

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) NO. /2020

(EXTRAORDINARY WRIT JURISDICTION)

IN THE MATTER OF:

MOHAMMAD JAMAL & ORS.PETITIONERS

VERSUS

UNION OF INDIA & ORS.RESPONDENTS

WRIT PETITION U/A 226 OF CONSTITUTION
OF INDIA FOR ISSUANCE OF WRIT OF
MANDAMUS OR ANY OTHER
APPROPRIATE WRIT, ORDER OR
DIRECTION TO THE RESPONDENTS
THEREBY TO QUASH THE PARAGRAPH
NO. 5 OF THE ORDER DATED 09.05.2020
ISSUED BY THE RESPONDENT NO.3 AS
BEING UNTENABLE IN LAW AND
VIOLATIVE OF ARTICLES 14, 21 AND 22 OF
THE CONSTITUTION OF INDIA, AND
FURTHER PRAYING FOR ISSUANCE OF A
WRIT OF HABEAS CORPUS OR ANY
OTHER APPROPRIATE, WRIT, ORDER OR
DIRECTION TO THE RESPONDENTS TO
ORDER AND FACILITATE IMMEDIATE
RELEASE OF FOREIGN NATIONALS HELD
IN INSTITUTIONAL QUARANTINE IN DELHI

**HAVING TESTED NEGATIVE FOR COVID-19
AS QUARANTINE IN PERPETUITY SHALL
TANTAMOUNT TO ILLEGAL DETENTION
AND THEREBY VIOLATIVE OF ARTICLES
14, 21 AND 22 OF THE CONSTITUTION OF
INDIA ALONG-WITH SUPPORTING
AFFIDAVITS.**

TO,

THE HON'BLE CHIEF JUSTICE AND HIS
COMPANION JUSTICES OF THE HON'BLE
HIGH COURT OF DELHI AT NEW DELHI
THE HUMBLE PETITION OF THE
PETITIONERS ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That present Writ Petition under Article 226 of the Constitution of India has been preferred by the Petitioners before this Hon'ble Court praying for issuance of a writ of mandamus thereby quashing of Paragraph 5 of the Order dated 09.05.2020 (hereinafter referred to as the 'Impugned Order') passed by the Respondent No. 3 on directions of the Respondent No.1 directing for the handing over of the custody of 567 foreign nationals (having participated/visited the religious congregation at

Nizamuddin Markaz) across various institutional quarantine centres to the Delhi Police upon testing negative for novel coronavirus (Covid-19), and furthermore for the issuance of a writ of habeas corpus praying for the release & initiation of deportation of the foreign nationals having successfully undergone institutional quarantine and testing negative for Covid-19 as per the Standard Operating Procedure issued on 02.04.2020 by the Respondent No.1. It is imperative to note that the consequential effect of Paragraph 5 of the impugned Order, whereby the foreign nationals are prevented from departing to their respective countries upon being tested negative for COVID-19 & having undergone more than a month of detention, and the direction of the handing over the custody of the aforementioned nationals to the Respondent No.4 falls within the contours of 'illegal detention' and resultantly is violative of Articles 14, 21 and 22 of the Constitution of India.

True Copy of the Order dated 09.05.2020 passed by the Respondent No. 3 i.e. Office of the Divisional Commissioner, Revenue Department, Government of NCT of Delhi is marked and annexed as **IMPUGNED ORDER**

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2. That the Petitioners in the present Writ Petition are diverse foreign nationals belonging to United States of America, Malaysia, Indonesia, Brazil, Afghanistan, Algeria, Australia, Kazakhstan, Kenya, Niger, Krygyzstan and Myanmar visiting India on tourist visa inter alia to participate in the discourse by the Tabhligi Jamaat in Nizamuddin Markaz, New Delhi from 10th-15th March. However, the Petitioners are presently held in institutional quarantine in Delhi since 01.04.2020 upon orders of the Respondents, despite testing negative for Covid-19. However, a total of 916 foreign nationals, including the Petitioners herein, have been held in institutional quarantine, sharing the plight of the Petitioners herein. The details of the Petitioners in the present Writ Petition are as follows:

