

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION No.250 OF 2019

Ms. Iuliia Sergeeva,
d/o. Oleg Sergeev, aged 28 years,
Russian National,
Permanent Resident of
Ekaterinburg, Nekvasova Street,
Russia, presently lodged at
Detention Centre for Foreigners,
Mapusa, Goa.

..... Petitioner.

Versus

1. State of Goa,
as represented by Officers Incharge
of Calagute P.S.,
Calangute, Bardez, Goa.

2. The Director,
Department of Tourism,
Patto, Panaji,

3. The Superintendent of FRRO,
Police Headquarters,
Panjim, Goa.

..... Respondents.

Ms. Carolina Collasso, with Mr. K. Poulekar, Advocates for the
Petitioner.

Mr. Mahesh Amonkar, Additional Public Prosecutor for Respondents
No.1 and 3.

Mr. Pravin Faldessai, Additional Government Advocate for
Respondent No.2.

***Coram : M.S. Sonak &
C.V. Bhadang, JJ.***

Date : 29th November, 2019.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Ms. Carolina Collasso for the Petitioner, Mr. Mahesh Amonkar, learned Additional Public Prosecutor for Respondents No.1 and 3 and Mr. Pravin Faldessai, learned Additional Government Advocate for Respondent No.2 .

2. Rule. Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties. Even, otherwise, this is a matter pertaining to detention of the Petitioner, and, therefore, it is necessary that the same is taken up with utmost expedition.

3. The challenge in this Petition is to the order dated 21.11.2019, made by the Superintendent of Police & Foreigners Regional Registration Officer (FRRO), Panaji, Goa by which, the Petitioner has been ordered to be detained at the Detention Centre at Mapusa, Goa.

4. The impugned order reads as follows :

“*ORDER:*

I, Shri Bosco George, Superintendent of Police, Civil Authority/Foreigners Regional Registration Officer, Panaji, Goa in pursuance of MHA's/Govt. of India Notification No.381 issued from File No.25022/96/99-F.I dated 13/07/2000, r/w Ax/Immigration, New Delhi Order 1/AXI/Misc.- 2012 dated 02/06/2012 and Additional Director/Imm. IB MHA Govt. of India Order dated 20/06/2012, hereby impose the following restrictions under clause (e) of sub-Section (2) of Section 3 of the Foreigners Act, 1946 and under para 11(2) of the Foreigners Order, 1948 on the foreign national named:-

MS. IULIA SERGEEVA, D.O.B.08/09/1990 holder of Passport No.757263137 dated 20/03/2018 valid till 20/03/2028 bearing e-Tourist Visa No.90IF2356J dated 30/10/2019 valid till 07/10/2020.

Produced by staff of Calangute Police Station, Goa as she was convicted by the Dy. Director, Department of Tourism, Panaji, Goa u/s 26 of the Goa Registration of Tourist Trade Act 1982.

That the above named foreign national will not move out of the Detention Centre, Mapusa, Goa till her travel arrangements are made, as there is every likelihood that she may disappear and indulge in undesirable activities. This order is valid for one month from the date of issue.

Non compliance of this order will render her liable for prosecution under Section 14 of the Foreigners Act, 1946. The staff of Calangute Police Station are escorting the foreign national from FRRO, PHQ, Panaji, Goa to Detention Centre Mapusa.

*Sd/
(Bosco George, IPS)*

*Superintendent of Police &
Foreigners Regional Registration Officer,
Panaji, Goa.”*

5. Ms. Collasso, learned Counsel for the Petitioner submits that from the tenor of the order it is more than apparent that the Petitioner has been ordered to be detained at the Detention Centre. She submits that the powers of detention have not at all been delegated to the Superintendent of Police & FRRO. In any case, she submits that this is not a case where any deportation order has already been made against the Petitioner. She submits that the impugned order refers to the Judgment and Order dated 21/11/2019 made by the Deputy Director of Tourism, imposing penalty upon the Petitioner. She submits that the Petitioner has already appealed against such order, after paying fine, without prejudice. She submits that on the basis of the said Judgment and Order dated 21.11.2019, there was no authority to order detention of the Petitioner. For these reasons, she submits that the impugned order is liable to be set aside.

