

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1713 of 2025

Arising Out of PS. Case No.-76 Year-2025 Thana- Haraiya District- East Champaran

Baraa Fawzi Haameed AL Bayati S/o Shri Fawzi R/o Aldora, AL Sourta,
Sector 840, House No. 48, Bagdad, Iraq.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Deptt. Govt. of Bihar.
2. The Director General of Police, Bihar, Patna
3. The Senior Superintendent of Police, East Champaran, Motihari Bihar
4. The Station Head Officer, Haraiya P.S., East Champaran Bihar
5. The Union of India through the Secretary, External Affairs Deptt., Govt. of India New Delhi
6. The Home Secretary, Home Affairs Deptt. Govt. of India New Delhi

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Mr. A.P.S. Rana, Advocate Mr. Ankur Bhasin, Advocate
For the UOI	:	Mr. Kumar Priya Ranjan, Sr. Panel Counsel Mr. Sudarshan Bharadwaj, Advocate Mr. Sandeep Kumar Advocate
For the State	:	Mr. Irshad, Ac to SC-1

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 14-10-2025

The instant criminal writ petition has been filed by the
petitioners seeking following relief(s):

*“(i) To quash the F.I.R. of Haraiya P.S.
Case No. 76 of 2025 registered for the
offences under sections 3(ii)(a) & 14(A)(B)
of Foreigners Act, 1946 which is pending for
investigation.*

*(ii) To direct the respondents to release
the petitioner from jail who has been in*



custody since 22.06.2025 illegally and arbitrarily.

(iii) To grant any other relief or reliefs, which may deem fit and proper in the facts and circumstances of the case.”

02. Brief facts of the case are that the petitioner, an Iraqi National, having Passport No. A16420847 and double entry Visa No. VL6166777, entered into the Indian borders from Nepal and on checking of his passport, it was found that he was having double entry tourist Visa issued by the Government of India and he had already availed the same, firstly from 15.05.2025 to 20.05.2025 (arrival at Mumbai Airport and departure from Kolkata Airport) and secondly from 25.05.2025 to 05.06.2025 (arrival and departure from New Delhi Airport). After availing both Visa entries, he remained in India illegally from 16.06.2025. Coming to know about this fact, Haraiya P.S. Case No. 76 of 2025 was registered on 21.06.2025 against the petitioner for offences under Sections 3(2)(a), 14(a) and 14(b) of the Foreigners Act, 1946 (for short ‘the Foreigners Act’).

03. Learned counsel for the petitioner submitted that petitioner is holder of a valid Iraqi Passport and was having valid double entry Visa for Republic of India from 22.04.2025 to 21.10.2025. The petitioner is gainfully employed in United



Arab Emirates with one Granada Europe Construction as Senior Technical Manager since 12.11.2017. The petitioner is an Engineer by profession and is also having his own business in Dubai. The employer company of the petitioner is a highly reputed company having annual turnover in billions of dollars and the said company requires thousands of workers from various countries for carrying out their business work. The employer company of the petitioner is registered with the Government of India and for recruitment of Indian workers of all categories, the employer company of the petitioner has also approached the Government of India, Ministry of External Affairs. In the said process, a manpower recruitment agreement dated 10.04.2025 was executed with one Uniq Overseas, Chandigarh, India, which has been operating under the license granted by the Government of India, Ministry of External Affairs for recruitment of sixteen thousand workers of all categories. As the petitioner had been holding a Senior Post, he was deputed by his employer company for recruitment of all categories of workers from India as well as other countries. The employer company of the petitioner issued certificate to the Consulate General of the India, United Emirates dated 02.06.2025 regarding travel of the petitioner for business



purposes to India for multiple entries and also for attending the project meetings and hiring the manpower. The status of the petitioner including his salary was also specifically mentioned in the letter dated 02.06.2025. During his visits to India on 15.05.2025 to 20.05.2025 and 25.05.2025 to 05.06.2025, the petitioner selected four thousand candidates from various States in India through Unique Overseas agency and other associates for recruitment in employer company at Dubai. This whole process of recruitment and selection of workers has been carried out with the knowledge and concurrence of Government of India, Ministry of External Affairs Overseas Employment Division. The Government of India also granted various permissions to conduct interviews for the employment of the Indian workers from various States in India in favour of employer company of the petitioner. Learned counsel further submitted that as the petitioner was required to visit multiple locations in India for recruitment purposes in pursuance to the permission letters issued by the Government of India, therefore, Unique Overseas, with whom an agreement was executed for manpower by the employer company of the petitioner, submitted a request to the Consulate General, Embassy of India United Arab Emirates through local office at Chandigarh with