2A. The details of the Petitioner No.1 is as follows:

NAME: MOHAMMAD JAMAL

3. FACTS

3.1 That the Tabhligi Jamat, a self reform movement having its headquarters at the Nizamuddin Markaz, New Delhi having regular discourse around the year. It is pertinent to mention that followers and members of the movement from across the globe participate in the religious congregation at the Markaz. This said congregations which were scheduled for March, 2020, were planned two year in advance i.e. well before the inkling of outbreak of Covid-19.

3.2 That furthermore the Respondent No.1 issued directions on the website of Ministry of Home Affairs- Foreigners Division whereby no restrictions were imposed upon persons on a tourism visa insofar as visiting religious places and attending normal religious activities is concerned. The relevant extract is reproduced hereunder:

“3. There will be no restriction in visiting religious places and attending normal religious activities like religious discourses. However, preaching religious ideologies, making

speeches in religious places, distribution of audio or visual display/pamphlets pertaining to religious ideologies, spreading conversion etc. will not be allowed.”

True Copy of the advisory issued on the Respondent No.1 website is marked and annexed as **ANNEXURE P/1 Pg.101-102**

3.3 That on 11.03.2020 the World Health Organization declared novel coronavirus (Covid-19) as a pandemic. However, at the time, no lockdown was effected in the Country.

3.4 That on 13.03.2020, the Respondent No.2 in pursuance to exercise of powers conferred by the Delhi Epidemic Diseases, Covid-19, Regulations, 2020 under the Epidemic Diseases Act, 1897 capped all sports gatherings (including IPL)/conferences and seminars at 200 persons. However, no mention was made insofar as prohibiting religious congregations.

True Copy of the Order dated 13.03.2020 issued by the Respondent No.2 is marked and annexed as **ANNEXURE P/2 Pg.103**

3.5 That on 16.03.2020, the Respondent No.2 issued an Order in superseded the previous Order dated 13.03.2020 expanding the scope of the prohibitions including social, cultural, political, religious gatherings and, academic/sports/seminars events restricted to 50 persons.

True Copy of the Order dated 16.03.2020 issued by the Respondent No.2 is marked and annexed as
ANNEXURE P/3 Pg.104

3.6 That on 22.03.2020 the pursuant to the Janta Curfew declared by the Respondent No.1, consequently on 24.03.2020, a nationwide lockdown for a period of 21 days was declared w.e.f 25.03.2020.

3.7 That from 30.03.2020 onwards, pursuant to the registration of FIR against the organisers of the Markaz event, the Respondent, the Respondents ordered institutional quarantine for the attendees, visitors, organizers, members, of the Markaz congregation, including Indian Nationals and Foreigners alike.

3.8 That on 02.04.2020 the Respondent No.1 issued an addendum in continuation with the Orders No. 40-3/2020-DM-I(A) dated 24th March, 25th March and 27th March, 2020 Standard Operating Procedure (SoP) in

order to facilitate the departure of the asymptomatic foreign nationals stranded in India by way of chartered flights to be arranged by concerned foreign Government in consultation with the Ministry of Civil Aviation, owing to the outbreak of Covid-19 and the subsequent lockdowns imposed by the Centre and the State Governments.

True Copy of the Order dated 02.04.2020 issued by the Respondent No.1 containing the Standard Operating Procedure for Deportation of Foreign Nationals is marked and annexed as **ANNEXURE P/4 Pg.105-108**

3.9 That on 03.04.2020, the Respondent No.1 blacklisted 950 foreign nationals in connection with the religious congregation at Nizamuddin Markaz out of the blue. However, the Petitioners are not privy to the detailed list of the aforementioned 'blacklisted' foreign nationals and the reasons thereof for such enmass blacklisting.

