

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1167 of 2022

Arising Out of PS. Case No.-164 Year-2022 Thana- RAXAUL District- East Champaran

1. Roludugin Alexey @ Rodugin Alexey @ Roldugin Alexey Son of Shri. Anatoliy R/o Nakhimova 15, Maposad, Russia Passport No.- 761463050
2. Zherdev Ilia Son of Shri Vladimir R/o 38 Keramzavoda St. 390007 Ryazan, Russia. Passport No.- 662612041
3. Balashova Anna D/o Shri. Vladimir Anatolievich R/o Moscow Geroev Panfilovcev 16-2-60, Russia Passport No.- 753913418

... .. Petitioners

Versus

1. The State of Bihar through Director General of Police, Bihar
2. The Superintendent of Police, East Champaran, Dist- East Champaran
3. The Assistant Superintendent Police, East Champaran, Dist.- East Champaran
4. The Deputy Superintendent of Police Raxaul, East champaran, Dist.- East Champaran
5. The Officer-in-Charge, P.S. Raxaul (Haraiya O.P) Raxaul, East Champaran, Dist- East Champaran
6. Shri Ajay Kumar Pankaj, AFRRO, ICP Raxaul, Bureau of Immigration, ICP, Raxaul, Dist- East Champaran
7. Union of India, through the Secretary Ministry of Foreign Affairs, New Delhi

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Himanshu Luthura, Adv.
For the State	:	Mr.Iqbal Asif Niazi, AC to GP-5
For the Respondent no.7	:	Mr.Dr.K.N.Singh, Sr. Adv.
		Mr.Manoj Kumar Singh, Adv.
For the Respondent no.6	:	Mr.Ramakant Sharma, Sr.Adv.
		Mr.Kumar Sachin, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 21-12-2022 Heard learned counsel for the petitioners, Mr. Ramakant Sharma, learned Senior Advocate assisted by Mr. Kumar Sachin, Advocate for respondent no. 6 and Mr. Manoj Kumar Singh, learned Advocate for respondent no.7 as also Mr. Iqbal Asif Niazi, learned AC to GP-5 for the State.



2. Since the Superintendent of Police, East Champaran at Motihari is said to be outside Patna in connection with some legal matters in the Hon'ble Supreme Court, in his place, the Dy.S.P. (Headquarter), Motihari has appeared. The I.O. of the case is also present.

3. Petitioners in this case are seeking quashing of the Raxaul, Haraiya (OP) P.S. Case no. 164 of 2022 dated 02.04.2022 registered under Section 14(b) of the Foreigners Act, 1946 and Section 20-(b) (ii)(c)/23 (c) of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act'). In the writ application prayer nos. (ii) and (iii) under Paragraph '1' were made for a direction to release the petitioners on bail but the prayer no. (ii) and (iii) under Paragraph '1' were not pressed. This Court has recorded in its order dated 29.09.2022 that in view of filing of regular bail application, those prayers have not been pressed.

Brief Facts of the Case

4. The case of the petitioners have been set out in Paragraph '5' of the writ application which are being reproduced hereunder:-

“ i. That on intervening night of 30/31-03-2022 all the three petitioners, who were traveling in India on a tourist VISA, reached at Raxaul Railway Station and checked into the Shyam International Hotel for their stay.



ii. That on 31.03.2022 in the early morning, receptionist/ manager of the Hotel informed the petitioners that since their VISA have expired and that they have overstayed in India, hence, they should contact the FRRO Office.

iii. The petitioners tried to explain the manager at the reception that their VISA extension application is pending and they were waiting for the decision till then they are legal in India but with the language barrier, the unfortunate in doing so. The manager at the reception of Shyam International Hotel insisted the petitioners to check-out and approach the immigration office. Since they had already applied for an extension of their stay in India with the FRRO, Mumbai and not knowing that the office of AFRRO, Raxaul was just 2 km away, they checked out from the hotel around 12:10 P.M. on 31.03.2022. The petitioners reached Raxaul Railway Station at around 01:45 P.M. to catch the train which was to depart around 05:00 P.M. as their application for extension of stay was pending in the office of FRRO Mumbai.

iv. However, while they were sitting in the Tea and Coffee Stall for purpose of eating snacks etc. just outside the Raxaul Railway Station, they were intercepted by 6-7 persons, claiming to be the immigration officers wearing badges. Upon interception, they were questioned and asked to produce their passports for verification of their VISA and stay in India. The petitioners tried to explain the officers that their Indian VISA extension application is pending with the FRRO, Mumbai and showed them the Application Confirmation Number and e-mail confirmation of the same.

v. The immigration officers insisted them to come along with them to the office of AFFRO for future verification and they were brought to the AFFRO Office at Raxaul. They were again questioned by the immigration officers regarding their VISA and were informed that they were overstaying in India. The immigration officers demanded a huge amount of money for their, which the petitioners could not afford and, therefore, refused such



illegal gratification.

