ration laid down in the case of Premanand (cited supra) stands on different putting from a foreigner or any illegal emigrant who entered the country without valid passport or travel document even though he falls within the definition of foreigner.

14) It is also pertinent to note that both the witnesses have not inquired about the documents of accused at the office of special branch of police. So also, they never inquired with the Embassy of Eritrea. The

accused has discharge his burden by showing that he is refugee . He cannot be forced to go to Eritrea. Therefore, he cannot be held guilty for the offence punishable of 14 of the Foreigners Act. The prosecution is fail to prove the offence leveled again accused. Accordingly, I answer point no. 1 in the negative. I hold the accused not guilty and in answer point no. 2 pass following order.

O R D E R

- 1) Accused Thiotros Girme Gaien is acquitted of the offence punishable under section 14 of the Foreigners Act vide section 248(1) of Code of the Criminal Procedure..
- 2) His bail bond stands cancelled.
- 3) The accused is directed to furnish personal bond and surety bond of Rs.10,000/- vide section 437A of the Code of Criminal Procedure.

(Dictated and pronounced in open court)

Date: 16 /01/2018
Place : Pune

Smt (P. T. Gote), (61118)
Judicial Magistrate First Class,
(Court No.3) Pune

signed by



TRUE COPY
Additive
Asstt. Supdt.
J.M.F.C., Court No.3-Pune
1 FEB 2019



HEADING OF JUDGMENT

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS, BANGAON,
NORTH 24 PARGANAS

PRESENT: DR. SHIVI SRIVASTAVA

J.O. CODE: WB 01140

SS
DATE: 19/07/2023

G.R. CASE No. 2060/2017 (Old G.R. Case No. 1409/2017)

CNR NO. WBNP07-001796-2017

U/S. 14 of the Foreigners Act

State of West Bengal

VERSUS

- P. NO.
971
19/07/23
- 1. Sayed Noor
 - 2. Laila Begum
 - 3. Md. Rafique
 - 4. Jamila Begum

... Accused

JUDGEMENT

1. Facts and Development of the case

(a) The de facto complainant PSI Biplab Sarkar of the Gaighata P.S. made a suo motu written complaint on 10/06/2017 wherein he alleged that on 10/06/2017, at about 14:05 hrs., he received an information that some Bangladeshi Nationals were loitering aimlessly at Chandpara Patpatty More under P.S. Gaighata, that he along with the RT Officer ASI Biswajit Das, Force Constable 1767 Gopal Ch. Ghosh, Constable 807 Prabir Ghosh, Lady Force Constable 1997 Minakshi Biswas and Constable Nazima Mondal, all of the Gaighata Police Station, left the police station to act upon the said information, after apprising the Officer-in-charge of



the said police station and that this referred to GDE No.. 693 dated 10/06/2017.

(b) On the basis of the said First Information Report a Gaighata P.S. Case being No. 563 dated 10/06/2017 was initiated under Section 14 of the Foreigners Act.

(c) Subsequently, the case was endorsed to a Sub Inspector namely Manas Chakraborty of the Gaighata Police Station for investigation of the allegations in the complaint. The investigating officer submitted the charge-sheet against the above-named accused vide C.S.No.446 dated 15/06/2017 for the offence punishable u/S. 14 of the Foreigners Act. On submission of the charge-sheet, after serving copies to the accused, the case was transferred to and received by this Court on 28/09/2017 for trial and disposal. On receipt of the caserecord, the accused appeared before this Court and the record was taken up for consideration of charge on 02/04/2019 for commission of offence punishable u/S. 14 of the Foreigners Act. Upon examination under Section 240 of the Cr.P.C., the substance of the accusation against them punishable under the above quoted provisions was explained to the accused and they individually pleaded not guilty to the same and claimed to be tried. Accordingly, the trial proceeded and the matter was fixed for recording of evidence.

(d) During trial, the prosecution examined 06 (six) witnesses and tendered the following documents having been marked as:

Exhibit 1 – The written complaint;



Exhibit 1/1 - the signature of the *de facto* complainant on the complaint;

Exhibit 2 - Signature of the Receiving Officer Assistant Sub-Inspector Goutam Mondal of the Gaighata Police Station on the formal F.I.R.;

Exhibit 3 – Rough sketch map and signature of the I/O Manas Chakraborty thereon as a whole

Thereafter the prosecution evidence was closed.

- (e) The statement in defence of each of the accused was next recorded in separate sheets of paper, upon their examination as per the mandate of Section 313 of the Criminal Procedure Code, 1973 wherein the accused denied the entire allegation and all the statements given by PW1 to PW6 against them.
- (f) The Defence examined sole witness, the accused no.1 Syed Noor as the DW1 and the following documents were tendered in evidence by the DW1:

Exhibit A in series: Photocopies of the UNHCR Refugee Card Receipts of Accused Md. Rafique, Syed Noor, Laila Begum and Jamila Begum and two photocopies of Refugee Certificates of the six minor children of the accused.

Objection was raised by the Prosecution against tendering of the above documents on the ground that the same were photocopies. However, the Court marked them and accepted the above-described photocopies of documents as secondary evidence since, as per the statement on oath of accused Syed Noor/DW1, the original of the said documents are filed in

the UNCHR Representation In India, Head Office situated at B-2/16, Vasant Vihar, New Delhi, and hence the original documents were beyond the power and custody of the under-trial accused who are in detention since the inception of this case, i.e., since the year 2017.

After the evidence of the DW1, the Defence Evidence and the evidence in the instant case was closed and the case was fixed for argument.

(e) Subsequently, the Court proceeded to hear the argument. The State of West Bengal as the Prosecutor, represented by the Assistant Public Prosecutor, Md. Alfaz-ur-Rahaman advanced his argument. However, the Defence did not advance any argument and the argument was closed and the case fixed for passing judgement.

2. Points for determination

On a perusal of the case record, the following points for determination have been formulated by this Court:

- (i) Whether the accused Syed Noor, Laila Begum, Md. Rafique and Jamila Begum have committed an offence punishable under Section 14 Foreigners Act? If so, its effect?
- (ii) Whether the accused are Rohingya refugees? If so, its effect?

3. Summary of the evidence adduced by the Prosecution

(a) The Prosecution, having the burden of proof, produced as many as 6 witnesses being:

- (i) the de facto complainant Biplob Sarkar, W.B. Police, as the P.W.1;
- (ii) Biswajit Das, W.B. Police, as the P.W.2;

- SEAL OF THE COURT
- (iii) Gopal Chandra Das, W.B. Police, as the P.W.3;
 - (iv) Nazima Mondal, LC 270 of LOR Bangaon PD as the P.W.4;
 - (v) Goutam Mondal, ASI W.B. Police, as the P.W.5;
 - (vi) Manas Chakraborty, Sub-Inspector of Police, Barasat Police Station, as the P.W.6

(b) (I) Statement of the PW1

(i) In his examination-in-chief, the P.W.1, Biplab Sarkar, W.B. Police, deposed that on 10/06/2017, he was posted at Gaighata P.S., that on the said date, at around 14:05 hrs., he received an information that some people were moving about aimlessly at Chandpara Patpati More under the Gaighata P.S., that he immediately informed his superior and as per his direction, the P.W.1, along with his force, went to the spot, that he reached the spot at 14:40 hrs. and detained those people and some babies, that on enquiry the said people disclosed that they all had come to India in a clandestine way through Bangladesh and that they all are citizens of Myanmar. The P.W.1 further deposed that the said intercepted people couldn't produce any valid document for entering India, that he issued notice under Section 41 Cr.P.C. but to no avail and that he immediately arrested the said people/accused and brought them to the police station whereafter he lodged the written complaint himself by typing it and putting his signature thereon. The written complaint of the P.W.1 was marked as Exhibit 1 and his signature thereon as Exhibit 1/1.

(ii) In his cross-examination by the Defence, the P.W.1 stated that the duration of his posting in the Gaighata Police Station was from 18/05/2015 to 04/12/2018, that he couldn't narrate the details of all the raids that had

been conducted by him nor the details of all the complaints lodged by him, that there ought to be a copy of the notice under Section 41 A of the Cr.P.C. in the CD. He further stated that he had prepared the arrest memo on the spot, that in the arrest memo of Jamila Begum, the time of arrest is written as 15:50 hrs., in that of Laila Begum, the time is mentioned as 15:40 hrs., in that of Syed Noor, the time of arrest is written to be 15:35 hrs and in that of Md. Rafique, it is mentioned to be 15:45 hrs. He stated that one Priya Ranjan Mondal is the sole independent witness of the arrest, that Chandpara Patpatti More is a busy market place. The P.W.1 denied any knowledge of the United Nations High Commissioner for Refugee (UNHCR). He stated that India is a member of SAARC, that India is one of the members of UN Organisation and that he did not know the guidelines for refugees under the UNO. He stated next that to the eastern side of the place of occurrence runs the Jessore Road towards Habra, to the west is a road going towards Bangaon, to the north are some shops and two the south is a temple and a road leading towards Jhaudanga. The P.W.1 stated that he was interrogated by the I/O, that in his complaint, it has not been mentioned that it has been typed by him and that it was typed on his office computer, that he has not mentioned in his complaint the official vehicle number in which he and the Force members had gone to the spot, that it took them around 20 to 30 minutes to reach the spot. He denied the Defence suggestion that he had filed a false case as per directions of his superior officer without proper verification or that he never went to raid the place of occurrence.

(II) Statement of the P.W.2



- (i) In his examination-in-chief, the P.W.2, Biswajit Das, W.B. Police, deposed that on 10/06/2017, he was posted at the Gaighata P.S., that on the said date, he had accompanied his superior Biplab Sarkar in a raid at Chandpara Patpati More under Gaighata P.S., that as per his said superior's direction, he and the other raid party members detained some people (the accused) and that the accused disclosed that they were Rohingyas and that, as per his superior officer's direction, he and the other force members arrested them and brought them to the police station. He identified all the accused in the courtroom.
- (ii) In his cross-examination, the P.W.2 stated that he has been posted in the Gaighata Police Station from February 2016 till the date of his deposition, that he could not narrate the details of all the raids carried out by him. He further stated that Chanpara Patpatti More is a busy market place, that he couldn't say the number of the vehicle by which he and the other members of the Force hd gone to the spot and that they might have returned at around 15:10 hrs. from the spot. The P.W.2 next stated that he could not say who had signed the arrest memo as independent witness. He denied the Defence suggestion that he was depositing falsely as per the instructions of his superior, or that he never went in an raid with his superior or that the accused were never arrested by him and the other police officers in the raid at the alleged place of occurrence.

(III) Statement of the P.W.3

- (i) In his examination-in-chief, the P.W. 3, Gopal Chandra Das, W.B. Police, has deposed that on 10/06/2017, he was posted at the Gaighata

P.S., that he was on RT duty with his superior officer ASI Biswajit Das, that thereafter, he accompanied his superior to Chandpara Patpati More and detained two males and two females, i.e., the accused along with the kids who had been moving around suspiciously, that since the accused couldn't produce any valid documents, as per the instruction of his superior officer, he and the other force members brought all of them to the police station. He identified the accused in the courtroom.

