

IN THE HIGH COURT OF BOMBAY AT GOA

SUO MOTU WRIT PETITION NO.1 OF 2019

.....

.... Petitioner

Versus

1. STATE
Through I.O.,
Calangute Police Station,
Calangute Goa.
 2. STATE
Through Police Inspector
Pernem Police Station
Pernem Goa.
 3. Public Prosecutor
High Court Building,
AG's Office, High Court,
Panaji Goa.
 4. Union of India,
Chankya Puri
New Delhi,
 5. Foreigners Regional
Registration Office (FRRO)
Police Head Quarters,
Panaji Goa.
- Respondents

Mr. Devidas J. Pangam, Amicus Curiae.

Mr. Pravin N. Faldessai, Additional Public Prosecutor for Respondent Nos. 1, 2, 3 and 5.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

***Reserved on : 20th February, 2019
Pronounced on : 27th February, 2019***

Judgment (Per M. S. Sonak, J)

Heard Mr. D. Pangam, learned Amicus Curiae and Mr. P. Faldessai, learned Additional Public Prosecutor for Respondent Nos.1, 2, 3 and 5.

2. Originally, Criminal Writ Petition No.199 of 2018 was instituted by Mr. Chidiebere Charles Onuchukwu, Nigerian National, who was then, in judicial custody at Central Colvale Jail, Goa, in order to question the FIR No.214/2018 dated 9th November, 2018 registered by the Calangute Police Station against him for violating the provisions of Sections 3 and 4 of the Passport Entry Act, 1920, Rules 3(2)(a) and 6(a) of Passport Entry into India Rules, 1950 and Section 7(1)(iii) of Foreigners Order 1948, all punishable under Section 14 of the Foreigners Act, 1946.

3. On 10th December, 2018, upon hearing Mr. T. George John,

learned Advocate for the Petitioner and Mr. P. Faldessai, learned Additional Public Prosecutor for Respondent Nos.1, 2 and 3, we made the following order.

“The learned Addl. Public Prosecutor appearing for the State has invited our attention to the judgment in the matter of Christian Chidieere Chukwu vs The State of Karnataka and others, 2016 Cri. L. J 2947 decided on 18.2.2016. The issue in relation to overstay of foreign nationals in the country needs to be addressed seriously. In the instant matter, the petitioner is questioning the registration of second FIR. In order to establish the identity of the petitioner, the petitioner was directed to produce before this Court original passport. However, the petitioner has shown photostat copy of first page of passport. The petitioner shall produce original passport on the next date of hearing.

2. The issue as regards the establishment of detention centres has been raised during course of arguments. It is informed that there are no detention centres established in the State of Goa to keep the foreign nationals who are overstaying in the country. The respondent/State is directed to furnish the information as regards the establishment of detention centres in the State and steps, those are taken till this date. We shall also be informed as to time frame requirement for setting up requisite detention centres in the State.

3. The respondent/State shall also furnish the data in respect of overstay of foreign nationals in the State of

Goa and mechanism provided by the State for keeping control over the foreign nationals' overstay in the country and the steps being taken. The petitioner shall implead (i) Union of India through Ministry of Home Affairs and (ii) Foreigners Regional Registration Office(FRRO) as party respondents. Petitioner to carry out necessary amendment forthwith. In the event of failure of the Petitioner to carry out amendment, registry is directed to carry out the same within three days. Registry is directed to supply copy of the petition alongwith annexures to the Shri M. Amonkar, counsel appearing for the Union of India.

4. Place the petition for consideration on 17.12.2018.”

4. On 17th December, 2018, the original Petitioner instead of complying with the directions issued by us in our order dated 10th December, 2018, in the matter of production of his original passport on the next date of hearing, applied for leave to withdraw the petition through his counsel Mr. T. George John. Upon this motion, on 17th December, 2018, we made the following order:-

“The Petitioner has objected to the registration of FIR bearing No.214/18 dated 9 November 2018, registered at the Calangute Police Station against the Petitioner.

2. The Counsel appearing for the Petitioner, on instructions, states that the Petitioner does not

intend to proceed with the challenge raised in the Petition and seeks leave to withdraw the Petition.

3. While directing issuance of notice on 10th December 2018, this Court has taken cognizance of the issue of establishment of Detention Centres in the State of Goa and called upon the State to furnish information, in writing, of the steps taken for establishing Detention Centres in the State of Goa. We have also directed impleadment of Union of India, through the Ministry of Home Affairs and the Foreigners Regional Registration Office, as party Respondents.

4. Though the Counsel for the Petitioner seeks leave to withdraw the Petition, in view of the issue of larger public interest involved in the Petition, we may discharge the Petitioner by permitting him to withdraw from the Petition. However, since the issue raised before us needs to be taken cognizance of, we direct the registration of the Petition as a Suo Motu Writ Petition and permit the Petitioner to withdraw from the Petition. We may request Mr. D. Pangam, Advocate to assist the Court as an amicus curiae. Registry to furnish papers to the learned Amicus Curiae.

5. S.O. to 14 January 2019.”

5. After the present petition was registered as Suo Motu Writ Petition No.1 of 2019, Mr. Bosco George, Superintendent of Police, FRRO filed an affidavit dated 12th January, 2019.

