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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2021  
PRONOUNCED ON : 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.NO.12861 OF 2021 AND  
W.M.P.NOS.13660 & 12662 OF 2021

Ruma Sarkar

... Petitioner

Versus

1. The State of Tamil Nadu Rep. by,  
Principal Secretary to Government (FAC),  
Public (Foreigners) Department,  
Secretariat, Chennai - 600 009.
2. The District Collector cum Camp Officer,  
Special Camp for Foreigners,  
Central Prison Campus,  
Tiruchirapalli.
3. The Inspector of Police,  
Fake Passport Team,  
Central Crime Branch - Team II,  
Chennai - 600 007.  
(Crime No-19/2021).

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records in connection with the order passed in G.O.(1D). No.166, dated 12.04.2021 by the first respondent against the detenu Mr.Sushil Sarkar (Passport No-M8986800) confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli and quash the same.

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.A.Damodaran  
Government Advocate (Cr1. Side)



## ORDER

This Writ Petition has been filed to quash the Government Order in G.O.(1D).No.166, dated 12.04.2021 passed by the 1<sup>st</sup> respondent against the detenu Sushil Sarkar (Passport No.M8986800), who is confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli.

2.The case of the petitioner is that the petitioner is the husband of Sushil Sarker (hereinafter referred to as 'Detenu'). The detenu by the impugned Government Order detained in the Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli, his movement was restricted as he is found to be a Bangladeshi National under the Foreigners Act, 1946. The 1<sup>st</sup> respondent on the power conferred under Section 3(2)(e) of the Foreigners Act, 1946 read with notification of the Government of India, Ministry of Home Affairs No.4/3/56(i)F1, dated 19.04.1958 had passed the Government Order restricting the movement of the detenu. The petitioner and the detenu are Hindu. The detenu on the fear of religious persecution during the year 1996 while he was 13 years old had come down to India along with entire family and was residing in India for the past several years. The detenu studied 8<sup>th</sup> Std in Haldia, Bangladesh. He studied Higher Secondary Education during the year 1999, graduated from Chakdaha College, P.O. Chakdaha, Nadia District, West Bengal during the year 2000-2003. The petitioner obtained his first Indian passport bearing No.F59773430 issued by the Regional Passport Office, Kolkatta. Thereafter, the detenu travelled to Bangladesh in the year 2007 to attend his uncle son's marriage on 12.12.2007 and returned back on 23.12.2007. In the year 2008, the detenu went to Singapore for employment as fitter. In the year 2015, the detenu renewed his passport No.F5973430 to the current passport No.M8986800, which is valid up to 27.07.2025. The detenu has not come on adverse notice from the year 1996 till the time of his detention.

3.The detenu migrated from Bangladesh and settled down in India. They acquired permanent resident identity and also obtained Aadhar Card bearing No.750589442803, Pan Card bearing No.GQHPS0742G, Driving License No.WB89 2019 0005025, Indian Passport bearing No.M8986800, bank passbook, school certificates and all other documents with the Indian address. Hence, the detenu became natural citizen of India and he is residing here for more than 25 years. Recently, the detenu had gone to Singapore for further employment and returned to India on 06.03.2021. The immigration officials in Chennai enquired the detenu, verified his passport. During enquiry, it was revealed that the passport No.M8986800 issued to the detenu, did not disclose his domicile that he is the citizen of Bangladesh. Suppressed the same by submitting fake address proof, he had



obtained passport in India. In this regard, on 17.03.2021, the Foreigners Regional Registration Officer, Bureau of Immigration, Chennai International Airport, Chennai, lodged a complaint to the 3<sup>rd</sup> respondent and a case in Crime No.19 of 2021 was registered against the detenu for offence under Section 12(1A) (a) of the Passport Act, 1967 r/w 420, 468 and 471 of IPC. Subsequent to the registration of the case, the detenu was arrested and remanded to Judicial Custody by the learned Judicial Magistrate, Alandur. Thereafter, the detenu was released on bail by the learned Judicial Magistrate, Alandur in CrI.M.P.No.608 of 2021, dated 10.30.2021 with certain conditions. This being the case, the Deputy Inspector General of Police, Intelligence (Internal Security), Chennai had requested the Government under Section 3(2)(e) of the Foreigners Act, to restrict the movement of the detenu in Tiruchirapalli Special Camp, in the event of releasing him from prison, till deportation. Thereafter, the impugned Government Order in G.O (1D).No.166 was issued by the 1<sup>st</sup> respondent on 12.04.2021. After the detenu was released on bail in Crime No.19 of 2021, he is confined at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli.