(ii) In his cross-examination, the P.W.3 expressed his inability to say the names of the accused. He next stated that he had taken part in many raids when posted at Gaighata, that he couldn't narrate the details of all the raids, that he could not show any documents to show that he was, at the relevant point of time, on RT duty, that he couldn't sat the number of the vehicle in which he went to the spot. The P.W.3 further stated that he could not say what was the exact date of his interrogation by the I/O. He denied the Defence suggestion that he became a witness in this case as per instructions of his Superior, or that he wasn't involved directly in this case, or that he was not a part of the raid held on 10/06/2017. He further denied the suggestion that he never went to Chandpara Patpatti More and detained 2 males and 2 females along with small children moving around suspiciously or that the accused could produce valid documents or that they were arrested merely to please his Superior Officer or that he had deposed falsely.

(IV) Statement of the P.W.4

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(i) In her examination-in-chief, the P.W.4, Nazima Mondal, LC 270 of LOR Bongaon PD deposed that on 10/06/2017, she was posted at Gaighata on the self-same post, that on the said date, she along with PSI Biplab Sarkar got an information that two women, two men and six babies were found loitering suspiciously at Chandpara Patpatti More, that thereafter, she, along with PSI Biplab Sarkar and two to three other constables went to the said location at 2:00 to 2:05 P.M. and enquired from the said men and women (the accused) about their identity and wherefrom they all had come and what was their destination, that upon such enquiry from the accused, she and the other police personnel got the information that the accused and children had come from Myanmar through Bangladesh to India, that thereafter the accused were arrested and brought to the Gaighata P.S. and thereafter produced before the Court and that their names are Sayed Noor, Laila Begum, Md. Rafique, Jamila Begum though she could not say the names of the 6 children.

(ii) In her cross-examination, the P.W. 4 state that there are many shops situated at Chandpara Patpatti More and the place is frequented by a large number of people, that on the date of arrest of the accused, as many as 10 people were present over there. She further stated that the de facto complainant PSI Biplab Sarkar made enquiry from a number of shopkeepers on the spot, that she could not recollect the registration number of the vehicle by which she along with the other police personnel had gone to the spot, that she could not say the name of any shop situated at the location. She further expressed her inability to say the date of her interrogation by the Investigating Officer. She next stated that all the enquiry on 10/06/2017 was made by PSI Biplab Sarkar and that she only was accompanying him. The P.W. 4 next identified the four accused.



standing on dock by taking their names correctly. She stated that the date of her evidence was the first when she was appearing and giving her statement as a witness. She went on to deny the Defence suggestion that she had stated falsely that on 10/06/2017, she, along with PSI Biplab Sarkar, got an information that two women, two men and six babies were found loitering suspiciously at Chandpara Patpatti More, or that thereafter, she, along with PSI Biplab Sarkar and two to three other constables went to the said location at 2:00 to 2:05 P.M. and enquired from the said men and women (the accused) about their identity and wherefrom they all had come and what was their destination, or that upon such enquiry from the accused, she and the other police personnel got the information that the accused and children had come from Myanmar through Bangladesh to India, or that thereafter the accused were arrested and brought to the Gaighata P.S. and thereafter produced before the Court. She denied the suggestion that she had deposed falsely as per directions of her Superior Authority.

(V) Statement of the P.W.5

(i) In his examination-in-chief, the P.W.5, Goutam Mondal, ASI W.B. Police, at present posted in the Bagdah P.S., deposed that on 10/06/2017, he was posted in the Gaighata Police Station as an ASI, that on the said date, a suo motu complaint made by PSI Biplab Sarkar was received by him as per instructions of the SI Gaighata P.S. Arindam Mukhopadhyay, and that, thereafter, the case was started and ASI Manas Chakraborty was assigned the work of investigation therein.

(ii) In his cross-examination, the P.W.5 stated that apart from having received the complaint of the instant case, he did not have any personal knowledge regarding the case.

(VI) Statement of the P.W.6

(I) In his examination-in-chief, the P.W.6 Manas Chakraborty, Sub-Inspector of Police, Barasat Police Station has deposed that on 10/06/2017, he was posted at the Gaighata Police Station as an Assistant Sub-Inspector of Police, that on that day, Sub-Inspector Arindam Mukherjee received a source information that some unknown people, that is, the accused and their children, were moving around suspiciously at Chandpara Patpatty More, that then PSI Biplab Sarkar, ASI Biswajit Das, Constable 1767 Gopal Chandra Das, Constable 807 Prabir Ghosh, Lady Force Constable 1997 Minakshi Biswas and Constable 2026 Nazima Mondal reached the location at about 14:40 hrs., that they saw some people including ladies (the accused with children) assembled at Chandpara Patpatti More, intercepted them, arrested them and brought them to the Gaighata Police Station, that they interrogated the accused and they said that they are the citizens of Myanmar. The P.W.6 has further deposed that then was issued to the accused, a notice under Section 41A Cr.P.C., that at the police station, the formal F.I.R. was filled up by ASI Goutam Mondal and that thereafter, the O/C S.I. Arindam Mukherjee endorsed the case to the PW6 for investigation thereof. The PW6 has next deposed that after being given the responsibility of investigation, he went to the Chandpara Patpatti More to fix the place of occurrence then recorded the statements under Section 161 of the Cr.P.C. of ASI Biswajit Das, Constable 2026 Nazima Mondal,



Constable 1767 Gopal Chandra Das, Constable 807 Prabir Ghosh and PSI Biplab Sarkar, that thereafter, he prepared a sketch map at the place of occurrence, i.e., Patpatti More consisting of 2 sheets and bearing his signature, (Exhibit 3) that thereafter, he returned to the Police station and interrogated the arrestees, i.e., the accused, readied the forwarding application and sent the same to the Ld. Court of the A.C.J.M. Bongaon and that as per orders of the superioirs, he submitted the final report/charge sheet being no. 446 dated 15/06/2017 in Gaighata P.S. Case No. 563 dated 10/06/2017 under Section 14 Foreigners Act against accused being Syed Noor, Laila Begum along with three lap babies, Mohd. Rafique and Jamila Begum along with three lap babies.

(ii) In his cross-examination, the P.W.6 stated that Patpatti More is a crowded place, that at 14:40 hrs. when he went to the place of occurrence to record statements under Section 161 Cr.P.C., he couldn't record any statement of any independent witness because no-one was willing to give any statement to him. He denied the Defence suggestion that he had not recorded the statement of the de facto complainant. He next stated that he did not record any statement of the four accused named above, that no prayer was made by him before the Court for recording statements of the accused under Section 164 of the Cr.P.C.. He next stated that the accused had themselves informed him during interrogation that they are the citizens of Myanmar. He admitted the Defence suggestion that he had not been able to produce any evidence before the Court to show that the accused are the citizens of Myanmar. He denied the Defence suggestion that he had stated falsely that he had interrogated the accused regarding their identity or that they said to him that they are the citizens of Myanmar. He also denied the Defence suggestion that beginning from the F.I.R till the Charge Sheet, all

that has been submitted by him is false, pre-planned or a product of desk-work. He denied the suggestion that he had deposed falsely.

4. Summary of the Evidence adduced by the Defence

(a) The Defence adduced the evidence of the Accused no. 1 as the sole witness. The accused no. 1 Syed Noor, during his examination-in-chief tendered in evidence, photocopies of the UNHCR refugee card receipts granted to them and the refugee certificates issued in favour of their 6 children which were marked as Exhibit A series, as detailed above. He stated that in the year 2017, he and the rest of the accused were interviewed while they were in the DUM DUM Correctional Home by an official of the UNHCR New Delhi Head Office and that they told her that they are Myanmar Nationals who have been compelled to flee from their country in the face of persecution by their own government. He further stated that thereafter, in the year 2018, the original refugee card receipts and refugee certificates were shown to the accused and photocopies of the same (Exhibit A in series) were handed over to each of them respectively while the originals were deposited in the Head Office at New Delhi.

(b) In his cross-examination by the Prosecution, the D.W.1 stated that his home is situated in Myanmar. He further stated that he and the other accused and their children do not want to go back to Myanmar because of threat of persecution by the ruling government of Myanmar. He stated that he does not know that India is not a member country of UNHCR. The next statement of the accused was that he and each of the rest of the accused had made an application before the concerned authority in New Delhi expressing their intention and desire to live in the Refugee Camp

over there but no result/response to their said applications has been received as yet by them.

5. Reasoned Findings

(a) The material on record, the evidence of the parties and the argument advanced have been carefully considered by this Court. It is significant to observe that the Defence chose not to argue. Accordingly, first of all, it would be pertinent to address some key arguments advanced by the State while gradually arriving at findings on the points for determination. The State represented by Md. Alfaz-ur-Rahaman, the Assistant Public Prosecutor opened the argument by summarizing the *suo motu* F.I.R. lodged by PSI Biplob Sarkar. He directed the Court's attention towards Section 9 of the Foreigners Act and submitted that the accused had the burden of proving that they are not foreigners of any particular class. He went on to argue that since the accused had entered India by illegally crossing the India Bangladesh border without any valid documents, they were guilty and deserved conviction and punishment as prescribed under Section 14 Foreigners Act, 1946.

(b) As regards the argument advanced by the prosecution regarding Section 9 of the Foreigners Act 1946, in a nutshell, the said provision stipulates that in a case not falling under Section 8 of the Act, when there arises a question as to whether a person is a foreigner or not, the onus of proving that the person is not a foreigner is on the person concerned. The Foreigners Act 1946, is a pre-independence era legislation that was enacted for regulating the entry, presence and departure of foreigners into and from India, section 2(a) defining a 'foreigner' to mean a person who is not a citizen of India. However, what is remarkable is that the Act per-se does not prescribe any methodology for detection or any mechanism for identification of foreigners which makes the role of The

Foreigners Order 1948 cardinal to the understanding of the Act. In actual fact, these so-called foreigners are mostly faceless human beings without any apparent record of their "infiltration". They are charged with having infiltrated predominantly from a specified territory, i.e., the present day Bangladesh. This charge is based on their ethnic character and their linguistic background even though similarity of both language and ethnicity is found from both sides of the border- in Bengal and Bangladesh. These 'facts' make their 'detection' apparently more complex. These people have entered India, crossing the supposedly porous borders and have intermingled with the citizens of the country. However, what is to be remembered is that the borders are not entirely open and do not permit free or entirely free access. Section 9 of the Foreigners Act, 1946 has a very important bearing on the determinations made under the Act. Section 8 of the Act deals with the issue of determination of the nationality of two categories of foreigners: (i) those having more than one nationality, (ii) those of uncertain nationality, by the central government. The instant case does not come under the purview of Section 8. Section 9, by implication, excludes cases under Section 8 and appears to pertain to foreigners, whose specific foreign nationality is attributable with a certain amount of certainty, but where the said foreigner disputes the allegation that he is a foreign national and claims to be a citizen. In the instant case, no claim was made in defence by any or all of the accused that they are Indian citizens. From the length and breadth of the F.I.R., the evidence of the P.W. and even from the examination of the accused under Section 313 and the evidence of the D.W., what is amply borne out is that the accused, each and all of them are Myanmar nationals and not Indians. Thus the fact that the accused are Myanmar nationals is admitted and hence no further proof of it is required. The Accused no. 1 as the D.W.1, already discharged the onus under Section 9 of the Foreigners Act by



deposing on oath that he and each of the other accused is a Myanmar national. Exhibit A series is ample proof of the same.

