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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 01.05.2024
Pronounced on: 02.05.2024+ **W.P.(CRL) 3422/2023**

STEPHEN

..... Petitioner

Through: Mr. Dhruva Bhagat & Ms.
Meenu Sethi, Advocates.

versus

NCB AND ANR

..... Respondents

Through: Mr. Vineet Dhanda, CGSC &
Inspector Satish Kumar & SI
Raghunath Prasad, FRRO
Delhi.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present petition has been filed seeking a writ of mandamus to the respondent no. 1 to issue a No Objection Certificate on the repatriation of the petitioner to his native country i.e., Nigeria from the FRRO Detention Centre, Lampur, Narela, Delhi during pendency of *SLP (Crl.) 2805/2023* pending before the Hon'ble Supreme Court of India against the judgment and order dated 04.07.2022 passed in *Crl. A. 147/2016* of this Court, whereby the order of conviction was



set aside by this Court, and direction to respondent no. 2 to take steps for repatriation of petitioner to his native country.

2. The brief facts of the present case are that the petitioner who is a Nigerian National was arrested by NCB, DZU in case no. VIII/08/DZU/2012 dated 20.04.2012. After conclusion of the trial, he was convicted by the learned Special Court, NDPS Act, Patiala House Court, New Delhi. On 04.07.2022, the petitioner was acquitted by this Court. Thereafter, the NCB had preferred an SLP (Diary No. 42233/2022) before the Hon'ble Supreme Court of India against the order passed by this Court, which is pending adjudication.

3. Learned counsel for the petitioner states that the petitioner has already served the entire sentence which he was awarded after his conviction by the learned Special Court i.e. imprisonment for a period of 10 years. It is stated that the petitioner was acquitted by this Court in an appeal filed against the decision of learned Special Court, however, even after that, the petitioner has not been set free. It is submitted that after passing of the judgment by this Court, since the petitioner did not possess any valid passport/visa of India, he was transferred from Tihar Jail to FRRO Detention Centre at Narela, Delhi and he has been detained in the said detention centre since 2022. It is argued that even if the Hon'ble Apex Court arrives at a conclusion that the petitioner is to be convicted in the present case, it would not make much difference since the jail term awarded by the learned Special Court has already been undergone by the petitioner and there will be no occasion in which the petitioner will again have to be incarcerated. It is, therefore, prayed that the petitioner be



released from FRRO Detention Centre, Narela, Delhi and he be repatriated to his native country.

4. Learned CGSC appearing on behalf of respondents, on the other hand, states that since the SLP filed by the prosecution, against the judgment of acquittal passed by this Court, is pending before the Hon'ble Apex Court, it will be inappropriate for this Court to release the petitioner and give any direction to depute him to his native country i.e. Nigeria from FRRO Detention Centre, Narela, Delhi as it will be difficult or impossible to procure his attendance in case the same is required in future. It is also pointed out that if the SLP is allowed by the Hon'ble Apex Court, the sentence of the petitioner can also be enhanced and thus, the argument regarding there being no further occasion to send the petitioner to jail, is without merit. It is further submitted that on 20.06.2022, the movements of petitioner were restricted at Restriction Center, Narela, Delhi under Section 3(2)(e) of Foreigners Act, 1946 read with 11(2) of the Foreigners Order, 1948, for repatriation/deportation purposes, until travel arrangements for his repatriation/deportation are made. It is stated that Memorandum No. 25022/19/2014- F.I dated 24.04.2014, issued by the Ministry of Home Affairs, contains specific instructions/procedure regarding imposition of restriction on foreigners on the completion of their jail terms is described/ highlighted, as well as instructions regarding procedure to be followed for deportation/repatriation of a foreign national. It is also submitted that foreign nationals who have been illegally residing in India without any valid passport/visa/overstay despite expiry of Visa are kept at Restriction



Centre(s), for deportation/repatriation to ensure their physical availability at all times for expeditious repatriation as soon as the travel documents are ready. Therefore, it is prayed that the present petition be dismissed.

5. This Court has heard arguments addressed on behalf of petitioner as well as the respondents and has gone through the case file.

6. In the present case, this Court is of the opinion that the petitioner herein had been convicted by the learned Special Court for committing offence under Sections 23(c)/28/29 of the NDPS Act. This Court notes that Section 23 of NDPS Act provides that a person who is being convicted for commission of offence under this Section, in case of commercial quantity, can be awarded punishment for a term which shall not be less than 10 years but may extend to 20 years and he shall also be liable to pay fine which shall not be less than Rs. 1 lakh but may extend to Rs. 2 lakhs. Section 23 of NDPS Act reads as under:

23. Punishment for illegal import in to India, export from India or transhipment of narcotic drugs and psychotropic substances.—

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorisation issued thereunder, imports into India or exports from India or tranships any narcotic drug or psychotropic substance shall be punishable,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees or with both;



(b)where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine; which may extend to one lakh rupees;

(c)where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.. ”

(emphasis supplied)

7. Therefore, as per the provision, the maximum punishment that can be awarded for a conviction under Section 23(c) of NDPS Act under which the present petitioner has been convicted can be up to 20 years, whereas in the present case, the petitioner has undergone 10 years of imprisonment as the minimum punishment awarded to him.

8. The SLP against the acquittal of petitioner passed by this Court is already pending before the Hon’ble Apex Court. This Court cannot presume the outcome of the said case and therefore, cannot come to a conclusion that the Hon’ble Apex Court will not interfere with the judgment of acquittal passed by this Court or will not award punishment more than the punishment awarded by the learned Special Court to the petitioner.

9. As far as the contents of the Status Report filed on behalf of FRRO regarding the statutory law/rules/notifications governing the issue of restriction/repatriation of foreign nationals residing in India without any valid passport/visa is concerned, learned counsel for the



petitioner has neither disputed nor raised any arguments against the same.

10. Therefore, considering the aforesaid facts and circumstances, this Court finds no ground to allow the present petition.

11. Accordingly, the present petition stands dismissed.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 2, 2024/zp