

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R. No. 85 of 2025

**Camara Fofana Ussumane
Vs.
The State of West Bengal.**

For the petitioner : Mr. Ujjal Ray,
: Ms. Manishikha Mondal.

For the State : Mr. Niloy Chakraborty, Ld. APP
: Mr. Ujjawal Luksom

Hearing concluded on : **20/02/2025**

Judgment on : **25/02/2025**

Rai Chattopadhyay, J.

1. The petitioner who is a foreign national, has filed the present case under section 482 of the Code of Criminal Procedure, that is, akin to an application filed under section 528 of the BNSS 2023, praying for quashing of the criminal proceeding against him in **Sessions Case No. 77(7) of 2021**, now pending in the court of learned Assistant Sessions Judge, Siliguri, arising in connection with the FIR being **Naxalbari Police Station Case No.**

94 of 2021 dated 27.4.2021 under section 14 of the Foreigners Act, 1946.

2. The petitioner is a citizen of the Republic of Guinea Bissau. His Passport is **No. C00171354**. His employment visa issued by the Indian Authorities is **No. VK9705857 dated January 6, 2020**. His visa as above was due to expire on **July 5, 2020**. Allegedly he has overstayed the period permitted under the said visa and after the same has expired. Hence, he has been booked vide the FIR as mentioned above.
3. The legality and propriety of the criminal proceeding against the petitioner has been challenged on the ground that pursuant to the notifications issued by the Central Government, the visa period should be construed to have been extended further, during which a foreign national cannot be considered to have stayed in India illegally and beyond the permitted period of visa. On the contrary, the petitioner should have been regarded as possessing a valid visa at the pertinent period, as the visa was extended by the notifications that were issued. Therefore, the instant criminal proceeding against him is only misconceived and should be quashed.
4. Mr. Roy has represented the petitioner. He has referred to an office memorandum of the Ministry of Home Affairs, Foreigners Division, Government of India, dated **May 5, 2020** on the subject matter, '*Grant of some consular services on gratis basis to foreign nationals, presently stranded in India due to travel restrictions in view of COVID-19*'. He indicates that at the time when

visa of the present petitioner had expired on **July 5, 2020**, the country, rather the entire world was tormented by COVID-19 pandemic. Preventive lockdown had brought the humankind at the halt, all over the world. India was no exception. The following directions made in the said notification, are worth noting:

“Regular Visa, e-visa or stay stipulation, of such foreign nationals whose visas have expired or would be expiring during the period from 01.02.2020 (Mid-night) till the date on which prohibition on international air travel of passengers from India is lifted by the government of India, would be extended on ‘GRATIS’ basis on submission of online application by the foreigners. Such extensions would be granted for a period up to 30 days from the date of lifting of prohibition on international air travel of passengers from India without levy of overstay penalty. Exit to such foreign nationals, if so requested by them, will also be granted on the same lines”.

5. Thereafter, Mr Roy has referred to another notification dated **September 2, 2021**, which has provided that ‘Indian visa or stay stipulation period of foreign nationals stranded in India due to COVID-19 pandemic to be considered as deemed to be valid till. 30.09.2021’. The said notification has further provided that:

“Due to the situation arising out of COVID-19 pandemic, a number of foreigners who had come to India on various types of visas prior to March, 2020 got stranded in the country in the absence of flights to their destinations. The Central Government had facilitated the stay of such foreign nationals within India by giving deemed extension of their regular visa or e-visa or stay stipulation period on gratis basis without levy of any overstay penalty. This facility which is presently available till August 31, 2021 has now been extended by the Central Government till September 30, 2021. Such foreign nationals will not be required to submit any application to the FRRO/FRO concerned for extension of their visas till September 30, 2021. Before exiting the country, they may apply online for an exit permission on e-FRRO portal, which would be granted by the FRRO/FRO concerned on gratis basis without levy of any overstay penalty. If an extension of visa is required beyond September 30, 2021, the foreign national concerned may apply for extension of visa on the online e-FRRO platform

on payment basis, which would be considered by the FRRO/FRO concerned, subject to the eligibility as per the extant guidelines.

However, afghan nationals already in India on any category of visa will be granted extension of visa under guidelines issued separately for Afghan nationals.

6. Therefore, it has been submitted that, the petitioner being a foreign national, having entered into this country prior to March 2020, and stranded in India due to COVID-19 pandemic and lockdown, was entitled to be granted deemed extension of his visa, which has expired during pandemic and lockdown, that is, on July 5, 2020, till **September 30, 2021**. It is also submitted that the application dated **April 1, 2021**, for exit permission submitted by the petitioner on e-FRRO portal has never been considered by the authorities, as yet.

7. Mr. Roy asserts that, based on the notifications issued by the relevant department of the Central Government on the date of the alleged offence, that is **April 27, 2021**, the petitioner ought to be regarded as having held a valid visa that authorised his stay in India. Hence, the proceeding as above is unfounded and not maintainable in the eye of law, he says. He informs that the co-travellers of the present petitioner, from the same country, though were booked by the police similarly as the present petitioner, in frivolous and misconceived criminal case as above, they have been discharged by the learned trial court, in absence of any evidence against them for unauthorized overstay, in violation of the visa conditions, vide order dated September 13, 2021. The petitioner who is on similar footing with the said other persons, may be extended with similar relief, he insists.

8. Mr. Niloy Chakraborty being assisted by Mr. Ujjawal Luksom have represented the State. The case diary is however, not produced. Though on behalf of the State,

objections have been raised as to the contentions and prayer of the petitioner, the learned counsels have not been able to substantiate that by relying on any material of the case diary. It is also stated that a case under the provisions of The Immigration (Carriers' Liability) Act, 2000, should have been a proper course of action in this case.

