

Court No. - 18

Case :- BAIL No. - 2865 of 2020

Applicant :- Mohammad Shafiullah & Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Pranshu Agrawal, Sufiyan Mohammad

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Attau Rahman Masoodi, J.

Heard learned counsel for the applicants and learned AGA for the State.

The accused applicants are the foreign nationals from Bangladesh. It is implicit from the provisions of Part III of the Constitution of India that protection of Article 14, 20 and 21 is equally available to foreign nationals. That being the position of law, this Court in an identical situation has already passed an order in Bail Application No. 2898 of 2020 on 2.6.2020 enlarging the similarly situated accused persons on bail against whom the F.I.R. under the same very penal provisions was registered.

The accused applicants have pressed the prayer for bail on the same footing asserting that the commission of offences alleged is punishable with a minor punishment. That apart it is argued that the offences under which the F.I.R. has been lodged can remotely be attracted in the facts and circumstances set out in the F.I.R.

Article 20 of the Constitution of India guarantees an equal protection to foreign nationals in the matter of trial in criminal cases and Article 21 guarantees protection of life and personal liberty in equal measure. The applicants after being taken into custody were subjected to quarantine and have not tested Covid Positive and are presently in jail.

The question in the present case, however, is as regards the freedom of the accused applicants and the conditions on which they can be released and subjected to a fair trial for which their personal presence before the competent courts is essential.

The applicants entered into the territory of India in the month of March, 2020 on the basis of valid passports and by obtaining tourist Visas. The tourist visa of applicant no.3 viz Akalli Nahar @ Aklimun Nahar has already expired on 10.4.2020. The affidavit in support of bail application for all the applicants has been sworn by the next friend who cannot extend his surety in respect of a foreign national whose overstay and movement in the territory of India on the expiry of Visa is forbidden under law. The freedom of movement of such a foreign national against whom criminal trial is to be conducted and concluded and whose personal presence before the competent court of law within the territory of India is essential, there does not appear to be a place feasible for shelter other than the premises of the Embassy of Bangladesh where he can be housed so long as the Visa for his free movement in India is extended by the competent authority. The Visa of other applicants is expiring on the dates mentioned against the name of each of them as under.

Applicant number	Name	Expiry date of Visa
1	Mohammad Shafiullah	12.8.2020
2	Zaheer Islam @ Mohammad Zaheer-ul-Islam	09.2.2021
3	Mohammad Alauddin	17.7.2020
4	Jameela Akhtar	12.8.2020
5	Rahima Khatoon @ Most Rahima	17.8.2020

7	Zareena Khatoon @ Jorina Khatun	17.7.2020
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Let a notice be issued to the High Commission of Bangladesh through Ministry of External Affairs, Government of India, New Delhi. The High Commission of Bangladesh is expected to assist the Court for protection of the rights of their nationals through a counsel of their choice as well as for the formulation of conditions of bail. Notice is also issued to the Secretary, Ministry of External Affairs, Government of India to enter into necessary communication with the Government of Bangladesh through its High Commission according to treaty of extradition operative, if any, in this regard. The government of India is expected to be represented through Solicitor General/Additional Solicitor of India personally or video conferencing.

The prayer for bail made by accused applicant no. 6 whose Visa has expired on 10.4.2020 is put on hold till the next date of listing, whereas the other accused persons i.e. accused applicants no. 1 to 5 and 7 are released on interim bail for the period their Visas remain operative or until further orders, whichever is earlier. The prayer for bail is granted looking to the reasoning assigned in the order passed by this Court on 2.6.2020 and similarity of case in Bail Application No. 2898 of 2020.

The accused applicants no. 1 to 5 and 7 are released on interim bail during currency of their Visas and are permitted to reside at the place mentioned in the tourist Visas or as informed to the competent authority in Form-C. For the period of stay in India in terms of the Visas, the applicants shall be at liberty to receive disclosed financial support from their relatives in Bangladesh or from any citizen or any voluntary organisation

in India. In the event, applicants run short of financial support from the above sources, the Central/State Government through the Ministry of External Affairs after due consultation with the Government of Bangladesh shall provide necessary financial help to the accused applicants for sustaining their life in a dignified manner inclusive of the medical aid. The applicants shall surrender before the court concerned immediately before the expiry of Visa, subject to further orders which may be passed by this Court.

In view of the above let the applicants no. 1 to 5 and 7, namely, **Mohammad Shafiullah, Zaheer Islam @ Mohammad Zaheer-ul-Islam, Mohammad Alauddin, Jameela Akhtar, Rahima Khatoon @ Most Rahima and Zareena Khatoon @ Jorina Khatun** involved in FIR/Crime No. 259/2020, under Section 188 IPC, Section 3 Epidemic Diseases Act, 1897, Section 56 Disaster Management Act, 2005 and Section 13/14B/14C Foreigners Act, 1946, P.S. Madiyaon, District Lucknow, be released on their furnishing a bail bond each and one reliable surety to the satisfaction of the court concerned, subject to the following conditions in addition to the conditions enumerated in the earlier part of the order:

(i) The applicants will not leave the last place of residence mention in the Visa or as informed to the authorities in Form-C without prior written permission of the Court and shall furnish an undertaking to the said effect and shall keep the nearest Police Station informed about their whereabouts every fortnight. The applicants shall be at liberty to offer prayers according to their faith but the religious congregations contrary to the model guidelines issued by the Central or State Government during the period of Pandemic i.e. Covid-19, may not be joined.

(ii) Each applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) Each applicant shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iv) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence a proclamation or a look out notice be issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them in accordance with law.

(vi) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against them in accordance with law.

(vii) The accused applicants shall strictly adhere to the conditions of this order and shall not indulge into any activity endangering the security of the country nor shall violate any condition of the Visa issued under the Foreigners Act, 1982.

List this bail application on 16.7.2020 for consideration on regular bail.

It shall be open to applicant no. 6 to apply for extension of Visa in the manner as may be permissible under law through the jail authorities who shall transfer any such application to the Ministry of External Affairs, Government of India for the same being placed before the High Commission of Bangladesh.

Amendment application (C.M. Application No. 35851 of 2020) for the incorporation of penal provisions correctly in the bail application is allowed.

Let necessary amendment be incorporated within three days and an amended copy of the bail application be brought on record within a week.

Let the Ministry of External Affairs, Government of India, New Delhi, through its Secretary and Bangladesh High

Commission, New Delhi through its First Secretary, be also impleaded during course of the day.

Issue notice to newly impleaded parties.

Steps within three days.

Ministry of External Affairs shall accordingly take up the matter of foreign nationals with the High Commission of Bangladesh and apprise the Court as to how the participation of the present applicants can be secured for conduct and conclusion of the trial if for any reason the same does not conclude within the period for which the tourist Visas granted by the Government of India remain operative.

This Court as an abundant caution also leaves it open to the Government of India through Ministry of External Affairs, New Delhi and Government of Bangladesh to decide the fate of criminal cases otherwise than by way of judicial trial. This shall solely depend upon the examination of offences and material by the respective governments and may not be matter for judicial scrutiny by this Court.

Order Date :- 9.6.2020

Fahim/-