the request that the petitioner was required to travel India frequently for attending the project meetings and for finalizing the upcoming projects as well as for hiring the manpower and therefore, it was requested that multiple entries (business visas) to India be granted to the petitioner. Consequently, the Deputy Secretary and Protector of Immigrants Chandigarh, Ministry of External Affairs forwarded the above mentioned request submitted by Unique Overseas to the Ministry of External Affairs, Government of India for granting special permission to the petitioner for recruitment of manpower on already issued visa dated 22.04.2025 by specifically stating that it will be beneficial for the safe and legal overseas employment of Indian citizen by the registered Foreign Employer. The petitioner also submitted required documents for multiple visits (business visa) on 13.06.2025. Consequent upon request of the petitioner for multiple visits (business visas), the Indian Embassy approved the request of the petitioner and asked the petitioner to visit the center for submission of applications with original passport. Learned counsel further submitted that a manpower agreement was also executed between the employer company of the petitioner and M/S Lulu International Private Limited, Kathmandu, Nepal. A guarantee letter dated 26.05.2025 was



also issued by the employer company of the petitioner to the Director General, Department of Labour, Buddhanagar, Kathmandu, Nepal. Before deputing the petitioner for the recruitment at Nepal, a police clearance certificate with regard to conduct and behaviour of the petitioner was also issued. The petitioner also recruited a number of persons from Nepal pursuant to the agreement executed with Nepal Government. Thereafter, on 21.05.2025, the petitioner approached the Immigration Office of the Government of India at the Border of India and Nepal for query about issuance of business visa for multiple visits pursuant to email dated 18.06.2025 of Indian Embassy by which request of the petitioner was approved and the petitioner was asked to visit the center for submission of applications with original passport. Learned counsel further submitted that as no center of Government of India was available in Nepal for submission of the original passport and other documents, the petitioner approached the Immigration Office of the Government of India situated at India-Nepal border for the aforesaid purpose. The petitioner was not having any criminal intention to enter into the territory of India and as such, no criminal liability can be fastened upon the petitioner. The petitioner has never been involved in any illegal activities



and there is no criminal antecedent of the petitioner. The facts enumerated hereinbefore clearly establish that petitioner has not committed any offence and has been falsely implicated in the present case. From the FIR and the documents brought on record by the petitioner, it is clear as crystal that no offences under Sections 3(2)(a), 14(a) and 14(b) of the Foreigners Act are made out against the petitioner. Except for the allegation that the petitioner was present in the territory of India despite already availing his double visa entries, there is no other allegation for commission of any offence by the petitioner. Learned counsel further submitted that the petitioner has not done any act in violation of the conditions of valid visa issued to him for his entry into Indian territory as he has been doing a service to the citizens of this country by recruiting manpower for his employer company, for which, he has been granted a double entry visa. Moreover, a business visa for multiple entry has already been sought for and the petitioner approached the Immigration Office in Indian territory only to enquire about the same, which shows the bonafide of the petitioner as he himself approached the Immigration Office and this fact is evident from the FIR.

04. Learned counsel further submitted that in worst case, if the petitioner was found in the territory of India without



Visa, since the petitioner has been holding a valid passport, he should have been deported to the country from where the passport has been issued exercising the power under Section 5 of the Passport (Entry into India) Act, 1920 (for short 'the Act of 1920') and could not be taken into judicial custody.

05. In support of his contention, learned counsel for the petitioner first referred to a Division Bench judgment of this Court in the case of *Fadi Fadel Vs. The State of Bihar through its Home Secretary 7 Ors., 2018 (2) PLJR 400*. Learned counsel submitted that in the case of *Fadi Fadel* (supra), the petitioner therein, a Lebanese citizen, entered into Indian territory by mistake and the Hon'ble Division Bench of this Court held that no material in the entire case diary shows that the documents, which were seized from the possession of the petitioner, were forged or false documents. The petitioner was having a valid Lebanese passport and visa for stay in Nepal and considering all these facts, the FIR and criminal prosecution against the petitioner therein were quashed.

Learned counsel next referred to the decision of the learned Co-ordinate Bench of this Court in the case of *Williams Rebecca @ William Rebecca @ Rebecca Williams Vs. State of Bihar & Ors, 2022(4) BLJ 710*. Again, in this case, the



petitioner being a Canadian citizen entered into India without an Indian Visa, though the petitioner was tried to be stopped by the Immigration Officer, she boarded a bus which was headed to Bettiah. However, the learned Single Judge, after examining the facts of the case and relevant provisions of law applicable, came to the finding that none of the ingredients of the offences mentioned in the FIR were made out against the petitioner therein and exercising its extraordinary writ jurisdiction, the learned Single Judge quashed the FIR, order taking cognizance as well as order framing charges against the petitioner and at the same time, directed the State as well as Union Government to take immediate steps for deportation of the petitioner to her native country.

