IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ALPESH Y. KOGJE,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 27th OF OCTOBER, 2026

WRIT APPEAL No. 193 of 2026

CNR No.: MPHC010043302026

SAYED RASHED SADAT

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Sankalp Kochar and Shri Prakahar Shukla - Advocates for the appellant.

Shri Sunil Jain, Additional Solicitor General assisted by Shri Sanjay Kumar Malvi - Advocate for the respondent/Union of India.

Shri B.D Singh - Additional Advocate General for the respondent/State.

JUDGMENT

Per: Justice Vivek Jain

The present appeal under Section 2(1) of M.P Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 has been filed against the order dated 09.10.2025 passed in Writ Petition No.17150/2025 by the learned Single Judge whereby the writ petition has been dismissed.

02. The aforesaid Writ Petition was filed by the appellant challenging the Leave India Notice dated 08.01.2025 issued to the appellant and a further prayer was made to quash the FIR dated 03.03.2025 arising out of non-compliance of the said notice, registered at Crime No.134/2025 at Police Station Kolar Road, District Bhopal Urban, under Section 14 of the Foreigners Act, 1946.

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03. Learned counsel for the appellant at the very outset has submitted that the challenge made in the writ petition was to the Leave India Notice issued to the appellant on 08.01.2025 calling upon the appellant to leave India on or before 15.01.2025 which was not complied with by the appellant for various reasons which will be discussed in detail in this order below. He states that the FIR was challenged consequent to challenge to the leave India notice. He submits that now the appellant no longer wishes to reside in India and he wishes to go back to Afghanistan which is his native country as he apprehends no persecution in view of changed circumstances in that country. However, on account of pendency of FIR and the consequential proceedings, despite he now willing to leave India to his native country, he is unable to leave India for his native country only for pendency of prosecution against him under Section 14 of the Foreigner Act, 1946. Therefore, so far as challenge to leave India notice is concerned, the same has rendered infructuous as the appellant is now willing to go back to his native country i.e Afghanistan and only the pendency of FIR and consequential proceedings is hampering his return to his native country. He is a foreigner and the FIR may be quashed so that he may depart for his native country.

04. The aforesaid assertion was taken on record subject to condition that the appellant files an affidavit before the Registry of this Court by tomorrow expressing his intention to unconditionally depart to his native country i.e. Afghanistan so that this Court may consider the aforesaid prayer of the appellant. The counsel for the appellant has submitted that such an affidavit shall be filed by tomorrow. Therefore, we proceed to consider this prayer of the appellant.

05. Very briefly stated, the facts leading to the present appeal are that the appellant is a citizen of Afghanistan and he came to India on a student visa in

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December, 2019 as he was student of Jagran Lake City University, Bhopal. It is his case that on account of Covid-19 outbreak and travel restrictions, he could not return back to his native country. Consequently, he secured admission into a full time Masters of Arts program in Journalism which he completed in the year 2022. The student visa was granted to the appellant and extended from time to time upto the year 2024.

06. In the intervening period, the appellant secured a job offer from the University wherein he was studying i.e Jagran Lake City University Bhopal. The said job offer has been placed on record by the appellant as Annexure A-6 dated 17.06.2022 wherein an offer has been given to him to join Jagran Lake City University as Production Executive.

07. The appellant continued to remain in India on the pretext that since August 2021, there is a change of regime in Afghanistan and in place of the erstwhile democratically elected Government, now the Taliban-led Government is in power. Since the Government of the day which is in power in Afghanistan does not promote journalism, therefore, the appellant being a qualified Journalist having attained course of journalism in India, apprehends persecution at the hands of State if he returns back to Afghanistan.

08. The appellant thereafter approached the India office of United Nations High Commission for Refugees (U.N.H.C.R) and a blue card was issued to him on 24.03.2023 wherein it was mentioned that the appellant has been registered as an asylum seeker by the U.N.H.C.R India and his application for refugee status is under consideration. This was followed by the U.N.H.C.R, India office recognizing him as refugee and a refugee card was issued to him on 27.09.2024 which is placed on record as Annexure A-14, and the same is valid upto 28.02.2027.

