IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.181 of 2017

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Fadi Fadel Son of Aziz Fadel Resident of St- Antonios Street, Zahleh, Bequaa, Country -Lebnon Presently in Sitamarhi Jail, District- - Sitamarhi, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar Through Its Home Secretary, Patna .
2. Union of India through its Secretary, Ministry of Home, New Delhi.
3. Ministry of External Affairs through its Secretary, New Delhi.
4. The Director General of Police, Patna.
5. The Superintendent of Police, Sitamarhi.
6. The Officer In-Charge, P.S.- Sitamarhi Sadar, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinod Kanth, Sr. Adv
		Mrs. Shama Sinha, Advocate
For the State	:	Mr. P.K. Verma, AAG-3
	:	Mr. S.K. Sharma, AC to AAG 3
	:	Ms. Divya Verma, AC to AAG 3
For the Union of India	:	Mrs. Nevedita Nirvikar, Advocate
	:	Mr. Tarique Yazdani, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
And

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date 17.01.2018

This Criminal Writ Petition has been filed by Fadi Fadel a Lebanese citizen for issuance of writ of certiorari to quash Sitamarhi P.S. Case No. 432 0f 2016 instituted for the offence punishable under Sections 467, 468, 471, 120B and Section 13/14 (B) of Foreigner Act and all other consequential benefits arising therefrom. The petitioner further prays to deport him back to his country or to hand him over to his embassy for deporting him back in terms of provisions of the Foreigners Act, 1946.

The petitioner is a citizen of Lebanon and is accused in Sitamarhi P.S. Case No. 432 of 2016.

1. Learned Senior Counsel appearing on behalf of the petitioner submits that petitioner was working in Dubai since 2012 in an oil and gas company as a logistics coordinator, his contract had expired in December 2015 so he was looking for a place to get a one year vacation before starting another contract. The petitioner after Nepal earthquake decided to go and volunteer in helping earthquake victims. It has been further submitted that petitioner was volunteering in Nepal. Photographs of work done by the petitioner and other volunteers helping earthquake victims and their family to restore their house has been enclosed with petition. He also rescued two juvenile girls from sex trafficking, all process was under supervision of Nepali police and maiti Nepal NGO representative to show the bonafide and credentials of petitioner.

2. Petitioner bought a motorcycle in Katmandu, Nepal from a tourist who had bought the motorcycle from Goa in India. The petitioner was driving to Pokhara and lost his way and reached Hetauda, where he slept in the night at guesthouse. After he woke up, he decided to ask if Tanakpur border is near, as the bike he bought from a tourist who came from India to Nepal by bike, its

validity was to be renewed at this border i.e. Tanakpur. Petitioner also wanted to check the process and route of visiting India through this border to India in his next trip. The petitioner was planning for a tour in India after applying for a visa after his next contract. The petitioner had no access to internet so he started asking people about the way to Tanakpur they understood that he was asking to go to Janakpur (a famous place in India), everyone started telling him to move straight only. The petitioner also stopped at a Nepali police station where he had a cigarette smoke break with the police and they also guided him the same, as such he moved forward and when he reached a petrol station with a sign of Indian oil, he could realize that he is inside the Indian territories. As India and Nepal have open border the petitioner unknowingly entered into India.

3. The petitioner started asking for help, due to language problem it became very difficult to communicate and one person advice him to go to immigration office and when the petitioner asked him where is it then he was told that it was in Delhi and thereafter petitioner asked persons how to go Delhi and one person introduce to him as a IB person and started interrogating him. Meanwhile some one informed Local police station that one foreigner is roaming on motorcycle at Mohanpur Chowk.

On receiving said information informant/officer in-charge of police station with other police personnels reached

Mohanpur Chowk and found one foreigner standing with motorcycle at Mohanpur Chowk. The informant asked the name and whereabouts of the person then he disclosed his name as Fadi Fadel and further told about his whereabouts. The informant checked the belongings of the Fadi Fadel and prepared seizure list of all his belongings and brought him to police station.

4. It has been submitted by Sr. Counsel appearing on behalf of the petitioner that he was given due regard and hospatility by the Officer-in-Charge of the police station but the language problem was still there. The Officer-in-charge of the police station was very kind and friendly with him and invited him to his office and offered him food and took him to a cyber café to get the embassy's number so that petitioner can contact his embassy. It has been further submitted by the counsel for the petitioner that the behaviour of the S.H.O was very cooperative and cordial and he asked petitioner to sleep in the night in his office and the next day the I.B Officer again came to interrogate the petitioner and accused him of being a terrorist.