Learned counsel next relied on the decision of a learned Single Judge of this Court in the case of ***Kasperek Petr Vs. The State of Bihar & Ors. (decided on 21.06.2025 in Criminal Revision No. 705 of 2023)***. In this case as well, the petitioner was having a valid visa to enter into Indian territory, though he was having a passport of Czech Republic. The learned Single Judge recorded its finding that if the petitioner was found to have entered in India without visa but as he was having a valid passport, the concerned authority should have



taken steps for his immediate deportation and set aside the order of conviction passed against the petitioner. Learned counsel further submitted that the same Co-ordinate Bench in the case of ***Farida Malik @ Sana Akhtar Vs. State of Bihar & Ors., 2024(4) BLJ 71*** quashed the entire proceeding in connection with Mahila (Kishanganj) P.S. Case No. 44 of 2022 lodged against the petitioner. The petitioner therein was found to be in possession of two passports in different names issued by the Government of United States.

Thus, the learned counsel submitted that the case of the petitioner is covered by the Division Bench decision of this Court in the case of ***Fadi Fadel*** (supra) and also the decision of learned Co-ordinate Bench in the case of ***Williams Rebecca @ William Rebecca @ Rebecca Williams*** (supra).

06. A counter affidavit has been filed on behalf of respondent no. 3, the Superintendent of Police, East Champaran Motihari, in which it has been stated that the petitioner was found in the Indian territory without valid visa and has committed an offence under Sections 3(2)(a), 14(a) and 14(b) of the Foreigners Act.

07. The learned senior panel counsel appearing on behalf of Union of India submitted that the petitioner entered



into the Indian territory without any Visa and thus, violated the Visa's norms by the illegal entry. The petitioner did not show valid travel document at the time of his third entry to the Immigration Officer at ICP Raxaul. The petitioner has no valid visa as he had already availed both the entries of his tourist visa which was a double entry visa. Learned counsel further submitted that Section 3(2)(a) of the Foreigners Act provides that a foreigners shall not enter into India, or shall enter India, only at such times and by such route and at such port of place and subject to the observance of such conditions on arrival as may be prescribed by the Central Government. Section 14(a) provides for penalty for overstaying in India exceeding the period fo Visa. Further, Section 14(b) of the Foreigners Act mentions that whoever does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder shall be punished in accordance with prescribed law. Once the petitioner has availed both entries in terms of his Visa, his presence in Indian territory was in clear violation of the visa norms. Therefore, having regard to the provisions of Sections 3(2)(a), 14(a) and 14(b) of the Foreigners Act, the FIR registered against the petitioner cannot be quashed. However, learned senior panel counsel very fairly conceded that



in the light of decision of the Hon'ble Division Bench in case of ***Fadi Fadel*** (supra) and the decision of learned Single Judge in the case of ***Williams Rebecca @ William Rebecca @ Rebecca Williams*** (supra), deportation of the petitioner could be allowed.

08. I have given my thoughtful consideration to the rival submission of the parties in the light of facts placed before this Court.

09. The FIR has been lodged against the petitioner for commission of offences under Sections 3(2)(a), 14(a) and 14(b) of the Foreigners Act. These provisions read as under:

“3. Power to make orders.-(1)

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner-

(a) shall not enter [India] or shall enter [India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

14. Penalty for contravention of provisions of the Act, etc. — Whoever. —

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;



(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

*(c) -----
shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.”*

Apparently, Section 3(2)(a) of the Foreigners Act is an enabling provision by which the Central Government can pass orders for regulating the entry and exit of foreigners into India. Now, Section 14(a) of the Foreigners Act provides for punishment for a person who remains in any area in India for a period exceeding the period for which the visa was issued to him. Further, Section 14(b) of the Foreigners Act provides punishment for such person who does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder. Now, in the facts of the present case, the petitioner was issued a double entry visa and he availed both his entries and returned on 05.06.2025 from New



Delhi Airport as is apparent from the contents of the written report leading to registration of Haraiya P.S. Case No. 76 of 2025. Therefore, the petitioner did not remain in any area in India for a period exceeding the period for which the visa was issued to him. In these circumstances, it could be said that the petitioner entered into the territory of India without any valid Visa and was a trespasser in the Indian territory but he could not be said to have violated the provision of Section 14(a) of the Foreigners Act. Similarly, there is no application of Section 14(b) of the Foreigners Act in the case of the petitioner as he had not violated any conditions of the valid visa since he was having none. This provision is attracted only when there is any allegation of violation of the conditions of the valid Visa issue to the person for his entry and stay in India or any part thereunder. If the petitioner was not having any valid Visa, there is no question of violating the conditions of such Visa. Therefore, there is no application of Sections 3(2)(a), 14(a) and 14(b) of the Foreigners Act against the petitioner and no offence under these provisions are made out against him.

