

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE P. SREE SUDHA
WRIT PETITION No.1199 OF 2023

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. M.A.Shakeel, learned counsel for the petitioner and Mr. Mujib Kumar Sadasivuni, learned Special Government Pleader representing learned Additional Advocate General appearing for respondents 1 to 3 and 5 and Sri V.T.Kalyan, learned counsel representing learned Deputy Solicitor General of India, appearing for respondent No.4.

2. Wife of the detenu Shaik Gulzar Khan @ Gulzar Massih S/o Shaik Lalkhan @ Haroon, filed the present writ petition challenging the G.O.Rt.No.599, Law (LA, LA & J – HOME - COURTS.B) Department dated 02.11.2021 issued by 1st respondent who accorded permission to 2nd respondent for detaining the detenu, the Pakistani National, in Central Prison, Cherlapally till his deportation to Pakistan. Pursuant to the said G.O., 3rd respondent issued notice dated 08.02.2022 stating that the detenu is detained in Central Prison, Cherlapally till his deportation process is completed.

3. According to the respondents, the detenu is native of Christian Basthi, Kuluwal Village, Sialcot District, Punjab province of Pakistan. He has forged the document by submitting documents of Md. Adil r/o. Iqbalpur, used it as genuine document in fraudulent manner, obtained emergency certificate and entered into India on 10.01.2011. While living in India, the detenu obtained Indian Passport by submitting fake and forged voter ID and Adhar Card. On the complaint lodged by 3rd respondent, SIT-CCS, Hyderabad, registered a case in Cr.No.252/2019 against the detenu, for the offences punishable under Sections 468, 469, 471 of IPC read with Section 14 (A) of Foreigners Act, 1946 (for short, ('the Act') and Section 12 (1) (b) of the Indian Passport Act, and Section 3 of Passport (entry into India) Act, 1920. On completion of investigation, the Investigating Officer laid charge sheet against the detenu and the same was taken on file vide C.C.No.2681 of 2021.

4. It is opt to note that IV Additional Metropolitan Sessions Judge at Hyderabad, granted bail to the detenu vide order dated 10.03.2020 in CrI.P.No.633 of 2020 in Cr.No.252 of 2019 of P.S. SIT/CCS, Hyderabad on the following conditions:-

- i. On execution of a personal bond for Rs.20,000/- with two local sureties for a likesum each to the satisfaction of learned XII Additional Chief Metropolitan Magistrate, Hyderabad,
- ii. He shall appear before the concerned SHO, SIT/Hyderabad on every alternate day between 9.00a.m. and 12.00 p.m., till further orders,
- iii. He shall not leave the limits of Hyderabad City without prior written permission of the Station House Officer concerned,
- iv. He shall not threaten, coerce or influence the witnesses, shall not tamper the evidence, shall cooperate with the Investigating Officer in completion of the investigation,
- v. He shall furnish full residential address of the petitioner endorsed by his neighbor, e-mail address, cell number, to the strict satisfaction of the learned Magistrate,
- vi. If the petitioner fails to appear before the Magistrate Court after filing of charge sheet, for judicial process without leave of the said Court and in the event of issuance of Non Bailable Warrants, this bail stands automatically cancelled and the self and surety bonds will be forfeited.

5. While the matter stood thus, 2nd respondent vide proceedings Rc.No.1568/C1/TS/2021, dated 02.12.2021 informed 1st respondent that the detenu was arrested, produced before the Court and sent for judicial custody. He sought for necessary orders to detain the detenu subject to outcome of the judgment in the said case and if he is acquitted in the said case, he has to be detained till the deportation

process is completed. Therefore, 2nd respondent requested 1st respondent to accord permission for detaining the detenu till his deportation process to Pakistan is completed.

