

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 8314 of 2024
Md. Ataur Rahman & another
Versus
The State of West Bengal & Ors.

For the petitioners : Mr. Samim Ahmed
Ms. Saloni Bhattacharya
Mr. Arka Ranjan Bhattacharya
Ms. Gulsanwara Pervin
Mr. Aniruddha Singh

For the State : Ms. Sonal Sinha
Mr. Avishek Prasad

For the respondent nos. 4 to 7: Mr. Rabindranath Das
Ms. P. Choudhury

Heard on : 03.04.2024

Judgment on : 03.04.2024

Jay Sengupta, J:

This is an application for quashing of Swarupnagar PS Case No. 145 dated 07.03.2024 and for inquiry into illegal detention.

Affidavit of service filed on behalf of the petitioners is taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioner no.1 was a Bangladeshi National who had prayed for refugee status in the UK while studying there. He was granted a refugee status with a valid travel document. He travelled from UK to India. He was apprehended from a market near the border between India and Bangladesh admittedly on 06.03.2024 at about 18.00 hrs. However, the BSF people illegally kept him detained and shown the arrest memo to be of 07.03.2024 at 21.02 hrs. He was produced before the learned Magistrate only on 08.03.2024. While in custody of the BSF, illegal demands were made. As the petitioner is a Bangladeshi citizen, even if he had gone to Bangladesh from India, no travel document would be required. Therefore, there is no question of Section 3 of the Indian Passport Act applying. Reliance is placed on a decision of the Hon'ble Apex Court in *Akmal Ahmad -vs- State of Delhi reported in (1999) 3 SCC 337*. No prima facie case is made out as would be evident from a plain reading of the First Information Report. No case is made out under Section 14 of the Foreigners Act either. At present, the petitioner is on bail. However, his travel document from the UK is expiring on 09.04.2024.

Learned counsel appearing on behalf of the State relies on the report filed earlier and submits as follows. During investigation, it was revealed that the petitioner was a Bangladeshi National who had gone to London for studying in the year 2013. In December 2015, he applied for asylum in the United Kingdom of Great Britain and was granted refugee status in the year 2021 on condition that he surrendered his Bangladeshi Passport. The United Kingdom of Great Britain and Northern Ireland Government issued a travel document in his name to travel to all other countries except Bangladesh. The document would expire on 21.11.2026. On 10.11.2024, the petitioner came to India with a valid VISA and went to Bangladesh

illegally to meet his mother and family members. On 06.03.2024, he returned to India from Bangladesh illegally and was apprehended by the BSF.

Learned counsel appearing on behalf of the respondent nos. 4 to 7 denies the allegations made in the writ petition and submits as follows. There was no illegal detention as the arrest memo shows the arrest to be at 21.02 hrs of 07.03.2024 and the petitioner was produced before the Magistrate on 08.03.2024. However, if it is found that the petitioner had been illegally detained from 06.03.2024, appropriate inquiry would be initiated.

It appears that a case was started against the petitioner under Section 14 (A) (B) Foreigners Act and Section 12 of the Passport Act.

It is an admitted fact that the petitioner came to India with a travel document issued by the Government of Great Britain and Northern Ireland, which is still valid. Therefore, admittedly his initial entry into India was absolutely valid. He possibly still has a valid permit to stay in India. However, it is alleged that in the meantime, the petitioner had crossed the border and went to Bangladesh to meet his relatives and was apprehended while coming back. It is to be decided by the Court after going through the evidence and other materials on record whether any case under Section 14 (A) (B) of the Foreigners Act is at all made out.

The submissions of the petitioner that being a Bangladeshi Citizen, the petitioner would not require any document to travel to Bangladesh whether it be from India or anywhere else cannot be sustained. Because, he had already obtained refugee status in England after surrendering his passport. He is travelling to other places from Great Britain with a travel document which debars him from travelling to Bangladesh. Therefore, technically Section 3 of the Passport Act would apply because if the petitioner is found entering from Bangladesh to India, after coming

to India with valid documents. Then it is quite obvious that he had gone away from India to Bangladesh at some point.

The above facts distinguish the case from Akmal Ahmad (surpa).

The present case involves disputed questions of fact which can best be gone into at the stage of trial.

As regards the question of illegal detention, it appears from the FIR that the date of occurrence is mentioned as 06.03.2024, although the arrest memo shows the arrest to be on 07.03.2024 at 21.02 hrs. Admittedly, the production was made before the Magistrate on 08.03.2024.

Let the BSF authorities take these facts into account and decide whether any departmental proceeding should be initiated against the officers or personnel who had allegedly kept the petitioner detained before handing over to the police for more than 24 hours.

The petitioner has not been able to make out a case for any further intervention.

Accordingly, the writ petition is disposed of with these observations and without any order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)