

GAHC010127912024



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

Case No. : WP(C)/3495/2024

RASHIDA BEGUM
D/O AMIN ULLAH, P/R/O DHOOMSAPARA, MAGARPARA, MARKET
RASHIDONG MOORULI, MYANMAR, PRESENTLY AT MATIA, GOALPARA
DETENTION CENTRE, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI-110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE INSPECTOR GENERAL OF PRISON
ASSAM
KHANAPARA
GUWAHATI-22

4:THE SUPERINTENDENT OF MATIA DETENTION CENTRE
GOALPARA
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP (M)
DIST- KAMRUP (M)
ASSAM

6:THE DEPUTY COMMISSIONER
KAMRUP (M)
DIST- KAMRUP (M)
ASSAM
PIN-78100

Advocate for the Petitioner : MR Z HUSSAIN, MR A KALITA (AMICUS CURIAE),MR A K DAS,MR. RASHIDUL ISLAM,MR. T SK

Advocate for the Respondent : MR. R K D CHOUDHURY, DSGI, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 04.10.2024
(S. Saikia, J)

Mr. Z. Hussain, learned counsel for the petitioner. Also heard Mr. R.K.D. Choudhury, learned DSGI, representing respondent no.1; Mr. J. Payeng, learned counsel appearing for respondent nos. 2 to 5, Mr. R.K. Talukdar, learned Govt. Advocate appearing for respondent no.6.

2. The petitioner before this Court claims to be a national of Myanmar, belonging to the Rohingya community. Because of communal violence, the petitioner claims to have been compelled to cross international borders to reach the United Nation High Commission in New Delhi, seeking a refugee status in India.

3. From Myanmar, she entered the territory of Bangladesh and thereafter entered Tripura, eventually arriving in Assam. On 25.07.2021, the petitioner,

along with other refugees, was travelling on the Agartala-Deoghar Express from Badarpur in Karimganj to New Delhi via Guwahati, attempting to reach the United Nation High Commission in New Delhi to seek refugee status. On their way to New Delhi by train, the petitioner and along with others were apprehended by railway police personnel at the Guwahati railway station, and an FIR was lodged against the petitioner and others vide Guwahati GRPS Case No. 67/2021 under Section 120(B)/370/371 IPC read with Section 14 of Foreigners Act read with Section 4 of Passport Entry into India Act, 1920 and Rule 6 of Passport Entry into India, 1950. They were forwarded to judicial custody on 26.07.2021. After completion of the investigation, the charge-sheet was submitted and in the said charge sheet which was filed on 22.10.2021, the petitioner and 9 others were not found to be involved in the said offence. Rather, they were found to be victims of circumstances who became an easy prey for the human traffickers. Upon perusal of the said charge sheet, the learned Special Judge NIA on 25.10.2021, directed the petitioner not to be put up for trial and they were released on personal bond.

4. Subsequently, on 28.10.2021, the learned Special Judge NIA issued a direction to the DC, Kamrup (M), Guwahati, for making sufficient arrangements for the petitioner to return to her respective place and also for her safeguard for completing her evidence in order to expedite the trial. Pursuant to the said order, the DC, Kamrup (M), Guwahati made arrangements for the petitioner to be detained at the Matia Detention Centre at Goalpara. Presently, the petitioner is still in detention at the said centre.

5. The statement and evidence of the petitioner has been recorded in the proceeding before the NIA Court, but in spite of that, the petitioner has not been released from detention centre by the respondent authority till date. Being

aggrieved, the present writ petition has been filed under Article 226 of the Constitution of India read with Section 227 of the Constitution of India.

6. The learned counsel for the petitioner submits that the prayer made in the writ petition is for permitting /facilitating the writ petitioner to be released from the Matia Detention Centre at Goalpara and to be relocated to the Refugee Camp no. 11, Royal Colony, Balapur, Hyderabad, Telangana as other similarly situated persons who had travelled together with the petitioner are lodged in the said detention centre.

