



Serial No. 02&03
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 50 of 2025

Date of Order: 08.09.2025

Shri. Mahtab Uddin
 S/o Toyyab Uddin
 R/o Strone Road, E-12 6 TR
 Eastham, London
 Presentl lodged at Jowai District
 Prison & Correctional Home,
 Meghalaya

Vs.

1. State of Meghalaya
 represented by the Public
 Prosecutor.

2. Coy Commander, 'E' Coy
 4 Bn, BSF, BOP Dawki
 West Jaintia Hills, Meghalaya

..... Petitioner

..... Respondents

Crl. Petn. No.51 of 2025

Shri. Ziaur Rahman
 S/o Arshab Hussain
 R/o 50 Winter Avenue, E 61 NY
 Eastham, London
 Presentl lodged at Jowai District
 Prison & Correctional Home,
 Meghalaya

Vs.

1. State of Meghalaya
 represented by the Public
 Prosecutor.

2. Coy Commander, 'E' Coy
 4 Bn, BSF, BOP Dawki
 West Jaintia Hills, Meghalaya

..... Petitioner

..... Respondents



Coram:

Hon'ble Mr. B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mrs. T. Yangi B, AAG with
Ms. Z.E. Nongkynrih, GA (R:1)
Dr. N. Mozika, DSGI with
Ms. N.A.U. Sogra (R:2)

Judgment and Order (ORAL)

1. This set of two criminal petitions arising out of the same facts and circumstances seeking quashing of the FIR and the charge-sheet in Dawki P.S. Case No.21(7) 2025 u/s 14 A of the Foreigners Act, 1946 is taken up together and disposed of by this common order.
2. Both the petitioners in the criminal petitions are originally Bangladeshi national. However, owing to political turmoil, they left their country and thereafter were granted political asylum by the United Kingdom of Great Britain and Northern Ireland. The petitioners are also holders of Passport/Document of Voyage issued by the United Kingdom of Great Britain and Northern Ireland. As per the terms and conditions of the Passport/Document of Voyage, the petitioners are not allowed to travel to Bangladesh. On the strength of visa granted by the concerned authorities of the Government of India, the petitioner in CrI.Petn.No.50 of 2025 entered Republic of India on 25.03.2025 and the petitioner in CrI.Petn.No.51 of 2025 entered Republic of India on 05.06.2025. Both the petitioners entered India through New Delhi Airport immigration centre.
3. On 02.07.2025 an FIR was lodged before the Officer-In-charge,



Dawki Police Station, by the respondent No.2 alleging that the petitioners were apprehended by the Border Security Force (BSF) when they crossed over to India from Bangladesh and were in search of transportation from Dawki to Shillong. The FIR was received vide Dawki P.S. GDE No.16 dated 02.07.2025 and registered as Dawki P.S. Case No.21(7) 2025 u/s 14A of the Foreigners Act, 1946. The present set of two criminal petitions were filed by the petitioners on 01.08.2025 challenging the said FIR dated 02.07.2025. However, during the pendency of the criminal petitions, a charge-sheet dated 31.07.2025 has been filed in the matter by the investigating authority. The said charge-sheet dated 31.07.2025 is brought into record of this Court by way of additional affidavits by the petitioners and also put under challenge in these criminal petitions. The State-respondent has also brought into record the same charge-sheet by way of additional affidavit as according to them the charge-sheet brought into record by the petitioners was not a complete one.

4. Assailing the impugned FIR and the charge-sheet, Mr. S. Deb, learned counsel appearing for the petitioner submits that the allegations made in the FIR as well as in the charge-sheet are without any legal basis inasmuch as the evidences which have been cited in the charge-sheet do not support the case of the prosecution. He submits that there is no allegation in the FIR that the petitioners have stayed in any area without valid document and hence, the basic ingredients of section 14A of the Foreigners Act is not present in the matter. He submits that the petitioners have at no point of time crossed over to Bangladesh and were present at Dawki on that particular day only for the purpose of tourism. He submits that foundation of the entire prosecution case is based on the alleged statement of the petitioners recorded by the police during the investigation which is not admissible as evidence in a court of law. He submits that in absence of any other evidence, trial of the petitioners on the basis of the charge-sheet would be a futile exercise resulting in harassment to



the petitioners without any legal basis. He contends that unlike section 9 of the Foreigners Act, 1946, the prosecution cannot establish an offence u/s 14A of the said Act by shifting burden of proof to the petitioners. In support of his contention on the question of burden of proof, the learned counsel places reliance on a decision dated 11.07.2024 of the Apex Court in *Md. Rahim Ali @ Abdur Rahim vs. The State of Assam & ors.* He, therefore, prays that the impugned FIR dated 02.07.2025 and the charge-sheet dated 31.07.2025 be set aside and quashed.

