

12.07.2022

Court No.32
rpan/02

WPA (H) 8 of 2022
with
IA No.: CAN 1 of 2022
Boni Amin
- Versus -
The State of West Bengal & Others

Mr. Abhishek Sikdar,
Ms. Sahili Dey
... for the Petitioner.

Mr. Anirban Ray, Ld. G.P.,
Mr. Debabrata Chatterjee,
Mr. Simanta Kabir
... for the State.

Mr. Sikdar, learned advocate appearing for the petitioner submits that the petitioner is the husband of one Fatema Begum (in short, Fatema). She was arrested and charged under Section 14A of the Foreigners Act (in short, the said Act). After framing of charges, the case was registered as S.T. No.46(05)/2016. She was found guilty of committing an offence punishable under Section 14A of the said Act and was sentenced to suffer rigorous imprisonment for three years and six months and to pay a fine of Rs.15,000/-, in default to suffer further imprisonment for six months by a judgment and order dated 13th June, 2019 passed by the learned Additional Sessions Judge, Fast Track, First Court, Malda. Fatema has three daughters, namely, Zohra, Taslima and Dalabi, who are lodged at Shilayan Home for Girls and one

son, namely, Hairul Islam, who is lodged at Kishalaya Children's Home for Boys. Though Fatema had already served out her sentence, she has been kept under illegal detention at the Dum Dum Central Correctional Home till date.

According to Mr. Sikdar, as Fatema had already served out her sentence, she may be released so that she can reside with her husband, who is the petitioner herein and other family members. In support of such contention reliance has been placed upon an order passed by the Hon'ble Supreme Court on 10th May, 2019 in the case of *Supreme Court Legal Services Committee Vs. Union of India & Anr. [Writ Petition (Civil) No.1045 of 2018]*. Let a copy of the same, as produced, be kept on record.

Per contra, Mr. Kabir, learned advocate appearing for the State denies and disputes the contention of the writ petitioner and submits that Fatema had fled from Myanmar and entered this country in or around the year 2016. She had suffered the punishment as per the judgment dated 13th June, 2019 passed in S.T. No.46(05)/2016. She is yet to be deported or repatriated to her motherland. As she had already served out the sentence, she has been provided an accommodation at a temporary camp within the premises of Dum Dum Central Correctional Home. Her children are allowed to meet her at the said camp.

He further submits that Fatema along with others preferred a writ petition, being WPA 1609 of 2022 stating herself to be the wife of one late Abdul Salam. In the said writ petition, the writ petitioners had prayed for issuance of necessary direction upon the respondents to set them at liberty so that they may reside with their family members. The said writ petition is still pending. In the midst thereof, one Boni Amin has preferred the present writ petition stating that he is the husband of Fatema. There is, thus, an apparent dispute as regards the identity of Fatema's husband and in such circumstances it would not be safe to hand over the victim lady to the petitioner herein.

Records reveal that previously a criminal revision application, being CRR 446 of 2020, preferred by one Amit Bapari, was disposed of by a learned Single Judge on 25th February, 2022 directing the Principal Secretary, Department of Correctional Administration, Government of West Bengal to immediately take steps for completing the process of building up a Safe Home for the foreign released inmates of all nationalities.

In view thereof, we directed the Principal Secretary, Department of Correctional Administration, Government of West Bengal to file a report before us disclosing the status of construction of such Safe

Home. Pursuant to such direction, a report in the form of an affidavit has been filed by the Principal Secretary, Department of Correctional Administration, Government of West Bengal. Let the same be kept on record. A copy of the said report has also been handed over to Mr. Sikdar.

In the said report, it has *inter alia* been stated that Fatema along with other foreign released inmates have been kept in a temporary camp within the premises of the Dum Dum Central Correctional Home. A building located at Jayantipur Mouza under Bongaon Police Station has also been identified as a Safe Home for the foreign released inmates of all nationalities and that steps are being taken to make it ready for accommodating them by the month of February, 2023.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by a summary procedure.

In the present case, Fatema is a foreign national. She has served out the sentence in S.T. No.46(05)/2016. There is a pending writ petition filed by Fatema along with others in which she has described herself to be the wife of late Abdul Salam whereas the present writ petition has been filed by one Boni Amin claiming to be the husband of Fatema.

There is, thus, an apparent dispute as regards the identity of Fatema's husband. The order passed in Supreme Court Legal Services Committee (*supra*) is, thus, distinguishable on facts.

Fatema is not under illegal detention. She has been provided accommodation in a building within the premises of the Dum Dum Central Correctional Home. Steps have already been taken by the State for accommodating all foreign released inmates of all nationalities in a Safe Home at Jayantipur Mouza under the jurisdiction of Bongaon Police Station. The petitioner is aware of such facts.

In view thereof, no interference is called for in the present writ petition.

The application for addition of party being CAN 1 of 2022 is dismissed and the writ petition, being WPA (H) 8 of 2022 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)