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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 31.01.2024

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CRL.A.1063/2016

MICHAL BENSON NWAOGU @ CHUNA BENSON Appellant

Through: Mr. Vikas Walia, Ms. Drishti Harpalani and Mr. Yash Bansal, Advocates

versus

STATE

..... Respondent

Through: Mr. Ajay Vikram Singh, APP with SI Arvind Kumar, PS: Fatehpur Beri. Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor and Ms. Vidhi Jain, Advocates for FRRO.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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ORDER

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 470/2023

1. CRL. A.1063/2016 has been preferred by the appellant challenging the judgment dated 09.09.2016 and order on sentence dated 21.09.2016 whereby the appellant has been sentenced to undergo Rigorous Imprisonment for 03 years with fine of Rs. 50,000/- (in default of payment of fine, to undergo SI for six months) for offence punishable under Section 21(b) of NDPS Act, 1985. The appeal stands admitted vide order dated 09.11.2016 and sentence of the appellant was suspended vide order dated 07.02.2017.

2. CRL.M.A.470/2023 has been preferred by the appellant seeking directions for release of passport and renewal of Visa, on which directions



were issued by this Court vide order dated 01.02.2023 as under:

“6. In the circumstances, on a balance of all considerations, and to enable the appellant to have his passport and visa renewed, so that he does not remain an illegal alien in the country, the following directions are issued :

a. The Registry is directed to release the original passport (Exb-PW-5/A in the Trial Court Record) to the petitioner, after retaining a complete photocopy thereof, and after verifying his credentials;

b. The petitioner is permitted to make the necessary application for renewal of his passport to the High Commission of Nigeria, New Delhi within 07 days thereafter, with prior intimation to the Investigating Officer of the case; who will accompany the petitioner at the time he deposits his passport and appears for his interview in the High Commission;

c. The original receipt/acknowledgment of deposit of passport for renewal shall be handed-over by the petitioner to the Investigating Officer, who (latter) shall collect the original passport from the High Commission upon renewal; and shall retain it with himself, awaiting further directions by this court.

7. In so far as renewal/extension of visa is concerned, Mr. Kirtiman Singh submits that he shall obtain appropriate instructions from the FRRO as regards the procedure for grant/extension of the appropriate category of visa for the appellant, since he is still facing legal proceedings in India.”

3. Learned counsel for the appellant submits that passport has since been renewed but directions need to be issued for renewal of appropriate category of Visa to ensure that the stay of the appellant is authorized during the pendency of appeal.

4. The matter assumes significance in view of difficulties faced by foreign nationals embroiled in criminal cases, since despite being granted the benefit of bail, their movement remains restricted due to confinement in Detention Centres.

5. It may be noticed that in absence of extension of Visa, a foreign



national is likely to be deported on initiation of proceedings under Section 3(2)(c)(e) of the Foreigners Act, 1946 read with Section 11(2) of the Foreigners Order, 1948. The foreign nationals, who violate the Visa rules and norms are liable to face the penal consequences under the Foreigners Act, 1946 besides deportation. The discretionary power of extending the Visa of any foreign national before expiry in case of overstay is exercised by the competent authority considering the reasons for overstay and the same can be regularised in justified cases. With reference to a foreign national against whom one or more cases are pending, the matter is considered by the competent authority under the Foreigners Order, 1948.

6. The clarification rendered by FRRO in the status report filed on record as reflected in paras 5 and 9 in this regard may be reproduced for reference:

“5. Further, in respect of a foreign national against whom one or more cases are pending, it is humbly submitted/apprised that as per Section 5(2)(C) of the Foreigners Order, 1948, leave shall be refused (to a foreign national) if the civil authority (FRRO) is satisfied that the foreigner's presence is required in India to answer a criminal charge. That under such circumstances, an appropriate category of Entry Visa (X - Misc category) is granted to an accused foreign national who is facing criminal charge/trial proceedings, in order to facilitate the foreign national to face criminal charge/trial proceedings before the concerned Ld. Trial Court or to appear before the Investigating agency if the criminal case/proceedings is pending investigation. Further, said Entry Visa (X-Misc) can be extended co-terminus with the date of hearings fixed in the said case or as per any other directions issued by the Hon'ble Court/Ld. Trial Court, in this regard. The foreign national while applying/registering for such a visa gets entered into the system of the immigration department and it becomes easy to track the movements of such a foreign national. It is pertinent to mention here that this visa is granted to such foreign national only for the sole purpose of facing criminal charge and no other activity like employment, business etc. is allowed on such a visa. The earlier overstay is also not regularized by the department for such foreign nationals. That the department is of the opinion that such foreign



nationals are not required to be granted any visa extension while they are in jail or in restriction centre.

