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

+ **W.P.(C) 9718/2017**

USAMA DAWOUD MUKHTAR AL-OTHMAN Petitioner

Through **Mr. Zubair Hashmi, Advocate.**

versus

UNION OF INDIA & ANR Respondents

Through **Mr. Rahul Sharma and Mr. C. K. Bhatt,
Advocates.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.11.2017**

1. The petitioner has filed the present petition, *inter alia*, praying that a direction be issued to respondent no.2 to release the petitioner who is currently confined at a deportation camp at Lampur Border, Narela, Delhi. Briefly stated, the relevant facts are that the petitioner entered India on 28.07.2006 on a Student Visa. He completed his educational course in May 2008. His Visa expired in 2008 (as informed by learned counsel for the petitioner), however, he did not take any steps at that stage to have his visa extended.

2. He approached Foreigner Regional Registration Office (hereafter 'FRRO') in 2012 seeking extension of visa service till 31.08.2012. He also approached United Nations High Commissioner for Refugees (hereafter 'UNHCR') for being registered as a refugee and such status was granted by

UNHCR. Thereafter, on 19.08.2015, the petitioner also approached FRRO, Delhi for registration and issue of a Long Term Visa (LTV).

3. Learned counsel for the respondent states that the petitioner's case was forwarded to the Ministry of Home Affairs (MHA) on 05.11.2015. However, MHA did not accede to the petitioner's request and his case was turned down on 13.04.2016. This was communicated to the petitioner and he was directed to obtain an exit permit and leave the country. However, the petitioner did not take any such steps and continued to live in India without any visa or permission.

4. On 21.08.2017, MHA directed FRRO to take necessary action for deporting the petitioner. Pursuant to the said direction, the order for deporting the petitioner was passed and the petitioner has been confined to the camp at Narela.

5. The learned counsel for the respondent further submits that enquiries were made and it was found that the petitioner was living in Vasant Kunj, New Delhi and was working along with his brother in a hospital as an interpreter / broker. According to the respondent, the living style of the petitioner also indicated that the petitioner has another source of income and it is suspected that the petitioner was carrying on business and/or had taken employment in India.

6. Learned counsel appearing for the petitioner contended that the petitioner apprehended persecution in his country (Iraq) and therefore, ought not to be deported to that country. In the petition, it is specifically averred that the petitioner fears persecution by ISIS and others in Iraq and some of his friends and family members have been killed.

7. The learned counsel for the petitioner also referred to the decision of

this Court in *Dongh Lian Kham & Anr. v. Union of India & Anr: W.P.(Crl.) No.1884/2015, decided on 21.12.2015, 2015 SCC ONLINE Del 14338* in support of his contention that petitioner ought not to be deported as he had already been granted the status of a refugee by UNHCR.

8. The learned counsel for the respondent countered the aforesaid submissions and also referred to the decision of this Court in *Amir Ahmed Khmes Ahmed & Anr. v. Union of India & Anr: W.P.(Crl.) No.65/2017, decided on 10.01.2017*.

9. At the outset, it would be relevant to observe that the decision of *Dongh Lian Kham* (*supra*) is of little assistance to the petitioner. On the contrary, this court had held that the decision of the Union Government and FRRO to permit the petitioner to stay in a country is at their absolute discretion and the rights of the foreigner refugee are only confined to Article 21 of the Constitution of India. Paragraph 26 of the said decision is relevant and is set out below:

“26. It is the decision of the Union Government and FRRO to permit or not to permit a refugee to stay in a country or to grant or not to grant long term VISA in the first instance or its extension on a year wise basis. The Fundamental Right of foreigner/refugee is only confined to Article 21, i.e. the right to life and liberty and does not include the right to reside and settle in India, which right is only applicable to the citizens of the country. The power of the Indian Government to expel foreigners is absolute and unlimited and there is no provision in the Constitution of India or other law, putting fetters on the aforesaid discretion of

the Government.”

10. In the present case, there is no material on record that would establish that the petitioner’s life would be in danger on being deported to his country (Iraq). The petitioner has expressed fear of being persecuted by ISIS. This is a common knowledge that Government forces in Iraq are in conflict with ISIS and therefore, the petitioner would enjoy protection from his country’s government (Government of Iraq). It is not the petitioner’s case that he was persecuted by the authorities in his country as was the case in *Dongh Lian Kham* (*supra*).

11. Learned counsel for the respondent has also submitted that the petitioner’s claim that the fear for his life in Iraq had been examined by the MHA and the decision to deport the petitioner was taken only after considering the same.

12. It is also important to note that the petitioner has been residing in India in violation of this country’s law and despite having been declined the LTV, the petitioner had not taken any further steps in accordance with law but had continued to reside in India unlawfully.

13. In view of the above, this Court is not inclined to interfere with the order of the deportation passed by the respondent.

14. At this stage, the learned counsel for the petitioner submits that the petitioner should be given a chance to voluntarily leave this country to any other country. This Court finds the said request reasonable and accordingly, directs the respondent to defer the implementation of the deportation order for a further period of two

weeks from today. The petitioner would be at liberty to voluntarily make arrangements for his travel overseas. The respondent would assist the petitioner for the same. It is clarified that in the event if the petitioner leaves this country voluntarily, the deportation order would stand cancelled. It is also clarified that if the petitioner is unable to make arrangements to travel voluntarily within the period of two weeks as stated above, respondent shall take necessary steps in accordance with law for deporting the petitioner from this country.

14. The petition disposed of with the aforesaid directions.

15. Order *dasti* under the signatures of the Court Master.

VIBHU BAKHRU, J

NOVEMBER 03, 2017

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