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09. The appellant got employed for sometime while he was in India in connection with student visa and the said visa was extended from time to time. Undisputedly, the visa issued to the appellant was lastly extended upto 24.03.2024, and thereafter there was no further extension of the visa. The passport of the appellant had expired, but later his passport was renewed upto 20.06.2027.

10. He received prompt from Foreigner Regional Registration Office (F.R.R.O) asking him to apply for an exit permit but since he was anticipating grant of a long term visa on the strength of refugee status as recognized by the U.N.H.C.R, he did not apply for an exit permit but kept on pressing for issuance of long term visa.

11. The appellant also did not pay the fees for exit permit and it was taken to be a case of intentionally over staying in the country which was taken to be a violation of Section 14 of Foreigners Act, 1946 and therefore, the Deputy Commissioner of Police (Int. and Sec.) Bhopal vide letter dated 28.01.2025 issued a "Leave India Notice" directing him to leave India on or before 15.01.2025. However, he did not leave India by the stipulated date and hence, an FIR was registered against him by the Police under Section 14 of Foreigners Act, 1946. Thereafter, the appellant filed a writ petition before this Court on 08.05.2025 inter alia praying therein that the leave India notice be quashed and the consequential FIR registered against him be also quashed.

12. The learned Single Judge has dismissed the petition holding that it is case of intentionally over staying in the country after expiry of visa and after rejection of application for renewal of visa. In such a case, issuance of leave India notice cannot be stated to be illegal because no foreign national can press upon authorities in India to remain in India despite the purpose for which he was allowed to enter the country gets over. The learned Single Judge also found that it

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is a case of violation of terms and condition of visa also because he was allowed to enter India on the strength of a student visa but thereafter he got employment offer with the Jagran Lake City University in the year 2022 and again reverted back to be a student by again taking admission in the said University on 12.08.2024 in the course of Diploma in Events which is 1½ years long course, having tenure from August, 2024 to January, 2026. The learned Single Judge found that the appellant anyhow on some pretext or the other, wants to stay in India which is clearly a case of over stay and cannot be permitted and therefore did not find any fault in the leave India notice. Consequently the petition was dismissed.

13. Learned counsel for the appellant, as already noted by us above, had argued that now the appellant wishes to go back to his native country i.e Afghanistan and he no longer wishes to apply for a long term visa, nor wishes to press for staying in India on the strength of refugee status recognized to him by the U.N.H.C.R, India office. Therefore, he gives up challenge to leave India notice and restricting his challenge to the FIR registered against him which is the only impediment for he leaving to his native country because till the time prosecution remains pending, he would not be able to leave India for his native country.

14. *Per contra*, learned Additional Solicitor General for the Union of India has vehemently argued that it is clearly a case of over stay in India on one pretext or the other. The appellant entered India as a student in December, 2019 on a short term student visa but on one pretext or the other, he kept on extending the said visa which was lastly extended upto March, 2024 and thereafter there has been no extension. It is argued that the appellant entered India on the strength of student visa and avoided return to his native country. He again took admission in

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the same University wherein he was earlier a student. Therefore, it is clearly a case for attempting to stay in India on one pretext or the other which cannot be permitted.

15. It is further stated that India is a non-signatory to Refugees Convention, 1951 of the United Nations, or the Protocol thereunder adopted in the year 1967. Therefore, Government of India is under no obligation to grant long term visa to a person granted refugee status by U.N.H.C.R. Even otherwise no cogent grounds have been made out by the appellant seeking asylum in India because the apprehension of he being persecuted in his native country i.e. Afghanistan is a mere apprehension having no just and sound basis. He has never worked as journalist in Afghanistan or in any country, and merely having attained education in journalism cannot lead to inference that he would be persecuted in Afghanistan.

16. In rejoinder submissions, the counsel for the appellant stated that since the appellant is now not intending to continue to reside in India nor he is pressing on his application for long term visa as refugee, therefore all these grounds are now academic in nature and need not be gone into by this Court and now only the question is to give quietus to the matter and enable the appellant to go back to his native country. It is further informed that the appellant has not been engaged in any criminal activity in India and he has remained a peaceful civilian in India since the year 2019 when he has been staying in India. He did not enter as an infiltrator or intruder, but entered on the strength of a valid visa and it is only a case of overstaying, that too, without concealing himself in the meantime, but was in continuous touch with authorities seeking extension of visa.

