

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-50778-2021 (O&M)

Date of Decision:-15.9.2022

Yasin Sadat

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Akshay Rana, Advocate,
Mr. Arun Khatri, Advocate,
Ms. Shalini, Advocate,
Mr. Sahil Khurana, Advocate and
Mr. Mohit, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Ms. Saigeeta Srivastava, Advocate,
for respondent No.3-UOI.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide FIR No.497, dated 25.7.2021, Police Station Gurgaon Sadar, District Gurugram, under Section 12(1A) of Passports Act, 1967 and Sections 14-A, 14-B and 14-C of Foreigners Act, 1946.
2. The FIR was lodged at the instance of Sub-Inspector Suresh Chander, who moved a written complaint against Abdul Gaffar Nori, Mohd. Shabir, Eimal

Aria and Mohd. Yasin Sadat residents of Afghanistan. In the complaint, it was stated that on 25.07.2021, when he (Sub Inspector Suresh Chander) alongwith ASI Ashok Kumar and HC Parveen Kumar was present behind Sector 39 Cyber Park for crime patrolling duty, he received a secret information that in the house of Puneet Thakran, some foreigners were residing for the last several months. Upon receipt of said information, the police raided the house of Puneet Thakran, where Abdul Gaffar Nori, whose passport was valid till 1.9.2019 and Visa was also expired, Mohd. Shabir resident of Kabul Afghanistan, who was also having passport and Visa and which were also expired long ago, Eimal Aria and Mohd. Yasin Sadat (petitioner), whose passports and Visas were also expired long ago, were present. It is the case of prosecution that when inquiries were made from the owner of the house namely Puneet Thakran in respect of the same, he could not give satisfactory reply nor could produce any document. It is alleged in the complaint that action should be taken against landlord Puneet Thakran and accused Abdul Gaffar Nori, Mohd. Shabir, Eimal Aria and Mohd. Yasin Sadat.

3. The learned counsel for the petitioner submits that although the petitioner had entered India from Afghanistan in the year 2016 on the basis of a valid passport and valid Visa documents, but subsequently he had been issued a Refugee Card by 'United Nations High Commission for Refugees' (UNHCR) and that it was on the basis of said card that he had been staying in India. The Learned counsel has further submitted that he was possessing a valid passport, which somehow expired on 06.10.2020 and on account of the spread of pandemic COVID-19, he could not get the same renewed within time and ultimately he came to be apprehended in the month of July, 2021.

Learned counsel submits that apart from the said allegations of having overstayed in India without valid documents, there is nothing else against him and there is nothing on record to show that he had committed any other offence.

4. Opposing the petition, learned Additional Solicitor General of India representing the respondent-Union of India as well learned State counsel representing the State of Haryana have submitted that since the Tourist Visa as granted to the petitioner had expired on 06.07.2016 and had never been extended thereafter, the stay of the petitioner ever since July, 2016 was illegal and he never made any effort for getting the Visa extended or for taking any step so as to justify his stay in India. It has been submitted that India is not a signatory to UNHCR and as such does not recognize refugee status granted by UNHCR, which the petitioner claims to be possessing.
5. It has further been submitted that apart from the expiry of Visa on 06.07.2016, even the passport of the petitioner had expired on 06.10.2020 and, as such, when the petitioner was arrested by the police on 25.07.2021, he was neither having a valid Visa nor a valid passport and as such, his presence/stay in India is absolutely illegal.
6. Upon directions having been issued by this Court, learned Additional Solicitor General of India representing the respondent-Union of India has today filed a short reply, which is taken on record. The relevant extract of the said reply reads as follows:-

“3. That in reply to the first query it is submitted that as per provisions under sub-clause (1)(b) of section 2 of the Citizenship Act, 1955, the expression “Illegal Immigrant” has been defined as:-

- “i. a Foreigner who entered into India (i) without a valid passport or other travel documents and such other documents or authority as may be prescribed by or under any law in that behalf, or (ii) within a valid passport or other travel documents and such other documents or authority as may be prescribed by or under any law in that behalf, but remains therein beyond the permitted period of time and further as per electronic records the petitioner was holding a Multiple Entry Tourist Visa No.VK0006359 (validity 07.01.2016 to 06.07.2016, max stay for 30 days) and had entered India on 10.01.2016 on Afghan Passport No.00415091 (validity till 2020). hence, his overstay beyond 09.02.2016 and holding an expired Passport in India is not legitimate and he would be listed as an “illegal immigrant”.”
4. That in reply to the second query it is submitted that India is not a signatory to the UN Convention relating to the Status of Refugee and the 1967 Protocol thereon, India does not recognize refugee status granted by UNHCR. All issues related to entry, stay and exit of foreign national including refugee seekers and illegal immigrants in the country are dealt under the provisions of (a) The Passport (Entry into India) Act, 1920 (b) The Foreigners Act, 1946 (c) The Registration of Foreigners Act, 1939 and (d) The Citizenship Act, 1955 and rules/order made there under; (ii) Conferment of “refugee status” by UNHCR to a foreign national who is not having valid travel documents would not alter their status as “illegal immigrants’ and provide them no immunity against action taken under the relevant acts.
5. That in reply to the third query it is submitted that as per Chapter 3, Para 96) of HMA communication No.25022/32/2014 F.I(Vol. II) dated 09.01.2019 where in

foreigners violating VISA norms i.e. case of overstaya
may be detained in a Detention Centre/Holding
Centre/Camp.”

7. Learned State counsel has informed that the petitioner as on date has been behind bars since the last about 1 year and 2 months and that he is not involved in any other case.
8. Having regard to the aforestated position and while bearing in mind that the maximum sentence as may be imposed in respect of offences for which the petitioner stands charged, is 5 years, further detention of the petitioner would not be justified. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds and heavy surety to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. In addition to the heavy surety, the petitioner shall deposit an amount of Rs.5,00,000/- before the trial Court.
9. Upon deposit of such amount, the Trial Court/Illaqa Magistrate shall get the same invested in some FDR with some Nationalized Bank with a specific direction to Manager of the bank concerned not to entertain any request for encashment of the same except under orders of the Court. Upon the petitioner being declared innocent or being acquitted and such acquittal attains finality, the petitioner shall be entitled to proceeds of the said FDR. However, in case the petitioner absconds or is found guilty and is convicted and such conviction attains finality, the same shall be forfeited to the State.
10. Additionally, the petitioner shall also arrange for some undertaking by some Afghanistan National permanently residing in India ensuring his good conduct, which the learned counsel for the petitioner has submitted that he

would be able to arrange for. In addition to that, it shall be open to the Trial Court to impose any other condition, as deemed appropriate, so as to ensure regular presence of the petitioner before the trial Court concerned.

11. The aforesaid order shall not be construed to be any bar in case the law mandates that the petitioner is otherwise required to be kept in any detention centre.

15.9.2022
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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No