



**IN THE HIGH COURT OF MADHYA
PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
&
HON'BLE SHRI JUSTICE ROOPESH CHANDRA
VARSHNEY**

ON THE 10th OF DECEMBER, 2024

WRIT PETITION No. 1818 of 2023

AHMED ALMAKKI ALIAS AHMED

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anil Mishra and Shri Akram Khan, Advocates for petitioner.

Shri S.S.Kushwaha, Government Advocate for respondent nos. 1,2 and 4/State.

Shri Praveen Kumar Newaskar, Dy. Solicitor General for respondent nos. 3 and 5/IOI.

ORDER

Per: Justice Gurpal Singh Ahluwalia

This petition, under Article 226 of Constitution of India, has been filed seeking the following reliefs:-

“That, the petitioner praying a relief on basis of facts by filing this petitioner as under:

1. To issue a Writ of habeas corpus or any other appropriate writ, order or directions, directing the respondents to declare the decision of the Superintendent of Police and the District Magistrate as



illegal and issue directions to transfer the Petitioner to a detention center as per law.

2. To issue directions to the State Government, FRRO and Ministry of External affairs to conduct an enquiry (interview the petitioner and verification of documents) and to establish communications with the Government of Saudi Arabia to deport the Petitioner to his family as soon as possible.

3. To order the State Government to make sure the detention center has basic amenities like electricity, safe drinking water, hygiene, accommodation with bed, toilet bath, communication facilities, provision for kitchen, proper drainage and sewage facilities as provided under the Model Detention Center/ Holding Center/Camp Manual.

4. For an order to establish sufficient detention centers as per the ruling by the Supreme Court in Bhim Singh, circulars/communications issued by the Ministry of External Affairs and the Model Detention Center/ Holding Center/Camp Manual.

5. For an order directing the concerned state authorities to provide all the documents, gadgets, materials recovered from the Petitioner.”

2. It is the case of petitioner that he is a Rohingya Refugee. In order to save their lives, his parents had moved from Myanmar to Saudi Arabia some times in the year 1960. The family was given refuge by Saudi Government and documentation of identity and residence were provided to the family by the Government of Saudi Arabia. Petitioner and his siblings were born in Saudi Arabia. In the year 2013, under hope and belief of getting higher education, petitioner got in touch with a Bangladeshi national living in Saudi Arabia, who promised him safe passage out of country, as refugees in Saudi Arabia do not have right to leave the country. Petitioner



was deported to Bangladesh by the Saudi Government upon learning that he had an invalid Bangladeshi passport. Petitioner arrived in Bangladesh in the year 2013 where he struggled for livelihood and faced constant harassment. Ultimately, petitioner came to India and reached Gwalior where he was taken in custody on 21/9/2014. Crime No. 496/14 was registered at Padav Police Station for offences under sections 14(b) of the Foreigners Act, 1946 and section 3 of Passport Act, 1920. Petitioner was sent to judicial custody in Central Jail, Gwalior. He was sentenced to undergo RI for 3 years by judgment dated 22/8/2015 passed in Case No.16418/2014. The sentence of petitioner was completed on 22/9/2017. Since the officials could not determine citizenship of petitioner, he was temporarily sent to Detention Centre operated and managed by Padav Police Station. Petitioner was kept in a room for approximately 9 months. The Detention Centre was unsuitable for human habitation, influxed with rodents and inedible food and, accordingly, petitioner suffered each day. He was physically and mentally assaulted as well as harassed. Even after nine months of his stay in the so called Detention Centre, he was never informed about the status of his deportation and communication with Ministry thereof. Accordingly petitioner escaped from Detention Centre on 12/6/2018 and went to Hyderabad, but he was brought back by Padav Police from Hyderabad on 23/6/2018. Thereafter an FIR bearing Crime No. 321/2018 was registered against petitioner under sections 4/14 of the Foreigners Act, 1946. Petitioner was again sentenced to 3



years RI by judgment dated 24/02/2021 passed by JMFC, Gwalior in RCT No. 3527/2018. Petitioner has also undergone the said sentence. However, since then petitioner is languishing in prison. On 2/7/2021, Superintendent of Police, Gwalior issued a letter to Superintendent, Central Jail, Gwalior directing them to treat the Central Prison as a temporary Detention Centre for petitioner and District Collector, Gwalior also sent a letter to Principal Secretary, Home Ministry thereby informing that Central Jail shall be treated as temporary Detention Centre for the purpose of stay of petitioner. It is submitted that since then petitioner is languishing in Jail even without there being any conviction and sentence against him and, accordingly, it is prayed that petitioner may be shifted to some Detention Centre till question of his citizenship is decided and he be deported to the respective country and the State Government must ensure that the Detention Centre has basic amenities like electricity, safe drinking water, hygiene, accommodation with beds, toilets/baths, communication facilities, provision for kitchen, proper drainage and sewage facilities as provided in the Model Detention Centre/Holding Centre/Camp Manual.