4.The contention of the petitioner is that the detenu is not an illegal migrant from Bangladesh. He had come to India in the year 1996 and he is a local resident of India for more than 15 years. The detenu being the member of the minority community, on the fear of religious persecution, was compelled to seek shelter and had come down to India. The Government of India had provided exception under Section 3-A of the Foreigners Act, 1946 and the same is extracted as follows:-

"3-A. Exemption of certain cases of foreigners.-

(1) Persons belonging to minority communities in [Afghanistan, Bangladesh] and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31<sup>st</sup> December, 2014-

(a) without valid documents including passport or other travel documents and who have been exempted under rule 4 from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950, made under Section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920); or

(b) with valid documents including passport or other travel document and the validity of any of such documents has expired, are hereby granted exception from the application of provisions of the Foreigners Act, 1946 and the orders made thereunder in respect of their stay in India



without such documents or after the expiry of those documents, as the case may be, from the date of publication of his order in the official Gazette."

5. Correspondingly, Section 6-B of the Citizenship Act, 1955 has been inserted by Act 47 of 2019 and the same is extracted as follows:-

"6-B. Special provisions as to citizenship of person covered by proviso to clause (b) of sub-section (1) of Section 2. - (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalization to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

(2) Subject to fulfilment of the conditions specified in Section 5 or the qualifications for naturalization under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalization under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him;

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section;

Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under 'The Inner Line' notified under the Bengal Eastern Frontier Regulation, 1873 (Reg.5 of 1873)."

6. In the Passport (Entry into India) Rules, 1950 by



G.S.R.685(E), dated 07.09.2015, Section 4(1)(ha) has been inserted and the same is extracted as follows:-

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“(ha) persons belonging to minority communities in [Afghanistan, Bangladesh] and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31<sup>st</sup> December, 2014.”

7. In view of the above, any foreigner being a part of minority community on fear of religious persecution, who had sought shelter and residing in India, is exempted from the applicability of the Foreigners Act, 1946. Thus, the detenu is exempted from being prosecuted under the Foreigners Act, 1946. As per the Citizenship Act, 1955, the detenu is eligible to be a citizen of India.

8. He further contended that the submission of fake address in obtaining Indian passport is to be proved by way of evidence and the investigation is on. The fear of petitioner fleeing India was considered and thereafter only the bail was granted to the petitioner by the learned Judicial Magistrate, Alandur. He further contended that Article 21 of the Constitution of India protects the life and personal liberty and Article 22(4) safeguards preventive detention of a person for a longer period than three months unless approval. Therefore, the detenu cannot be deprived of his liberty without complying the requirement of Article 21 and 22(4) of the Constitution of India. Hence, he prayed for quashing the Government Order and for his release.

9. In support of his contention, the learned counsel for the petitioner relied on the order of this Court in the case of “Sasikumar alias Sasi Versus The State of Tamil Nadu, Rep. by its Home Secretary, Fort St. George, Chennai and others in W.P (MD).No.10080 of 2008, dated 25.08.2021.”

10. The learned Government Advocate (Crl. Side) appearing on behalf of the respondents filed counter affidavit and submitted that the 3<sup>rd</sup> respondent received the complaint from the Assistant Foreigner's Regional Registration Officer, Bureau of Immigration, Chennai International Airport, Chennai along with the detenu and passport. During enquiry, it was found that the detenu illegally obtained India passport in No.F5973430 from the Regional Passport Office, Kolkatta on 17.01.2006 with the help of agent Babu @ Mama, who obtained the passport by giving Indian address but with original parentage details. Using the passport, the detenu visited Bangladesh on 12.12.2007 to attend



his uncle's son marriage and returned to India on 23.12.2007. In the year 2008, he went to Singapore for his work as Fitter. In the year 2015, he renewed his passport and obtained current passport No.M8986800 which is valid up to 27.07.2015. The address in the passport is still Maheshmati English Bazar Malda 732101, whereas the detenu and his family are residing at village Saguna Post Saguna PS kalyanai District Nadia and had never stayed in Malda. Thus, by giving false address particulars, the detenu obtained passport violating the Passports Act, 1967.