17. We have heard learned counsel for the rival parties and perused the record.

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18. It is not in dispute that the appellant has not entered India as an infiltrator or intruder, nor by any unlawful means by resorting to travel to an intermediary country from which there is visa free travel to India. He entered India on the strength of a valid student visa. He duly took admission in educational course in India and completed the education which is not in dispute. His visa has been lawfully extended from time to time upto March 2024 which is also not in dispute and thereafter he applied for extension of visa which was turned down which is also not in dispute. He did not conceal himself after validity of visa was over, but remained in constant touch with authorities. It is case of overstaying in India by a person who wished not to return to his native country i.e Afghanistan on account of change of political situation in the said country in August 2021, precipitated by fall of elected Government and restoration of Taliban Government in the said country. Since, the appellant now wishes to go back to his native country i.e Afghanistan, therefore we need not advert to the grounds raised by him as to whether he has a valid and reasonable apprehension of facing persecution at the hands of the State authorities in Afghanistan because as per his own version, now the situation is conducive for him to return to his native country i.e Afghanistan.

19. The question that remains before this Court is that whether the appellant who is a foreign citizen and entered India lawfully but overstayed in India while seeking long term visa on the strength of his refugee status granted to him by U.N.H.C.R and now he wishes to go back to his native country without having indulged in any anti-social or criminal activity in India, the quietus can be given to the entire matter and the FIR be quashed so as to enable him to go back to his native country.

20. As per Foreigners Act, 1946, Section 14 lays down penalties for

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contravention of provisions of the Act and as per Section 14 (a), a person overstaying in India for a period exceeding the period for which the visa was issued to him is a punishable offence. By invoking the aforesaid provision, the impugned FIR has been registered against him. The facts which are prevailing in the case show that the appellant lawfully entered India as a student and over stayed and moved an application for long term visa as refugee status was granted to him by U.N.H.C.R. Long term visa was not granted to him by the Indian Government, as the authorities here are not bound by grant of refugee status in view of the 1951 convention and 1967 protocol not being binding on India, it not being signatory to the convention and protocol.

21. The appellant is not being allowed to leave India only because criminal prosecution under Section 14 of Foreigners Act, 1946 is pending against him. It has been urged before this Court that the appellant is a young man about 28 years of age and he having completed education in India may be allowed to leave India by giving quietus to the matter as otherwise he has not done any unwanted activity in India. He remained as a responsible civilian in India and completed his education here. Only the pendency of FIR under Section 14 of Foreigner Act is becoming impediment to his exit from India. He is being retained in India only to face the prosecution, and may be, to serve out the sentence in case he is convicted.

22. Nearly identical situation was considered by the Karnataka High Court in the case of ***Mr. Junia Erastus Mayemba vs. The Bureau of Immigration & Ors.*** passed in ***Criminal Petition No.1305/2017*** dated 12.04.2017 wherein a national of Republic of Uganda entered India on a student visa and over stayed in India. He was not allowed to leave India only because of pendency of criminal

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prosecution against him under the Foreigners Act. The Karnataka High Court considered the position that if he is made to suffer prosecution and imprisonment (if any) then his overstay would only be extended further and all such proceedings against him would necessarily be at the cost of State exchequer. As the petitioner is now ready to leave the country, it is appropriate that he is sent out of the country at the earliest. He did not indulge in any criminal activities in India nor entered India in any unlawful manner. The Karnataka High Court held as under :-

> *6. Given the above facts and circumstances, the admitted circumstance that the petitioner has overstayed and this being in violation of the law, if the petitioner should be penalized and if he should suffer imprisonment, his overstay would only be extended further. Any such proceedings taken against him would necessarily be at the cost of the State exchequer. If the petitioner is now ready to leave the country, it is appropriate if he is sent out of the country at the earliest. Therefore, it would not be feasible to carry on any further proceedings against the present petitioner as the justice dispensation system of this country is also over-loaded and we need not add one more of the kind in the present case and it is in the interest of all, particularly of the State exchequer to ensure that the present petitioner leaves the country at the earliest. In this regard, the formalities of procuring an exit permit is necessary. The petitioner shall be provided an exit permit by the F.R.R.O, who shall issue such an exit permit without insisting upon the petitioner facing action for violation of rules and regulations as already alleged and the criminal case pending against the petitioner should also be dropped provided it is ensured that on issuance of such exit permit, the petitioner is excorted by the Airport Police till he is subjected to security check and onward journey to the country as per the ticket which is now procured for the scheduled Flight No.66F67A leaving at 6.45 hours on 30.04.2017.*

23. The Karnataka High Court in the aforesaid case considered that as justice dispensation system of this Court is already overloaded and the person is ready to leave India to his native country then FIR should be dropped facilitating safe return of the foreigner to his country. This will also unnecessarily avoid drain of State exchequer. The factual situation of the said matter was nearly identical to the present case.

