

CWP No.1211 of 2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.1211 of 2014
Date of decision:09.05.2016**

Rajprit Singh Gill

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Shashank Bhandari, Advocate, for
Mr. Ranjan Lakhanpal, Advocate, for the petitioner.

Mr. Saurabh Goyal, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner was born on 02.06.1982 in India. He was adopted by Gurpreet Singh Gill vide adoption deed dated 26.05.1986. The petitioner passed his 10+2 examination in the year 2000, B.Com-I from Guru Nanak Dev University and B.A.-II and B.A.-III from the Panjab University and also obtained the Postgraduate Diploma in Agriculture, Journalism and Mass Communication from Punjab Agricultural University, Ludhiana. The petitioner got married on 28.03.2009, shifted to Canada and obtained Canadian citizenship. He held Canadian passport No.LJ-497381 issued on 08.06.2005 and expired on 08.06.2010. He secured multiple visa No.U436359 issued on 21.09.2006 and expired on 20.09.2011. He visited India on 28.09.2005, 04.10.2006 and 21.06.2007 and stayed here at

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different intervals. He is holding a new passport No.QF314663 and multiple visa for India No.AP0423202, valid for five years, w.e.f. 20.07.2011 to 19.07.2016.

The petitioner came to India at Delhi Airport on 04.02.2009 but was sent back to Canada. He again came to India on 13.01.2012 and was again sent back. It is alleged that the petitioner has obtained the police clearance from Moga police on 02.12.2009 after thorough verification of his antecedents. The petitioner, being an NRI, holds immovable property at Moga and since he has been deported twice from the Delhi Airport itself to Canada, his father sought information under the Right to Information Act, 2005, to provide him the reasons for not allowing the petitioner to enter India but his application was rejected on the ground that the Immigration and Intelligence Bureau are exempted from providing such type of information. The appeal filed by the father of the petitioner in this regard was also rejected. The petitioner has, thus, filed this petition invoking Article 21 of the Constitution of India seeking a *mandamus* to the respondents to allow him to enter India and stay over here and also to compensate him for his suffering, airfare incurred twice.

In the reply filed by respondent No.2 on behalf of the Ministry of Home Affairs, it is alleged that Article 21 of the Constitution of India is not available to a foreign national for the purpose of compelling the Government to allow him to enter India and to afford an opportunity to make a representation asking for the reasons for such a refusal. It is also alleged that the petitioner had voluntarily acquired the citizenship of a

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foreign State i.e. Canada and he is holding a Canadian passport and is no more an NRI. It is further alleged that the petitioner has been blacklisted on the basis of inputs of the security agencies for safeguarding the national security.

In the reply filed by respondent Nos.3 and 4, it is alleged that when the petitioner landed at New Delhi Airport on 04.10.2009 and not on 04.02.2009, he was found to be a subject of Look Out Circular (LOC) for preventing his entry into India. The LOC was opened on the instructions of the Ministry of Home Affairs, Government of India, issued vide letter dated 19.06.2008 for banning the LOC subject's further entry into India. The Ministry of Home Affairs had issued the LOC on the request received from the High Commissioner of India, Ottawa, Canada vide letter dated 30.05.2008 as per which the petitioner was involved in anti India activities and in pursuance thereof, in terms of Order 3(2)(e) of the Foreigners Order, 1948 (hereinafter referred to as the "Order"), which provides that *"leave to enter shall be refused if the civil authority is satisfied that his entry is prohibited either under an order issued by a competent authority or under the specific orders of the Central Government"*. The entry of the petitioner was declined and the Immigration Officials are not bound to reveal the details of the LOC opened against a foreigner as the letter containing the grounds has been classified as "Secret" by the originator i.e. Ministry of Home Affairs. It is further averred that the national security is the main concern of the Immigration control and if the same is revealed to an LOC subject, it may defeat the purpose of opening the LOCs as the LOC subject

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may try to gain entry by changing his identifying particulars. The petitioner was again refused entry on 13.01.2012 when he arrived at New Delhi Airport on another passport NO.QF314663.

Counsel for the petitioner has submitted that the petitioner is entitled to protection under Article 21 of the Constitution of India as the matter relates to his liberty.

I have heard learned counsel for the parties and examined the available record.

It is provided under Section 3 of the Foreigners Act, 1946 (hereinafter referred to as the "Act") that the Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein. Order 3(2) of the Order empowers the Central Government to refuse the entry of such a foreigner. It is needless to mention that the petitioner is still on the blacklist.

In the case of **R.I. Jebaraj vs. Union of India and others**, 2009 AIR (Madras) 127, it has been held that even if the prohibition on entry of foreigner is absolute, it is an unfettered discretionary exercise of sovereign power and the Government need not give opportunity for representation to the concerned foreign national. The Constitution does not provide any such right to the foreigner to compel the Government to allow him to enter or afford opportunity of hearing.

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In the case of **Louis De Raedt. vs. Union of India**, 1991 AIR (SC) 1886, it has been held that the right of life and liberty is also extended to the foreigner but it would not include the right to reside and settle in India and the Government has unrestricted right to expel foreigner.

In the case of **Hans Muller of Nurenburg vs. Superintendent, Presidency Jail, Calcutta and others**, 1955 AIR (SC) 367, it is held that the Foreigners Act, 1946, deals with the powers of expulsion of foreigner from India.

The aforesaid discussion on the issue of law in regard to the right tried to be established by the petitioner, who is admittedly a foreign national, leads to an irresistible conclusion that if the petitioner is on the blacklist and is prohibited from entering India on account of his anti India activities, then he cannot take refuge to Article 21 of the Constitution of India for the purpose of entering and moving around, much-less settling in any part of India, without permission of the Government and the right of the Government in terms of Section 3 of the Act read with Order 3 of the Order is unfettered, for which the petitioner cannot even ask for an opportunity of hearing.

Consequently, the present petition is hereby dismissed being denuded of any merit.

May 11, 2016
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(Rakesh Kumar Jain)
Judge