6. On the request made by 2nd respondent, 1st respondent vide G.O.Rt.No.599, dated 02.11.2021 accorded permission to 2nd respondent for detaining detenu till his deportation process to Pakistan is completed in exercise of the powers conferred under Section 3(2)(e) of the Act read with Government of India Notification No.4/3/56(1) F.I. dated 19.04.1958.

7. Vide aforesaid G.O., 1st respondent granted permission to the 2nd respondent to take necessary action accordingly and intimate as and when deportation process of the detenu is completed.

8. In the notice dated 08.02.2022, 3rd respondent stated that pursuant to the orders of 1st respondent vide G.O.Rt.No.599, dated 02.11.2021, the detenu was taken to custody on 09.02.2022 at 8.00 A.M. and he is being detained in Central Prison, Cherlapally, Hyderabad till his deportation process is completed. Vide proceedings dated 09.02.2022, 3rd respondent produced detenu before 5th respondent.

9. Challenging the said G.O.Rt.No.599 dated 02.11.2021 of 1st respondent, the petitioner filed the present writ petition.

10. Sri M.A. Shakeel, learned counsel for the petitioner would submit that 1st respondent is not having power to accord permission to 2nd respondent to detain the detenu in exercise of powers conferred under Section 3(2) (e) of the Act. In the Notification dated 19.04.1958, Section 3(2) (e) is not included. The same was inserted by Act 42/1962. Therefore, 1st respondent has no power to accord permission to 2nd respondent to detain the detenu under Section 3(2) (e) of the Act. He has placed reliance on the judgment dated 15.09.2022 of Division Bench of this Court in W.P.No.6407 of 2022 and batch.

11. Whereas, learned Special Government Pleader would submit that 1st respondent has accorded permission to 2nd respondent to detain the detenu considering the allegations and also by following the due procedure laid down under law. There is no error in it.

12. Whereas, Sri V.T.Kalyan, learned counsel, representing Deputy Solicitor of India, on instructions, would submit that there are serious allegations against the detenu. He is a Pakistan National. He has forged the document by submitting documents of Md. Adil r/o.

Iqbalpur, used it as genuine document in fraudulent manner, obtained emergency certificate and entered into India on 10.01.2011. While living in India, the detenu obtained Indian Passport by submitting fake and forged voter ID and Adhar Card. There is every possibility of he committing illegal activity. Deportation process is under progress. Invoking power under SO No.590, dated 19.04.1958, the aforesaid G.O.Rt.No.599, dated 02.11.2021 was issued by 1st respondent according permission to 2nd respondent to detain the detenu till deportation process is completed. There is no error in it.

13. 1st respondent issued the aforesaid G.O. referring to Gazette notification dated 19.04.1958 of 3rd respondent wherein power was delegated to 1st respondent under SO 590 dated 19.04.1958 which is extracted below:-

S.0.590- In exercise of the powers conferred by clause (1) of Article 258 of the constitution and of all other powers enabling him in this behalf and in suppression of all previous notifications on the subject in so far as they relate to the Acts, Rules and orders thereunder mentioned, the President, with the consent of the State Government concerned, hereby entrusts to the Government of each of the States of Andhra Pradesh, Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, and West Bengal, the functions of the Central Government (i) Under Section 5 of the Indian Passport Act, 1920 (34 of 1920); (ii) under rules 2 and 4 of the Indian Passport Rules, 1950; (iii) under rule 3 of the Registration of Foreigners Rules, 1939; (iv) in making orders of the nature specified in clauses (c), (cc), (d), (e) and (f) of sub-section 2 of Section 3 of the Foreigners Act, 1946 (31 of 1946); and (v) under

the Foreigners Order, 1948, subject to the following conditions, namely –

- (a) that in exercise of such functions the said State Government shall comply with such general or special directions as the Central Government may from time to time issue; and
- (b) that notwithstanding this entrustment, the Central Government may itself exercise any of the said functions should it deem fit to do so in any case,"