3.10 That on 09.05.2020 the Respondent No.3 ordered for the release of the Indian Nationals related to the Markaz and other Masjids from institutional quarantine upon testing negative, while adhering to the Standard Operating Procedure of the various States and UTs. Furthermore, Paragraph 5 of the Impugned Order under the advisement of the Respondent No.1 directed for the

handing over of 567 foreign nationals related to Markaz and other masjids to the alleged custody of the Respondent No.4 i.e. Delhi Police, upon being tested negative for Covid-19.

3.11 That the present Writ Petition concerns 916 foreign nationals, including the 20 Petitioners, presently undergoing institutional quarantine for over a month in Delhi alone, despite having testing negative for Covid-19. The Petitioners in representative capacity had addressed 20 separate representations to the Respondents No.1 and 3. However, upon inaction of the Respondents, it was incumbent upon the Petitioners to approach this Hon'ble Court. For the purposes of this Petition, only one representation is annexed, as the contents of all 20 representations is the same.

True Copies of the representations addressed by the Petitioners to the Respondent No.1 and 3 is marked and annexed as **ANNEXURE P/5 Pg.109-113**

4. That the Petitioners herein have addressed representations to the Respondents No.1 and 3 praying for the release of the foreign nationals held in institutional quarantine and initiation of deportation process in pursuance to the Standard Operating Procedure directed by the Respondent No. 1.

5. That the Petitioners have no other efficacious remedy available to them except seeking indulgence of this Hon'ble Court by way of this Writ Petition.
6. That the Petitioners have not filed any petition or case in any other court or forum of law including the Hon'ble Supreme Court of India.
7. That the Petitioners have preferred the present Writ Petition inter-alia the following grounds:

GROUND

A. **BECAUSE** the present writ petition has been preferred by the Petitioners, representative capacity for a total of 916 foreign nationals (including the Petitioners herein), facing institutional quarantine since as early as 30.03.2020 in relation with the Markaz congregation. It is a trite precedent that a Writ of *habeas corpus* may be invoked by any person, on behalf of illegally detained person(s). (*Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378; *Kamaladevi v. State of Punjab*, (1985) 1 SCC 41).

B. **BECAUSE** the present Writ Petition is preferred before the Hon'ble Court for two-fold reasons:

- a) The specific direction contained in Paragraph No.5, issued by the Respondent No.3 in the Impugned Order dated

09.05.2020 insofar as 567 foreign nationals are concerned, finds no merit in law and warrants to be set aside; else shall tantamount to 'illegal detention', impinging on Articles 14, 21 & 22 of the Constitution of India and is liable to be quashed. The power to grant custody of an accused against whom an FIR is registered (u/s 167) and power to arraign any person as an accused in a trial/for investigation(u/s319) is vested with the Judicial Magistrate under the Code of Criminal Procedure, 1973.

- b) Even otherwise, despite having tested negative of Covid-19, 916 foreign nationals (out of which 895 foreign nationals have not been arrayed as accused persons in FIRs in connection with the Markaz congregation held in March, 2020) continue to be held under institutional quarantine, culminating in a blatant non-compliance of the Standard Operating Procedure issued by the Respondent No.1 itself; tantamount to 'illegal detention' thereby violating Articles 14, 21 and 22 of the Constitution of India.

C. **BECAUSE** at present, all aforementioned 916 foreign nationals (including the 79 foreign nationals who initially tested positive for Covid-19) have tested negative for Covid-19, including the Petitioners herein. However, foreign nationals

including the Petitioners herein have not been released by the Respondents, despite having undergone more than 1 month in institutional quarantine. It is pertinent to note that the no powers vests in the Respondents legalizing the detention of the foreign nationals in question, beyond the cycle of 14-days quarantine necessitated owing to the outbreak of Covid-19. The inaction of the Respondents in releasing the foreign nationals in question despite all persons testing negative for Covid-19 takes on the color of 'illegal detention'.