11.The learned Government Advocate further submitted that in this case, the First Information Report in Crime No.19 of 2021 was registered for offence under Section 12(1A)(a) of the Passport Act, 1967 r/w 420, 468 and 471 of IPC and thereafter, the petitioner was remanded to judicial custody on 07.03.2021. The petitioner was granted bail on 10.03.2021 in CrI.M.P.No.608 of 2021 by the learned Judicial Magistrate, Alandur on the condition that the petitioner to execute a bond for sum of Rs.25,000/- with two sureties, out of which one surety must be a local surety and the petitioner should not leave the local jurisdiction and to appear before the respondent Police daily at 10.30 a.m for a period of 30 days and to cooperate with the investigation. On 12.04.2021, the Government Order in G.O.(1D). No.166 under the Foreigners Act was passed by the 1<sup>st</sup> respondent with a direction that the detenu to be lodged at Special Camp for Foreigners, Central Prison Campus, Tiruchirapalli. From then on the detenu is in the camp.

12.As per Section 3 of the Foreigners Act, 1946, the Central Government may by order make provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom. The powers for deportation/repatriation of a foreigner are vested in the Central Government in terms of Section 3(2)(c) of the Foreigners Act, 1946. The powers under Section 3(2)(e) of the Foreigners Act, 1946 and Foreigners Order, 1948 have been delegated to State Government and Union Territory Administration vide notification S.O.No.590, dated 19.04.1958. It is suggested to the State Government and the Union Territory Administration to exercise delegation of powers under Section 3(2)(e) of Foreigners Act, 1946 and to restrict the movement of foreigners who are awaiting deportation due to non possession of valid document. It is provided to restrict the movement of foreigners to ensure their physical availability at all times for expeditious repatriation as soon as the travel documents are ready.



13.It is further submitted that the detenu's place of birth is Haldia, Bangladesh and he studied 8<sup>th</sup> Std in Haldia, Bangladesh and came to India at the age of 13 along with his parents as illegal immigrant in the year 1996 by crossing the India-Bangladesh border (Benapol Check Post), and stayed at Saguna Village, Kalyani Police Station, Nadia District, West Bengal and completed his higher education in Nadia, West Bengal. The detenu fraudulently obtained the Indian passport at Kolkatta by providing fake Indian address. On 06.03.2021, at about 21.00 hours, the detenu holding Indian passport No.M8986800 issued at Singapore on 28.07.2015 arrived from Singapore by Air India Express Flight. While scrutinizing his travel documents and during interrogation, the Emigration officer felt suspicion. On enquiry, it was found that the detenu is an illegal migrant. The detenu's Bangladesh identity card recovered along with the sale deed of the ancestral property and his school Attendance Register Copy was recovered. Thus, the detenu neither renewed the citizenship of Bangladesh, nor applied for Indian Citizenship. The petitioner is an illegal migrant at the time of obtaining fraudulent Indian passport.

14.The learned Government Advocate further submitted that the Citizenship (Amendment) Act, 2019 (Central Act 47 of 2019) is not applicable to him and he is not entitled to the benefit of the Citizenship Amendment Act. The detenu illegally entered into the India not seeking shelter due to fear of religious persecution as specifically mentioned in Section 3A of the Foreigners Order, 1948. Thus, the exemption given in the Foreigners Act, 1946 and the Citizenship Act, 1955 (Central Act 57 of 1955) will not be applicable to the case of the detenu. Hence, G.O(1D)No.166, Public (Foreigners-III) Department, dated 12.04.2021 passed by the 1<sup>st</sup> respondent is appropriate and sustainable in law. The detenu, an illegal migrant entered into the territory of India, obtained fake passport and thereby created threat to the security of the country. Any sort of compromise to the security is against the sovereignty of the country as a whole. Further, the detenu gave the statement before the Emigration Authorities that he is Bangladeshi National, illegally entered into the India and obtained passport.

15.In support of his submissions, the learned Government Advocate (Crl. Side) relied on the order of this Court in the case of "Ilian Zdravkov Markov Versus The State represented by the Home Secretary, Secretariat, Fort St.George, Chennai in H.C.P.No.2671 of 2019."

16.This Court considered the rival submissions and perused the materials available on record.