(c) As regards, the argument of the Prosecution that the accused deserve conviction under Section 14 Foreigners Act, this issue shall be decided after findings on Point No. 1 below.

(d) Point No. (i)

a. What has to be seen is that whether the accused have committed an offence punishable under Section 14 of the Foreigners Act or not. Section 14 reads as below:

"14. Penalty for contravention of provisions of the Act, etc.-Whoever-

(a) remains in any area in 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 thereof or show cause to the satisfaction of the convicting Court why such 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)."

b. From the evidence of the Prosecution, especially that of the de facto complainant/P.W.1, the police officer who apprehended the accused

and made the FIR to the effect that the accused had entered illegally into India through Bangladesh without any valid documents for such entry coupled with the evidence of the Investigating Officer/P.W.6 it is clearly borne out that the accused, all four of them and their 6 children are all Myanmar nationals. In their examination under Section 313 of the Cr.P.C., the accused, each of them, refused to comment on the evidence of the prosecution witnesses and each of them simultaneously stated that he/she and their children are all Rohingya Refugees. The D.W.1/accused no. 1 Syed Noor tendered in evidence the UNHCR Refugee Card Receipts of Accused Md. Rafique, Syed Noor, Laila Begum and Jamila Begum and two photocopies of Refugee Certificates of the six minor children of the accused which were marked as Exhibit A in series as secondary evidence. From the Exhibit A series, it is amply borne out that the accused are Myanmar nationals. At the same time, what also comes to the forefront is that admittedly, the accused did not possess any visa or passport as they entered into India through the India Bangladesh border. Thus, the accused, each of them have not fulfilled the requirements under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920). Not only that the accused Syed Noor, Laila Begum, Md. Rafique and Jamila Begum are hereby also found to have violated the provisions under Rule 3 (1) of the Foreigners Order, 1948 by not seeking permission of entry into India from the appropriate civil authority and are further found to have acted in contravention of Rule 3B of the Foreigners Order 1948 by not holding a valid passport or other valid travel document relating to passport, as the case may be, for living in India, both of which offences, thus proved to have been committed, entail their conviction under the



provision of sub-section (c) of Section 14 of the Foreigners Act, 1946.

C. Point no. (i) is accordingly answered in the affirmative and against the Defence and in favour of the Prosecution.

(e) Point No. (ii)

a. That the accused Syed Noor, Laila Begum, Md. Rafique and Jamila Begum and their children are Myanmar nationals is an admitted fact. What has to be seen is that whether, as stated by each of the accused in his/her respective statements under Section 313, Cr.P.C., he/she and their 6 children namely Arafat Yasin (D.O.B. 01/01/2014), Abdul Rahman (D.O.B. 01/01/2012) and Yasmeen Akhtar (D.O.B. 01/01/2009), all three minor sons and daughter respectively of Md. Rafique and Jamila Begum, and, Mohammad Hassam (D.O.B. 01/01/2016), Mohammad Hussain (D.O.B. 01/01/2012) and Nur Ayesha (D.O.B. 01/01/2014), all three minor sons and daughter respectively of Syed Noor and Laila Begum, are Rohingyas or not and whether they are refugees or not. Admittedly, the accused are by religion Muslims and belong to Myanmar (Burma). Rohingya is a term used commonly to refer to a community of Muslims generally concentrated in Rakhine (Arakan) state in Myanmar, although they can also be found in other parts of the country as well as in refugee camps in neighbouring Bangladesh and other countries. From a comprehensive consideration of the evidence of the D.W.1, both oral and documentary, the accused totally qualify and fit into the description of Rohingya who are basically the Muslims of Myanmar. Rohingyas are effectively denied citizenship under Myanmar's 1982 Citizenship Law, rendering them stateless. Before the Rohingya genocide in 2017, when over 740,000 fled to

Bangladesh, an estimated 1.4 million Rohingya lived in Myanmar. It is widely known all over the world that the Rohingyas are one of the most persecuted minorities in the world and that there are also restrictions on their freedom of movement, access to state education and civil service jobs. The legal conditions faced by the Rohingya in Myanmar have been compared to apartheid by some academics, analysts and even the International Court of Justice in as much as the mass displacement of Rohingya in 2017 led the International Criminal Court to investigate crimes against humanity, and the International Court of Justice to investigate genocide. This bit of information is relevant to the instant case in as much as the accused herein came to India through Bangladesh with their children from Myanmar in the year 2017 and in 2018, while in the DUM DUM Correctional Home in India, they were granted UNHCR refugee cards and their minor dependent children UNHCR refugee certificates copies of which have been marked here as Exhibit A in series as secondary evidence. In each of the UNCHR refugee receipts of the four accused (Exhibits A1 to A4) the following is written in respect of each of the accused herein:

“The bearer of this card is a refugee under the mandate of the United Nations High Commissioner for Refugees. As a refugee, she/he should, in particular, be protected from arbitrary detention or forcible return to her/his country or to any other country where she/he would face threats to her/his life or freedom. During her/his stay in India, the bearer is subject to and has the obligation to respect national laws.”

Similarly, the minor children of the accused, named above, have been granted respectively the Refugee Certificate by UNHCR (Exhibits A5 and A6) wherein it is written in respect of the three children of accused

Syed Noor and Laila Begum and the three children of accused Md. Rafique and Jamila Begum respectively as follows:

"This is to certify that the below named persons have been recognized as refugees by the United Nations High Commissioner for Refugees, pursuant to its mandate... As refugees, they are persons of concern to the Office of the United Nations High Commissioner for Refugees, and should, in particular, be protected from forcible return to a country where they would face threats to their life or freedom. Any assistance accorded to the below-named persons would be most appreciated..."

A refugee may be defined as a person who has lost the protection of his or her country of origin and who cannot or is unwilling to return there due to well-founded fear of persecution. Such a person may be called an asylum seeker until granted refugee status by the contracting state or the United Nations High Commissioner for Refugees (UNHCR) if they formally make a claim for asylum. In the instant case, from their circumstances as evinced by the testimony of the D.W.1 and the Exhibit A in series, the accused along with their minor 6 children respectively are found to fit into the above-stated definition of the term Refugee. The Court is aware that India is not a member/contracting country of the UNHCR. However, despite India being a non-member of the UN Refugee Convention 1951, such position of India does not affect the refugee status conferred upon the accused and their children by the UNHCR by proper documents. Thus, it is established beyond reasonable doubt that the status of the accused and their 6 children is that of refugee, more particularly, Rohingya Refugee.

b. It would be significant to observe that the documents marked as Exhibit A in series were valid till 16th May 2020. Whether the refugee cards and refugee certificates were extended by the Head Office of the UNHCR Representation situated in New Delhi is a matter that is unknown. However, no adverse inference would arise against the accused and their minor dependent children nor would they be deprived of their refugee status from any non-extension, if such be the case, of the validity of their refugee cards and refugee certificates, for, as per the statement in cross-examination of the D.W.1/accused no.1, it is clearly found that each of the accused had made an application before the concerned authority in New Delhi expressing their intention and desire to live in the Refugee Camp but no result/response to their applications has been given till date by the UNHCR Representation, Head Office, New Delhi. Since 2017, the accused have been inmates as under-trial prisoners in the DUM DUM Correctional Home, West Bengal and their efforts to secure a place as refugees in the New Delhi based Refugee Camp have gone in vain. The validity of the refugee cards and the refugee certificates may or may not have expired, but no such expiry, would, by any stretch of imagination have the effect of taking away the status or identity of the accused and their children as Rohingya Refugees. Their basic human right still remains. Since the very inception, the entry of the accused and their minor children as Rohingyas in India, though not by legal means, in the year 2017, got converted into the status of a refugee under UNHCR. Mere non-extension on paper of the refugee cards or receipts does not reverse the status of the accused negatively. The Court cannot be unmindful of the fact that since 2017, the accused each of them, have been in the

Correctional Home, and, in the prevalent conditions in correctional homes in India and in the face of the fact that the accused are farmers of humble origin with little or no education or knowledge about the intricacies of law, whether national or international, it would not be unusual for them not being aware in the first place or even informed about their rights as refugees or the concept of validity of their refugee cards or renewal of the same. Besides, the Court is completely in the dark about the steps taken by the UNHCR Representation in India, Head Office New Delhi for the rehabilitation of the accused herein and their children. While adjudging the status of the accused, they ought not to be made to suffer for apathy and inaction by the concerned authority in New Delhi nor should they be prejudiced by the delay caused in the disposal of this case because of the long-drawn procedures of criminal trial and proceedings and they should not be made to pay the price for lack of information, resources and knowledge caused to them by the surrounding circumstances. Undoubtedly, from the evidence of the DW1, it is clearly found that the accused fled with their children from Myanmar to escape persecution at the hands of their own government. They may have entered illegally in India but they are not illegal migrants. Their status further got clarified with the issuance of the refugee cards and refugee certificates by the UNHCR. As a result, in the considered opinion of this Court, it is found that the UNHCR vide Exhibit A in series has already conferred refugee status on Accused Syed Noor, Laila Begum, Md. Rafique, Jamila Begum and of their minor dependents and children being Arafat Yasin (D.O.B. 01/01/2014), Abdul Rahman (D.O.B. 01/01/2012) and Yasmeen Akhtar (D.O.B. 01/01/2009), all three minor sons and daughter respectively of

Md. Rafique and Jamila Begum, and, Mohammad Hassan (D.O.B. 01/01/2016), Mohammad Hussain (D.O.B. 01/01/2012) and Nur Ayesha (D.O.B. 01/01/2014), all three minor sons and daughter respectively of Syed Noor and Laila Begum, and nothing remains to be determined any further in this regard. Thus, the above-named accused and their children are hereby found to be Rohingya Refugees. It is further found that in the face of their applications to the Head Office, UNHCR Representation in India, New Delhi seeking asylum in refugee camp being pending unanswered till date, they continue to hold their status as refugees and their refugee cards and refugee certificates (Exhibit A in series) are deemed to be extended pending a decision on their request for rehabilitation by the appropriate authority in New Delhi.

