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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 02.01.2017

+ W.P.(C) 11986/2016

MUGWEMA SUSAN WAIRIMU

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr. Anoop Kumar Gupta, Advocate.

For the Respondents:

Mr. Ajit Kumar Singh, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

02.01.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks a mandamus against the respondents not to deport the petitioner but to release the petitioner and to allow the petitioner to go back to her Country i.e. Kenya.

2. The petitioner, on 04.07.2016, was issued a six months' tourist (Multiple) Visa. One of the conditions of the visa was that the petitioner could not stay for more than 90 days at a stretch.

3. The petitioner arrived in India on 18.07.2016. The visa is valid

till 03.01.2017. As per the respondents, the documents reveal that the petitioner had visited Nepal on 15.10.2016 and returned back to India on 17.10.2016.

4. The petitioner had been detained on 07.12.2016.

5. The contention of the respondents is that they had intelligence inputs as well as complaints from Kenyan Embassy that House No.229, Gali No.D-7, Chhatarpur, New Delhi was being used for running a prostitution racket.

6. A raid was conducted on 07.12.2016 on the said premises, wherein, one Nigerian National was found residing there without a valid travel document/visa. The petitioner was also found in the said premises. The petitioner is suspected to be indulging in undesirable activity.

7. As per the counter affidavit, the petitioner is suspected to be indulging in undesirable activity and illegal/illicit act in India in violation of the visa rules and conditions. Her movement was restricted under Section 3(2)(e) of the Foreigner Act, 1946 (hereinafter referred to as 'the Act') read with Section 11(2) of the Act. The petitioner was kept at Restriction Centre, Mahila Sadan, Nirmal Chhaya Complex, Jail Road, New Delhi. The respondents intend to deport the petitioner on 03.01.2017.

8. As per the counter affidavit, though the petitioner had arrived in

India on a tourist visa but she had not visited any tourist places/spots in India. The short visit to Nepal for only two days depicts that she visited Nepal only to override the endorsement of stay stipulation of 90 days in India.

9. The respondents in the counter affidavit further contend that the petitioner, in most probability, is indulging in undesirable activities and illegal/illicit acts in India in violation of visa rules and conditions. A report in a sealed cover has been produced. The same has been perused and returned.

10. Perusal of the counter affidavit as well as the report shows that the investigation is still underway. However, the investigation, till date, has not conclusively established that the petitioner is indulging in undesirable activities and illegal/illicit acts, in violation of the visa rules and conditions. The respondents contend that the petitioner, in all probability, is indulging in undesirable activity.

11. The visa of the petitioner, in any case, expires on 03.01.2017. Time is short for conclusion of the investigation. In the counter affidavit, the respondents have stated that it is a fit case for immediate repatriation/deportation and the petitioner will be deported back to her native country of origin. Learned counsel for the respondents admits that the repatriation and deportation have different consequences. Deportation would have serious consequences.

12. The enquiry, being conducted by the respondents, is still not

concluded and the enquiry conducted so far, does not establish that the petitioner was in fact indulging in any undesirable, illegal/illicit activity. The counter affidavit and the report show that the stand of the respondents is that the petitioner, in most probability, is indulging in such activity. There is no conclusive material or evidence, with the respondents, as yet, to establish that the petitioner was actually indulging in undesirable activities and illegal/illicit acts in violation of the visa rules and conditions. Since the visa of the petitioner is expiring on 03.01.2017, the respondents are intending to deport the Petitioner on 03.01.2017.

13. Since the investigation till date has not established that the petitioner was indulging in undesirable activities and illegal/illicit acts in violation of the visa rules and conditions, it would prejudice the petitioner, in case she is deported.

14. The respondents have themselves contended that the petitioner is liable to be repatriated/deported. Since the intention of the respondents is that the petitioner should leave the country and the petitioner has expressed desire to leave the country on her own, it would be in the interest of justice that the respondents repatriate the petitioner instead of deporting the petitioner.

15. Accordingly, it is directed that the respondents shall repatriate the petitioner. The respondents shall ensure that the petitioner leaves the country by 03.01.2017 (when her visa expires) or within such

extended time as the respondent may deem appropriate.

16. The petitioner shall make necessary arrangements for her own travel and leave the country by the expiry of 03.01.2017 or within such extended time as the respondents may allow. The respondents shall return the personal belongings seized from the petitioner.

17. Till the time the petitioner is repatriated out of the country, the petitioner shall continue to remain at the Restriction Centre. However, she will be provided the facility for making arrangements for her own travel out of the country.

18. The writ petition is disposed of in the above terms.

19. It is clarified that this order has been passed in the peculiar facts and circumstances of the case and it would not come in the way of the respondents concluding their enquiry vis-a-vis the alleged acts of the petitioner and taking appropriate steps in accordance with law, if in future, the petitioner applies for a visa.

20. *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

JANUARY 02, 2017
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