

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.49 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Jehanabad

AFSHAN NIGAR D/o Md. Shamshad and W/o Syed Naqul Alam @ Naqul Imam R/v- Sahi Mohalla, P.S. and District- Arwal, State- Bihar

... .. Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH THE HOME SECRETARY, MINISTRY HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI New Delhi
2. THE ADDITIONAL SECRETARY, FOREIGNERS DIVISION, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI New Delhi
3. THE JOINT SECRETARY, FOREIGNERS DIVISION, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI NEW DELHI
4. THE DIRECTOR, (FOREIGNERS), FOREIGNERS DIVISION, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI NEW DELHI
5. THE DIRECTOR, (INDIAN CITIZENSHIP), FOREIGNERS DIVISION, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA NEW DELHI
6. THE FOREIGN SECRETARY, MINISTRY OF EXTERNAL AFFAIRS, GOVT. OF INDIA, NEW DELHI NEW DELHI
7. THE ASSISTANT SECRETARY, DIVISION PAKISTAN, MINISTRY OF EXTERNAL AFFAIRS, GOVT. OF INDIA, NEW DELHI NEW DELHI
8. THE STATE OF BIHAR THROUGH ITS CHIEF SECRETARY, GOVERNMENT OF BIHAR, PATNA BIHAR
9. THE CHIEF SECRETARY, GOVERNMENT OF BIHAR, PATNA BIHAR
10. THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF HOME, GOVERNMENT OF BIHAR, PATNA BIHAR
11. THE DISTRICT MAGISTRATE-CUM-COLLECTOR ARWAL BIHAR
12. THE ADDITIONAL COLLECTOR, ARWAL BIHAR
13. THE SUPERINTENDENT OF POLICE, ARWAL BIHAR
14. THE SUPERINTENDENT OF DETENTION CENTRE, JEHANABAD BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Amit Narayan, Advocate Mr.Abhigyan Kumar, Advocate Mr.Ashwani Kumar, Advocate Mr.Majid Mehboob, Advocate
For the State	:	Mr.Khurshid Alam, AAG
For the Union of India	:	Mr.K.N.Singh, ASG



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

16 25-06-2024 In the instant petition, petitioner has prayed for the
following relief(s):-

“For issuance of writ in the nature of Habeas Corpus or any other appropriate writ/writs, order/orders, command/commands, direction/directions to the respondents to produce husband of petitioner namely Syed Naqui Alam alias Naqui Imam who has been detained in Detention Centre, Jahanabad and to release him on bail.

(b) For issuance of a writ in the nature of mandamus or any other appropriate writ directing the respondent (Union) to consider and consequently accord Indian Citizenship to the husband of the petitioner; an application thereof is pending before the concerned respondents;

(c) For issuance of a writ in the nature of mandamus or any other appropriate writ passing an order/s, direction/s to the effect that petitioner’s husband be granted long term visa so that he can stay and look after his matter of citizenship and also look after his wife (petitioner), who is his legally wedded wife and an Indian citizen and no one else to look after her.

(d) For issuance of any other writ/writs, command/command, order/orders direction as this Hon’ble Court deem fit and proper in the facts and circumstances of the case.”



2. Gist of the matter is that petitioner's husband *Mr. Syed Naqui Alam* is alleged to be Pakistan National and he has Pakistani Passport No. AD1751042 it was valid up to 12.04.2016 read with VISA for the period from 10.02.2011 to 10.02.2012. He had entered Indian national territory through Attari rail check post. He overstayed in India with reference to residential permit and F.I.R No. 196 of 2012 dated 30.10.2012 was registered for the offence under Section 14 of the Foreigners Act, 1946 and it was registered at P.S. Arwal, Bihar.

3. In the aforementioned case, he was convicted and undergone sentence for a period of 7 months on 22.12.2016. After serving sentence, he should have been deported to Pakistan. In this regard, there was a protracted correspondence among the petitioner and Government of India officials and so also the Pakistan High Commission Office. On two occasions for want of verification from the Pakistan High Commission officials about the citizenship of the *Mr. Syed Naqui Alam*, the matter was deferred. Even from the latest instruction furnished by the Ministry of Home Affairs dated 10.05.2024 reveals that still there are correspondence with the Pakistan High Commission about the deportation. Despite the fact that Pakistan High Commission have expressed their opinion that



petitioner's husband *Mr. Syed Naqui Alam* is not a Pakistani citizen. In such circumstances, there is a vacuum created to the extent that what is the fate of the petitioner's husband when he is alleged to be neither Pakistani citizen or Indian citizen. To that effect Ministry of Home Affairs have not apprise this Court despite our observations made on an earlier occasion.

4. Be that as it may, in identical circumstance the Hon'ble Supreme Court in the case of *Ana Parveen & Anr. vs. Union of India & Ors.* Writ Petition (Criminal) No. 43 of 2022 granted relief. It is necessary to extract the order of the Hon'ble Supreme Court and it reads as under:-

"1. The first petitioner Ana Parveen is the daughter, while the second petitioner Rohil Khan is the son of Mohd Qamar alias Mohd Kamil, who is detained at the Detention Centre at Lampur, Narela, Delhi.

2. Invoking the jurisdiction under Article 32 of the Constitution, the petitioners seek a writ in the nature of habeas corpus or any other appropriate writ for the production of their father, Mohd Qamar from the Detention Centre and for his release on furnishing a bond of Rs 5,000 with two sureties in the like amount so as to enable him to reside with his family in Meerut subject to reasonable restrictions.