c. It would be pertinent to clarify the effect that flows from the refugee status of the accused and their children herein. First of all it would be relevant to clarify that India is not a member country of the UNHCR. However, India is a party to the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966 and thus, there is an obligation upon the country and its Courts to carefully preserve the sanctity of the principles of international law laid down therein. At the same time, it has to be remembered that this is a case where already refugee status has been conferred by the UNHCR upon the accused persons and their 6 minor children. What happens next is the question required to be answered now. To find the answer, we need to look into the Constitution of India and find out whether it has anything to afford protection to the non-Indians. Thus we find that, in the Indian Constitution, the basic

principle that the protection of Articles 14 (equality before law) and 21 (right to life and personal liberty) is not limited to citizens, but extends to all individuals, i.e., even to non-citizens. In the instant case thus, the accused and their children automatically come under the shelter of Articles 14 and 21 of our Constitution. Thus, the Court cannot take a narrow or pedantic approach to the situation of the accused and their fate at the hands of the law of the land. While they flouted the domestic law (Foreigners Act and Foreigners Order) and have been decided to be convicted for the same, at the same time, as refugees they ought to be and deserve to be afforded the Constitutional protection under Articles 14 and 21. Thus, the answer to the question posed above is that, the accused, after serving sentence, if any, to be decided later today, ought to be given an opportunity to be subsequently rehabilitated as refugees. This is not a mere case of illegal entry of foreigners in Indian soil, the case involves larger issues. The accused herein do not deserve as refugees to be deported back to Myanmar in the face of evident threats to their lives and to the lives of their children in their own country. It is needless to say that in view of the refugee status of the accused and their 6 minor children, Article 21, right to life and personal liberty, of the Constitution of India gives protection to them against refoulement or forcible deportation. The Court would like to refer to the interim order that was passed by the Hon'ble Apex Court in the pending writ petition Mohammad Salimullah v. Union of India. In this connection, it would be pertinent to observe that the facts and circumstances of the said writ petition and those of the instant case at hand are different from each other. Besides, the order dated 08/04/2021 in the said writ petition, being interim in nature, does not have any binding effect on this Court in its decision of the instant case. Not to

forget that concerns about security threats, which were amongst the presumed bases in that order, do not apply to the present case. Accordingly, the finding of this Court derives support in favour of the accused as refugees in as much as it is inferred that the proper course to be taken herein is to send the convicts to refugee camps after they complete serving the sentence, if any, imposed upon them under Section 14 Foreigners Act instead of deporting them forcibly to Myanmar, for, in the opinion of this Court, the principle of non-refoulement is a part of Article 21 of the Constitution of India, thereby protecting Myanmar nationals who entered India illegally under the threat of persecution by declaring them to be 'refugees' and not 'illegal migrants', in the instant case the accused and their children already having been given the status of refugees by the UNHCR.

d. Point No. (ii) is accordingly answered in the affirmative and in favour of the accused/Defence.

6. The Court next would, before proceeding further, look into the presence or absence of motive behind the offence proved to have been committed by the accused herein. No act can be done by anyone without a motive. There is always a motive behind every act and it is very hard for someone to do something without a motive. It is motive which propels and acts as a catalyst responsible for any act being committed. Therefore, its importance in analyzing the real reason behind any offender committing any crime can hardly be overstated. Many difficult cases have been solved by the courts by evaluating



motive and correlating it with the facts and circumstances of those cases. Therefore, its importance in determining the final outcome in any given criminal case can hardly be overemphasized. This explains why the Supreme Court held in *State of UP v Babu Ram*, AIR 2000 SC 1735 that motive is a relevant factor in all criminal cases whether based on testimony of eyewitnesses or circumstantial evidence. In the instant case, from an over-all consideration of the evidence of both the parties, what is clear is that the motive behind the entry of the accused into India through India-Bangladesh border without valid documents was to flee from their country of origin and thereby flee persecution, i.e., Myanmar with the sole motive to save their lives and the lives of their minor children from persecution at the hands of the Myanmar Government and to seek asylum in India. There is no evidence of the accused having any criminal antecedents or record. It is not case of the Prosecution that the accused entered illegally into India with the motive or intention to commit crime or to cause any threat to the national security or regional security or to indulge in any militant activities. Thus, it is clear that self-protection and protection of their children's lives in the face of manslaughter by their own government was the only motive of the accused in their entry in India through the border in violation of the Rules 3(1) and 3B of the Foreigners Order, 1948.

7. Next, what has to be considered is whether the accused are entitled to the benefit of probation in this case. The nature of the instant case is such that it is not found fit for applying the provision of section 360 of



the Code of Criminal Procedure nor even to extend to the accused the provisions under the Probation of Offenders' Act, 1958. This is not a case of conviction for a crime that can be remedied by releasing the convicts on probation of good conduct. This case involves violation of Indian law by foreigners or people who are not Indians and hence imposing of the sentence as per Section 14, Foreigners Act, 1946 on the accused herein is the proper course to be taken.

Accordingly, it is

ORDERED

That the accused Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum are hereby found guilty of the offence punishable under Section 14 of the Foreigners Act 1946.

The accused Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum, already in custody, are accordingly convicted u/S. 248(2) of the Code of Criminal Procedure.

The order of sentence shall be passed after hearing the convicts on that point.

Let the judgment duly sealed and signed be kept with the record.

Thus, the instant case is disposed off on contest.

Note in the relevant register.

D/C

(SHIVI SRIVASTAVA)

Judicial Magistrate Bangaon

J.M.

North 24 Parganas

Later:

The Court has taken up the matter on the point of sentence and heard all the convicts on the same. Convict Syed Noor submitted that since the past 6 years, they are facing trial and have been in custody in the DUM DUM Correctional Home and that he and the other convicts and their children may be sent to the refugee camp in New Delhi. Convict Laila Begum reiterated the submission of convict Syed Noor and submitted further that she and Syed Noor may be reunited with their two out of three children who are in Kishalaya Home for male children and Sukanya Home for female children. Convicts Md. Rafique and Jamila Begum repeated and reiterated the submissions of convicts Syed Noor and Laila Begum.

The Ld. A.P.P, on the other hand, submitted that the offence punishable under Section 14 Foreigners Act, 1946 having been proved beyond reasonable doubt, adequate punishment be given to the convicts.

The Court has considered the respective submissions on behalf of the Prosecutor State and the submissions of the convicts. The case record shows that the convicts were brought under arrest by the Gaighata police on 11/06/2017 and produced that day before the Ld. Court of the ACJM, Bangaon, North 24 Parganas, and were remanded to judicial custody on the same date. Since 11/06/2017, thus, the convicts have been without bail in judicial custody as inmates of the DUM DUM Correctional home as under-trials. The Court can see that the convicts have been in detention for six years and thirty seven days (6 years and 37 days) today. The maximum punishment to be imposed under Section 14 Foreigners Act, 1946 is five (5) years and

S E C R E T * B O N G A *

fine. In the instant case the period of detention of the convicts, as under-trials, has exceeded the maximum period of imprisonment as provided under Section 14, Foreigners Act, 1946 by 1 year and 37 days. Accordingly, the punishment entailing conviction to be imposed on the convicts herein will have to follow the principle of set-off.

That apart, post punishment the convicts herein deserve to be reunited with their respective children and all of them deserve to be given a chance of rehabilitation by sending them to the appropriate authority, i.e., the office of the UNHCR Representation in India, New Delhi so that they may be reinstated in a refugee camp. Only then can substantial justice be meted out in the instant case.

Accordingly,

It is

ORDERED

That the convicts Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum shall undergo Simple Imprisonment for a period of three (03) years each for the offence punishable under Section 14 of the Foreigners Act, 1946 and shall pay a fine of Rs. 500/- each, in default, to suffer Simple Imprisonment for another fifteen (15)days each.

The period of detention of the Convicts Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum as under-trials (6 years 37 days) is hereby set-off as against the period of imprisonment awarded to them.



Similarly, the excess period of detention is deemed hereby to be in lieu of and/or to set off the amount of fine payable by each of the convicts.

The punishment of the convicts thus is deemed to already have been suffered by them.

The convicts thus next deserve to be and are released with the status of refugees.

Refugees Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum shall be reunited with their children namely Arafat Yasin (D.O.B. 01/01/2014), Abdul Rahman (D.O.B. 01/01/2012) and Yasmeen Akhtar (D.O.B. 01/01/2009), all three minor sons and daughter respectively of Md. Rafique and Jamila Begum, and, Mohammad Hassan (D.O.B. 01/01/2016), Mohammad Hussain (D.O.B. 01/01/2012) and Nur Ayesha (D.O.B. 01/01/2014), all three minor sons and daughter respectively of Sayed Noor and Laila Begum.

The above named refugees and their minor children are hereby ordered to be given safe passage to the UNHCR Representation in India, B-2/16, Vasant Vihar, New Delhi-110057, Tel: 011 43530424; Fax: 011 43530460; email: indne@unhcr.org with full cooperation by the West Bengal Police, Kolkata Police, Police of intervening states between West Bengal and New Delhi, the Delhi Police, Armed Forces in India, BSF, CRPF, as may be applicable and any other authority.

The Indian Railways and The Airport Authority of India, as may be applicable, shall cooperate in the safe passage of Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum and their children namely Arafat Yasin (D.O.B. 01/01/2014), Abdul Rahman (D.O.B.



01/01/2012) and Yasmeen Akhtar (D.O.B. 01/01/2009), Mohammad Hassan (D.O.B. 01/01/2016), Mohammad Hussain (D.O.B. 01/01/2012) and Nur Ayesha (D.O.B. 01/01/2014), to The UNHCR Representation in India, New Delhi.

The Superintendent DUM DUM Correctional Home is hereby directed to immediately release Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum and is further directed to make arrangements for their reuniting with their children named above by corresponding with the In-Charge of Kishalaya Home for male children, Barasat and the In-Charge of Sukanya Home for female children, DUM DUM.

The Superintendent DUM DUM Correctional Home shall make arrangement at the time of release of the convicts for their safe passage along with their children to the UNHCR Representation in India, New Delhi at the address mentioned above.

The In-Charge authority of Kishalaya Home, Barasat is directed to follow the proper procedure and immediately hand-over Arafat Yasin (D.O.B. 01/01/2014), Abdul Rahman (D.O.B. 01/01/2012) to their parents Md. Rafique and Jamila Begum and is further directed to immediately hand-over Mohammad Hussain (D.O.B. 01/01/2012) to his parents Sayed Noor and Laila Begum.

The In-charge authority of Sukanya Home, DUM DUM, is directed Kishalaya Home, Barasat to follow the proper procedure and immediately hand-over Yasmeen Akhtar (D.O.B. 01/01/2009) to her parents Md. Rafique and Jamila Begum and is further directed to immediately



hand-over Nur Ayesha (D.O.B. 01/01/2014) to her parents Sayed Noor and Laila Begum.

It may be noted that Mohammad Hassan (D.O.B. 01/01/2016) is already in the custody of his parents Sayed Noor and Laila Begum.

The West Bengal Police and Kolkata Police shall play an active role in the safe passage of the refugees, all named above, to UNHCR Representation in India, New Delhi.

Direction is given to the Office of the UNHCR Representation In India, New Delhi to do the needful for rehabilitation of refugees Sayed Noor, Laila Begum, Md. Rafique, Jamila Begum, Arifat Yasin, Abdul Rahman Yasmeen Akhtar, Mohammad Hassam, Mohammad, and Nur Ayesha in a refugee camp.