D. **BECAUSE** the act of continued institutional quarantine of the 916 foreign nationals, testing negative for Covid-19 despite a Standard Operating Procedure notified by the Respondent No.1, as well as the Impugned Order directing for the handing over of *custody* of 567 foreign nationals to the Respondent No.4 upon testing negative for Covid-19 is violative of Articles 14,21 and 22 of the Constitution of India. Therefore, the Impugned Order is liable to be quashed as being illegal, arbitrary and *ultra vires*.

E. **BECAUSE** the fundamental right of personal liberty envisaged under Article 21 of the Constitution of India is paramount and forms the basic structure of the Constitution and cannot be overridden by any statutory law of the Country, else

the latter would be declared as *ultra vires*. Circumscribing boundaries in the shape of procedure established by law have been embodied in the Constitution itself, and it being the parent law of the country, no other statutory law can override the same. Both Articles 21 and 22, implicitly and explicitly reinforce emphasis on 'procedure established by law' and consequently, 'Right to Life & Dignity' and 'Protection from Illegal Detention' are engrained in the Basic Structure of the Constitution. Reliance is further placed upon Article 21 of the Constitution of India, which guarantees 'Right to Life and Dignity' to both citizens and aliens (foreigners) alike; which cannot be suspended unless in accordance to procedure established by law. Furthermore, Article 22 of the Constitution of India explicitly warrants due cause prior to the arrest and detention of any person, citizen or foreign national alike. Furthermore, insofar as preventive detention is concerned, Under Article 22(5), the concerned authority is duty bound to communicate the grounds for detention and subsequently afford an opportunity to the person apprehended to make a representation against the order.

F. **BECAUSE** Dr. B.R. Ambedkar, the father of the Indian Constitution, in his famous speech on 25th November, 1949, on conclusion of deliberations of the Constituent Assembly, stated:

“These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them.....”

G. **BECAUSE** the Hon'ble Supreme Court in the case of *Maneka Gandhi v. Union of India.*, 1978 AIR 597 SC interpreted the word 'Law' in the expression 'procedure established by law' in Article 21 has been interpreted to mean that law must be right, just and fair, and arbitrary, fanciful or oppressive.

H. **BECAUSE** the principle of "due process" is an emanation from the Magna Carta doctrine. This was accepted in American jurisprudence (*Munn v. Illinois* [MANU/USSC/0207/1876 : 24 L

Ed77], L Ed p. 90: US p. 142). Again this was acknowledged in *Planned Parenthood of Southeastern Pennsylvania v. Casey* [120 L Ed 2d 674] wherein the American Supreme Court observed as follows:

The guarantees of due process, though having their roots in Magna Carta's 'per legem terrae' and considered as procedural safeguards 'against executive usurpation and tyranny', have in this country 'become bulwarks also against arbitrary legislation'.

I. **BECAUSE** as mentioned above, the Respondent No.1 issued Standard Operating Procedure (hereinafter referred to as 'SOP') on 03.04.2020 direction for the initiation of deportation process of asymptomatic foreign nationals stranded in India. It is imperative to note that in the present case, only 79 foreign nationals, currently held in institutional quarantine, related to the Markaz congregation were initially tested positive for Covid-19 in March, 2020.

J. **BECAUSE** in the prevailing facts and circumstances of the present Writ Petition, the 916 foreign nationals, including the Petitioners herein had entered India on a tourist visa, whereby

they participated in the religious congregation at Nizamuddin Markaz, organized between the 10th -15th March, 2020. It is noteworthy, that the Respondent No.2 had placed no ban on religious congregations till 16.03.2020. Even as per the guidelines meted out by the Respondent No.1, no ban was imposed on visiting and/or attending religious congregations while visiting the Country on Tourism Visa.

