

\$~10

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

+ **W.P.(CRL) 3165/2017**

Ms GULFISHA Petitioner
Through Mr. Sundeep Sehgal, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr.Bhagwan Swarup Shukla, CGSC
with Mr.Kamaldeep, Advocate for
FRRO
Mr. Rahul Kumar, Standing counsel
for State with Mr. Jamal Akhtar,
Advocates with SI Rohit Kumar.
P.S.Jamia Nagar

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
20.12.2017

%

1. The background to the present petition is that Petitioner, who happens to be an Indian citizen married Zulmi Khan, a citizen of Afghanistan, on 22nd March, 2009. A copy of the marriage certificate has been enclosed as Annexure I to the petition.

2. FIR No.111/2009 was registered at Police Station ('PS') Jamia Nagar against Zulmi Khan under Section 14 of the Foreigners Act, 1946 ('FA') on 23rd May, 2009. This was because he had overstayed his visa period. He was arrested and granted bail on 27th May, 2009 by the learned Metropolitan Magistrate (MM), Saket Courts, New Delhi.

3. It is stated that between 2010 to 2015 three children (two boys and a girl) were born out to the Petitioner and Zulmi Khan. Copies of the *Aadhaar* cards of the Petitioner and the children are enclosed as Annexure II to the petition.

4. At the end of the trial, in the case under Section 14 FA on 31st May, 2016 Zulmi Khan was found guilty and was convicted by the learned MM, Saket Courts. On 1st July 2016 he was sentenced to imprisonment for two months with a fine of Rs. 5,000/- and ordered to be deported to Afghanistan after completion of the sentence. Zulmi Khan was immediately sent to Tihar Jail for serving out his sentence. In the meanwhile, Zulmi Khan filed an appeal against the above conviction in the court of the District and Sessions Judge, Saket Court, New Delhi (DSJ). By order dated 4th September, 2016 the DSJ reduced the sentence from two months to one month.

5. On completion of his sentence in September, 2016 Zulmi Khan was transferred from the Tihar Jail to the Sewa Sadan, Lampur for deportation. He has been in Sewa Sadan, Lampur since then. In the above circumstances the present petition has been filed by his wife, *inter alia*, drawing attention to the Standard Operating Procedure (SOP) which has been drawn up by the Ministry of Home Affairs (MHA), Government of India for dealing with people awaiting deportation.

6. In response to the notice issued by the Court in present petition on 15th November 2017, replies have been filed on behalf of the MHA as well as the Foreigners Regional Registration Officer (FRRO). It appears that the

essential facts concerning the Petitioner's husband are not in dispute. It is pointed out by the Respondents that against the order dated 24th September, 2016 of the learned DSJ, Criminal Revision Petition No. 686 of 2016 has been filed in this Court and is pending consideration. The next date of hearing in the said Criminal Revision Petition is 9th January, 2018.

7. It appears that another Writ petition (C) No. 9871 of 2016 was filed by the Petitioner in this Court seeking directions to the FRRO not to deport her husband Zulmi Khan till the disposal of the said petition. That writ petition is also stated to be pending and is fixed for hearing on 11th May, 2018.

8. It is stated by the Respondents that when Zulmi Khan was produced in the office of the FRRO for deportation, he did not possess any valid travel papers and therefore, the Ministry of External Affairs (MEA) was asked to issue a new passport/travel document to facilitate his deportation

9. It is pointed out by the Respondents that it is the admitted case of the Petitioner herself that her husband had entered India on 20th December, 2006 with a visa that was valid up to 9th March, 2007 and which was extended last till 12th March 2008. It is stated that even according to the Petitioner, Zulmi Khan, has overstayed in India since 13th March 2008 without a valid visa. Accordingly, the Respondents contend that Zulmi Khan is as on date an illegal immigrant awaiting deportation. It is further pointed out that in terms of Office Memorandum (OM) dated 24th April 2014 issued by the MHA, the deportation can take place "only after completion of the sentence/court proceedings".

10. It is pointed out by the Respondents that foreign nationals who illegally stay in India and who are either convicted or released by the Court and whose presence in India is required in a case are placed in Restriction Centres for deportation/repatriation “to ensure their physical availability at all times for expeditious repatriation as soon as the documents are ready”.