This order is hereby made a part of the judgement.

The Superintendent, Correctional Home DUM DUM, the In-Charge authority Kishalaya Home, Barasat and the In-Charge authority Sukanya Home, DUM DUM shall submit compliance report before this Court by 04/08/2023.

Let a copy of the judgement be supplied free of cost to each of the convicts.

Let a copy of the judgement be sent to each of the following for information and necessary compliance:

- 1. Superintendent Correctional Home, DUM DUM,*
- 2. The In-Charge Kishalaya Home, Barasat,*
- 3. The In-Charge Sukanya Home, DUM DUM,*

- JUDICIAL SEAL
4. The Superintendent of Police, Bangaon Police District,
 5. The District Magistrate North 24 Parganas, Barasat
 6. The Commissioner of Police, Kolkata,
 7. United Nations High Commissioner for Refugees Representation in India,
New Delhi.

Let photocopies of the refugee cards of Sayed Noor, Laila Begum, Md. Rafique and Jamila Begum and the refugee certificates of their six children be returned to and/or handed over to them.

D/C

Sd/- (SHIVI SRIVASTAVA)

Judicial Magistrate Bangaon

J.M.

North 24 Parganas

Judicial Magistrate
1st. Class, Bangaon
North 24 Pgs
19/07/23

Exit permit

Sr.
No.

Date

Orders

04-03-1998 Present : Mr.Deepak Kumar Thakur for the petitioner.
Mr.Rakesh Tikku for respondent No.1.
Mr.K.H.Nobin Singh for respondent No.2.

Crl.W.110/98

The petitioner is a Burmese national. He was involved in the movement for democracy and human rights under leadership of Daw Anug San Suu Kyi and as a result of army action had to leave his country along with numerous others who were involved in the said movement. He took refuge in Manipur (India) from 1988 to 1989. Thereafter, the petitioner proceeded to Mizoram but was stopped by Manipur police when he arrived at Singhat on 5.3.1989 and was arrested since he had no travel documents. FIR No.18(3) 89 SGT was registered at Police Station Singhat for offence under Section 14 of Foreigners Act 1946. It is stated that now a case is pending the court of Chief Judicial Magistrate, Churachandpur, Manipur. The petitioner was granted bail by an order passed by the Guwahati High Court, Imphal Bench on 11.9.1990 to enable him to contact the United Nations High Commission for Refugees at New Delhi.

It is now stated that the petitioner has been granted visa to travel to Canada under resettlement programme. This petition was filed by him seeking directions against respondent No.2 to withdraw the prosecution pending against the petitioner for offence under Section 14 of the

Date

Orders

(4)

Foreigners Act 1946 and to direct the respondents to release the petitioner and permit him to leave India and to travel to Canada.

After notices were issued, appearance has been put in on behalf of respondents. Learned counsel for respondent No.2, on the last date, stated that as per the information received by the Resident Commissioner, Manipur stationed at New Delhi from the Additional Secretary, Home, Government of Manipur, necessary instructions had been issued to the Director of Prosecution, Manipur to move the court of Judicial Magistrate, Churachandpur to withdraw the case under FIR No.18(2)89 SGT of P.S.Singhat for offence under Section 14 of the Foreigners Act against the petitioner. Adjournment was sought thereafter by Mr.Tikku to take appropriate instructions..

Mr.Tikku states that the Central Government and the Ministry of Home Affairs has no objection to grant of exit visa to the petitioner subject, however, that prosecution pending in the court of Chief Judicial Magistrate is withdrawn and intimation is conveyed to respondent No.1. It is also stated that the moment Ministry receives the information from Manipur Government that the case has been withdrawn, the Ministry will grant exist permit to the petitioner since there is no other objection for granting such exit permit.

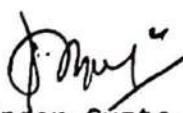
Date

Orders

(5)

In view of the statement of Mr.Tikku, no further orders are required to be passed in this petition except that on receipt of the information, exit permit will be issued forthwith. The petition stands disposed of.

Copy of this order be given DASTI to learned counsel for the parties.


Devinder Gupta, J.



March 04, 1998
sun

N.G. Nandi, J.

Refugee children



CHILD WELFARE COMMITTEE-IX

(BENCH OF MAGISTRATES)

District: New Delhi

NPS Building, Mayur Vihar Phase-I, Delhi-110091
Telephone: 011-22756552, Email: delhicwc9@gmail.com

Date: 19.09.2023

FORM 44

[Rules 82 (1)]

RELEASE CUM RESTORATION ORDER

PRESENT:

- **DSLSA Advocate:** Ms. Ritu Chandra and Ms. Sandeep Saini
- **Case produced by:** ASI Abhijit Biswas, SL No. N-24P 1823/18, (Mobile: 7797460565), Ms. Shazia Kidwai, Legal Officer, from SLIC (Socio Legal Information Center) 7800623704, Mr. Rafique and Mrs. Jamila Begum father & mother of the child (6387526987)
- **Child:** Md. Yasin Arafat, Present

| Name of the Child/ Age | Case No. | Father & Mother Name | Family and UNHCR (Delhi) details |
|---|-----------|------------------------------------|--|
| Md. Yasin Arafat, Male (DOB-01/01/2014) | 1219/2023 | Md. Rafique & Mrs. Jamila Begum | WZ-62, 1 st floor, Budhella Village near Vikaspuri, New Delhi (M: 8826131035) United Nations High Commissioner for Refugees (UNHCR) Representation in India, B-2/16, Vasant Vihar, New Delhi- 110057 |

On Tuesday (19/09/2023) matter is taken-up by the Bench of CWC-IX. A boy child named Abdul Rehman aged around 09 Years S/O Mr Md. Rafique and Mrs. Jamila Begum, Present Residing at H. No. WZ-62, 1st floor, Budhella Village near Vikaspuri, District: West Delhi is present before the bench under section 2 (14) (vii) the Juvenile Justice (Care and Protection) Act 2015.

The Bench of CWC-IX, New Delhi has received a Child along with Escort Order (Form-45) from CWC North 24 Parganas, West Bengal dated on 13.09.2023 for the Rohingya children mentioned above and same taken on record. As per reference of the matter Children's parents were in Judicial custody in North 24 Parganas U/s 14 of **Foreigners Act, 1946** a FIR No. 0563 dated on 10.06.2017 of PS: Gaighata, District: North 24 Parganas, West Bengal.

CWC of North 24 Parganas, West Bengal has sent children with Police team by the Escort Order to CWC-IX and the same has been taken on record in this matter. As reported children Abdul Rahman and Md. Yasmeen Arafat in **Kishalaya Home**, Barasat, North 24 Paragnas, West Bengal. Children's parents are staying in WZ-62, 1st floor, Budhella Village near Vikaspuri, New Delhi Camp provided by UNHCR as per the Court direction.

Considering the fact, CWC Order and judgement from the court of Bangaon, North 24 Parganas, West Bengal there is need of children to restore with family along with relevant documents for the above mentioned children.

ASI Abhijit Biswas and Ms. Shazia Kidwai have verified the identity of the father of the child. Child has identified his father and wants to go along with his father. Father of the child have submitted an application requesting for the restoration of his child. Form 17, form 20, child Escort Order, Counselling report, follow-up ICP and Child Status Report by SLIC are submitted and the same taken on record. Refugee card and Refugee Certificate from UNHCR of child's parents has been submitted and taken on record. Child is willing to go along with her parents. Child is restored Child is his father (reason for discharge).

This order is granted subject to the conditions hereon, upon the bench of any of which it shall be liable to be revoked.

Dated: 19/09/2023 (Tuesday)

Place: New Delhi

CHAIRPERSON
CHILD WELFARE COMMITTEE
(Bench of Magistrate U/G 27(B) of JJ Act 2015
New Delhi District
Child Welfare Committee-IX, NPS Building,
1st Floor, Mayur Vihar-1, Delhi-110091
E-mail: cwc9@rediffmail.com | Tel: 011-32756551

Chairperson/Member
Child Welfare Committee-IX

Conditions:

1. He shall not, without the consent of the CWC IX-New Delhi himself from that place or any other place, which may be named by the said CWC IX-New Delhi.
2. He shall obey such instruction as he may receive from the said CWC IX-New Delhi with regard to punctual and regular attendance at school/vocation or otherwise.
3. He shall not get involved in any offence and shall lead a sober and industrious life to the satisfaction of CWC IX-New Delhi.
4. In the event of his committing a breach of any of the above conditions the remission of the period of stay in the Institution hereby granted shall be liable to be cancelled and on such cancellation he shall be dealt with under section 97 of the Juvenile Justice (Care & Protection of Children) Act 2015.



I hereby acknowledge that I am aware of the above conditions which have been read over/ explained to me and that I accept the same.

(Signature or mark of the released child)

Certified that the conditions specified in the above order have been read over/explained to mother and that she has accepted them as the conditions upon which his release may be revoked.

Certified accordingly that the said child has been discharged/ restored on the **19/09/2023**.

Signature and Designation of the certifying authority
i.e. Person-in-charge of the institution

Remark & Direction: Father/DCPU-XI/SLIC/UNHRC/BOSCO

1. BOSCO ensure to continue child in School/Vocational Course.
2. DCPO of DCPU-XI is directed to ensure well-being of child and conduct Home visit Report along with photographs and other relevant documents to be submitted on next date.
3. SLIC/ BOSCO/ UNHRC is to coordinate with DCPU-XI, New Delhi to connect with children's families, and provide an updated status report of the matter.

Next Date :- 20/10/2023 (Friday)

Copy to: for the information and necessary action:

1. United Nations High Commissioner for Refugees Representation in India, B-2/16, Vasant Vihar, New Delhi-110057
2. Chairperson, Child Welfare Committee, North 24 Parganas, West Bengal
3. DCPO of DCPU-XI, New Delhi District
4. Incharge of Kishalaya Home, Barasat, North 24 Paragnas, West Bengal
5. Incharge of Socio Legal Information Center, 576A, Masjid Road, Jangpura, New Delhi-14
6. Director of BOCSO, Vikaspuri, New Delhi (hr@boscodelhi.org)

Anjali
19/09/23

Anjali Kumari Member

Angelika S Gier
19/09/23

Angelika S Gier Member

Bhaskar J Gogoi
19/09/23

Bhaskar J Gogoi Member

Purnima
19/09/23

Purnima R Panda Member

Varun Pathak
19/09/23

Varun Pathak Chairperson

CHILD WELFARE COMMITTEE
(Branch of Magistrate U/S 27(9) of JJ Act 2015)
New Delhi District
Child Welfare Committee-IX, NPS Building
1st Floor, Mysore Road, New Delhi-110091
E-mail: cwcnewdelhi@gmail.com Off: 011-22756565



CHAIRPERSON
CHILD WELFARE COMMITTEE
(Branch of Magistrate U/S 27(9) of JJ Act 2015)
New Delhi District
Child Welfare Committee-IX, NPS Building
1st Floor, Mayur Vihar-1, Delhi-110091
E-mail: cwcnewdelhi@gmail.com Off: 011-22756565



सत्यमेव जयते

CHILD WELFARE COMMITTEE -IX

Bench of Magistrates

District : New Delhi, Govt. of N.C.T. of Delhi
 NPS Building, Mayur Vihar-I, Delhi-110091
 Tel.: 011-22756552, Email :delhicwc9@gmail.com

FORM 20

[Rule 18(8) and 19 (7)]

UNDERTAKING BY THE PARENT OF GUARDIAN OR 'FIT PERSON'

CWC Case No. 1219/2023

I Jamila Begum resident of house no. W2-62, first floor,
 Street Village/Town Budela, village s, vikaspuri
 PO 110018 District west Delhi State New Delhi

do hereby declare that Contact No. 8826131035 Alternate No. if any

I am willing to take charge of (name of the child) Md. Yasin Arafat State

Aged 09 years Under the orders of the Child Welfare Committee

subject to the following terms and conditions :

1. If his conduct is unsatisfactory I shall at once inform the Committee.
2. I shall do my best for the welfare and education of the said child as long as he remains in my charge and shall make proper provision for his maintenance.
3. In the event of his / her illness, he shall have proper medical attention in the nearest hospital.
4. I agree to adhere to the conditions that may be imposed by the Committee from time to time and also to keep the Committee informed about the compliance with the conditions.
5. I undertake to produce him / her before the Committee as and when required.
6. I shall inform the Committee immediately if the child goes out of my charge or control.

