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

+ **W.P.(C) 14148/2024 & CM APPL. 59250/2024**

**MR. YAMA BABUR THROUGH SPA HOLDER MRS. VINITA DEVNANI** .....Petitioner

Through: Mr. Akshit Gadhok, Mr. Asghar Khan  
and Mr. Abdul Tahir Khan,  
Advocates.

versus

**UNION OF INDIA** .....Respondent

Through: Mr. Syed Abdul Haseeb, CGSC with  
Mr. Shriram Tiwary, G.P. for R-1 &  
2.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**  
**07.10.2024**

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1. The Petitioner, Mr. Yama Babur, being an Afghan National, has approached this Court through a Special Power of Attorney Holder – Mrs. Vinita Devnani, seeking juridical intervention for facilitating the process of grant of visa applied by the Petitioner under Ex-Visa Application ID 1004V8641522.

2. The factual background leading to the filing of the present petition is as follows:

2.1. The Petitioner is a businessman in Kabul, Afghanistan, and has been visiting and staying in India for the past 15 years. During this period, the Petitioner got married to Mrs. Vinita Devnani, an Indian National, who is also the Special Power of Attorney of the Petitioner.



2.2. In the year 2022, the Petitioner was in India on an E-Emergency X-Miscellaneous Visa, valid from 9<sup>th</sup> December, 2021 to 7<sup>th</sup> June, 2022. The Petitioner sought extension of the visa, which was granted till 7<sup>th</sup> December, 2022. Thereafter, the Petitioner travelled back to Afghanistan.

2.3. Subsequently, the Petitioner applied for E-Emergency X-Miscellaneous Visa on 30<sup>th</sup> November, 2022. He also sent numerous requests, followed by several reminders to the Ministry of External Affairs, seeking an update with request to his request.

2.4 Ministry of Home Affairs, Foreigners Division issued an Office Memorandum dated 28<sup>th</sup> June, 2023 addressed to the Bureau of Immigration in the following terms:

*“The Undersigned is directed to forward herewith a copy of National Human Rights Commission’s order dated 14.06.2023 in NHRC case no. 996/90/0/2023 for taking appropriate action as per extant rules and provide action taken report directly to NHRC.”*

2.5 The Petitioner then took the concern with National Human Rights Commission<sup>1</sup> (Law Division). In this regard, through several communications, the Ministry of Home Affairs has been informing the concerned division of the NHRC that the grant of visa to the Petitioner is being examined in consultation with the Bureau of Immigration and Ministry of External Affairs. In this regard, the communication dated 15<sup>th</sup> January, 2024, issued by the Ministry of Home Affairs, reads as follows:

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<sup>1</sup> “NHRC”



W.P.(C)<sup>el/A</sup>-14148/2024

Ministry of Home Affairs  
Foreigners-I Division  
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ANNEXURE P/11

Major Dhyani Chand National Stadium, New Delhi

Dated: 15 January, 2024

To

**Shri Debindra Kundraa,**  
Assistant Registrar (Law), M-4 section, Law Division,  
NHRC, Manav Adhikar Bhawan, Block-C,  
GPO Complex, INA, New Delhi-110023.

**Subject: NHRC case No. 996/90/0/2023 - reg.**

Sir,

I am directed to refer to NHRC order dated 19.12.2023 in the subjected case along with Ministry of Home Affairs' O.M. of even no. dated 22.12.2023.

2 In this regard, it is humbly submitted that grant of visa is a plenary sovereign function of the Government and across the world the matters concerning the non-grant, rejection or cancellation of visas are not justiciable. It is stated that in such matters the procedure established by law does not specifically provide for a right of hearing as the same does not regulate any rights of an individual viz-a-viz the State rather is merely a unilateral grant of a privilege.

3. In view of the prevailing situation in Afghanistan, only e-Emergency X-Misc visa. is being considered for Afghan nationals as a temporary measure for emergency travel to India. These applications are processed by the Bureau of Immigration in consultation with MEA and security Agencies. In view of the security concerns and absence of Indian Mission in Afghanistan, no time line can be fixed for processing e-emergency visa applications.

*WY* This issues with the approval of Competent Authority.

Yours faithfully,

2.6 The Petitioner has since then, continuously engaged with the Ministry of External Affairs, however, his request for the issuance of visa has not been granted.

3. Pertinently, the Under Secretary to the Government of India, in the communication dated 15<sup>th</sup> January, 2024, has pointed out that presently, the only visa being considered for Afghan Nationals is the 'e-Emergency X-Miscellaneous Visa' as a temporary measure for emergency travel to India,



and that the applications for the said visa are being processed by the Bureau of Immigration in consultation with the Ministry of External Affairs and Security Agency. Therefore, in view of the security concerns of the State and in absence of Indian mission of Afghanistan, no timeline can be prescribed for processing of the e-emergency visa applications.

4. Having regard to the aforementioned circumstances, the Petitioner's request for an issuance of a mandamus to the Union of India for facilitating the process of the his E-visa application, in the opinion of the Court, cannot be granted. The Respondents have adequately clarified the reasons owing to which the Petitioner's request cannot be granted, and the Court finds no reasonable basis to interfere with the same.

5. In view of the above, the present petition, along with pending application(s), if any, is dismissed.

**SANJEEV NARULA, J**

**OCTOBER 7, 2024**

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