

GAHC010097512024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/1420/2024

SUT KHAN KIM AND 8 ORS
S/O- KHAI ZA KAP,
R/O- NEW LAIBONG,
P.S- KHAI KAM , DIST- HAKHA, STAE - CHIN, MYANMAR

2: NUAM NGAIH KHAM
S/O- KHUAL ZA MANG

R/O- PIMPIH

P.S- TIDDIM
DIST- HAKHA
STATE - CHIN
MYANMAR

3: KAM SIAN LIAN
S/O-CIN NGAIH THANG

R/O- PYIADAWTHA

P.S- KANY
DIST- SAGAING
SAGAING DIVISION

MYANMAR

4: THANG SIAN MUANG
S/O-LANG KHAN KAP

R/O- PYIADAWTHA

P.S- KALY
DIST- SAGAING
SAGAING DIVISION

MYANMAR

5: THANG HO SIAM
S/O-THANG THAWH MUNG

R/O- NEW LAIBONG
P.S- KHAIKAN
DIST- HAKHA DIVISION
STATE- CHIN MYANMAR

6: DAI SIAN NEM
S/O- NGIN KHAN THANG

R/O-KHAI KAM

P.S- KHAI KAM
DIST- HAKHA

STATE- CHIN MYANMAR

7: AWI KHAWM HUAI
S/O-CIN KHUA MANG

R/O- TAHN
P.S- KALAYMYO
KALAY TOWNSHIP
SAGAING DIVISION
MYANMAR

8: DIN LAN CING
D/O-KHAI ZA KAP

R/O- KHAI KAM

P.S- KHAI KAM
DIST- HAKHA

STATE- CHIN MYANMAR

9: CING THAWH SIAM
D/O-DAL SUANH NGING

R/O- KHAI KAM

P.S- KHAI KAM
DIST- HAKHA

STATE- CHIN MYANMA

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, SASTRI
BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE HOME DEPARTMENT

GOVT. OF ASSAM

DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE (B)
GUWAHATI
ASSAM

4:THE SUPERINTENDENT
OF GUWHATI CENTRAL JAIL

5:THE DEPUTY COMMISSIONER
GUWAHATI
KAMRUP (M)
ASSAM

6:THE UNION OF INDIA
THROUGH THE MINISTRY OF DEFENCE
SOUTH BLOCK
NEW DELHI-11

7:THE UNION OF INDIA
THROUGH THE MINISTRY OF EXTERNAL AFFAIRS
ROOM NO-2021
A WING

J.L NEHRU BHAWAN
23-D
JANPATH
NEW DELHI- 110011

Advocate for the Petitioner : MR. S DUTTA, MR. C SHARMA

Advocate for the Respondent : DY.S.G.I., GA, ASSAM

Linked Case : W.P.(Crl.)/21/2023

SUT KHAN KIM AND 8 ORS
S/O- KHAI ZA KAP

R/O- NEW LAIBONG

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DIST- HAKHA
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J.L NEHRU BHAWAN
23-D
JANPATH
NEW DELHI- 110011.

Advocate for : MR. S DUTTA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 6 ORS

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 12.09.2024

Heard Mr. S. Dutta, learned Sr. counsel assisted by Mr. S. Dutta, learned counsel for the applicants. Mr. H. Gupta, learned CGC appearing for the respondent.

2. This is an application filed by the applicants praying for conducting video conferencing to facilitate applications to be made to United Nations High Commissioner for refugees at New Delhi seeking the refugee status by the applicants.

3. The case of the applicants is that they travelled from Myanmar in a bus and entered India without requisite travel documents and then through Imphal they reached Guwahati, Assam on 12.09.2021 and checked into hotel at Rihabari. The Paltanbazar police on receipt of the information, conducted a raid in the hotel and found sixteen male and ten female staying at the hotel and their identity and nationality were found to be suspicious. Upon interrogation, it was found that all twenty six were citizens of Myanmar and they entered India with forged documents. Accordingly, a case was registered. After completion of investigation, charge-sheet has been laid under Section 468 IPC read with Section 14 of Foreigners Act and Section 3, 4 and 6 of Passport (Entry into India) Act. After completion of trial, the applicants were convicted and sentenced to undergo simple imprisonment for six months and the trial court also directed the Superintendent of Guwahati Central Jail to hand over the

custody of the convicts to the DCP (Border), Guwahati for the purpose of initiating the process of deporting the convicts outside the territory of India vide order dated 21.10.2022. After serving the term of sentence in the jail, the petitioners are detained in the transit camp, Matia, Goalpara awaiting repatriation to their country of origin i.e. Myanmar.

4. According to learned Sr. counsel for the applicants, though the applicants presently detained in the transit camp Matia, Goalpara but 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. It is further submitted that the process of repatriation is taking a long period and considering the apprehension that the applicants may not get fair treatment after being repatriated to Myanmar. Hence, the applicants desire to seek refugee status from the United Nations High Commissioner for refugees at New Delhi.

5. The learned Sr. counsel has specifically submitted that the prayer of applicants is to direct the concerned authorities to provide video conferencing facilities to the applicants so that they may seek refugee status from United Nations High Commissioner for Refugees at New Delhi.

6. Learned CGC submits that India is not a signatory to United Nations Convention of 1951 relating to the status of refugees and India does not recognize refugee status granted by UNHCR. It is further submitted that the deportation/repatriation of the illegal migrants i.e. the applicants is being done by the State Government of Assam and in that regard communication has been made with the State Government of Assam for their deportation.

7. It is further submitted that the applicants are the illegal migrants and are foreigners. The fundamental right to reside and settle in this country guaranteed under Article 19 is available only to the citizens. The Government of India cannot facilitate the applicant's prayer seeking refugee status as the same is not permissible in law. Hence, the learned CGC has prayed for dismissal of the prayer of the applicants.

8. Having heard the learned counsel for the parties and on perusal of the records along with the documents available therein, the admitted position is that the applicants are foreigners, citizens of Myanmar. Though the applicants were convicted by the trial court, but they served out the sentence. Now they are detained in detention camp at Matia, Goalpara, Assam. Through this application the applicants prayed to direct the authorities to provide video conferencing facilities so that they could make request to the UNCHR at New Delhi to grant them refugee status

9. Under the facts and circumstances of the case, if the applicants desire to seek refugee status from the United Nations High Commissioner for Refugees at New Delhi, this Court is of the view that the right to seek the same cannot be denied. The concerned authorities of the detention camp, Matia, Goalpara is directed to make necessary arrangements for such conversation through video conferencing facility.

10. In view of the above, interlocutory application stands disposed of.

JUDGE

Comparing Assistant