3. On 3-7-2024, the following order was passed :

“Shri Swapnil Shukla - Advocate for the petitioner.

Shri Praveen Kumar Newaskar - Deputy Solicitor General for the respondents/Union of India.

Shri Rajesh Shukla - Additional Advocate General for respondent/State.

Union of India has filed the reply by submitting that neither Saudi Arabia nor Bangladesh are ready to take this petitioner in their countries because the parents of the petitioner are refugees in Saudi Arabia and the passport



of Bangladesh produced by the petitioner has been found forged. Admittedly, the petitioner is not a citizen of this country, therefore, he cannot be permitted to live in this country for indefinite period. In order to get the response from both the foreign countries, let they be impleaded through High Commission, Embassy at New Delhi in this petition as respondents.

Let appropriate application be filed by the counsel for the petitioner for impleadment.

On filing this application, same be treated as allowed & notice be issued by RAD mode.

Meanwhile, Government Advocate is directed to get the status of W.P.No.793/2017 pending before the Hon'ble Apex Court in relation to the deportation of Rohingyaas.”

4. Thereafter, on 23-9-2024, the following order was passed :

“Earlier notice was issued to respondents No.6&7, in which service report denotes “awaited”.

Learned counsel for petitioner informs this Court that earlier respondents No.6 & 7 declined to accept notice; therefore, this matter be kept on any date for hearing finally.

Since service report is awaited, therefore, as a matter of last indulgence, this matter is placed in the week commencing 21/10/2024 with the stipulation that if notice are not being served, then looking to the nature of dispute, this matter shall be heard finally at motion stage.

Meanwhile, parties may submit synopsis.”

5. Thereafter, on 23-10-2024 the following order was passed :

“Written submission has been produced by counsel for petitioner, which is taken on record.

2. It is submitted that the petitioner was apprehended on 21.09.2024 by Padav Police Station Authorities due to suspicion about his citizenship. Upon investigation, he failed to provide valid citizenship documents, classifying him as an illegal immigrant.



Consequently, an FIR was registered under CrimeNo.496/2014 citing Section 14(3,2) of the Foreigners Act, 1946 and Section 3 of the Passport Act, 1920. The petitioner was remanded to judicial custody in Central Jail Gwalior, pending trial and later sentenced to a three-year term on 22.08.2015 by the trial Court in Case No.16418/2014.

3. It is further stated that after completing his sentence on 22.09.2017, the petitioner was released from Central Jail, Gwalior. However, his citizenship status remained unresolved throughout the investigation and trial. Due to these circumstances, the petitioner was temporarily placed at Padav Police Station, District Gwalior, a designated "Temporary Detention Centre" starting from 22.09.2017.

4. The case of the petitioner is that on 12.06.2018, it was alleged that the petitioner absconded from the temporary detention center, leading to the registration of a case under Section 14 of the Foreigners Act, 1946, in connection with Crime No.321/2018. Acting on information from an informant, the petitioner was arrested on 22.06.2018 in Hyderabad. Following a trial, the Court sentenced him and upon completion of his sentence on 02.07.2021, the petitioner was temporarily placed in a designated detention center within Central Jail, Gwalior as per the letter dated 02.07.2021.

5. It is not in dispute that the petitioner completed the sentence in both the cases and the prayer of the petitioner is that there are several detention centers designated for holding refugees, illegal immigrants and foreign nationals awaiting deportation. These centers are primarily located in States such as Assam, Delhi, Maharashtra, West Bengal and Karnataka. The facilities at these detention centers typically include basic amenities such as food, medical care, sanitation and shelter. However, the conditions vary significantly across different centers with some receiving criticism for inadequate facilities and poor living conditions. The government has been working to improve these centers as



per the guidelines issued by the Ministry of Home Affairs.

6. In view of above, the Central Government, Ministry of Home Affairs is directed to take a decision as to why the petitioner cannot be kept in the centers located in the States such as Assam, Delhi, Maharashtra, West Bengal and Karnataka.

7. For response to the said query, re-notify after Diwali Holidays.”

6. On 12-11-2024 the following order was passed :

“Learned counsel for respondent/Union of India sought two weeks' time to furnish details of detention centres operating in different States of India, so that respondent/State can make requisition for sending petitioner in one of such detention centres.

Needful be done within two weeks.

List this case on 09.12.2024.”

7. Ultimately, on 9-12-2024, the following order was passed :

“It is the case where even the Central Government has expressed its helplessness in dealing with the petitioner. This Court by order dated 23.10.2024 had passed the following directions:-

"6. In view of above, the Central Government, Ministry of Home Affairs is directed to take a decision as to why the petitioner cannot be kept in the centers located in the States such as Assam, Delhi, Maharashtra, West Bengal and Karnataka."

It is submitted by Shri Newaskar that petitioner had illegally immigrated to this Country on the basis of fake passport. He has been convicted twice for the said offence and at present, he is detained in Central Jail, Gwalior. According to District Magistrate, said Central Jail, Gwalior is to be treated as detention centre for the petitioner. However, counsel for State as well as Union



of India are not in a position to justify the said order.