Date this day of

Johsif Biswas

I Jamila Begum
Parent's / Guardian Signature



MEMBER
 CHILD WELFARE COMMITTEE
 of Magistrate U/S 27(3) of JJ Act. 2011
 New Delhi District
 Child Welfare Committee-IX, NPS Building
 1st Floor, Mayur Vihar-I, Delhi-110091
 E-mail: dwc9@gmail.com Off: 011-22756552

CHAIRPERSON
 CHILD WELFARE COMMITTEE
 Bench of Magistrate U/S 27(3) of JJ Act. 2011
 Child Welfare Committee-IX, NPS Building
 1st Floor, Mayur Vihar-I, Delhi-110091
 E-mail: dwc9@gmail.com Off: 011-22756552

Rasheed
Rasheed
19/09/23

Angali
19/09/23

Witness



CHILD WELFARE COMMITTEE, JAMMU

Child Protection Scheme (CPS), Govt. of J&k

Bench of Magistrate established u/s 27(9) of Juvenile Justice (Care and Protection) Act ,2015

House no. 11, Sector 2 Trikuta Nagar, Jammu

Case No 23.L.CWCJ/20

Date 14/10/2020

ORDER

This has reference to the request made to this office by Mr. Farooq Ahmed S/o Ashozama aka Noor Salam (UNHCR Case No. 305-13c01186) presently staying in Sunjwan near Army camp Jammu (J&K), for the repatriation of his sister Raheema Begum UNHCR Case No. 305-13c01185 who has been staying in Sukanaya home(WB) from past one and half year.

This office has made repeated requests to CWC North 24 Parganas for the repatriation of the girl to Jammu to be united with her family but to no avail.

Since the girl and her family are wanting to re unite and as already mentioned above the repatriation proceedings are taking longer than expected time. The family of the girl is now getting restive and have volunteered to go to the West Bengal to fetch the girl.

In this connection, elder brother namely Mr. Farooq Ahmed UNHCR Case No. 305-13c01186, Whose antecedents stands verified shall be going to West Bengal to fetch her sister for which necessary assistances required for securing the custody of her sister Raheema Begum UNHCR Case No. 305-13c01185 may be providing to him.

Copy forwarded for information:

Chairperson CWC North 24 Parganas

District Child Protection Officer Jammu

Chairperson
Child Welfare Committee
District Jammu

Malena Malena
CHAIRPERSON

Member
Child Welfare Committee
District Jammu

A
MEMBER

Gupta
MEMBER



CHILD WELFARE COMMITTEE, JAMMU

Child Protection Scheme (CPS), Govt. of J&k

Bench of Magistrate established u/s 27(9) of Juvenile Justice (Care and Protection) Act ,2015

House no. 11, Sector 2 Trikuta Nagar, Jammu

Date 3/02/21

Case no. 15/CWCJ/21

ORDER

Whereas CWC Jammu is in receipt of an application referred by Mr. Rahul Raja Sharma, Assistant Manager, Save the Children, J&K, regarding the case of care and protection of two minor children Kunsuma UNHCR card no. 305-00111490 & Mohd. sadiq UNHCR card no. 513-19C01591 wards of Mrs. & Mr. Sheikh Ahmed , both the children are staying presently with their paternal Aunt Mrs. Dildar Begum UNHCR card no. 305-00085620 at Veeru Plot, Bhatindi, their parents being in Bangladesh.

Whereas Social investigation Report (SIR) of the family of the paternal aunt was also got obtained by the Project Assistant, Mohd. Sideeq, Save the Children, before the Bench could decide in the matter .SIR recommends that the children can be placed in the custody of paternal aunt.

Whereas to substantiate the SIR, both the children & their Aunt were produced before the CWC Jammu. The children corroborated the facts stated in the SIR and the aunt also assured CWC that she is fit and capable to take care of the minors financially, emotionally and physically.

In deciding the Best interest of the children, CWC Jammu declares aunt Dildar begum as Fit Person u/s 2(28) as per the provisions of the Juvenile Justice Act and signed undertaking by the Aunt is also taken on record.

Save the Children is directed to keep the case of both the children on follow -up and ensure regular counselling of both the children and submit reports to Child welfare committee Jammu.

Save the Children is further directed to take effective steps to reunite children with their parents.

Copy forwarded for information:

District Child Protection Officer, Jammu

Chairperson
Child Welfare Committee
District Jammu

Sonalini Sharma
Chairperson

Member
Child Welfare Committee
District Jammu

Member

(M) Gupta
Member

Email: cwcjammu1@gmail.com

State vs CCL 'Sd' & Ors
FIR No.- 13/21
PS- P.I. Area
U/s- 14 Foreigners Act

GAURAV GUPTA
PRINCIPAL MAGISTRATE
JUVENILE JUSTICE BOARD-W (EAST)
INSTITUTIONAL AREA, VISHWAS NAGAR
SHAHJAHANPUR, DELHI-110082

11.02.2021
(Through Video Conferencing)

Pr: Sh. Virender Meena, Ld. APP for the State
CCL 'R' produced from OHG by Welfare Officer
CCLs 'Sh' and 'Sd' produced from OHB-I by Welfare Officer
Sh. Anshum Goswami, Ld. Counsel for all three CCLs

Sh. Ramawatar Prajapati, Ld. Member has not joined as he has gone to attend a training programme.

- 1.) The present case highlights the plight of Rohingya refugees, who were forced to leave their motherland and seek refuge in a foreign land with a hope that maybe one day they'll reach a place they could call home. However, the dream of this unfortunate family of finding Utopia was shattered very soon.
- 2.) The family, including parents and three minor children, left Myanmar and took refuge in Bangladesh. The hope of finding a place where they could fearlessly raise their kids and have a better life kept them going. This led them to choose a dangerous path of crossing illegally into Indian territory. Their luck ran out soon as they were apprehended by the authorities and a swift end was put to that short lived dream. The father and mother got lodged in separate jails, the girl child in one observation home and the two boys in another observation home.
- 3.) Mr. Anshum Goswami, Ld. Counsel appeared for the children and filed his detailed written submissions. He also placed on record a copy of the UN Mission's fact finding report on human rights violations in Myanmar as well as a compilation of judgments of various fora on the subject of refugees. It was argued that the CCLs are asylum-seekers and were apprehended even before they could approach the United Nations High Commissioner for Refugees (UNHCR). It was submitted that two brothers of CCLs are registered with UNHCR as refugees and have been living



peacefully in India for the last many years. The family had also come to India seeking asylum and would have approached UNHCR in this regard. It was argued that the CCLs are victims of circumstances and not offenders by choice. It was further argued that the family has a well established fear of persecution and by taking all risks and after going through countless miseries, they fled their country to seek asylum in India and hence, should not be prosecuted.

4.) *Per Contra*, Ld. APP for the State assisted by the IO argued that the CCLs alongwith their parents are foreigners who succeeded in illegally entering India. It was argued that the CCLs have not been granted status of refugees by the UNHCR till date and as such they are liable to be prosecuted under the foreigners Act and also liable to evicted from the country.

5.) The Board can take judicial notice of the fact that Rohingya people are an ethnic minority in Myanmar but are not considered as citizens of that country by the Myanmar government. Thus, the Rohingyas lack legal protection from the Myanmar government and face strong hostilities in that country. They have been recognized globally as one of the most persecuted people on earth. A report of UN Mission dated 16.09.2019 vide A/HRC/42/CRP.5,submitted to the Human Rights Council,titled as "*Detailed findings of the Independent International Fact Finding Mission on Myanmar*", copy of which was placed on record by Ld. Counsel for CCLs, provides an insight into the conflict and human rights violations & abuses in Myanmar. The report documents the violations and abuses under international human rights law and violations of international humanitarian law, by the Myanmar military known as "the Tatmadaw" and also by the ethnic armed organizations. The report finds the situation of Rohingyas to be of grave concern as the community remains the target of the government attack termed "clearance operations" aimed at erasing the identity and removing them from Myanmar. The Mission found that the Rohingya villages continue to be bulldozed and razed. An estimated 40,600 structures were destroyed between August 2017 and April 2019, with over 200 settlements almost completely wiped out. The lack of safe and viable homes and



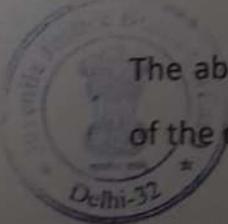
land for Rohingyas to return to is further exacerbating their situation and justice remains elusive for Rohingya victims. The report concluded that there is a strong inference of continuing genocidal intent on the part of the State and the Myanmar government is failing in its obligation to prevent genocide, to investigate genocide and to enact effective legislation criminalizing and punishing genocide.

6.) The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia vs. Myanmar*), commonly referred to as "the Rohingya genocide case" is currently being heard by the International Court of Justice. Vide its order dated 23.01.2020, the ICJ ordered Myanmar to implement vital measures to protect its Rohingya population from any further atrocities. The Court observed that Rohingyas face an ongoing threat that necessitates Myanmar to take all measures within its power to prevent all acts prohibited under the 1948 Genocide Convention and to report back to the Court every six months. The above decision of the International Court of Justice further recognizes the imminent threat to life and liberty faced by Rohingya people in Myanmar and lends credence to the argument of Ld. Counsel that it is not safe for Rohingyas to return to Myanmar and that they fled their country to save their lives and to seek asylum.

7.) The United Nations Convention on the Rights of Children was ratified by India on 11.12.1992. It enjoins all State Parties to take all possible steps and measures as agreed upon in the Convention. Article 2 of the Convention is reproduced herein:

"Article 2

1. ***
2. *State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members.* (emphasis is mine)



The above makes it pellucid that a child cannot be punished for activities or actions of the child's parents.

