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IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; J., HIMA KOHLI; J.
Writ Petition (Criminal) No 43/2022; April 29, 2022
ANA PARVEEN & ANR. versus UNION OF INDIA & ORS.

Foreigners Act 1946 – Citizenship - Supreme Court orders the release of a 62-year old man named Mohammad Qamar, who has been under detention in a Foreigners Detention Centre since 2015 on being adjudged that he belonged to Pakistan and that he was not an Indian citizen - The Court directed the Union Government to take a decision on granting him Long Term Visa.

For Petitioner(s) Mr. Sanjay Parikh, Sr. Adv. Ms. Srishti Agnihotri, AOR Mr. Satwik Parikh, Adv. Ms. Sanjana Grace Thomas, Adv. Mr. Suraj Singh, Adv.

For Respondent(s) Mr. K.M. Nataraj, ASG Mr. Ashok Panigrahi, Adv. Mr. Om Prakash Shukla, Adv. Mr. Shailesh Madiyal, Adv. Mr. Rajesh K. Singh, Adv. Mr. Abhishek Atrey, Adv. Mr. Sugghosh Subramanyam, Adv. Mr. Akash Giri, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Gurmeet Singh Makker, AOR Ms. Garima Prasad, Sr. Adv. AAG Mr. Pradeep Misra, AOR Mr. Ajay Prajapati, Adv.

ORDER

1 The first petitioner Ana Parveen is the daughter, while the second petitioner Rohil Khan is the son of Mohd Qamar alias Mohd Kamil, who is detained at the Detention Centre at Lampur, Narela, Delhi.

2 Invoking the jurisdiction under Article 32 of the Constitution, the petitioners seek a writ in the nature of habeas corpus or any other appropriate writ for the production of their father, Mohd Qamar from the Detention Centre and for his release on furnishing a bond of Rs 5,000 with two sureties in the like amount so as to enable him to reside with his family in Meerut subject to reasonable restrictions.

3 Mohd Qamar was arrested in connection with FIR No 250 of 2011 under Section 14 of the Foreigners Act 1946 registered at PS Delhi Gate, Meerut. He was convicted and sentenced to three years and six months' simple imprisonment and to a fine of Rs 5,000 by the Chief Judicial Magistrate, Meerut on 2 September 2014. He completed his sentence on 6 February 2015. For the last seven years he has been lodged at the Detention Centre under the Foreigners Act, pending deportation on the ground that he is a Pakistani national. The detinue contested the assertion of his being a foreign national. But in writ proceedings before the Delhi High Court, he stated that he would be seeking Indian citizenship.

4 The case of the prosecution was that Mohd Qamar was a Pakistani national who came into India. He married an Indian citizen in 1989. The couple have five children – three sons who are labourers and two daughters who are home makers. The wife of Mohd Qamar is an Indian citizen. The children were born in India. Moh. Kumar is stated to be sixty two years old.

5 A representation was submitted on behalf of the Mohd Qamar by the first petitioner to the Ministry of Home Affairs. Responding to the representation, the Foreigners' Division of the Union Ministry of Home Affairs addressed a communication on 14 January 2019 to the Principal Secretary (Home Department), Government of Uttar Pradesh after adverting to the facts which have been referred to above, the Government of Uttar Pradesh was requested to examine whether Mohd Qamar may

be released from the Detention Centre and be allowed to stay in the State of Uttar Pradesh on a long term visa or a visa “as per the existing provisions/norms”.

6 The Senior Superintendent of Police, Meerut by a communication dated 26 November 2020 stated that the spouse of Mohd Qamar has stated that she was divorced from Mohd Qamar ten years ago in a panchayat before the community. However, no document of divorce is forthcoming. The spouse is living with her parents and children at PS Delhi Gate, Meerut. The SSP, Meerut indicated in his letter that since Mohd Qamar is divorced from his Indian wife, there is no justification for him to live in India and hence the representation to release him from the Detention Centre was not recommended.

7 On 26 November 2020, the Deputy Secretary to the UP Government in the Home Department addressed a communication to the Union Ministry of Home Affairs declining to recommend the release of Mohd Qamar from the Detention Centre on the ground that he has divorced his Indian wife.

8 The facts as they stand before the Court indicate that Mohd Qamar has served out his sentence. He has been lodged at the Detention Centre awaiting deportation since 7 February 2015. The communication of the Union Ministry of Home Affairs dated 14 January 2019 notes that he was provided consular access twice, namely, on 22 November 2011 and 22 January 2012 at Central Jail, Delhi, yet his nationality was still to be confirmed by the Pakistan government “which is essential for his repatriation/deportation to Pakistan”. From the material which has been placed before this Court, it is undisputed that Mohd Qamar married an Indian citizen and they have five children, all of whom were born in India and stay in India. The Union government had sought the view of the Government of Uttar Pradesh on whether the case could be recommended on these facts for the grant of a long term visa.

9 We have heard Mr Sanjay Parikh, senior counsel for the petitioners, Mr K M Nataraj, Additional Solicitor General for the Union government of India and Ms Garima Prasad, Additional Advocate General for the State of Uttar Pradesh.

10 During the course of the submissions, Mr K M Nataraj, Additional Solicitor General has adverted to the above exchange of correspondence and submitted that the Uttar Pradesh government having declined to make its recommendation for the grant of a long term visa, no decision has yet been taken. The SSP, Meerut has declined to grant a visa or a long term visa on the ground that Mohd Qamar appears to have divorced his wife in which event he opined that there is no justification for him to continue to reside here. Equally, it is evident from the communication that no papers in connection with the alleged divorce are forthcoming. Moreover, it is also undisputed that all the five children of Mohd Qamar are Indian citizens who reside in Meerut as does their mother. Seven years have elapsed since the father of the petitioners has served out his sentence following the conviction under the Foreigners Act.

11 In this backdrop, we are of the view that it would be appropriate if the Foreigners’ Division of the Union Ministry of Home Affairs takes a final decision on the representation for the grant of a visa/ long term visa having regard to all the facts and circumstances of the case and after assessing the inputs from the security angle. They shall do so independent of the communication which has been addressed by the SSP, Meerut, noted above.

12 At the same time, we are of the view that keeping the detainee, Mohd Qamar in detention would not be consistent with the mandate of Article 21 of the Constitution.

13 In the facts of the present case and since no security threat or adverse impact bearing on national security has been placed on the record, we are of the view that the detainee, Mohd Qamar should be released on furnishing a personal bond of Rs 5,000 with two sureties of Indian citizens in the like amount. The detainee shall furnish the address of his place of permanent residence in Meerut where he proposes to reside, to the SHO of the police station concerned and report to the local police station on the seventh day of every month pending further orders.

14 The decision of the Union government in the Ministry of Home Affairs in regard to the grant of a long term visa or visa to Mohd. Qamar shall be placed on the record of these proceedings within a period of four months from the date of this order.

15 List the Petition in the first week of September 2022.

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