



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3927 OF 2023

Harjinder Kaur
Versus
The Foreigner Regional Registration
Office & Anr.

...Petitioner
...Respondents

Mr. Weseley Menezes a/w Mr. Waqar Pathan, Mr. Steven Anthony, Mr. Sushrut Desaid & Mr. Nashir Vania i/b Saumya Partners, for the Petitioner.

Mr. Shreeram Shirsat, Spl.P.P. a/w Ms. Tanvi Mate for the Respondent No.1.

Mr. S.V.Gavand, Addl.P.P for the Respondent-State.

PI Rupali Deshmukh, FRRO, Mumbai & API Harshada Dagade from FRO, Pune, present.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 21st DECEMBER, 2023

P.C. :

1. On 19th December, 2023, having heard learned Counsel for the petitioner, we directed the Foreigner Regional Registration

Office ('FRRO' for short) that the petitioner shall not be deported till the next date i.e. till today. We also granted the petitioner, liberty to meet his family members at the Kondhawa Police Station, Pune, where he is detained.

2. Today, learned Counsel for the petitioner tendered an affidavit of the petitioner giving details of when her husband - Fahd entered India, they got married and the steps taken by her husband to apply to the FRRO under Section 7-A of the Citizenship Act, 1955, and that the petitioner's husband has been given a Refugee status. The said affidavit is taken on record.

3. In the said affidavit, the petitioner has stated that her husband - Fahd is a Yemeni National; that she first met Fahd when, she and Fahd were pursuing Bachelor of Commerce Course / Degree at Spicer Memorial College, Pune; that they fell in love, which culminated into marriage as per Islamic rites in April, 2011; that their marriage was registered under Section 13 of the Special Marriage Act,

before the Marriage Registrar Office on 19th May, 2011; that after marriage, her husband - Fahd entered India on his 'Spousal Visa'; that Residence Permit issued to him was valid from 7th June, 2014 to 26th November, 2014; that in 2014, her husband – Fahd made an application seeking extension of his Residence Permit to FRRO, Pune, however, the same was not granted as he did not have the requisite minimum period of 6 months to get a Residence Permit; that thereafter, in 2015, the petitioner's husband – Fahd had to surrender his passport as he was tried in connection with an offence of abetment of suicide; that in 2018, he was acquitted of the said offence, pursuant to which, his passport was returned back to him in 2019; that on receiving the passport and realizing that the same had expired and needed renewal, her husband – Fahd has filed an application seeking extension of his passport with the Yemen Embassy, based in Delhi in the year 2019 and as such, the same was extended by a period of two years; that her husband – Fahd applied for an OCI card in the year 2019; that the officers of the FRRO, Pune, informed the petitioner's husband – Fahd that unless he had a valid Residence Permit of

minimum 6 months to one year, only then an OCI card is issued and that OCI card cannot be issued on a passport whose validity has been extended; that in 2019, her husband – Fahd had also applied for Residence Permit, however the same was not issued and that the physical copy of the said application is not available, although the application seeking Residence Permit would be in the system of FRRO; that thereafter, because of COVID-19, the issuance of the Residence Permit was delayed; that he applied for a new passport to the Yemen Embassy in New Delhi, India; that due to ongoing civil strife in the country of Yemen, the Yemeni Government formed a passport issuing Centre at Kuala Lumpur, Malaysia; that he was issued a new passport with validity from 8th June, 2021 upto 8th June, 2027; and that on receiving the new passport, her husband – Fahd has applied for an OCI card on 23rd October, 2023.

4. The petitioner has further stated in para 18 of the said affidavit that in the month of October, 2023, her husband – Fahd was recognized as a Refugee by the United Nations Refugee Agency and

was issued an identity card on 24th October, 2023 bearing UNHCR No. xxxxxxxxxxxx with an expiry date of 23rd October, 2025. The petitioner further states that on 6th November, 2023, the Deputy Commissioner of Police, Special Branch, Pune City who is constituted as a civil authority under the provisions of the Foreigners Act detained her husband - Fahd in the premises of Kondhawa Police Station; that on 7th November, 2023, her husband – Fahd made an application seeking extension of his Visa, however, inadvertently, a wrong date of birth was mentioned; that on 10th November, 2023, her husband – Fahd on the basis of the advice given to him by the officials of the FRRO, made an application seeking his exit from India; and on 20th December, 2023, her husband – Fahd made an application seeking extension of his Visa.

5. Learned Counsel for the petitioner submits that the application made on 10th November, 2023 by her husband – Fahd, seeking his exit from India was made on the advice given by the officials of the FRRO. Mr. Shirsat denies the same.

6. Learned Counsel for the petitioner states that the petitioner has been issued an Aadhar Card as well as a Driving Licence and PAN card by the Authorities and having regard to the said documents, and what is stated above, there was no reason for the FRRO to deport the petitioner much less to detain him.

7. It appears from the arguments, that there is no separate Detention Centre as contemplated and that the petitioner is detained in the premises of the Kondhawa Police Station, Pune, from 6th November, 2023 till today i.e. for one month and around 18 days.

8. Learned Counsel for the petitioner, on instructions of the petitioner states that the petitioner's husband - Fahd be released temporarily till the next date by way of interim relief and that the petitioner will not go beyond the jurisdiction of Kondhawa Police Station.

9. It is pertinent to note that the petitioner not only studied

in India, but also got married to the petitioner in 2011 and that from the said marriage, has two children, one born on 17th September, 2015 and the other born on 2nd August, 2016 and that the children as well as the petitioner are Indian Nationals. Learned Counsel submits that in view of the same, the petitioner would be entitled to get an overseas OCI card under Section 7-A(d) of the Citizenship Act, 1955. He submits that the second proviso to Section 7-A will not apply. As far as the first proviso is concerned, what is required is only a prior security clearance from a competent authority in India.

10. Learned Counsel for the respondents seek time to file affidavit-in-reply. The same to be filed in the Registry on or before 2nd January, 2024, with an advance copy to the learned Counsel for the petitioner.

11. Stand over to **8th January, 2024.**

12. In the meantime, till the next date, the petitioner's

husband – Fahd, who is detained in the premises of Kondhawa Police Station, Pune, shall be released. However, the petitioner’s husband – Fahd shall not leave the jurisdiction of Kondhawa Police Station, Pune, till the next date.

13. Needless to state, that it is open for the petitioner’s husband – Fahd to pursue his applications including application for OCI Card / Visa, in accordance with law.

14. If such an application is filed, the FRRO to decide the said application, on its own merits, in accordance with law, uninfluenced by the pendency of this petition.

15. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.