8.) Section 3 of the *Juvenile Justice (care and protection of children) Act, 2015* lays down the fundamental principles which shall guide this Board while taking any decision concerning a child produced before the Board. Section 3(iv) declares that all decisions regarding a child shall be based on the primary consideration that they are in the best interest of the child. Further, Section 3(xiii) declares that every child shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

9.) The Constitution of India guarantees certain fundamental rights to citizens as well as non-citizens. The Preamble to the Constitution, which is an introductory statement that sets out the guidelines and which presents the principles of the Constitution also contains the words "*assuring the dignity of the individual*", which is also one of the basic objectives of the international humanitarian law. Also, Article 21 of the Constitution of India guarantees the right to life and personal liberty to an individual, including non-citizens. It declares that a person cannot be deprived of right to life and liberty, except in accordance to procedure established by law.

10.) In the instant case, the alleged offenders are young children between the age of 10 to 15 years. Their only crime is that they had accompanied their parents who fled from their country fearing persecution and unlawfully entered this country seeking asylum. They cannot be incriminated for something for which they were not responsible as they were brought into this country by their parents. As discussed above, Article 21 of the Constitution protects the life and personal liberty of non-citizens as well, and hence is available to the CCLs. Prosecuting them in the present case would also be violative of Article 21. Fastening criminality to their actions would not just be cruel but a travesty of justice and hence, cannot be allowed.

11.) Rule 10(1) of the *Juvenile Justice (care and protection of children) Model Rules, 2016* elucidates the procedure to be followed by the Board upon production of a



child. It clarifies that on production of a child before the Board, the report containing the social background, circumstances of apprehending the child and offence alleged to have been committed, the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, including, disposing of the case, if on the consideration of the documents and record submitted at the time of child's first appearance, his being in conflict with law appears to be unfounded.

12.) This makes it pellucid that the Board has the powers to dispose of the case, even on first production of the child, when after having regard to the allegations and documents, the Board is of the opinion that the allegations are baseless. While arriving at such a decision, the Board shall be guided by the fundamental principles as declared under section 3 of the Act.

13.) Having regard to the above provisions of law and on being satisfied that there is no justifiable reason why the said children should face criminal prosecution, **the Board finds that no case is made out against the alleged CCLs. The present case against them is accordingly disposed of.**

14.) Since these children have no place which they can call home and there is no one to take care of them as their parents have been incarcerated, **the children are declared as *children in need of care and protection* as defined under section 2(14) of the Act.** Rule 10(1)(ii) further provides that where the Board comes to a finding that a child is a child in need of care and protection, then the Board may refer such a child to the Child Welfare Committee. **Accordingly, it is directed that the children be produced before the concerned CWC on 12.02.2021.**

15.) Before parting with the order, the Board would like to comment upon the approach followed by the police authorities in the present case. Had the concerned SHO/CWPO been more sensitive towards the plight of children, these children would not have had to face the ordeal of this criminal prosecution. In their zeal to enforce the rule of law, the police officials themselves ended up violating the law by prosecuting innocent children when all they needed was care and support as both



their parents were locked up in jail. Had the police officials been sensitized to handle such cases, the situation could have been avoided. The present case is not just a one-off incident where an avoidable criminal prosecution was launched but numerous such matters must be coming up before various forums. As such, it is desirable that police officials, at least the CWPOs handling the cases of children, should be sensitized in this regard.

16.) Hence, a copy of this order be sent to the worthy Commissioner of Police, Delhi with a request to pass appropriate directions that a training programme sensitizing the CWPOs on how to deal with children of foreigners found illegally in India, may be conducted. Such sensitization programme would go a long way in preventing a repeat of this case. Since, UNHCR is the authority which deals with refugees and has a vast network of experts in the field, it is suggested that such training programme may be conducted in collaboration with UNHCR. Copy of this order be also sent to the UNHCR to bring the facts of the present case to its notice and also requesting it to facilitate a training cum sensitization programme for the CWPOs of Delhi Police on the subject. It is hoped that a gracious view would be taken of the Board's suggestion.

17.) Copy of the order be also sent to the CWC, Mayur Vihar for information and necessary action. Copy of the order be also sent to the Superintendents of Observation Home for Girls and Observation Home for Boys-I directing them to produce the children before the CWC, Mayur Vihar. Copy be also sent to the CWPO/IO, PS PIA with direction to appear before the CWC on the given date. Copy of this order be also given dasti to Ld. Counsel for the children.

Ordered accordingly.



Sd/-
(CharuMakkar)
Member, Social Worker

MEMBER
Juvenile Justice Board-IV
Institutional Area, Vishwas Nagar
Shahdara, Delhi-110032

Sd/-
(Gaurav Gupta)
Principal Magistrate,
JJB-IV, East District, Delhi
JOUVENILE JUSTICE BOARD-IV (EAST)
INSTITUTIONAL AREA, VISHWAS NAGAR
SHAHDARA, DELHI-110032
Page - 6 - of 6

Present: A Deb Ray
Principal Magistrate
Juvenile Justice Board
North Tripura, Dharmanagar

Case No. Misc Juv 02 of 2018
29.03.2018

Received back the case record from the Court of Ld CJM, North Tripura, Dharmanagar along with the order passed in c/w the supplementary case record which is further connected with this case.

Perused the said order.

Received the charge sheet against children in conflict with law named [1] Janna Tara, [2] Nur Fatema, [3] Jahangir Alam, [4] Dil Aara [5] Md Ibrahim and [6] Ashin US 3 of the IPP Act, 1920 and US 14 of the Foreigners Act, 1946.

Perused the same.

Registered it in the file of JJB.

The cognizance of offence punishable US US 3 of the IPP Act, 1920 and US 14 of the Foreigners Act, 1946 has already been taken.

The relevant prosecution papers are supplied to them.

In the charge sheet Md Ibrahim and Md Ashin have been shown as adults and they have been dealt accordingly by the Court of Ld CJM, North Tripura, Dharmanagar on being adults.

Ld APP is present.

Ld Remand Advocate Mr T K Paul is also present on behalf of the above mentioned 4 children in conflict with law named [1] Janna Tara, [2] Nur Fatema, [3] Jahangir Alam, [4] Dil Aara.

Ld Remand Advocate moved a petition for discharging the above named 4 children in conflict with law and submitted as follows:

i) That they are nationals of Myanmar and Rohingya Muslims by origin and due to the civil war and adverse political situation of Myanmar they had to enter into India via Bangladesh and all of their parents were assassinated in that civil war and to save their own lives they have entered into the territory of India.

ii) He further submitted that among the four above named children Md Jahangir Alam has already be given the status of a refugee from UNHCR and the fact has been verified by UNHCR and the other three have applied for

obtaining the status of refugee from the UNHCR and they have been called for an interview schedule to be held on 14th May 2018 at the premises of UNHCR, New Delhi and their applications are under consideration of UNHCR.

iii) Ld Remand Advocate submitted the photocopies of refugee identity cards of Etahan, Omar Faruk and Md Abdul Shukur who are brothers of the above named four children in conflict with law and they have also appear before the board.

iv) He further submitted that the above named children in conflict with law cannot be brought under the purview of S 3 of the Passport (entry into India) Act 1920 and S 14 of the Foreigners Act, 1946 as they are not the citizens of India and are assylum seekers and refugees and were detain by the police at Dharmanagar Railway station on their way from Dharmanagar to Hyderabad where the other Rohinga Muslims have been residing as refugees.

As such Ld Remand Advocate prayed for discharging the above named four children in conflict with law as no incriminating material is available against them under the above mentioned charge sheeted sections.

Also heard the prosecution side at length.

Perused the entire record, relevant documents submitted by the Ld Remand Advocate and also perused the relevant statutory provision.

S 14 of the Foreigners Act, 1946 lays down that
“Whoever—

(a) remains in any area in 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 thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.”

S 3 (3) of Passport (entry into India Act) 1920 lays down that "*Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both.*"

On perusal of the relevant statutory provisions and considering the materials on record and the submission of both sides it appears to the Board that there is no incriminating material against the children in conflict with law to frame charge against them under the above mentioned sections, rather they are themselves the victims of the prevailing circumstances and they entered inside the territory of India only to save their own lives and to take shelter.

Hence, after taking into consideration the afore mentioned ground and under the light of the prevailing circumstances the Board is of the opinion to discharge all the four children in conflict with law [1] Janna Tara, [2] Nur Fatema, [3] Jahangir Alam and [4] Dil Aara from the liability of the instant case.

All the above named children, on being asked, expressed their willingness to go with their brothers named Etahan, Omar Faruk and Abul Shukur.

Hand over the custody of the above named four children to their said brothers.

Send a copy of this order to the Ld CJM, North Tripura, Dharmanagar for his kind information.

Also inform the District Magistrate & Collector, North Tripura, Dharmanagar, for his information and needful since the matter involves international refugee related issues and also inform the The SP (DIB), North Tripura, Dharmanagar for his information and for protection of the children and for doing the needful.

Supply a copy of this order free of cost to the Ld Remand Advocate.

Also send a copy of this order to the "Ananya Social Welfare and Advancement Society", Hospital Road, Dharmanagar, North Tripura for doing the needful.

The instant case is thus disposed off.

Make entries in the relevant register.

As dictated.

(A Deb Ray)

1
State Vs. BXXX

CNR No.HRFB03050493/2022

CIS No.JJB/103/2022

BEFORE THE JUVENILE JUSTICE BOARD, FARIDABAD.

FIR Number 421 dated 15.12.2021.

Under Section 3 of The Passport (Entry into India) Act, 1920 and section 14 of The Foreigners Act, 1946 Act.

Police Station Kheripul, Faridabad.

BENCH: Mahendra Singh, Principal Magistrate,
Juvenile Justice Board, Faridabad

Sh. Amardeep Singh and Dr. Mukta Gupta, Members, Juvenile
Justice Board, Faridabad.

Present: Ms.Deepali, APP for State.
Sh.Gagan Kumar, Legal Aid Counsel for CCL BXXX.
Sh.Bhim Chandila and Sh.Dilwar, Advocates assisting the Board.
CCL BXXX produced from Girls Observation Home, Karnal.

Order:

Copy of final report supplied to counsel for CCL.

I have heard APP for State and counsel for CCL on notice of accusation.

Briefly stated, the case of prosecution is that CCL BXXX (name withheld to protect identity) and Md. Alam had illegally crossed into the Indian territory from Bangladesh. They were caught on 15.12.2021 and FIR No.421 dated 15.12.2021 under section 3 of Passport (Entry into India) Act, 1920 and section 14 of The Foreigners Act, 1946 was registered at Police Station Kheripul, Faridabad. As per the case of prosecution, CCL is a Rohingya Muslim and is below the age of eighteen years.