K. **BECAUSE** it *is* no doubt true that it *is* an oft quoted maximum that '*ignorance of law is no excuse*', but at the same time, it is also correct that there is no presumption to the effect that everyone knows law. In the cases of ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. (1979) 118 ITR 326 (SC)*** the Supreme Court laid down that there is no presumption that every person knows *law*. It is often said that everyone is presumed to know the *law* but that is not a correct statement ; there is no such maxim known to the *law*".

L. **BECAUSE** insofar as the foreign nationals held in institutional quarantine in Delhi in connection with the religious congregation at Markaz is concerned, FIRs have been registered by the Respondent No.4 against only 21 foreign nationals out of a total of 916 aforementioned foreign nationals. Paragraph 5 of the Impugned Order passed by the Respondent

No. 3 directed for the *handing over of custody* of 567 foreign nationals under institutional quarantine to the custody of the Respondent No.4 i.e. Delhi Police, upon being tested negative for Covid-19 is prima facie illegal and untenable in law. The relevant extract of the Impugned Order is reproduced hereunder:

“5. In respect of 567 foreign nationals related to Markaz & other Masjids, those who are found to be corona negative and staying in various institutional quarantine centres, concerned Dy. Commissioners should place them under the custody of Delhi Police as per the directions of the Ministry of Home Affairs.”

At the outset, it is reiterated that a total number of 916 and not 567 foreign nationals are presently being held in institutional quarantine in Delhi alone. It is the humble submission of the Petitioners that the contents of Paragraph 5 of the Impugned Order are untenable in law, as amounting to colorable legislation as authority is vested in neither Respondent No.1 or Respondent No.3 is empowered to grant *custody* to the Respondent No.4, specifically in the absence of 546 of mentioned 567 foreign nationals not named in the FIR & vests with the Judicial Magistrate u/s 167 and 319 or the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘The Code’). So far as 895 foreign nationals detained without due cause is concerned, appears to be a concerted attempt on behalf of the Respondents *‘to do directly, what cannot be done directly.’*

M. **BECAUSE** the Impugned Order mentioning 567 foreign nationals fails to clarify if the aforementioned persons have previously been blacklisted and booked by the Police officials. Furthermore, it is unclear It is to be regarded that the power to grant police custody (Section 167) as well as the power to arraign a person, suspected of a crime for the purposes of investigation vests with the Judiciary under the Code of Criminal Procedure, 1973. Resultantly, the contents of Paragraph 5 and the consequential implication is contrary to the law of the land and thus cannot be upheld.

N. **BECAUSE** assuming the involvement and subsequent custody of the present list of foreign nationals pertinent to the case at hand, while stoutly denying the same, u/s 167 the Code of Criminal Procedure, 1973 (hereinafter referred to as 'The Code') the power to 'grant' police custody by the way of remand of an accused person for the purposes of investigation of an FIR vests, is bestowed upon the Judicial Magistrate. Furthermore, Section 319 of the Code the Judicial Magistrate only is vested with the reservoir of power for arraigning a person appearing to have committed an offence; for which the person could be tried along-with the accused persons, and may be detained for investigation upon the Orders of the Court, as reiterated by the

Hon'ble Supreme Court in the case of ***Hardeep Singh v. State of Punjab.***, AIR 2014 SC 1400.

O. **BECAUSE** in the present situation, the Order to place any person under home or institutional quarantine cannot be equated with custody. Consequently, no plausible justification for the 'handing over of the custody' of the foreign nationals by the way of an alleged lateral transfer finds legality in law. In *Ganesh Miskin and another v State of Karnataka.*, Criminal Petition No. 2448 of 2019, the court looked into how the meaning of custody should be construed:

"As could be seen from Cr.P.C, unfortunately, the terms 'custody', 'detention' or 'arrest' have not been defined. Under such circumstances, the Court is not having any option, but to refer to the dictionary meaning. As per Oxford Dictionary, 'custody' is imprisonment, detention, confinement, incarceration, internment, captivity, remand duress and durance.

This is how "custody" is dealt with in Black's Law Dictionary, (5th Edn. 2009):-

Custody : The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected.