5. The S.H.O. after interrogating the petitioner and verifying his credentials, expressed his sympathy towards the petitioner but showed his helplessness as he was bound by law and cannot sent petitioner back to Nepal or deport him without any order from higher authorities. FIR was registered against the petitioner for

offence punishable under Sections 467, 468, 471, 120B of I.P.C. and Section 13/14(A) of Foreigners Act, 1946 and he was arrested and produce before C.J.M. who remanded him to Judicial custody.

6. The Government of Lebanon through its embassy also took the case of the petitioner through external affairs ministry but due to lodging of Criminal case against the petitioner, everyone showed their helplessness to provide any relief to petitioner. Embassy of Lebanon in New Delhi certified the credentials of petitioner and had stated therein that he had entered India by mistake from Nepal and he may be deported to Lebanon and the embassy is ready to receive him. The letter dated 21.11.2016 and letter dated 23.01.2017 issued from the Embassy of Lebanon, New Delhi as contained in Annexure-2 to this writ petition is being quoted hereinbelow in its entirety.

Embassy of Lebanon
New Delhi

Note No. 200/2016

The Embassy of Lebanon presents its compliments to the Ministry of External Affairs (CPV Division) and has the honour to inform you that Mr. Fadi Aziz Fadel, Lebanese nationality was arrested on 07.07.2016, Sitamarhi district jail in Bihar State, Case no.

432/2016.

Mr. Fadi Aziz Fadel was arrested after entering India within 10 to 15 minutes, since he didn't notice the border line between India and Nepal so he was arrested under Indian IPC 467, 468, 471… 120 and foreign act 1314.

After charge sheet was submitted to the court they removed the 120(b) IPC so he left with 467,468,471 which is forgery documents. As per Indian central government violators of foreign act 13, 14 should be deported under section 3(2) C of the same act.

The Embassy of Lebanon kindly requests the concerned authorities to help these issues at the earliest as possible.

The Embassy of Lebanon avails itself of this opportunity to renew to the Ministry of External Affairs (CPV DIVISION) the assurances of its highest consideration.

New Delhi, 21st November, 2016

Embassy of Lebanon
New Delhi

To Whom It May Concern

This is to inform you that Mr. Fadi Aziz Fadel, a Lebanese National, holder of Lebanese

Passport No. RL 2375581, issued in Beirut on 08.10.2012 valid till 08/10/2017, is a respectable citizen of Lebanon and is not involved in any criminal activities neither in Lebanon nor outside the county. The Government of Republic of Lebanon is fully aware of Mr. Fadi's activities in Lebanon. Mr. Fadi had entered India by mistake from Nepal, we appreciate if he can be deported to Lebanon and the Embassy is ready to received him and take care of the whole procedures of his deportation.

New Delhi 23rd January 2017"

7. A counter affidavit has been filed on behalf of respondent No. 5 (S.P. Sitamarhi) in which it has been stated that accused Fadi Fadel was arrested for carrying forged document and entering Indian territory without holding valid visa and other document. Petitioner was carrying motorcycle without valid papers and other documents and without holding any ownership paper. The case on investigation was found true against the petitioner and charge sheet dated 30.08.2016 was submitted against him.

8. A counter affidavit has been filed on behalf of respondent No. 1, (Department of Home, (Special Branch) Government of Bihar) in which, it has been stated that Superintendent

of Police, Sitamarhi by its letter dated 08.07.2016 reported that one citizen of Lebanon, namely, Fadi Fadel has been arrested in connection with Sitamarhi P.S. Case No. 432 of 2016 dated 07.07.2016 for the offence under Sections 467, 468, 471, 120B I.P.C. and Section 13/14 Foreigners Act. The Home Department (Special Branch) passport section, Bihar by its letter dated 15.07.2016 requested Superintendent of Police, Sitamarhi to furnish detailed particulars regarding arrested Fadi Fadel, such as his passport, visa and other documents related to his identity. The Superintendent of police, Sitamarhi was further requested to furnish a copy of FIR, supervision note and a detailed report along with other evidence. The Home Department (Special Branch) Passport Section by its letter dated 23.08.2016 sent a report to the under Secretary (Foreigner), Ministry of Home Affairs, Government of India for information. It has further been stated in the counter affidavit that deportation of any Foreign National who is arrested in connection with any criminal case to his native nation is in domain of Ministry of Home Affairs and Ministry of External Affairs. The Foreign National may be deported to his native nation after conclusion of criminal proceeding instituted against him and after serving sentence, if any, passed against him by a competent court of law.