On the basis of statement of CCL BXXX, before Child Welfare Committee, Faridabad (hereinafter referred to as 'CWC, Faridabad'), another FIR bearing no.433 dated 17.12.2021 under section 370 and 370A of IPC was registered against Md.Alam at

Police Station Kheripul, Faridabad (hereinafter referred to as 'FIR No.433/21'). The copy of challan of case FIR No.433/21 had been called from the IO and same had been placed on record on 11.07.2022.

It is the case of prosecution that Md.Alam had brought CCL BXXX into the Indian territory. The consent of CCL BXXX, being a minor, is immaterial.

The perusal of challan in FIR No.433/21 reveals that the story put forth by prosecution in that case is that Md.Alam had trafficked CCL BXXX and allegations under section 370 and 370A of IPC has been levelled against Md.Alam. The consent of victim is immaterial in determination of the offence of trafficking.

The conjoint reading of challan in the present case and the challan in case FIR no.433/21 reveal that CCL BXXX is a victim and not an offender. Therefore, in the considered opinion of the Board, **no case is made out against CCL BXXX. The present enquiry is accordingly disposed of.**

Since, CCL BXXX has no home and settled place of abode and is without any ostensible means of subsistence, she is declared as **child in need of care and protection** as defined under section 2(14) of the The Juvenile Justice (Care and Protection of Children) Act, 2015. As per Rule 10 (1)(ii) of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, where the Board comes to a finding that a child is a child in need of care and protection, he/she is to be referred to the Child Welfare Committee.

Accordingly, it is directed that CCL BXXX be produced forthwith before CWC, Faridabad.

Copy of the order be sent to CWC, Faridabad for information and necessary

action.

Copy of this order be sent to the Incharge, Girls Observation Home, Karnal.

The IO, CWPO is directed to produce the CCL BXXX before the CWC, Faridabad.

Copy of this order be given to IO and a copy of this order be sent to Police Station concerned.

Copy of the order be supplied to counsel for CCL BXXX.

File be consigned to record room after due compliance.

Dated:15.07.2022

Randhir Singh, stenographer Gr. II

Sd/-
Manendra Singh
Principal Magistrate,
Juvenile Justice Board,
Faridabad. UID No.HR 0352

Sd/-
Amardeep Singh
Member, Juvenile Justice Board.

Sd/-
Dr. Mukta Gupta
Member, Juvenile Justice Board

Note: This order contains three pages and each page has been checked and signed by me.



Sd/-
Manendra Singh
Principal Magistrate,
Juvenile Justice Board,
Faridabad. UID No.HR 0352



OFFICE OF THE JUVENILE JUSTICE BOARD, JAMMU

Mission Vatsalya Department of Social Welfare, Govt. of J&K

Bench of Magistrates established u/s 4(2) of Juvenile Justice (Care & Protection of Children) Act, 2015

FIRST FLOOR HAJJ HOUSE NEAR RAIL HEAD COMPLEX, JAMMU-180012



- CORAM: 1. Arusa Chowdhary (Pr. Magistrate)
2. Dr. Sheetal Manhas (Member)
3. Shalini Sharma (Member)

No.: JJB/J/2024/143

DATED: 28/02/2024

DOCKET

UT of J&K through SHO P/S Bahu Fort
V/S

R*****A D/o Mohammad Sayed & R*****T D/o Haider Ali R/o
Myanmar A/P Malik Market Narwal, Jammu

Children in conflict of Law

FIR NO.: 31/2024

OFFENCE U/S: 14-A & 14 C of Foreigners Act

In the matter of: Bail Application/ Docket for Release.

To

SHO Police Station Bahu Fort

Whereas the above named CCLs have been admitted on bail today on 28-02-2024 up to 07-03-24 by the Board subject to the furnishing of surety bond to the tune of Rs. 20,000/- (Twenty Thousand only) respectively before the Board and personal bond of good conduct before the Observation Home R.S.Pura, Jammu individually and alleged CCLs have been placed under the safe custody of their Cousin sister namely Kismatara Begum with subject to the following conditions:

- Principal Magistrate
Juvenile Justice Board Jammu*
- That Cousin of the CCLs will furnish an undertaking before JJB, Jammu that in improvement of the applicants/CCLs
 - That the CCLs shall not commit any offence or involve themselves in other criminal acts/activities.

Member
Juvenile Justice Board
Jammu.

Member
Juvenile Justice Board
Jammu.

3. That neither the CCLs nor their surety shall change their place of residence during the period the CCLs are enlarged on bail.
4. That the CCLs shall ensure their presence before the Juvenile Justice Board as and when directed.
5. That the CCLs shall not leave the jurisdiction of the Board without seeking prior permission from the Board.
6. That CCLs shall not influence or try to win over the prosecution witness in any manner and assist the I.O to complete the investigation at the earliest.
7. That the cousin namely Kismat Ara Begum shall take their responsibility for good behavior of CCL so that they will not involve in any activities which are not good for them.

In Case of non-compliance of the terms and conditions of the bail, UT is at liberty to apply for cancellation of bail before the Board.

Announced: - 28-02-2024

Member
Juvenile Justice Board
Jammu.

Principal Magistrate
Juvenile Justice Board
Principal Magistrate
Jammu.

Member
Juvenile Justice Board
Jammu.

Juvenile Justice Board
Jammu

Copy to Incharge observation Home R.S. Pura
Jammu for Compliance.

Principal Magistrate
Juvenile Justice Board
Jammu.

ANNEXURE-R1



TRU
[Handwritten signature]

In lieu of order sheet

Present : Miss I. Dan

Principal Magistrate of JJB .Khowai

Case No : JUV 02 of 18

Dated: 02.07.18

ED APP Sri A Bhattacharya is present .

The record is taken up for passing necessary order .

The record reveals that the IO has on 20.06.18 reported that the juveniles in conflict with law have reached the UNHCR Delhi and got the status of refugees and they are now staying with their guardian .

Situated thus , the present case stands disposed of and the juveniles in conflict with law are acquitted and the surety and the bail bonds also stands discharged .

The case is thus disposed of uncontested .

Note in the proper TR .

[Signature]
(Miss I Dan) .

Principal
Magistrate of
JJB Khowai



P.S : Bongaon

Order Dated: 11.08.2017

Today is fixed for production and plea. The CCL Safi Akhtar is produced today from Sanlaap.

The record is taken up for examining the CCL Safi Akhtar under section 251 Cr PC.

One petition is filed by Mrs. Nuntaz Begum for release and restoration of the ccl. Let it be kept with the record.

Perused the case record.

The substance of the accusation is read over and explained to the CCL that on 17.03.2016 the special PTLG party apprehended few Maynamar citizen including the ccl without any valid documents. They failed to disclose their identity for which all including the ccl were booked under Sec 14 (B) of Foreigners Act.

The ccl stated that her mother and father have UNHCR cards for staying in India but she was not aware of the consequences and was accompanying her father and prays for mercy.

We think that it is necessary to hear from her as to why they entered into India without any valid documents. On being asked the ccl girl stated to us that they resided at Maynamar and belongs to "ROHINGA" community which is a minority community in their country. There was Civil War in their country and their community was attacked by the majority community of their country and their life were at stake. To save their life and limb, her parents decided to leave Maynamar along with their children and under compulsion to save life and limb they crossed the border of Maynamar into Bangladesh and tried to reside there but there also they were being attacked by local people for which they were



compelled to cross the border of India in half starved condition with all misery and suffering and unfortunately, they were caught by the police.

The ccl girl wept at the time of telling their stories and prayed to be re-united with her family.

Considered.

We are of the view that the ccl belong to Rohingya minority community whose entire villages were been razed, killing hundreds of people and displacing over 80,000 people. Therefore, the case of the ccl need to be considered more sympathetically rather than pedantically.

The ccl is under safe custody from 18.03. 16 till date that is over 15 months since neither her guardian nor any fit person came forward to claim the child inspite of the fact that the Board has taken repeated steps on its own initiative to call up the mother of the ccl over mobile so that she can talk/ communicate with her number of times.

We are further of the view that the ccl entered the Indian territories and has suffered a lot since the time she got separated from her family/father. More of pathos rather than infliction of adversary treatment is needed to be given to the child for the best of her interest based upon the principle presumption of innocence .

Keeping in tune with the sufferings she has already met, it is a high time that she be reunited with her family. We are of the view that the ccl is more of a child in need of care and protection rather than a ccl in a strict or broader sense. It is her family vis-vis her parents need to have safe-guarded and protected their daughter's interest in accordance with law which they have failed to do so, resulting in the apprehension and safe custody of the child.

We do unanimously hold, that the ccl Safi Akhtar be treated as a Child in Need of Care and Protection rather than a ccl and be handed over to CWC ,Barasat , North 24 Pgs. For catering to the best of interest of the child and her reintegration with her family.



The Chairman and Members of CWC Barasat, north 24 Pgs are requested to help the child for restoration to her family in accordance with law or to do the necessary acts they deem fit for the best interest of the child.

Accordingly, the child be produced before CWC on...16/08/2017.

D.A. is directed to send the copy of the order sheet to CWC Barasat with in the above date.

Copy of the order be also send to DCPO, DSWO, North 24 Pgs AND Sanlaap for their information.

Inform all concern.

Sana Jirka
[Redacted]
[Redacted]
JUVENILE JUSTICE BOARD
Salt Lake City
Sector-1, Calcutta-700064

Subroto Bhattacharya
PRINCIPAL MAGISTRATE,
JUVENILE JUSTICE BOARD,
North 24 Parganas
Salt Lake City, Sector-1
Calcutta-700064



DISCHARGE MEMO

Child Welfare Committee (CWC)

North Twenty Four Parganas

WEST BENGAL.

Mem. No.: 86897 for Justice(w)
Date: 16/08/2017

Profile No.: 1934301CIRJW20170222

Whereas **Safi Akhtar**, currently placed under the care of **SNEHA HOME SANLAAP**, Address - **52 NALINI MITRA STREET ELACHI GRAM NARENDRAPUR KOLKATA 103** has this day been found to be no more in need of care and protection, the reason being **restorable to parents or fit person i.e. to her mother NUNTAS BEGUM**.

It is hereby ordered to discharge the child from the care of the above said institution on 16/08/2017 under the care of **NUNTAS BEGUM**, Address - **WO - ANAYATULLA PRESENT ADDRESS AS REFUGEE - VILL - PLOT NO - 2 DOOR NO - 4 NEAR - BABA NAGAR DARGAH BALAPUR ROAD HYDERABAD STATE - HYDERABAD UNHCR ID NO - 30500117093 UNHCR ID NO - 305-13C00118 - NUNTAS BEGUM MOB NO - 8247585280**.

M. Mukherjee
16/08/17
Member

Child Welfare Committee
North 24 Parganas
Govt. of West Bengal

Dale Dey A. I. A.
16/08/17
Member

Child Welfare Committee
North 24 Parganas
Govt. of West Bengal

(Signature)

Chairperson / Member
Child Welfare CommitteeDate: 16/08/2017

Received By:

NUNTAS BEGUM OF
Signature: *Guardian / Fit Person*
Date: _____
Place: _____

*L
T
I
OF
ANAMOL HASSAN*

HRCM'