5. Mrs. T. Yangi B, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA appearing for the respondent No.1 submits that the petitioners were caught by the BSF patrolling team while they illegally crossed over to India from Bangladesh at about 10:30 PM on 01.07.2025 on the basis of a specific information. She submits that the petitioners in gross violation of their travel condition crossed over to Bangladesh, stayed there for some days with their families and re-entered India illegally. She submits that because of the existing political situation in Bangladesh, there is a huge national security concern and the petitioners' illegal entry into Bangladesh and their return is highly suspicious. She submits that the fact stated in the FIR and the outcome of the investigation disclosed in the charge-sheet makes out a clear case for trial against the petitioners. She further submits that the list of witnesses provided in the charge-sheet contains the names of seven witnesses which includes the members of the BSF team which apprehended the petitioners while crossing over to India and hence, it is not correct that the prosecution case is based only on the statements of the petitioners. The learned AAG contends that the High Court while exercising its inherent jurisdiction in a matter seeking quashing of FIR should neither proceed to determine truthfulness of the allegation made in the complaint nor there is a requirement of determination of defense version. She submits that when the charge-sheet



is already filed in the matter, the proper remedy for the petitioners is to seek discharge before the trial court in accordance with the related provision of law. It is also the contention of the learned AAG that many incriminating materials have been seized from the possession of the petitioners which require to be proved during the course of the trial. To buttress her argument, the learned AAG has placed reliance on the decisions of the Apex Court in *Rajiv Thapar & ors Vs. Madan Lal Kapoor (2013) 3 SCC 330* and *Iqbal Alias Bala & ors Vs. State of Uttar Pradesh & ors (2023) 8 SCC 734*. The learned AAG, therefore, submits that in the fitness of interest of justice, it would not be proper for this Court to interfere with the trial against the petitioners at this stage and prays that the criminal petitions be dismissed being devoid of merit.

6. Dr. N. Mozika, learned DSGI assisted by Ms. N.A.U. Sogra, learned counsel appearing for the respondent No.2 submits that the FIR dated 02.07.2025 and the charge-sheet dated 31.07.2025 filed in the matter prima facie constitute offence u/s 14A of the Foreigners Act. He submits that the petitioners have not only crossed over to Bangladesh and came back illegally but also has violated other conditions stipulated in the visa which make them liable under section 14A (a) and (b) of the Foreigners Act. He refers to the Foreigners (Restricted Areas) Order, 1963 and submits that the place where the petitioners were apprehended is a 'restricted area' in terms of definition of Order 2(b) and Schedule I (2) of the said Order. He submits that the visa issued by the Government of India to the petitioners makes a categorical stipulation that the visa is not valid for Prohibited/Restricted and Cantonment areas. The learned DSGI further contends that as per the stipulations made in the visa, the petitioners were permitted for single stay not exceeding 30 days, however, both the petitioners have exceeded the limits of their single stay as they have entered the territory of India on 25.03.2025 and 05.06.2025 respectively. The learned DSGI, thus, submits that it is not a fit case for quashing of the



proceedings against the petitioners at this stage and the criminal petitions are liable to be dismissed forthwith.

7. Heard the arguments made on behalf of the rival parties. Also perused the materials on record. It is clear that the petitioner in Crl.Petn.No.50 of 2025 has entered India through New Delhi on 25.03.2025 and the petitioner in Crl.Petn.No.51 of 2025 has entered India through New Delhi on 05.06.2025. A considerable period of time has lapsed from the date of their respective entry in the territory of India meaning thereby that the petitioners have been present in the country since their entry in India. However, the petitioners have not provided any details disclosing anything about the places where they travelled and stayed all along in India. There is also no disclosure in the criminal petitions as to how and when they came to Dawki and what they were doing at the time when the patrolling BSF team apprehended them. In absence of any such disclosure, at this juncture, it cannot be held that the allegation made in the FIR is totally false or untrue.

8. The contention of the learned counsel for the petitioners that the entire prosecution case is based only on the alleged statements of the petitioners and there is no other evidence on record to support the prosecution case cannot be accepted at this stage as the charge-sheet contains the name of as many as 7 (seven) witnesses including that of the members of the BSF team which apprehended the petitioners. Further, the decision of *Md. Rahim Ali @ Abdur Rahim (supra)* relied on by the learned counsel for the petitioners also does not help petitioners in this case as the decision primarily concerns the proof of nationality of foreigners. In the present matter, the nationality of the petitioners is not an issue.

9. Section 14A of the Foreigners Act, 1946 prescribes penalty for entry in restricted areas. The contention of the learned DSGI that the place from



where petitioners were apprehended is a 'restricted area' in terms of Foreigners (Restricted Areas) Order, 1963 is not disputed by the learned counsel for the petitioners. That apart, no satisfactory or acceptable explanation has been offered by the petitioners to explain their presence in Dawki and the time/period they spent there. There is also no dispute to the fact that the place from where the petitioners were apprehended by the BSF falls within 300 meters of the International Border with Bangladesh. In such a situation this Court is not inclined to interfere with the FIR dated 02.07.2025 and the charge-sheet dated 31.07.2025 in Dawki P.S. Case No.21(7) 2025 u/s 14 A of the Foreigners Act, 1946.

10. For the reasons stated above there is no merit in these two criminal petitions and the same are hereby dismissed.

Judge

Meghalaya
08.09.2025
"Shrity,PS"