9. Section 14(1) of the Foreigner's Act, 1946, speaks as follows:

“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;

**

**

**

** ”

10. Therefore, in accordance with the said provision of law, a foreigner's stay in India exceeding the period for which visa was issued to him, should be considered as unauthorized and illegal, being in contravention of the provision of law as mentioned above. Allegation against the petitioner is that he has overstayed exceeding the permitted period for which visa was issued to him.
11. Admittedly, visa was issued to the petitioner, on **January 6, 2020** which would ordinarily have expired on **July 5, 2020**. However, in case of the present petitioner something extraordinary happened. During the period of his stay in India and within the validity period of his visa, the nation-wide lockdown was imposed in the wake of COVID-19 pandemic. On **May 5, 2020**, the notification of the Ministry of Home Affairs, Foreigners Division, Government of India was issued, as mentioned above. In order to cope up with the extraordinary circumstances which had surfaced at the said relevant point of time, the visa period was extended, in terms of the directions made therein. On **September 2, 2021**, another notification was issued, as mentioned above, extending the similar benefit to all foreigners who had come to India **prior to March 2020**.

The petitioner would be duly covered by the same and eligible for the benefits granted by the same. Therefore, in terms of the notifications dated **May 5, 2020** and **September 2, 2021**, the petitioner ought to have been regarded as having a valid visa on the relevant date of lodging FIR, that is, when he had been arrested on the allegation of without having a valid one. It is worth nothing that even in a situation of lockdown, the petitioner has never refrained from duly performing his duties as a visiting foreign national in this country, in so far as on **April 1, 2021**, he has submitted his application for grant of exit permission as per the stipulations, in notification dated September 2, 2021, though the same has never been considered since thereafter.

12. So far as applicability of the notifications dated **May 5, 2020** and **September 2, 2021**, in case of the present petitioner, there is no adverse or negative evidence to refute the aforementioned fact. Accordingly, the petitioner should be deemed to have had a valid visa on the day of lodging FIR that is on **April 27, 2021**, in accordance and compliance with the aforementioned legal requirements.
13. For the reasons as above, the Court has no hesitation to hold that the criminal proceeding against the present petitioner as above, is definitely misconceived and misdirected, if not attended with manifest malafide or malice. It is found that there would not be any cognizable case made out against the petitioner, even if the allegations in FIR are taken at its face value. The notifications dated **May 5, 2020** and **September 2, 2021** should be considered to have engrafted an express legal bar to treat the visa of a foreign national who has entered India before March 2020, which the present petitioner has, to have expired, before the extended period of its validity, as enumerated therein. Hence, by dint of this legal fiction, the petitioner should be considered to have held a valid extended visa, as on

the date of lodging FIR against him. That diminishes the entire allegations against the petitioner, as contended in the said FIR. The Court thus finds that there should have been no cause of action at all against the petitioner, on the date of filing the FIR as above against him, though filed only on the wrong notion, erroneously and without any basis.

14. A person enters into a country thousands of miles away from his own, for a period of six months, to be engaged in an avocation to earn some money which he must have been unable to accomplish at his own country. That has prompted him to cross the globe to search for the source of sustenance. He enters the country on employment visa to be employed in this country, of which, he is perhaps deprived in his own country, in order to carry his earnings back to his family for sustenance of all. Hence, therefore there is not any apparent or probable reason for which the said person should intentionally undertake an illegal means which might put him into deep trouble, as it is in case of the present petitioner. A specific motive for the alleged violation of the visa conditions should have been forthcoming before the law enforcement authority to book him for the violation of the statutory provisions or else a more intensive and thorough homework was expected, from an authority, which is entrusted with such a serious kind of responsibility. So far as the petitioner is concerned, the prosecution has never been able to bring on record any ill motive or malafide of the petitioner, in intentionally overstaying in violation of the conditions of visa, as alleged. Therefore, not only the legal grounds as aforestated but the humanitarian grounds also should motivate, not only this Court, but all concerned, to look into this case, beyond the usual parameters of mechanical office work.

15. This should have been a fit case therefore, not only to quash the entire criminal proceeding against the

present petitioner, but also to direct for grant of an appropriate amount of compensation by the State, to him. However, since the COVID-19 pandemic period has been a trying time for the entire humanity, including the State Authorities, the inaction and the reckless conduct of the police authorities are hereby considered with leniency and no stringent direction is passed.

16. The criminal proceeding against the petitioner being **Naxalbari Police Station Case No. 94 of 2021 dated 27.4.2021**, and the entire follow up thereof, is hereby quashed.
17. Let the police authority of the district, being headed by the Superintendent of Police Darjeeling, in due and appropriate collaboration with the Director General of Police of the State, immediately follow up with the competent authority of the Central Government, the process of exit of the present petitioner from this country, in terms of his prayer, vide his application for exit permission **dated April 1, 2021**. The competent authority of the Central Government being headed by the Under Secretary, Ministry of Home Affairs, Foreigners Division, shall extend every possible assistance in this regard and ensure the petitioner's exit from the country, as expeditiously as possible. Let a copy of this order be immediately communicated to the offices, as mentioned above.
18. The criminal revision being CRR No. 85 of 2025 is allowed and disposed of.
19. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.

- 20.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

RAI
CHATTOPADHYA
Y



Digitally signed by RAI
CHATTOPADHYAY
Date: 2025.02.25 13:59:33 +05'30'

(Rai Chattopadhyay, J.)