3. Mohd Qamar was arrested in connection with FIR No 250 of 2011 under Section 14 of the Foreigners Act 1946 registered at PS Delhi Gate, Meerut. He was convicted and sentenced



to three years and six months' simple imprisonment and to a fine of Rs 5,000 by the Chief Judicial Magistrate, Meerut on 2 September 2014. He completed his sentence on 6 February 2015. For the last seven years he has been lodged at the Detention Centre under the Foreigners Act, pending deportation on the ground that he is a Pakistani national. The detainee contested the assertion of his being a foreign national. But in writ proceedings before the Delhi High Court, he stated that he would be seeking Indian citizenship.

4. The case of the prosecution was that Mohd Qamar was a Pakistani national who came into India. He married an Indian citizen in 1989. The couple have five children – three sons who are labourers and two daughters who are home makers. The wife of Mohd Qamar is an Indian citizen. The children were born in India. Moh. Kumar is stated to be sixty two years old.

5. A representation was submitted on behalf of the Mohd Qamar by the first petitioner to the Ministry of Home Affairs. Responding to the representation, the Foreigners' Division of the Union Ministry of Home Affairs addressed a communication on 14 January 2019 to the Principal Secretary (Home Department), Government of Uttar Pradesh after adverting to the facts which have been referred to above, the Government of Uttar Pradesh was requested to examine whether Mohd Qamar may be released from the Detention Centre and be allowed to stay in the State of Uttar Pradesh on a long term visa or a visa "as per the existing provisions/norms".

6. The Senior Superintendent of Police, Meerut by a communication dated



26 November 2020 stated that the spouse of Mohd Qamar has stated that she was divorced from Mohd Qamar ten years ago in a panchayat before the community. However, no document of divorce is forthcoming. The spouse is living with her parents and children at PS Delhi Gate, Meerut. The SSP, Meerut indicated in his letter that since Mohd Qamar is divorced from his Indian wife, there is no justification for him to live in India and hence the representation to release him from the Detention Centre was not recommended.

7. On 26 November 2020, the Deputy Secretary to the UP Government in the Home Department addressed a communication to the Union Ministry of Home Affairs declining to recommend the release of Mohd Qamar from the Detention Centre on the ground that he has divorced his Indian wife.

8. The facts as they stand before the Court indicate that Mohd Qamar has served out his sentence. He has been lodged at the Detention Centre awaiting deportation since 7 February 2015. The communication of the Union Ministry of Home Affairs dated 14 January 2019 notes that he was provided consular access twice, namely, on 22 November 2011 and 22 January 2012 at Central Jail, Delhi, yet his nationality was still to be confirmed by the Pakistan government “which is essential for his repatriation/deportation to Pakistan”. From the material which has been placed before this Court, it is undisputed that Mohd Qamar married an Indian citizen and they have five children, all of whom were born in India and stay in India. The Union government had sought the view of the Government of Uttar Pradesh on whether the case could be recommended



on these facts for the grant of a long term visa.

9. We have heard Mr Sanjay Parikh, senior counsel for the petitioners, Mr K M Nataraj, Additional Solicitor General for the Union government of India and Ms Garima Prasad, Additional Advocate General for the State of Uttar Pradesh.

10. During the course of the submissions, Mr K M Nataraj, Additional Solicitor General has adverted to the above exchange of correspondence and submitted that the Uttar Pradesh government having declined to make its recommendation for the grant of a long term visa, no decision has yet been taken. The SSP, Meerut has declined to grant a visa or a long term visa on the ground that Mohd Qamar appears to have divorced his wife in which event he opined that there is no justification for him to continue to reside here. Equally, it is evident from the communication that no papers in connection with the alleged divorce are forthcoming. Moreover, it is also undisputed that all the five children of Mohd Qamar are Indian citizens who reside in Meerut as does their mother. Seven years have elapsed since the father of the petitioners has served out his sentence following the conviction under the Foreigners Act.

11. In this backdrop, we are of the view that it would be appropriate if the Foreigners' Division of the Union Ministry of Home Affairs takes a final decision on the representation for the grant of a visa/ long term visa having regard to all the facts and circumstances of the case and after assessing the inputs from the security angle. They shall do so independent of the communication which has been addressed by the SSP, Meerut,



noted above.

12. At the same time, we are of the view that keeping the detenue, Mohd Qamar in detention would not be consistent with the mandate of Article 21 of the Constitution.

13. In the facts of the present case and since no security threat or adverse impact bearing on national security has been placed on the record, we are of the view that the detenue, Mohd Qamar should be released on furnishing a personal bond of Rs 5,000 with two sureties of Indian citizens in the like amount. The detenue shall furnish the address of his place of permanent residence in Meerut where he proposes to reside, to the SHO of the police station concerned and report to the local police station on the seventh day of every month pending further orders.

14. The decision of the Union government in the Ministry of Home Affairs in regard to the grant of a long term visa or visa to Mohd. Qamar shall be placed on the record of these proceedings within a period of four months from the date of this order.

15. List the Petition in the first week of September 2022.”

5. Taking note of the factual aspects of the present matter, we are of the view that petitioner's husband *Mr. Syed Naqui Alam* should be released on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) with two sureties of Indian citizens in the like amount, the detenue shall furnish the address of place of permanent residence in the State of Bihar where he proposed to reside to the concerned SHO of the Police



Station and report to the local police station on the 7th day of every month till Ministry of Home Affairs take decision in respect of what is the fate of the petitioner's husband in the absence of either he is a citizen of Pakistan or citizen of India. In this regard, Ministry of Home Affairs are hereby requested to take a decision within a period of three months from the date of receipt of this order and communicate the same to the petitioner's husband and also furnish copy to the concerned SHO, P.S. Arwal, State of Bihar.

6. With the above observation, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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