

12.07.2022
Court No.1
Item No.79
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

WPA 1502 of 2022

**Md. Mehedi Hasan
Vs.
Union of India and Ors.**

Mr. Biswajib Ghosh
Mr. Sumitava Chakraborty
Mr. Debanjan Das

... For the Petitioner.

Mr. Bikramaditya Ghosh
Mr. Pretom Das

... For the State.

Mr. Sudipta Kumar Mazumdar
Mr. Ajoy Kumar Singhanian
Mr. Sourab Kar

... For the Respondent Nos.1 to 4.

The writ petitioner's brother has been taken in custody under the Foreigners Act, 1946 for illegally entering into India from Bangladesh. The petitioner's brother has claimed that Md. Mehedi Hasan has sought to escape persecution in the State of Bangladesh.

The petitioner himself has entered in India on a valid visa. It is submitted that the petitioner is required to take his brother from prison to New Delhi to approach the UN High Commission for necessary protection for declaration of a status of refugee.

For the aforesaid purpose it is stated that the petitioner's brother who is languishing in prison is required to be taken physically to New Delhi.

Reliance has been placed on a decision of a Division Bench in ***Bogyi Vs. Union of India*** reported in **1989 SCC OnLine Gau 229** and ***Nandita Haksar Vs. State of Manipur*** reported in **2021 SCC OnLine Mani 176**.

This Court is of the clear view that what cannot be obtained directly, under the provisions of the Cr.P.C., cannot be obtained indirectly under Article 226 of the Constitution of India. It is, however, true that powers of the High Court under Article 226 of the Constitution of India are extremely wide and Article 21 of the Constitution is available even to foreigners.

However, in the facts and circumstances of the case, this Court is not inclined to exercise extraordinary jurisdiction under Article 226 of the Constitution of India to allow the writ petitioner to go to Delhi and apply for refugee status.

This Court, however, notes that the writ petitioner himself, who has entered India on a valid visa, can approach the UN High Commission at New Delhi to canvass his brother's application.

The submission of the counsel for the State that the procedure for application of refugee status

is already available on the website of the UNHCR and there should be provisions and the same can be availed.

This Court in the facts of the case cannot direct the UNHCR to pass any orders.

In view of the above, no relief can be granted to the petitioner.

Accordingly, the writ petition fails and hereby dismissed.

(Rajasekhar Mantha, J.)