

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.423 of 2021

Arising Out of PS. Case No.-149 Year-2020 Thana- KISHANGANJ District- Kishanganj

Muhammad Hafizuddin Son of Zainal Abidin Malaysia, Passport No.-
A545853390, Visa No.9009b2fk

... .. Petitioner/s

Versus

1. The Union of India
2. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna Bihar
3. The Principal Secretary, Department Of Home, Government Of Bihar, Patna Bihar
4. The Director General of Police, Bihar, Patna Bihar
5. The Inspector General of Police, Purnea Range, Purnea Bihar
6. The Superintendent of Police, Kisanganj Bihar
7. The Deputy Superintendent of Police, Kisanganj Bihar
8. The S.H.O., Kisanganj Police Station, Kisanganj, District-Kisanganj Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K.Shahi, Sr. Adv. Mr. Md. Shamimul Hoda, Adv.
For the Union of India	:	Mr. Uma Shankar Verma, Adv.
For the Respondents-State:	:	Mr. Patanjali Rishi, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

15 21-02-2022 Heard learned counsel for the parties through video conferencing.

The petitioner has filed the instant application for quashing the Kishanganj P.S. Case no.149 of 2020 registered under sections 14 and 14-C of the Foreigners Act, 1946, for quashing the order taking cognizance dated 12.8.2020 whereby the learned Judicial Magistrate 1st Class, Patna was pleased to take cognizance under sections 14 and 14-C of the Foreigners



Act, 1946, for direction to the respondents to deliver the passport and all essential documents, to ensure deportation of the petitioner to his country and for any other relief to which the petitioner is found entitled.

An F.I.R. being Kishanganj P.S. Case no.149 of 2020 was registered on 13.4.2020 under sections 14 and 14-C of the Foreigners Act, 1946. As per the self statement of the SHO cum Inspector, Kishanganj recorded on 13.4.2020 at 4 pm, it is stated therein that information was received about foreign nationals residing in Khankah mosque in Kishanganj. In light of the letter dated 9.4.2020 received from the Police headquarters, Bihar, Patna the informant proceeded to the mosque at 3 pm for verification of the information. It transpired that foreign nationals were residing in the mosque since 5 pm on 22.3.2020 and all of them were involved in religious preaching. The petitioner, a holder of Malaysian passport was amongst the persons residing there which included ten citizens of Indonesia and one of Malaysia. They are on tourist visa and were involved in preaching of their religious ideology. This was in violation of sections 14 and 14-C of the Foreigners Act, 1946 which is a cognizable offence. As such the passport of the accused persons were seized and a copy of the seizure list prepared were



provided to them. All the accused persons including the petitioner herein were taken into custody.

After investigation chargesheet no. 211 of 2020 dated 24.5.2020 was submitted under sections 14 and 14-C of the Foreigners Act, 1946 against the petitioner and others by the learned Chief Judicial Magistrate, Kishanganj. The instant application has been filed by the sole petitioner, a passport hold of Malaysia ie a foreign national for quashing the entire case of Kishanganj P.S. Case no. 149 of 2020 as also the order taking cognizance dated 12.8.2020.

It is submitted by learned Senior counsel for the petitioner that no case either under section 14 nor under section 14-C of the Foreigners Act, 1946 is made out against the petitioner. All the points which are raised in the instant application has already been considered and decided in the judgment dated 22.12.2020 passed in Cr. WJC no.367 of 2020 (Md. Enamul Hasan and Ors. Versus Union of India & Ors.), a copy of which has been brought on record as Annexure-4 to the petition, and the case of the petitioner herein is fully covered by the said judgment. Thus it is prayed that the F.I.R. as also the entire prosecution including the order taking cognizance be quashed and the prayers made in the instant writ application be allowed.



Learned Central Government counsel appearing for the Union of India in his submissions has also referred to paragraph nos. 28, 29 and 33 of the judgment in the case of Md. Enamul Hasan (supra).

Having heard learned counsel for the parties and taking into consideration the facts of the case, it may be stated here at the outset that it is not the case of the respondents-State that the operation of the judgment in the case of Md. Enamul Hasan (supra) has been stayed by the Hon'ble Apex Court or the same has been set aside.

It may be stated here that this Court has dealt with in great detail the various points raised on behalf of the petitioner in the case of Md. Enamul Hasan (supra). Out of eleven petitioners in the said case, petitioner nos. 1 to 9 were foreign nationals as is the sole petitioner in the instant case while petitioner nos. 10 and 11 in the case of Md. Enamul Hasan (supra) were Indian nationals.