17.The detenu at the age of 13 years along with his parents



in the year 1996 had crossed the border of India-Bangladesh illegally and stayed at Saguna Village, Kalyani Police Station, Nadai District, West Bengal. The detenu completed his school education and higher studies in West Bengal. Thereafter, he obtained passport in No.F5973430 issued by the Regional Passport Office, Kolkatta on 17.06.2006 by submitting fake Indian address. Using the same, he travelled to Bangladesh and to Singapore. In the year 2015, he renewed the passport No.F5973430 in Singapore with the current passport No.M8986800. The detenu is a fitter and went to Singapore for his work. On 06.03.2021, he came back from Singapore to India. During Emigration clearance at Chennai International Airport at Meenambakkam, the petitioner was enquired. During enquiry, it was found that the petitioner is the Bangladeshi National holding forged Inidan passport. On 17.03.2021, the Foreigners Regional Registration Officer, Bureau of Immigration, Chennai International Airport, Chennai lodged a complaint to the 3<sup>rd</sup> respondent and a case in Crime No.19 of 2021 was registered against the detenu for offence under Section 12(1A)(a) of the Passport Act, 1967 r/w 420, 468 and 471 of IPC. Subsequent to the registration of the case, the detenu was arrested and remanded to Judicial Custody by the learned Judicial Magistrate, Alandur. Thereafter, the detenu was released on bail by the learned Judicial Magistrate, Alandur in CrI.M.P.No.608 of 2021 dated 10.30.2021 with certain conditions.

18.Section 2 proviso has been inserted in the Citizenship Act, 1955 by Act 47, 2019, wherein it reads as follows:-

"2. Interpretation.-(1) In this Act, unless the context otherwise requires,-

(a) "a Government in India" means the Central Government or a State Government.

[(b) "illegal migrant" means a foreigner who has entered into India-

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii)with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;]

(iii)

[Provided that any persons belonging to Hindu, Sikh, Buddhists, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into Indian on or before the 31<sup>st</sup> day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport



(Entry into India) Act, 1920 (34 of 1920) or from the application of the provisions of the Foreigners Act, 1946 (31 of 1946) or any rule or order made thereunder, shall not be treated as illegal migrant for the purpose of this Act;]

19. In the Citizenship Act, 1955, an Amendment by Act 47 of 2019, Section 6-B was brought in, wherein Section 6-B(3) reads as follows:-

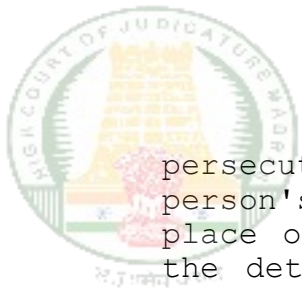
"(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application."

20. Correspondingly in the Foreigners Order, 1948 as per G.S.R.686(E), dated 07.09.2015, Section 3-A has been inserted, wherein the exemption of certain class of foreigners have been granted. Likewise, in the Passport (Entry into India) Rules, 1950, Section 4(1)(ha) was inserted by G.S.R.685(E), dated 07.09.2015 that "persons belonging to minority communities in [Afghanistan, Bangladesh] and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31<sup>st</sup> December, 2014."

21. It is not in dispute that the petitioner, a Hindu, belonged to a minority community in Bangladesh, who migrated to India in the year 1996. The exemption is given to the minority therein if there is a compulsion to seek shelter into India due to religious persecution or fear of religious persecution, who entered India on or before 31.12.2014. In this case, the detenu entered India in the year 1996 which is well before the cut off date. The qualification to satisfy is that the migrant ought to have faced religious persecution or fear of religious



persecution which is subjective fact depending upon each person's perception and the circumstances around him at the place of his residence and other factors. In this case, after the detenu entered India in the year 1996, the detenu had not come on adverse notice within any of the Law Enforcing Agencies which is not in dispute.

22. In view of the Amendment brought in the Foreigners Act, 1946, the Citizenship Act, 1955 and the Passports Act, 1967 and looking at the Government Order, this Court finds that the detenu being the Hindu minority from Bangladesh cannot be deported. Having given general amnesty to any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan who entered into India on or before the 31<sup>th</sup> December 2014, now detaining the detenu invoking Section 3(2)(e) of the Foreigners Act, 1946 read with Government of India notification cannot be sustained.

23. In view of the same, the detention of the petitioner's husband Sushil Sarkar, S/o. Sudhir Sarkar pursuant to G.O.(1D). No.166, dated 12.04.2021 hereby quashed. Accordingly, this Writ Petition is allowed. The detenu to be released forthwith, unless he is needed and detained in any other case. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government (FAC),  
State of Tamil Nadu,  
Public (Foreigners) Department,  
Secretariat, Chennai - 600 009.
2. The District Collector cum Camp Officer,  
Special Camp for Foreigners,  
Central Prison Campus,  
Tiruchirapalli.



3. The Inspector of Police,  
Fake Passport Team,  
Central Crime Branch - Team II,  
Chennai - 600 007.  
(Crime No-19/2021).

4. The Public Prosecutor,  
High Court, Madras.

+2ccs to Mr.R.Vivekanandan , Advocate, S.R.No.38522

+2ccs to Mr.R.Vivekanandan, Advocate, S.R.No.38759

W.P.No.12861 of 2021

PM(10/08/2021)