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

+ **W.P.(CRL) 3128/2025**

QADIR AHMED

.....Petitioner

Through: Mr. Amit Tiwari, CGSC along with
Ms. Ayushi Srivastava, Mr. Ayush
Tanwar and Mr. Arpan Narwal,
Advocates.

versus

THE STATE NCT OF DELHI AND ANR

.....Respondents

Through: Mr. Yasir Rauf Ansari, ASC for the
State along with SI Sudhir Jain, PS
IGI Airport.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

24.09.2025

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1. The present petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 482 of the Code of Criminal Procedure, 1973) seeks directions to the Respondents to release the Petitioner from the Detention Centre at Lampur, Delhi.

2. The factual matrix is not in dispute. The Petitioner is a national of Afghanistan who entered India. When queried on the legality of such entry, counsel for the Petitioner was unable to place on record any document or basis to establish that the entry was lawful. It was only asserted that the Petitioner's arrival had been recorded by the Indian authorities.



3. During his stay, the Petitioner was arrested in connection with FIR No. 423/2016 registered at P.S. IGI Airport and was subsequently convicted by the Sessions Court under Section 14 of the Foreigners Act, 1946. The conviction was challenged in Revision Petition No. 981/2024 before this Court. By order dated 28th August, 2024, this Court clarified that while the Petitioner had been sentenced for the period already undergone, the sentencing court could not have directed deportation proceedings in its order. The condition was accordingly modified to require the Petitioner to appear before the FRRO within seven days, with the order being forwarded for appropriate administrative action. The relevant portion of the order dated 28th August, 2024, reads as follows: -

8. The Criminal Revision Petition under Section 397 read with Section 401 of CrPC has been filed on behalf of the petitioner against the impugned Order dated 04.04.2024 vide which the petitioner has been sentenced under Section 14 of Foreigner's Act and has been sentenced for the period already undergone. However, the grievance is against the directions given by the Court in the impugned Order dated 04.04.2024 that "the convict is directed to appear within seven days before the FRRO, Delhi Office with the Order for deportation proceedings." It is submitted that the deportation proceedings is the administrative function and the Court cannot be issuing any directions for the deportation proceedings. Hence the said condition is sought to be modified.

9. Learned APP for the State has vehemently argued that these directions have been given in consonance with the Jail Manual and the Standing Notification of the FRRO. It is in accordance with law and does not need any modification.

10. Submissions heard.

11. It has been rightly submitted that the Court, in the Order on Sentence, cannot be directed for the deportation proceedings to be undertaken. The said condition is modified to the extent that the convict shall appear before the FRRO within seven days of the order today. The copy of the Order along with the Order on sentence be also forwarded to the FRRO for the intimation.

4. Consequent upon the conviction, the competent authorities initiated deportation proceedings, and the Petitioner is currently lodged in the Deportation Centre at Lampur, Delhi. Mr. Amit Tiwari, Central Government Standing Counsel, informs the Court that the Government of



Afghanistan has issued the requisite travel documents. The only remaining requirement is the arrangement of air tickets, which the Petitioner is expected to provide. Failing such arrangement, deportation shall proceed in accordance with law through the established procedure.

5. The Petitioner has sought to resist deportation by placing reliance on a certificate issued by the United Nations High Commissioner for Refugees (UNHCR), claiming to recognize him as a refugee. This argument, however, cannot be sustained. India is not a signatory to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol. Consequently, UNHCR certification, though relevant for humanitarian consideration, does not confer any enforceable legal status upon an individual under Indian municipal law. It cannot substitute for a valid visa or authorize continued residence in India contrary to the Foreigners Act, 1946, which governs the entry, stay, and deportation of foreign nationals.

6. The scope of judicial review in such matters is necessarily limited. Deportation of a foreign national is within the exclusive domain of the executive, subject to compliance with law and fair procedure. The Supreme Court in *Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta*¹ held that the power of the Union Government to expel a foreigner is absolute and unlimited, subject only to constitutional guarantees of fairness in procedure. Similarly, in *Louis De Raedt v. Union of India*,² the Court reiterated that foreigners do not have any fundamental right to reside and settle in India. A foreigner's presence in the country is purely permissive and regulated by statute. Judicial review, therefore, is confined to

¹ (1955) 1 SCC 167

² (1991) 3 SCC 554



ensuring that deportation is carried out in accordance with law, not to confer any right of residence where none exists.

7. Courts may intervene to prevent arbitrary or unlawful detention, but not to recognize or create a right to reside in India where none exists in law. In the present case, the Petitioner, having been convicted under Section 14 of the Foreigners Act, cannot seek release from the detention centre absent lawful permission to remain in India.

8. While this Court is conscious of the humanitarian difficulties that may arise during deportation, it must be emphasised that such considerations cannot override the statutory framework. In the absence of recognition by the Union of India of refugee status, or possession of a valid visa, the Petitioner's prayer for release from detention cannot be granted.

9. Accordingly, the writ of mandamus as prayed for is declined. The petition is disposed of, leaving it open to the authorities to conclude deportation proceedings in accordance with law, with due regard to the Petitioner's medical and humanitarian needs during custody.

SANJEEV NARULA, J

SEPTEMBER 24, 2025/MK