6. On behalf of Respondents No.1 and 3, reply has been filed under the signatures of the Additional Public Prosecutor. Normally, the detention order should have been defended by filing an affidavit of the Detaining Authority. However, we accept the submission made by Mr. Amonkar, learned Additional Public Prosecutor that

since this matter could brook no delay, this reply has been placed on record along with necessary material on the basis of the impugned detention order came to be issued.

7. In the peculiar facts of the present case, we feel that it is not necessary to go into a larger issue as to whether the Superintendent of Police & FRRO indeed has jurisdiction and authority to make a detention order. This is because, we find that even if we assume that he had such authority, there was really no material for making an order of this nature, detaining the Petitioner at the Detention Centre.

8. Though, along with the reply, there is reference to the communication dated 25.11.2019 requiring the Petitioner to make arrangement for her air travel to her home country, it is obvious that the said communication dated 25.11.2019 is not a deportation order. Besides, the communication is dated 25.11.2019, when the impugned detention order is dated 21.11.2019. The communication dated 25.11.2019, in fact, refers to the impugned order dated 21.11.2019 and clearly states that in terms of this order, the Petitioner is detained at the Detention Centre, following her conviction by the Deputy Director of Tourism, Panaji, Goa under Section 26 of the Goa Registration of Tourist Trade Act, 1982 (the Act) as per the information received from Calangute Police Station.

9. Accordingly, the communication dated 25.11.2019 produced along with the reply can afford no justification whatsoever to the impugned detention order.

10. Besides, it is well settled position in law that an order of detention will normally have to be justified on the basis of the reasons reflected therein. There is no question of addition or supplementing of such reasons by filing affidavits. This is yet another reason as to why the communication dated 25.11.2019 cannot afford any post facto justification in issuance of the impugned order dated 21.11.2019.

11. The impugned order refers merely to the Judgment and Order dated 21.11.2019 made by the Deputy Director of Tourism and the Prescribed Authority under the provisions of the Act. We have perused the said Judgment and Order which has been placed on record by the Petitioner. The order merely states that the Petitioner agreed that she was pestering tourists/passengers. The order also notes that the Petitioner failed to produce any authorisation to guide or tout. On this basis, a penalty of Rs.5,000/- came to be imposed upon the Petitioner and the Petitioner was informed not to indulge in any such activities in future. Ms. Collaso states that the fine has

been paid without prejudice. The Petitioner has already appealed against the judgment and order dated 21.11.2019 to the Appellate Authority.

12. Detention of any person is quite a serious matter. According to us, based upon the Judgment and Order dated 21.11.2019, such a serious order of detention of the Petitioner could have never been made. Even the Deputy Director of Tourism did not deem the activity undertaken by the Petitioner to be very serious and, therefore, the Petitioner was let off with penalty of Rs.5,000/-. At this stage, we do not deem it necessary to go into a larger issue as to whether the Deputy Director of Tourism is indeed authorised to record any conviction under Section 26 of the Act. Suffice to hold that on the basis of such a Judgment and Order which, in any case, is appealed against, there was no justification to issue the detention order dated 21.11.2019.

13. The impugned order speaks about likelihood that the Petitioner may disappear or indulge in undesirable activities. Again, there is absolutely no material placed before us to justify such apprehension or such likelihood. This is yet another ground for interference with the impugned detention order.

14. For the aforesaid reasons, and without going into the larger issue, we quash and set aside the impugned detention order dated 21.11.2019. The Petitioner shall, accordingly, be released forthwith from detention on the basis of the impugned detention order dated 21.11.2019.

15. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

C.V. Bhadang, J.

M.S. Sonak, J.