9. A counter affidavit has also been filed on behalf of respondent nos. 2 (Ministry of Home Affairs (Foreigner),

Government of India), in which it has been stated that action against illegal foreign nationals including deportation is taken under the relevant provision of the Foreigners Act, 1946. The powers for deportation of foreigner nationals have already been delegated to State Government long back in 1958 as per laid down procedures on the issues last circular dated 24.04.2014 was issued by the Ministry of Home Affairs, (Foreigner Division), Government of India, New Delhi. The Powers to identify and deport illegally staying foreigner nationals have also been delegated to the State Governments, therefore, action in the matter is to be taken by Government of Bihar in consultation with Ministry of External Affairs/Embassy concerned only on release of the foreigner from jail.

On the basis of charge sheet submitted by the police under Sections 467, 468, 471 and 13, 14B of Foreigners Act, the trial court took cognizance of the offence under Sections 467, 468, 471 of I.P.C. and 13, 14B of Foreigners Act against the petitioner. Subsequently charges were also framed against petitioner under Sections 467, 468, 471 of I.P.C. and 13, 14B of Foreigners Act.

10. It has been submitted by the Senior Counsel appearing on behalf of the petitioner that FIR and all proceedings attendant thereto are a complete abuse of the process of law and an attempt to subvert the ends of justice by instituting a FIR against the petitioner. The allegations made in the FIR even if taken at their face

value and accepted in entirety do not constitute any offence under Sections 467, 468, 471of the Indian Penal Code against the petitioner. The allegations made are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioner.

Section 467 of the I.P.C. reads as follow:-

> ***"467. Forgery of valuable security, will, etc.—*** *Whoever forges a document which purports to be a valuable security or a will, oran authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquaintance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

Section 468 of the I.P.C reads as follows:-

> **"468. Forgery for purpose of cheating —** *Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with*

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 471 of the I.P.C. reads as follows:-

471. Using as genuine a forged document — *Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.*

*"**463. Forgery.-** Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

11. From a reading of the definition of forgery as prescribed under Section 463 of the IPC, it would be evident that in order to attract the offence of forgery, the following ingredients would be necessary:

(i) The document or part of the document must be false;

(ii) It must have been made dishonestly or fraudulently in one of the three modes specified in section 464; and

(iii) It must have been made with intent:

(a)to cause damage or injury to (i) the public, or any

person; or
(b)to support any claim or title; or
(c)to cause any person to part with property; or
(d)to cause any person to enter into an express or implied contract; or
(e)to commit fraud or that fraud may be committed.

12. Thus, it would be evident that to constitute the offence of forgery making of a false document is an essential ingredient.

13. Making of a false document has been defined under Section 464 of the IPC, which reads as under:

*"**464. Making a false document.** – A person is said to make a false document or false electronic record –*
*"**First**.- Who dishonestly or fraudulently – (a) makes, signs, seals or executes a document or part of a document;*
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any electronic signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or a part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed

or affixed; or

***Secondly.**- who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*

***Thirdly.** – who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."*

14**.** It would be evident from a reading of Section 464 of the IPC that a person can be charged with the offence of making of false document only under three eventualities:

(i) (a) if he dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or
(b) makes or transmits any electronic record or part of any electronic record, or
(c) affixes any signature on any electronic record; or
(d)makes any mark denoting the execution of a document or the authenticity of the signature,
with intention of causing it to be believed that such document or a part of document, electronic record or

signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed, or

(ii) if, without any lawful authority, he dishonestly or fraudulently alters a document or an electronic record, or

(iii) if he dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document.

15. In short, a person can be alleged to have made a 'false document'; if (i) he made or executed a document claiming to be someone else or authorized by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception or from a person not in control of his senses.

Section 13 and 14B of Foreigners Act, 1946 reads as follows:-

13. Attempts, etc., to contravene the provisions of this Act, etc.—

(1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be

deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves 1[India] in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

***[14B. Penalty for using forged passport**.—Whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.]"*

16. We have gone through the entire case records i.e. the contents of FIR, case-dairy, charge sheet, FSL report but could not find essential ingredients in order to constitute offences under Sections 467, 468, 471 of IPC is made out. No case of forgery, cheating or making of false document can be inferred on the basis of material available on record.

17. No offence under Section 13, 14B of Foreigners Act is made out. There is no material available on record to suggest that petitioner has violated, abetted contravened any of the provision of Foreigners Act, 1946 or order made or direction given thereunder or failed to comply with any direction given in pursuance of any such order which shall be deemed to have contravened the provisions of the Act as such no offence under section 13 of Foreigners Act, 1946 is made out. There is no material in entire case diary to even form a prima facie opinion that documents which were seized from petitioner's possession are forged or false documents. The Lebanese passport which petitioner was carrying was a genuine passport and he had valid visa to stay in Nepal and his credentials were certified by the Lebanese Embassy in New Delhi as such no offence under Section 14(B) of Foreigners Act of carrying forged passport is made out.