vi. That petitioner No. 3 who was the only woman present at the immigration office, Raxaul was physically frisked, abused and touched inappropriately, therefore, an objection was raised by petitioner No. 1 and petitioner No. 2 (boyfriend of petitioner No. 3), as a result, they were not only abused/misbehaved but also manhandled and beaten with bamboos by the immigration officers. It is pertinent to mention that, admittedly, no lady officer was present during this incident or during their arrest.

vii. That the immigration officers after brutally beating them, demanded huge amount of money to release them or to arrange such money. Thereafter, the petitioners were escorted by the immigration officers and forced to check into the Shyam International Hotel on 31.03.2022 around 5:00 P.M. and since their check-in on 31.03.2022 at 5:00 P.M. at the Hotel they were forcefully confined, illegally detained by immigration officers, thereby, curtailing their liberty to leave the hotel as admittedly by the prosecution that someone from immigration office was constantly present and patrolled the gate of the Hotel.

viii. That the petitioners, somehow, on 01.04.2022 succeeded in contacting their friend at Goa through their laptop which was still in their possession, who then requested Himanshu Luthra, Advocate in Delhi for extending his legal assistance and visit Shyam International Hotel.

ix. That subsequently, on the same day Advocate Himanshu Luthra reached at Shyam International Hotel at about 02:00 A.M. on the intervening night of 01/02-04-2022 and checked into the Hotel. After settling, Advocate Himanshu Luthra contacted the petitioners who were lodged in room No. 306 and 307 of the said hotel. The petitioners narrated the entire incident and that how they have been in custody/ captivity/ wrongful confinement of the AFRRO Officers. It was also informed that the immigration officers are still present in the Hotel illegally detaining them. As a result, Advocate Himanshu Luthra went to the reception and found two persons sleeping on the



sofa in the lobby. He then woke them up and spoke to the officers, who informed it is a matter of overstay and that they are verifying the result of their Visa extension application, and once the verification is completed they will be released forthwith. The officers further requested Sh. Himanshu Luthra to meet their officer in-charge Sh. Ajay Pankaj Kumar in the morning for further clarification.

x. That on 02.04.2022, around 10:00 A.M. two persons claiming to be immigration officers came to the room of Advocate Himanshu Luthra and asked him to produce his ID's. Sh. Himanshu Luthra produced his Bar Counsel Identification Card for their satisfaction and asked them to produce their ID's, confirming that both were from AFRRO office, Raxaul.

xi. That the immigration officers requested Sh. Himanshu Luthra to approach immigration office at Raxaul border to meet their officer-in-charge Sh. Ajay Kumar Pankaj and subsequently, around 01:00PM Sh. Himanshu Luthra, Advocate left the Hotel to go and meet the immigration officer-in-charge at AFRRO office at Indo-Nepal border.

xii. That upon arrival at the AFRRO office, Sh. Himanshu Luthra inquired Sh. Ajay Kumar Pankaj about the incident and as to why his clients have been illegally detained. Sh. Ajay Kumar Pankaj informed Mr. Luthra that the petitioners visa has expired and that they have overstayed in India, once the process of verification is complete on their visa application they will be released in India forthwith or if the extension gets rejected will be deported to their country. It is pertinent to mention that as per the rules of Ministry of Foreign Affairs, if your visa extension is pending before FRRO, you are automatically entitled to stay in India, beyond the period of authorization, till the final disposal of the application, thereby, making the petitioners' forceful detention/ confinement illegal.

xiii. That admittedly on 02.04.2022 at 02:03 PM in a very conniving manner, the petitioners were forced to check-out with their belongings by four immigration officers, who then took them to the



AFFRO Office at Raxaul in their official car, where Himanshu Luthra was present. The petitioners were asked to keep their bags in a room below the AFRRO Office, Raxaul, till they confirm their result on their visa extension application. At about 04:30 PM, Himanshu Luthra, Advocate was informed that the police have been informed petitioners are being arrested on the ground of being found in possession of the Narcotics i.e. Charas.

xiv. The petitioners were taken to the police station, where upon the information of Sh. Ajay Kumar Pankaj an FIR bearing the Raxaul, Haraiya (OP) P.S. Case no. 164/2022, dated 02.04.2022 has registered for the alleged offence U/Ss. 14(b) of Foreigners Act, 1946 and U/Ss 20(b)II (c)/ 23(c) of N.D.P.S. Act, which is pending in the Court of Ld. 14th Additional Sessions Judge-Cum-Special Judge (NDPS), East Champaran, Motihari against the present petitioners. It is pertinent state here that the petitioners were forced to sign certain documents to which the petitioners, firstly objected and then signed on the alleged seizure memo but with the remarks.”