Section 3 of the Foreigners Act, is relevant and the same is extracted below:-

3. Power to make orders.—

(1) The Central Government may by order¹ make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into ²[India] or, their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter India, or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India, or in any prescribed area therein; (cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified—

- (i) requiring him to reside in a particular place; tc" (i) requiring him to reside in a particular place;"

- (ii) imposing any restrictions on his movements; tc" (ii) imposing any restrictions on his movements;"
- (iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
- (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
- (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
- (vi) prohibiting him from association with persons of a prescribed or specified description;
- (vii) prohibiting him from engaging in activities of a prescribed or specified description;
- (viii) prohibiting him from using or possessing prescribed or specified articles;
- (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;
- (f) 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;
- (g) shall be arrested and detained or confined;] and may make provision 5[for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.
- (3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) or clause (f) of subsection (2).

14. Section 3(2) (g) was inserted by Act 42 of 1962. Whereas, the aforesaid SO 590 was issued on 19.04.1958. Therefore, power to detain and confine the detenu was not delegated to 1st respondent by 4th respondent.

15. Considering the said aspects and relevant provisions of the Act, this Court vide common order dated 15.09.2022 in W.P.No.6407 of 2022 and batch wherein the detenus are Myanmar Nationals and Foreigners, held that no power was delegated to 1st respondent by 4th respondent under Section 3(2)(g) of the Act and declared the detention orders issued against 5 detenus therein as illegal.

16. In view of the aforesaid facts, this Court directed learned counsel appearing for 4th respondent to get specific instructions with regard to filing of SLP, if any, challenging the said order and also issuance of any notification including Section 3(2)(g) of the Act after amendment. Learned counsel appearing for 4th respondent informed this Court that no notification was issued including Section 3(2)(g) of the Act after amendment and no SLP was filed challenging common order dated 15.09.2022 in W.P.No.6407 of 2022 and batch. Despite granting liberty, he is not in a position to inform this Court about the

stage of deportation process initiated against the detenu by 4th respondent.

17. We respectively agree with the view taken by the coordinate Bench in common order, dated 15.09.2022 in W.P.No.6407 of 2022 and batch. The lis involved in the present writ petition is also squarely covered by the said order. 1st respondent accorded permission to the 2nd respondent in exercise of its powers under Section 3(2)(g) of the Act which is not included in the aforesaid notification dated 19.04.1958. However, PS, CCS/SIT has also registered a case against the detenu and on completion of investigation, laid charge sheet. The same was taken on file vide C.C.No.2689 of 2021. The Court below granted bail to the detenu on imposition of the aforesaid conditions. There is no allegation against the detenu that he has violated any of the conditions imposed by the Court below. In the counter itself, 3rd respondent stated that the detenu is working as painter in the locality and non-controversial with any one.

18. In the light of the aforesaid discussion, in our considered view, G.O.Rt.No.599, dated 02.11.2021 issued by 1st respondent is illegal and the same is liable to be set aside.

19. In the result, the present Writ Petition is allowed. G.O.Rt.No.599, dated 02.11.2021 issued by 1st respondent is set aside. 3rd respondent is directed to set the detenu namely Shaik Gulzar Khan @ Gulzar Massih S/o Shaik Lalkhan @ Haroon, aged about 51 years, Occ: Painter, R/o H.No.6-50, B.C. Colony, Gadivemula Village and Mandal, Kurnool District of Andhra Pradesh, who is now detained in Central Prison, Cherlapally, free forthwith on furnishing a copy of bail order by complying with the conditions imposed by the learned IV Additional Metropolitan Sessions Judge, vide order dated 10.03.2020 in CrI.M.P.No.633 of 2020 in Cr.No.252 of 2019 of PS, SIT/CCS, Hyderabad, and if he no longer requires in any other criminal cases. However, this order will not preclude 4th respondent in completing the process of deportation of the detenu in accordance with law. In the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

JUSTICE K. LAKSHMAN

JUSTICE P. SREE SUDHA

Date: 13th July, 2023

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