Be that whatever it may be.

In view of the direction given by this Court by order dated 23.10.2024, it is submitted by Shri Newaskar that there is no guideline to deal with such type of persons.

It is really shocking that Union of India, who is responsible for framing the guidelines, has expressed its helplessness on the ground that they have not framed any guidelines to deal with situation in hand.

Under these circumstances, it is clear that petitioner is under illegal detention.

Accordingly, counsel for State as well as Union of India are granted a day's time to address as to whether Union of India is ready to take action as per directions by this Court by order dated 23.10.2024 or else State Government as well as Union of India are ready to pay cost of illegal detention on monthly basis to petitioner.

List this case on **10.12.2024.**"

8. Today, again it was submitted by Counsel for Union of India, that Saudi Arab has refused to take the petitioner back to its Country, whereas talks with Bangladesh are going on. However, it is submitted that in case, no Country decides to take its citizen back to its country, then such persons are kept in detention centers. It is fairly conceded that since, talks with Bangladesh are going on, therefore, he can be kept in detention center situated in West Bengal or Assam.

9. It is submitted by Counsel for Petitioner, that in the light of order passed by Supreme Court in the case of **Bhim Singh Vs. Union of India** reported in (2012) 13 SCC 471, this petition may be disposed of with a direction to the respondents to lodge the petitioner in Detention Centre, Assam.



10. Heard the learned Counsel for the parties.
11. The Supreme Court in the case of **Bhim Singh (Supra)** has held as under :

“5. In Para 11 of the additional affidavit filed Shri Payingattery Venkiteswaran Sivaraman, it is stated that there are 37 Pakistani prisoners who have completed their sentence but they could not be repatriated as their nationality has not been confirmed by the Pakistan High Commission so far. It is also stated that besides, in respect of 11 Pakistani fishermen, Government of Gujarat has informed that no offence has been registered and they have no objection to their repatriation to Pakistan. However, in respect of these 11 Pakistani fishermen also, nationality has yet not been confirmed by the Pakistan High Commission. The list of these 37 Pakistani prisoners and 11 Pakistani fishermen is placed on record as Annexure G. Of the 37 Pakistani prisoners who have completed their sentence, 21 are stated to be mentally challenged. Most of these 21 persons have completed their sentence in 2007, 2008 and 2009, but their nationality has not been confirmed by the Pakistan High Commission though it appears that the consular access with regard to them was provided a few months before the completion of their sentence. It is indeed unfortunate that these 37 Pakistani prisoners who have served out their sentence and are not required under the Indian laws have been kept in jail because their nationality has not been confirmed. Whatever may be the reason for delay in confirmation of their nationality, we have not even slightest doubt that their continued imprisonment is uncalled for. In no way, can these 37 Pakistani prisoners be treated as prisoners once they have served out their sentence. It is true that unless their nationality is confirmed, they cannot be repatriated and have to be kept in India but until then, they cannot be confined to prison and deprived of basic human rights and human dignity.

6. It is stated in the additional affidavit of Shri Payingattery Venkiteswaran Sivaraman that in respect of



these 37 prisoners that the Ministry of Home Affairs has advised the State Governments/Union Territory Administrations concerned to set up detention centres for restricting their movements. A Communication dated 15-2-2012/16-2-2012 has been sent by the Ministry of Home Affairs advising the State Governments/Union Territory Administrations concerned to release such foreign nationals from jails and to restrict their movements in detention centres in terms of the powers delegated under Section 3(2)(e) of the Foreigners Act, 1946 and under Para 11 of the Foreigners Order, 1948 pending their deportation/repatriation. However, in the case of Jammu and Kashmir, it has been advised that the existing procedure i.e. detention under Section 8 of the Public Safety Act may continue. We are presently not concerned with the validity and legality of the detention of these prisoners under the above-referred provisions. However, suffice it to say that these 37 persons have to be formally released from jail immediately and be kept at appropriate place with restricted movements pending their deportation/repatriation. The places where they are to be kept—detention centres or by whatever name such places are called—must have basic facilities of electricity, water and hygiene. Twenty-one persons out of these 37 persons who are mentally challenged, on release, have to be given proper medical help/assistance or treatment in suitable government hospitals or the hospitals/clinics run by NGOs.”

12. In the present case, the petitioner has already undergone the jail sentence twice and at present he is no more required in any criminal case. Thus, his detention in Central Jail Gwalior (which has been declared as temporary detention centre), is violative of Article 20 and 21 of Constitution of India. Therefore, the respondents are directed that till the nationality of the Petitioner is adjudicated and he is deported back to his Country, he shall be



lodged in Detention Centre, Assam. For any reason, if the shifting of petitioner from Detention Centre Assam is found to be necessary, then he can be shifted to any other Detention Centre by the orders of the competent authority.

13. With aforesaid observations, the petition is finally **disposed of**.

(G.S.Ahluwalia)
Judge

(Roopesh Chandra Varshney)
Judge

(and)