5. Learned counsel for the petitioners submits that the case of these petitioners would be covered under Paragraph no.108, illustration no.7 of the judgment of the Hon’ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported in **1992 Supp. (1) SCC 335 :AIR 1992 SC 604**. It is submitted that on a bare analysis of the CCTV footage of the hotel and the Raxaul railway station, AFRRO Office, Raxaul and the surrounding areas from 30.04.2022 till 02.04.2022. It would appear that the petitioners were confined in the hotel since 31.03.2022(05:00 PM) by the Immigration Officers. It is alleged that the Immigration Officers were constantly present



and patrolling the gate of the hotel. It is his submission that the petitioners were forced to check out from the hotel on 02.04.2022 at 02:03 PM and then they were brought to the AFRRO Office at Raxaul in the official car of the Immigration Officers and at this point of time, they were arrested on the ground of being found in possession of the narcotics i.e. charas, weighing 6.38 Kg.

6. Learned counsel for the petitioners also submitted that while arresting the petitioners and preparing the seizure list none of the mandatory provisions and safeguards provided to an accused under the NDPS Act has been followed.

7. Learned counsel submits that this Court has already recorded in its order dated 13.07.2022 passed in Cr.W.J.C. No. 695 of 2022 that the investigation of the case had not proceeded in right direction and an incomplete chargesheet was filed in the court below only for the reason that the I.O. of the case wanted that these petitioners should not get benefit of Section 167(2) Cr.P.C. It is submitted that this Court has taken note of the legal provision i.e. Section 36A(4) of the NDPS Act, 1985 which provides for a period of 180 days for filing of chargesheet but in this case the chargesheet was filed under a wrong notion that 90 days' period is going to expire and the



petitioners may take advantage of non-filing of chargesheet.

8. The submission of learned counsel for the petitioners is that in view of what transpires from the CCTV footage, this Court may easily come to a conclusion that this is a malafide registration of FIR, hence, the FIR is liable to be quashed. At this stage, however, it has transpired that after filing of the chargesheet in the court of learned Sessions Judge/ Sub-Judge, NDPS, learned court has vide its order dated 30.06.2022 took cognizance of the offences under Section 14(a),(b) and (c) of the Foreigners Act, 1946 and Section 20(b)(ii)(c), 23(c) of the NDPS Act and fixed the case for 30.07.2022 for providing police papers, framing of charge and hearing on bail petition. It is submitted that unfortunately on 13.07.2022 when the writ application was being heard in this Court, neither learned counsel for the petitioners nor learned counsel for the State could inform this Court that the court below has already passed order taking cognizance and proceeded against the accused persons. Thus, the Court has in its order dated 13.07.2022 recorded that the cognizance has yet not been taken and under that impression, this Court passed an order on 13.07.2022 that the learned court below shall not pass any order on the basis of an incomplete chargesheet.



9. Learned counsel for the State has, on instruction submitted that in this case the police is going on with further investigation of the case. It is submitted that in fact in the chargesheet filed earlier there is a clear statement that further investigation is going on. Learned counsel submits that at this stage, when the CCTV footage are still being analyzed by the I.O. and the supervising authority is yet to take a complete view of the matter, this Court need not analyze the same and record its opinion on that as it would amount to perempting the result of the investigation and that would not be the correct course of justice.

10. Learned counsel further submits that at this stage, the FSL reports have been received from Chandigarh and Muzzafarpur and the FSL reports are confirming that the seized substances are charas. Those are much more than the commercial quantity, hence, at this stage, it cannot be concluded that the FIR has been lodged with any malafide intention.

11. So far as the allegations that the petitioners were kept confined from 31.03.2022 at 05:00 PM to 02.04.2022 at 02:03 PM, the same shall form part of the investigation and the I.O. will find out as to what happened during this period and that will come upon analysis of the CCTV footage which are



already going on.

12. Learned Senior counsel for the Union of India as well as learned counsel for respondent no. 6 have opposed the writ application as according to them the petitioners have no case for quashing of the First Information Report and it is not one of those cases which will be covered under any of the illustrations given in the judgment of the Hon'ble Supreme Court in the case of **Bhajan Lal** (supra).

Consideration

13. Having heard learned counsel for the petitioners, State, Union of India and respondent no.6 as also on perusal of the records, this Court finds that admittedly further investigation of the case is still going on. The I.O. and the Dy.S.P. (Headquarter), Motihari who are present in-person have jointly submitted that the supplementary chargesheet is likely to be filed within a period of four weeks from today as the investigation is almost on the verge of completion.

14. To this Court, it appears that the petitioners are unable to establish a case of malafide at this stage. The plea of malafide may be proved only in course of trial or from the uncontroverted materials present in the FIR and with the supporting materials present with the FIR. In the present case,



the FIR as it is, without adding or subtracting anything out of it, is disclosing commission of a cognizable offence and in course of argument even learned counsel for the petitioners do not dispute it. His only plea is based on malafide which cannot be culled out by this Court in the present proceeding.

15. In the circumstances stated above, this Court is of the considered opinion that this writ application cannot succeed.

16. Before this Court parts with this order, let it be recorded that in the hearing held on 03.11.2022, learned counsel for the petitioners made a specific submission that he would pursue this writ application for quashing of the FIR without challenging the order taking cognizance. Thus, in this case neither the chargesheet filed earlier nor the order taking cognizance has been challenged. This Court would, therefore, not make any observation at this stage into those aspects of the matter.

17. This writ application fails. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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