A relevant excerpt from a judgment which explains the meaning of in custody:

While interpreting the expression 'in custody' within the meaning of Section 439 Code of Criminal Procedure, Krishna Iyer, J. speaking for the Bench observed:

Custody, in the context of Section 439, is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

This word "in custody" is of elastic semantics but its core meaning is that the law has taken control of the person.

"He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody".

P. **BECAUSE** the Hon'ble Apex Court in the case of ***Niranjan Singh & Anr. V. Prabhakar Rajaram Khatore & Ors., 1980 AIR SC 785*** held that "*Custody, in the context of section 439 Cr.P.C. is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. When is a person in custody, within the meaning of s.439 Cr. P.C. ? When he is in duress either because he is held by the investigating agency or other police or allied*

authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of [s. 439](#). This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law.'

Q. **BECAUSE** the Hon'ble Supreme Court of India while rendering the decision in the case of ***Karitk Chakraborty v. State of Assam., 2017 5 GLT (FB) 144*** construed the meaning of 'Magistrate' strictly in the judicial sense, and no underlying tinge of executive overcast. The Hon'ble Court held as follows:

"Separation of powers between the Executive and the Judiciary and the requirement belief and expectation that the Judiciary functions absolutely

independent and uninfluenced by the Authority of the Executives.”

R. **BECAUSE** the Hon'ble Apex Court in the case of ***Manubhai Ratilal Patel vs. State of Gujrat & Ors.: (2013) 1 SCC 314***, held that the act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. In the case of ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni., AIR 1992 SC 1768*** the question regarding arrest & detention in custody was dealt with it was held that the magistrate under **S.167(2)** can authorize the detention of the accused in such custody as he thinks fit but it should not exceed fifteen days in the whole. Therefore the custody initially should not exceed fifteen days in the whole. The custody can be police custody or judicial custody as the magistrate thinks fit.

S. **BECAUSE** the Hon'ble High Court of Gauhati in the case of ***State of Assam v. Anupam Das., 2008 CriLJ 1276*** elucidated the phrase 'Magistrate' and the nature and extent as per the Code of Criminal Procedure, 1973. Relevant extracts are reproduced hereunder:

22. Section 3 Sub-section (32) of the General Clauses Act, 1897 defines the expression "Magistrate" as follows:

"(32) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;"

Therefore, necessarily we need to examine the provisions of the Code of Criminal Procedure.

23. Section 3 of the CrPC provides for rule of construction of references. Sub- Section (1) of Section 3 stipulates as to how the expression "Magistrate" shall be construed whenever reference is made under the Code, without any qualifying words. Sub-Sections (2) and (3) are not relevant for our purpose. Sub-section (4), which is relevant for the present purpose reads as follows:

25. Section 21 of the Cr.PC empowers the State Government to appoint Special Executive Magistrates; the details of which are not necessary in the present case. Section 22 of the Cr.PC deals with the local jurisdiction of the Executive Magistrates. Section 23 of the Cr.PC deals with the hierarchy of the Executive Magistrates and the limits and powers of the

various Executive Magistrates. Wherever the CrPC confers powers on the Executive Magistrates, the provisions of the Code are specific, for example, under Sections 107, 108, 109 and 110 the legislature expressly employed the expression "Executive Magistrate". We do not propose to make an exhaustive survey of the provisions of the Code for the present purpose. The above provisions are noted only for understanding the scheme of the Code with regard to the powers, functions and limitations of the Judicial and Executive Magistrates.