18. In view of discussion as recorded above no offence under Sections 467, 468, 471 of I.P.C. as well as no offence under Sections 13 and 14B of the Foreigners Act 1946 is made out against the petitioner and as a result Sitamarhi P.S. Case No. 432 of 2016 and subsequent orders taking cognizance as well as framing of charge as well as whole proceeding arising out of said FIR is quashed.

19. We have gone through different Act and rules governing the law relating to Foreigners such as Foreigners Act, 1946, Foreigners Order 1948. The Passport Act 1967, the passport (Entry into India) Act 1920 and rules framed thereunder and offences and punishment defined therein but could not find any offence committed by petitioner for which he can be proceeded for committing said offences.

20. We should not be misunderstood as having held that entry into India without valid visa is not an offence or arrest of petitioner by police was unlawful. The Passport (Entry into India) Act, 1920 prohibits entry into India without valid visa and same is an offence and police has power to arrest any foreigner entering India without valid visa.

Section 4 of the Act reads as follows:-

> ***"4. Power of arrest.** -(1) Any officer of police, not below the rank of a Sub-Inspector, and any officer of the Customs Department empowered by a general or special order of the Central Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under Section 3.*
> *(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer-in-charge of the nearest police*

station and the provisions of Section 61 of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply in the case of any such arrest.

5. Power of removal. -*The Central Government may, by general or special order, direct the removal of any person from India who in contravention of any rule made under Section 3 prohibiting entry into India without passport, has entered there in, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.*

The Passport (Entry into India) Rules 1950

5. The condition of a Valid Passport are:-

(iv) that when issued by or on behalf of the Government of a foreign country (other than Bangaladesh, Nepal and Pakistan) it shall have been [endorsed by a proper Indian diplomatic consular or passport authority or by such authority as may be authorized in this behalf by the Central Government], by way of visa for India in one or other of the following kinds, namely:-

(a) a single journey visa, valid for such period not exceeding ones [five years] as may be specified therein and for only journey to India;

(b) a transit visa, valid for such period not exceeding one year or the period of validity of the visa for the country of ultimate destination, as may be specified therein, and for one or more direct journeys through India undertaken for the sole purpose of reaching any place or country outside India,

permitting on each such journey sojourn of not more than fifteen days in India unless specially extended by competent authority; and

(c) an ordinary visa, valid for such period not exceeding ones [five years] as may be specified therein, and for any number of journeys to India;

(d) a multiple entry, life long visa for journey to India to persons registered as Overseas Citizen of India under the provisions of the Citizenship Act, 1955;]

6. Any person who-

[(C) enters or attempts to enter, India on a forged passport or visa,] [shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both]."

21. The Foreigners order 1948 issued by Central Government in exercise of powers conferred by Section 3 of Foreigners Act of which Section 14 reads as follows:-

"14. Expenses of Deportation- *Where an order is made in the case of any foreigner directing that he shall not remain in India or where a foreigner is refused permission to enter India or has entered India without permission, the Central Government may, if it* *thinks fit, apply any money or property of the foreigner in payment of the whole or any part of the expenses of or incidental to the voyage from India and the maintenance until departure of the foreigner and his dependants, if any."*

22. The petitioner had entered into the Indian Territory by mistake and he ought to have been sent back to Nepal but instead of sending him back to Nepal or permitting him to go to Nepal FIR was registered against him on the basis of unfounded allegation and was remanded to judicial custody. The credentials of petitioner were known and he had a valid Lebanese passport and visa for staying in Nepal and power to deport a foreign national who has entered Indian territories without valid visa has been delegated by the Central Government to State Government and without deporting petitioner to his native country or Embassy at New Delhi, a FIR was registered against him under Indian Penal Code and Foreigners Act and he was sent into prison. Subsequently, the petitioner has been released on bail by Patna High Court and has been sent to embassy with a condition that he would be attending the trial in Sitamarhi where he will have to attend on all dates when the case is fixed for trial.

23. The only reason for which the petitioner could not

be deported to his native country was on account of pendency of this criminal case and same being quashed there is no impediment in deporting petitioner to his native country through its embassy at New Delhi where petitioner is staying after grant of Bail.

24. The Central Government/State Government is directed to take immediate steps and to pass necessary orders for deportation of petitioner to his native country in consultation with Embassy of Lebenon at New Delhi forthwith preferably within four weeks from date of receipt/production of a copy of this order. The Court/authority in whose possession seized articles of petitioner is kept is directed to be released in his favour immediately.

Petition stands allowed.

(S. Kumar, J)

Dr. Ravi Ranjan J. **I agree**

(Dr. Ravi Ranjan, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	