24. The aforesaid judgment fell for consideration again before the Karnataka High Court in the case of ***Tshibambula Jennifer Kabantobelu vs. State of Karnataka & Ors. (Criminal Petition No.1331/2018)*** on 03.04.2018 speaking through Hon'ble Mr. Justice Arvind Kumar (as his Lordship then was) wherein the

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earlier judgment in the case of ***Junia*** (supra) was considered with approval by the Karnataka High Court. In the aforesaid case also the foreigner had entered India on a student visa. She was a citizen of Republic of Congo, Africa. She did not appear before the F.R.R.O after expiry of residential permit and overstayed in India. After considering the case of ***Junia*** (supra) with approval, the Karnataka High Court held as under:-

> *10. In the light of aforestated facts, this Court is of the considered view that continuation of further proceedings in C.C.No.10682/2017 initiated by Kumbalagudu Police Station against the petitioner for the offence punishable under Section 14 of Foreigners Act, 1946 and Order 7(2) of Foreigners Order, 1948, would not serve any purpose and in fact, it would be against the tenor of Section 14 itself namely, permitting a person without residential permit or visa to continue to over-stay in the territory of India and thereby legalizing her stay in the territory of India. This Court also cannot lose sight of the fact that FRRO had considered petitioner's application for grant of exit permit and had granted the same by imposing penalty, which has also been remitted by petitioner. In that view of the matter, if proceedings are quashed by putting the petitioner on strict terms, it would meet the ends of justice.*

25. Both the aforesaid judgments considered the need to give a quietus to the matter and when the person did not enter India unlawfully by any unlawful means and did not indulge in any unlawful activity in India and resided here as a responsible civilian then in cases of over stay, gave a quietus to the matter by ordering dropping of criminal proceedings to facilitate return to native country. The aforesaid judgments of High Court of Karnataka fell for consideration before the Gujarat High court in the case of ***Anastasiia Leonskaia v. State of Gujarat*** reported in ***2019 SCC OnLine Guj 2029***.

26. The aforesaid case before Gujarat High Court was a case of woman of Russian nationality who entered India unlawfully by using Nepal as conduit country from which there is visa-free travel to India. She did not even possess passport, leave alone visa, while entering India through Nepal. It was found that her passport had already expired but after she had entered India which was for the purpose of meeting her boyfriend, she gave birth to a child and now the lady and

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her child both wanted to leave for Russia. It was a case of person entering not by lawful means but by unlawful means however, the purpose of visit was not unlawful but was to meet boyfriend with whom she resided for a long time and gave birth to a child in India. She also had another child born earlier to the child born in India. This Court considered the continuation of criminal proceedings as jeopardizing the lives of two young children apart from the woman and also considered that continuation of criminal prosecution in such case would ultimately prove to be adding to the burden of State exchequer and also add to the already over burdened criminal justice system. It was considered that neither the purpose of visit was unlawful nor the foreign citizen indulged in any criminal activity or any unlawful activity in India. Apart from entering India unlawfully, she had a clean chit during her stay in India. The Gujarat High Court while permitting quashment of FIR only for the purpose of facilitating return of the foreign national to her native country held as under:-