6. xxxxxxx

7. xxxxxxx

8. xxxxxxx

9. In addition to this, it was noticed by this department that as the legal matters/case procedures take time to be completed, a large number of foreign nationals had started to misuse the above-said visa and were also found to be evading court dates while out on bail. It was also noticed that there were instances where foreign nationals deliberately got themselves involved in one or other criminal activity just to avail this service so that they could continue their stay in India by using this technicality for their ulterior motives. The foreign nationals who get involved in a criminal activity in India pose a serious threat to national security as well.”

7. Apart from above, FRRO has also referred to judgments passed in ***Babul Khan and Others v. State of Karnataka and Another, CRL.P.No.6578/2019*** decided by High Court of Karnataka, Principal Bench Bengaluru on 19.05.2020 and ***Pascal v. Union of India, FRRO Delhi & Anr., W.P.(CRL.)2276/2021*** decided by High Court of Delhi on 18.11.2021 and it has also been pointed out that an identical issue is also pending consideration in CRL. REF. No.2/2021 titled as ***Court on its Own Motion v. Govt. of NCT of Delhi and Others*** before High Court of Delhi wherein the accused continues to be detained in Restriction Centre.

8. So far as the present case is concerned, the stand of the FRRO as reflected in paras 10 to 12 of the status report may be noticed as under:

10. It is pertinent to mention that the foreign national in the present matter is without a valid passport or a valid visa and is overstaying as an illegal migrant. His movements are required to be restricted at the restriction centre as per the provisions of Section 3(2) of the Foreigner's Act, 1946. Further in respect of visa extension on the basis of pending court case, the appropriate visa can be extended by this department only if the Hon'ble Court specifically orders so. However, the foreign national would need to get his passport renewed first from his concerned Embassy and then make an online



application in this office for appropriate visa service after uploading required documents.

11. It is also stated that in this case after the completion of above prerequisites and specific Hon'ble court orders, he can be granted an X-Misc. category visa specifically for attending his court trial/appeal. No other employment, business etc is allowed on such visa. Further two types of visas cannot be granted simultaneously to any foreign national. Till the time the court case is pending, no other type of visa would be granted. In case the visa of the foreign national is extended, then the foreign national would not be restricted at the restricted centre till he is holding a valid visa.

12. Further after the presence of the foreigner is no longer required in India, ultimately the foreign national would be required to be repatriated back to his native country which is undertaken by the department as per existing guidelines.”

9. This Court is of the considered opinion that though the Government has the absolute power to regulate the entry and stay of foreigners, but it is equally well settled that Article 21 of the Constitution of India guarantees the protection of personal liberty of a citizen and foreigner alike. No person can be deprived of personal liberty except according to procedure established by law. As such, whether a foreigner released on bail needs to be detained in a Detention Centre during pendency of proceedings/appeal depends upon the facts and circumstances of each case.

10. In the instant case, the passport of the appellant has already been renewed and stands deposited. Sentence of the appellant has been suspended and orders for release on bail during pendency of appeal were passed on 07.02.2017. The appellant is constrained to stay back in India on account of pending appellate proceedings. Considering the facts and circumstances of the case, I am of the view that appellant should not be deprived of his liberty and kept in Detention Centre despite suspension of sentence and grant of bail by this Court, for want of extension of Visa of appropriate category.



Accordingly, the appellant shall file an appropriate application for consideration of the concerned authorities for grant of extension of Visa during pendency of appeal, which shall be disposed of in a time bound manner.

11. The present petition also brings to the fore the necessity of speedy disposal of cases wherein foreign nationals are arraigned as accused and are further detained in Detention Centres wherein their liberty is restricted on account of pendency of cases for long period, despite being admitted to bail. The Trial Courts are accordingly required to expeditiously deal with the criminal cases involving foreign nationals, in the interest of equity and fair play and to ensure that the liberty is not restricted or curtailed, due to delay in conclusion of trials.

A copy of this order be forwarded to the Competent Authority for compliance and be also circulated to the Officers of District Judiciary for information.

Application is accordingly disposed of.

CRL.A. 1063/2016

List the appeal for hearing on 13.05.2024.

ANOOP KUMAR MENDIRATTA, J.

JANUARY 31, 2024/R/sd