11. As regards, clause (xii) of the SOP which is relied upon by the Petitioner, the Respondents content that the said guideline applies to ‘refugees’. However, the Petitioner does not fall under that category. It is urged that the entire SOP is to be read in its totality. It is submitted that the reason for not proceeding with the deportation of the Petitioner is the pendency of the Criminal Revision Petition. Petition and the writ petition have been filed by the Petitioner in this Court.

12. Learned counsel for the Petitioner has categorically stated that Zulmi Khan is not resisting his deportation in accordance with law. He states that as and when the Respondents are ready with all the relevant paper work and are in a position to deport him, Zulmi Khan will abide by the said order without resisting the deportation. He submits that till such time, the Petitioner should not be continued to be detained at the Sewa Sadan, Lampur which is meant to be a ‘short stay’ place for persons awaiting the deportation. Learned counsel for the Petitioner further submits that although Zulmi Khan may not be a refugee, the SOP for refugees can be applied to him only for the limited purpose of ensuring that he is available and will cooperate as and when papers are prepared and made ready for his deportation.

13. Clause (xii) of the SOP in question, applicable to refugees, reads as under:-

“xii In cases in which diplomatic channels do not yield concrete results within a period of six months, the foreign national, who is not considered fit for grant of LTV, will be released from detention centre subject to collection of biometric details, with conditions of local surety, good behaviour and monthly police reporting as an interim measure till issue of travel documents and deportation.”

14. In the present case, although Zulmi Khan may not a ‘refugee’, it is clear that the Respondents are not in a position to proceed with his deportation. The reason given by them is the pendency of the Criminal Revision Petition and the writ petition filed by the Petitioner. However, no interim orders have been passed by this Court in either of those petitions. On his part, the Petitioner’s husband has already served the entire sentence. From the statement made hereinbefore, it is plain that he is not resisting deportation.

15. It is also not in dispute that the Petitioner’s husband has stayed at the Sewa Sadan now for over six months. He has been there since September 2016. Clause (xii) of the SOP states that where diplomatic channels do not yield concrete results within a period of six months, the foreign national, who is not considered fit for grant of long term visa, will be released from the detention centre subject to collection of biometric details, “with conditions of local surety, good behaviour and monthly police reporting as an interim measure till issue of travel documents and deportation.”

16. In the facts and circumstances outlined hereinbefore, the Court sees no reason why the same conditions cannot be applied to the case of the Petitioner's husband. More than six months have been spent by him at the detention centre and he is a foreign national who is not considered fit for grant of "long term visa."

17. In the circumstances, the Court directs that the Petitioner's husband, Zulmi Khan, be released from the FRRO, Detention Centre at Sewa Sadan Lampur, subject to the following conditions:

(i) Bio-metric details of the Petitioner's husband be collected by the FRRO.

(ii) The Petitioner's husband will provide one local surety in the sum of Rs.50,000/- to the satisfaction of the FRRO. The local address proof and mobile number of the surety will be provided. Any change in either will be promptly conveyed to the FRRO and the SHO concerned. The Petitioner's husband will not leave the NCT of Delhi without prior permission of this Court, except for the purposes of and pursuant to his deportation.

(iii) The Petitioner's husband will furnish an affidavit undertaking to observe good behaviour during the pendency period of his release and report to the Station House Officer (SHO) of PS Jamia Nagar on the second Saturday of every month at 11 am till such time the travel documents for his deportation are made ready by the Respondents.

(iv) As and when travel documents are ready, the Petitioner's husband will cooperate and proceed in accordance with the

directions issued in that regard to him by the MHA.

18. It is clarified that if the Respondents, i.e., the FRRO, the MHA and MEA are ready with the documents for deportation of the Petitioner's husband on or before 27th December, 2017, the above directions will not be given effect to. However, if the Respondents are not in a position to deport the Petitioner on or before 27th December, 2017 then the above directions will be given effect to immediately.

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

20. Order be given *dasti* under the signatures of the Court Master.

S.MURALIDHAR, J

I.S.MEHTA, J

DECEMBER 20, 2017

mw