The relevant paragraphs of the judgment of Md. Enamul Hasan (supra) are being quoted hereinbelow for ready reference:

“38. By filing a second supplementary affidavit the petitioners have submitted that they have not violated the provisions of Foreigners Rule. According to them, the Rules relating to



registration is not applicable on petitioner nos. 1 to 9 in Cr. W.J.C. No. 367 of 2020 and petitioner nos. 2 to 10 in Cr.W.J.C. No. 369 of 2020 because they have visited India on tourist Visa valid for only 90 days and not more than 180 days. No registration would be required to the tourist Visa holders who have visited India for less than 180 days. In this regard proviso to Rules 6 and 7 (1) f) have been relied upon.

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50. At this stage, to this Court it appears that the guidelines issued by the Union Home Ministry, Government of India are in tune with the objects sought to be achieved by enacting the Registration Act, the Foreigners Act and the Orders issued under Sections 3 and 7 of the Foreigners Act. The purpose behind all these guidelines is to ensure that the Foreign nationals who are visiting India on Tourist Visa do not indulge in Tabligh work. The guidelines give them permission to attend Tabligh Zamaat (congregation) and such act of mere attending the Tabligh Zamaat does not amount to Tabligh work prohibited under the instructions. This is a clear meaning of this guideline and the circulars. This Court would therefore consider the first allegation of violation of visa conditions in the light of circulars and guidelines discussed hereinabove. Another issue which has arisen in this case as regards reporting of foreign nationals by the keepers of the premises in which they have been allowed to stay is also required to be examined keeping in view the aims and objects of the various statutes such as the Act of 1939, the Foreigners Act/ Act of 1946, the Registration Rules framed under Section 3(E) of the Act of 1939 and the Foreigners Orders 1950 as amended vide Foreigners (Amendment) Order 2016.

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52. From the aforesaid discussions, this Court has found that the first allegation against the foreign nationals is that of violating Visa conditions by indulging in tabligh activities. They have been



sought to be prosecuted for violation of the Visa Conditions as it is an offence under Section 14(b) of the Act of 1946. This Court has already recorded hereinabove that the Government of India /BOI has not banned or imposed any restriction in the matter of boarding/staying of a foreign national on Tourist Visa in the premises of the 'Markaz', 'Mosque' or 'Madarsa'. What has been banned/prohibited is their indulgence / participation in the act of preaching, speaking from Tabligh platform/canvassing during congregation etc. only those foreign nationals are required to be prosecuted who have been found involved in the prohibited activities.

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57. It is crystal clear from above quoted office memorandum that at first instance the 'BOI' has to identify the foreign nationals who participated in tabligh activities on tourist visa and 'BOI' has to take penal actions for Visa violation. The 'BOI' has not come out with any identification as regards these petitioners. No such facts have been placed before this Court.

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60. In these cases Mr. Anjani Kumar, learned AAG 4 assisted by Mr. Alok Kkumar Rahi, learned Advocate has taken this Court through the entire case diary recorded in course of investigation. It appears that in course of investigation save and except the members of the Police party who were present in course of raid in the 'Markaz' and the 'Mosque' respectively no other independent witness has been examined. No material in form of Audio/Video cassettes, leaflets or pamphlets have been found in possession of these foreign nationals. There is absolutely no material in the case diary to even prima-facie suggest that these foreign nationals had indulged in preaching of their religious ideologies or that they had addressed any congregation on the 'Markaz' and the 'Mosque' platform. The allegation of preaching religious ideologies is thus not supported by any material. It is an unfounded allegation. In absence of any material, it appears to this Court that the learned



Chief Judicial Magistrate, Araria has taken cognizance of the offences and decided to issue summons to these foreign nationals in a routine and mechanical manner.”

So far as the facts of the instant case are concerned, herein also from the materials on record it does not transpire that the informant/Investigating Officer has collected any material to show that the petitioner herein was involved in preaching of his religious ideology. Merely attending Tabligh Zamaat/congregation not amounting to public work prohibited under the instructions, the allegation of violation of visa conditions in light of the circular and guidelines is not made out. As has been held in the aforesaid judgment, what has been banned/prohibited is the participation in the act of preaching. There is no material on record that the petitioner was involved in preaching of his religious ideology. There is also no material that the Bureau of Investigation identified the petitioner to have participated in the Tabligh activities on tourist visa. Further in the instant case also in the entire case diary no material has transpired to the effect that the petitioner who is a foreign national indulged in preaching of his religious ideology in the Markas and the mosque platform. Thus the allegations are found to be unfounded and not supported by the materials that has transpired in course of investigation.



In view of the facts and circumstances stated hereinabove, the Court is of the opinion that the case of the petitioner is fully covered by the judgment in the case of Md. Enamul Hasan (supra) and thus the prosecution of the petitioner arising out of Kishanganj P.S. Case no. 149 of 2020 as also the order taking cognizance dated 12.8.2020 are both hereby quashed, so far as this petitioner is concerned.

The respondents are directed to take immediate steps to deport the petitioner, a Malaysian national to his country, at the earliest, if not required in any other case.

The writ application stands allowed.

(Partha Sarthy, J)

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