> *37. This Court is of the opinion that permitting the continuation of this litigation would jeopardize in a major way the lives of two young children also. This Court, therefore, finds the need to consider this case on humanitarian ground and right of very young children of parental care. Again, the continuation of this litigation would ultimately prove to be adding to the burden of exchequer with the her further overstay in India during litigation would also add to the already overburdened judicial system, which is not at all desirable nor necessary. More particularly, when there is not an iota of evidence to show that, at any point of time, she has committed any illegality. Her only purpose and motive to visit India was to meet her boyfriend, who is the father of her child, who is a French businessman, as is investigated by the Crime Branch. This Court is alive to the fact that the petitioner, who is the foreign national, has no business to break law, while entering this country. Her angle of agent having defrauded her may also require further scrutiny if eventually the matter would have gone for adjudication by way of trial. But, this case needs to be treated as a special case not solely because it is urged by the officers of the Consulate General of Russia but, essentially, since humanity and human values would reign supreme when pitted against the strict observance of territorial laws. Continuation of prosecution against the petitioner would create a serious dent in the norms set out by the constitution to protect the children's rights. Not only her daughter is without her, but she is facing serious crisis of being sent to the orphanage, this prosecution would also deprive her son, one and half year, of his childhood and all possible care and protection, which at his age is a must. Children of any nationality are privy to parental care and protection of childhood. These are far weighty reasons for the mother to be set free when no criminality or ill motive could be investigated in her*

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entry or overstay.

27. Though the above stated judgments of the Karnataka and Gujarat High Courts are by Single Benches, but we fully agree with the view taken therein. The present case also, in the considered opinion of this Court, it is a fit case where a quietus can be given to the matter and the considerations that have persuaded this Court are as under :-

a. The appellant had not entered India unlawfully but on valid student visa.

b. The purpose of visit was not unlawful and he duly attained education in India.

c. He did not indulge in any unlawful activity while he has remained in India.

d. He did not conceal himself during period of over-stay and was in constant touch of authorities in India.

e. Now he is ready to depart for his native country unconditionally.

28. The continuation of prosecution of the appellant in this case would only prolong his stay in India which neither the appellant wants nor the Government of India wants to take place because the basic charge against him is of overstay and now continuation of the criminal proceedings against him would only prolong the over stay which may not be in the interest of justice looking to the peculiar facts of the case. At the cost of repetition, we may reiterate that neither the mode of entry as well as the purpose of entry was unlawful nor any unlawful activity was indulged during the course of stay. The appellant is now willing to return back to his native country, hence, it is a fit case where quietus should be given to the matter and he be permitted to return to his native country by quashing the FIR under Section 14 of the Foreigners Act wherein the only

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charge is of over stay in India.

29. Therefore, in view of the aforesaid attending facts and circumstances of this case without interfering in the impugned leave India notice nor in the findings of the learned Single Judge as to the challenge to leave India Notice, this Court deems it fit to quash the FIR registered at crime No.134/2025 at Police Station Kolar Road, District Bhopal Urban (Madhya Pradesh), so as to facilitate return to his native country i.e Afghanistan. Therefore, while quashing the FIR, the appeal is allowed with the following directions:-

i) The appellant shall purchase return tickets to Afghanistan within a outer limit of 30 days from the date of this order and inform the concerned authorities of F.R.R.O/F.R.O as well as the investigating officer.

ii) The appellant shall be issued exit permit by the concerned authority within a further period of 15 days in a manner that he leaves India by the date for which he has purchased the tickets. Appellant shall pay the necessary statutory charges and fees for this purpose.

iii) Appellant shall leave India latest within seven weeks of this order.

iv) The appellant shall remain in city of Bhopal and shall not move out of city of Bhopal during this period, except when his movement out of Bhopal is necessary for getting statutory permissions/exit permit etc. He shall inform the concerned police station Kolar Road, Bhopal while moving out of Bhopal.

v) The appellant shall not seek any extension of his stay in India on any ground whatsoever.

vi) The appellant shall not enter India in future, except on a valid visa.

vii) The concerned visa issuing authority while considering any application for issuance of visa to visit India in future, shall always be at liberty to consider the conduct of the appellant in over-staying in India.

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30. Upon failure to leave India by lapse of seven weeks of date of this order, the benefits under this order shall stand withdrawn and the prosecution of the appellant shall stand revived.

31. Registry of the Court shall issue a certified copy of this order only alongwith certified copy of the affidavit of the appellant showing his willingness to depart from India unconditionally, which is to be filed by 28.10.2026. Wherever required submit certified copy of this order, he shall submit the same alongwith certified copy of the affidavit.

32. With the aforesaid directions, the present appeal is **partly allowed and disposed of**.

(ALPESH Y. KOGJE)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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