26. It is in the context of such separation of powers among the two categories of Magistrates Section 3(1) stipulates that in the Code of Criminal Procedure any reference, without any qualifying words, to a Magistrate shall be construed a Judicial Magistrate which term includes a Judicial Magistrate in contradistinction to an Executive Magistrate. The Parliament was also conscious of the fact that under various enactments made by the Parliament, powers are required to be exercised by the Magistrates without specifying whether such powers are to be exercised by Judicial or Executive Magistrates in a given situation. The Parliament, therefore, thought it fit to make a declaration under Sub-Section (4) of Section 3 that whenever such a question arises (in the context of any law made by the Parliament other than the Code of Criminal

Procedure whether such a reference is to a Judicial Magistrate or the Executive Magistrate) depending upon the nature of the power that is to be exercised such reference is to be construed to be either to a Judicial or an Executive Magistrate. From the scheme of Sub-Section (4) it appears that where the powers are purely administrative in nature such powers are required to be exercised by an Executive Magistrate. Whereas, where the power to be exercised is such that it involves appreciation of evidence or the formulation of a decision which exposes any person to any punishment, penalty or detention etc then such functions are required to be exercised by the Judicial Magistrates.”

T. **BECAUSE** the 9-Judge Bench of the Hon’ble Supreme Court of India in the case of ***K.S. Puttaswamy (Retd.) &Anr. v. Union of India & Ors., (2017) 10 SCC 1*** while overruling the majority decision in *ADM Jabalpur v. Shivkant Shukla.*, held that Articles 14, 21 and 22 of the Constitution of India cannot be suspended even in times of declared national emergency under Article 359(1) of the Constitution of India.

U. **BECAUSE** the Constitution Bench of the Hon’ble Apex Court in the case of ***Kanu Sanyal vs. District Magistrate,***

Darjeeling & Ors., (1973) 2 SCC 674], dealing with the nature and scope of the writ of habeas corpus observed as under:

"The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint".

V. **BECAUSE** all human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. Hence, that is why "liberty" encapsulates the quintessence of a civilized existence. The object of Article 21 is to prevent encroachment upon personal

liberty in any manner. Article 21 is repository of all human rights essential for a person or a citizen. A fruitful and meaningful life presupposes life full of dignity, honour, health and welfare. In the modern "Welfare Philosophy", it is for the State to ensure these essentials of life to all its citizens, and if possible to non-citizens. While invoking the provisions of Article 21, and by referring to the of quoted statement of Joseph Addison, "Better to die ten thousand deaths than wound my honour", the Apex Court in ***Khedat Mazdoor Chetna Sangath v. State of M.P.: (1994) 6 SCC 260.***, posed to itself a question "If dignity or honour vanishes what remains of life?" This is the significance of the Right to Life and Personal Liberty guaranteed under the Constitution of India in its Third Part.

W. **BECAUSE** resultantly, the Impugned Order insofar as Paragraph 5 is concerned is untenable in law, violating the fabric of liberty safeguarded by the Constitution of India. In the light of the above, out of the 916 foreign nationals, those testing negative for Covid-19 shall be released and necessary arrangements for deportation to their respective countries shall be arranged in pursuance to the Standard Operating Procedure issued on 03.04.2020 by the Respondent No.1 for the transit of foreign nationals stranded in India. Even otherwise, the Respondents are bereft of any power or authority authorizing

the unending quarantine of the foreign nationals upon testing negative for Covid-19.

PRAYER:

In view of the facts and circumstances described herein above it is humbly prayed that this Hon'ble court may be pleased to:-

- A) Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents thereby to quash the Paragraph No.5 of the order dated 09.05.2020 issued by the Respondent No.3 as being untenable in law and violative of articles 14, 21 and 22 of the Constitution of India;
- B) Issue a writ of habeas corpus or any other appropriate, writ, order or direction to the respondents to order and facilitate immediate release of foreign nationals held in institutional quarantine in Delhi having tested negative for covid-19 as quarantine in perpetuity shall tantamount to illegal detention
- C) and thereby violative of Articles 14, 21 and 22 of the Constitution of India; and
- D) Pass any such other order or direction as the court may deem fit and proper grant in light of the facts and circumstances of the present case.

PETITIONERS

THROUGH

ASHIMA MANDLA
ADVOCATE

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Dated: 20.05.2020
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