7. This Court by earlier order dated 18.07.2024 permitted the respondent authorities to complete their instructions and also appointed an amicus curiae, Mr. Anjan Kalita, advocate of this Court. Subsequently, when the matter was listed on 21.08.2024, on the basis of a communication dated 19.08.2024, received from the Inspector General of Prisons, Assam, as well as a communication dated 20.08.2024, issued by the Joint Secretary, Government of Assam, Political (B) Department, to the effect that during the period of the detention of the petitioner at the detention centre, United Nation High Commissioner for Refugees (UNHCR) representatives have gathered information and evidence in respect of the petitioner towards her claim for refugee status and that they would review the case and take a decision in the matter.

8. The said communications were kept as a part of the record of the case records and the matter was deferred permitting the respondents to complete their instructions with regard to the claim of the petitioner for grant of refugee status by the UNHCR.

9. Today when the matter is called up, Mr. Z. Hussain, learned counsel for the petitioner has placed before this Court a photocopy of the UNHCR

receipt for refugee card shown to have been issued to the petitioner, namely, Rashida Begum, daughter of Aminullah. Her date of birth is reflected as 1st January 2005 and the country of origin is shown as Myanmar and date of issue of the identity card is shown as 26th August 2024. The learned counsel to the petitioner submits that since the petitioner has been granted refugee status by the UNHCR, her prayer for being shifted from Matia Detention Centre at Goalpara to the Refugee Camp no. 11, Royal Colony, Balapur, Hyderabad, Telangana should be directed by this Court.

10. The learned counsel for the respondents as well as learned DSGI appearing for the Union of India submits that a specific direction in respect of the prayer for shifting the petitioner to her preferred refugee camp as specified in the writ petition may not be ordered in the facts and circumstances of the case. The learned DSGI, however, fairly submits that the request, if any, made by the petitioner for shifting her from Matia Detention Centre at Goalpara to the Refugee Camp no. 11, Royal Colony, Balapur, Hyderabad, Telangana, the same can be facilitated by the Ministry of Home Affairs (Department of Foreigners' Division), Government of India.

11. We have given our anxious thoughts to the submissions made by the counsel for the parties and have also carefully noted the pleadings available on record as well as the photocopy of the UNHCR receipt for the refugee card stated to have been issued by the UNHCR to the present petitioner, a copy of which is retained in the case records. There is no doubt that the petitioner is an alien and is lodged presently in the detention centre. The prayer for seeking a direction to transfer her from the Matia Detention Centre at Goalpara to her preferred detention centre in the State of Telangana cannot be issued by this

Court as the state of Telangana will have to give their consent for such a request made by the petitioner in the first instance. Only upon such a consent is given by the State of Telangana, that any steps in that regard can be initiated. Further no such direction can be issued by this High Court as the State of Telangana is not within the jurisdiction of this Court. The Ministry of Home Affairs (Department of Foreigners' Division), Government of India is the appropriate department to look into the prayers, if any, made by the petitioner and facilitate issuance of necessary orders by the Union or by the respective States upon such an application being preferred by the petitioner. Under such circumstances, we close this writ petition by recording the fact that the petitioner has been granted a refugee status by the UNHCR

12. However, that by itself will not be taken as a ground for considering her prayer for being transferred from Matia Detention Centre at Goalpara to her preferred refugee camp. The petitioner is given liberty to make necessary applications to the Ministry of Home Affairs (Department of Foreigners' Division), Government of India as well as to the competent department in the State of Telangana. If such an application is made, it is expected that the respondent no.1, the Ministry of Home Affairs, Government of India, will facilitate the submission of any such representation before the State of Telangana and for appropriate disposal by the competent department.

13. If and when any order is passed by the State of Telangana accepting the prayer of the petitioner for her transfer, then necessary consequential orders can be passed by the respondent no.1, Ministry of Home Affairs, Government of India.

14. With the above observation, this writ petition stands closed.

15. A copy of this order will be marked to the office of the learned DSGI as well as to the counsel for the Home Department, Government of Assam for onward communication.

JUDGE

JUDGE

Comparing Assistant