10. There appears no material to infer that the petitioner has violated or contravened any provisions of the Foreigners Act or order made or direction given therein or failed



to comply any directions. Admittedly, the petitioner is having a valid Iraqi passport and could be said to have entered into the Indian territory by mistake.

11. Now, the provisions of Sections 2, 3 and 5 of the Act of 1920 read as under:

“2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context,—*

“entry” means entry by water, land or air;

“passport” means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs; and

“prescribed” means prescribed by rules made under this Act.

3. Power to make rules.—*(1) The Central Government may make rules requiring that persons entering [India] shall be in possession of passports, and for all matters ancillary or incidental to that purpose.*

(2) Without prejudice to the generality of the foregoing power such rules may—

(a) prohibit the entry into 7[India] or any part thereof of any person who has not in his possession a passport issued to him;

(b) prescribe the authorities by whom



passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act; and

(c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be 8[punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both].

(4) All rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

[(5) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be



of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

5. Power of removal.—*The [Central Government] may, by general or special order, direct the removal of any person from [India] who, in contravention of any rule made under section 3 prohibiting entry into [India] without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.”*

A cumulative reading of these provisions make it clear that if a person enters into Indian territory without valid documents, such persons can be removed from India.

12. Rule 3 of Passport (Entry into India) Rules, 1950 (for short ‘the Rules, 1950’) provides that save as provided in rule 4, no person proceeding from any place outside India shall enter, or attempt to enter, India by water, land or air- unless he is in possession of a valid passport conforming to the conditions prescribed in rule 5. Rule -5 of the Rules, 1950, which prescribes for the conditions of a valid passport are as under:

“5. The conditions of a Valid passport are-

(iv) that when issued by or on behalf of the Government of a foreign country (other



than Bangladesh, Nepal and Pakistan) it shall have been [endorsed by a proper Indian diplomatic consular or passport authority or by such authority as may be authorised in this behalf by the Central Government], by way of visa for India in one or other of the following kinds, namely:—

(a) a single journey visa, valid for such period not exceeding [five years] as may be specified therein and for only journey to India;

(b) a transit visa, valid for such period not exceeding one year or the period of validity of the visa for the country of ultimate destination, as may be specified therein, and for one or more direct journeys through India undertaken for the sole purpose of reaching any place or country outside India, permitting on each such journey sojourn of not more than fifteen days in India unless specially extended by competent authority; and

(c) an ordinary visa, valid for such period not exceeding ones [five years] as may be specified therein, and for any number of journeys to India;

(d) a multiple entry, life long visa for journey to India to persons registered as Overseas Citizen of India under the provisions of the Citizenship Act, 1955;]

.....”

These provisions provide for entry into India with valid passport followed by conditions under Rule 5 of the Rules of 1950. On the other hand, Section 5 of the Act of 1920 provides for removal of a person who enters into territory of India without passport.

13. In the case of the petitioner, he is having a valid



passport and is stated to have valid Visa for Nepal, from where he entered into the territory of India, and his act could be a mistaken one. Therefore, the petitioner could have been sent back to Nepal from where he entered into the Indian territory. If no such steps have been taken, then ideally the petitioner should have been deported to his native country. But, an FIR came to be registered against the petitioner and he was sent to judicial custody. Thus, institution of FIR against the petitioner is an abuse of process of law and the criminal proceeding on the basis of such FIR cannot be allowed to proceed. It is also pertinent to take note of the fact that vide order dated 10.09.2025 passed in Criminal Misc. No. 54594 of 2025, a learned Co-ordinate Bench granted bail to the petitioner and ordered for his release subject to certain conditions.

14. In the light of discussion made here-in-before, I am of the considered opinion that the case of the petitioner is squarely covered by the Division Bench decision of this Court in the case of ***Fadi Fadel*** (supra) and also the decision of learned Co-ordinate Bench in the case of ***Williams Rebecca @ William Rebecca @ Rebecca Williams*** (supra). Therefore, the FIR bearing Haraiya P.S. Case No. 76 of 2025 against the petitioner is hereby quashed.



15. The Central/State Government are directed to take immediate steps for deportation of the petitioner to his native country in consultation with the Embassy of Iraq at New Delhi, if the petitioner is not wanted in any other case in India. The competent authority shall pass an appropriate order at the earliest and preferably within a period of two weeks from the date of receipt/production of a copy of this order.

16. The court/authority having possession of the articles seized from the petitioner are directed to release the same in favour of the petitioner, if not already released, at the earliest and preferably within a week from the date of receipt/production of a copy of this order.

17. In terms of the aforesaid direction, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	19.09.2025
Uploading Date	14.10.2025
Transmission Date	14.10.2025