6. In the affidavit dated 12th January, 2019, Mr. Bosco George, Superintendent of Police, FRRO made reference to our order dated 10th December, 2018 in which we had directed the Respondents to furnish information regards the establishment of Detention Centre in the State of Goa and if no such Detention Centre is established then to indicate the time frame required for setting up such Detention Centres in the State of Goa. Secondly, the order dated 10th December, 2018 had also directed the Respondents to furnish data in respect of overstay of foreign nationals in the State of Goa and the mechanism provided by the State for exercising control over such overstay. Mr. Bosco George in his affidavit dated 12th January, 2019, made it clear that he was dealing only with second part of directions in our order dated 10th December, 2018.

7. Mr. Bosco George in his affidavit dated 12th January, 2019 had made it clear that if any foreign national is found staying in India without proper visa/travel documents, such foreigner is arrested by the concerned Police Station within whose jurisdiction such person is found overstaying. The arrest information of foreign nationals received from various Police Stations is then conveyed within 24 hours to the Ministry of External Affairs, New Delhi and also to the concerned Embassy/Consulate. Affidavit then states that upon disposal of the cases by the Courts and if convicted, upon undergoing the sentence/conviction the accused/foreign national, if not

wanted in any other cases in Goa, are deported. The deportation order is issued to the foreign nationals under Section 3(2)(c) of Foreigners Act, 1946. Once the departure is confirmed, a proposal for blacklisting is sent to the Deputy Director, Immigration, BOI, New Delhi.

8. Affidavit of Mr. Bosco George dated 12th January, 2019 further states that in case any accused foreign national is not in a possession of valid passport/travel documents, the communication is made by FRRO, Goa, to the concerned Embassy/Consulate through Ministry of Home Affairs and Ministry of External Affairs to arrange for travel documents to be furnished to such foreign national. Until the travel documents are organized, the personnel at the concerned Police Station are directed to keep a watch on the movement of such person to ensure that they do not go underground till the deportation order is issued and executed against them. Affidavit states that this is because no Detention Centre is presently functioning in Goa. Affidavit of Mr. Bosco George dated 12th January, 2019 further states that FRRO unit checks the genuineness of passport/visa of the foreigners through Immigration Visa Foreigners Registration Tracking (IVFRT) Unique Case File (UCF) module of Bureau of Immigration, New Delhi and if the travel documents are found to be doubtful, the matter is reported to the District Superintendent of Police, in order to secure direction to the concerned Police Station to take further legal action in the matter. The affidavit states that

team of FRRO unit carried out surprise checks in the coastal areas for verification of passport and visa of foreign nationals.

9. Affidavit filed by Mr. Bosco George dated 12th January, 2019 year-wise list of foreign nationals who were arrested in Goa for overstaying and are issued with deportation order and further blacklisted in entering into India is annexed. In the year 2013 there were 15 cases of overstay. In the year 2014 there were 12 cases of overstay. In the year 2015 there were three cases of overstay. In the year 2016, there were six cases of overstay. In the year 2017 there were nine cases of overstay. In the year 2018, there were seven cases of overstay.

10. The affidavit, according to us is not quite clear as to whether the persons referred to in the list continue to stay or rather overstay in Goa. If such persons continue to overstay in Goa, then, there is necessity of taking immediate action for their actual deportation unless during the intervening period there is some change in their status. Accordingly, we direct that the action as permissible under law be taken against such foreign nationals who are found to be overstaying or who are found without proper valid travel documents like passport/visa. Though, we are disposing of the present petition, we direct the Respondent No.5 to file a compliance affidavit within a period of three months from today by serving an advance copy of such

compliance affidavit to the learned Amicus Curiae.

11. The second issue which arises in this petition relates to the setting up of Detention Centre for foreign nationals who are found to be overstaying in India. In this regard, affidavit has been filed by Mr. Bossuet Silva, Superintendent of Police, Legal and Vigilance, on behalf of the Director General of Police on 11th February, 2019. In this affidavit, it is stated that the Government has issued an order on 7th February, 2019 requiring illegal immigrants/foreign nationals awaiting deportation to reside in the Detention Centre at Old Judicial Lock Up at Mapusa. From a perusal of the order dated 7th February, 2019, it appears that same has been issued in exercise of the powers conferred by clause (e) of sub-section (2) of Section 3 of the Foreigners Act, 1946 read with G.S.R. 529(E) of the Foreigners' Division, Section-I, Ministry of Home Affairs, Government of India, New Delhi and published in the Gazette of India, Extraordinary dated 3rd May, 1988.

12. The order dated 7th February, 2019 issued by the State of Goa reads thus:

Government of Goa
DEPARTMENT OF HOME (GENERAL)
SECRETARIAT
Porvorim Goa.

Tel.No.(0832)-2419775

Email:usgen-home.goa@nic.in

No. 2/44/2013-HD(G)/403

Dated: 07/02/2019

ORDER

In exercise of the powers conferred by clause (e) of sub-section (2) of Section 3 of the Foreigners Act, 1946 (31 of 1946), read with the G.S.R. 529(E) of the Foreigners' Division, Section-I, Ministry of Home Affairs, Government of India, New Delhi, and published in the Gazette of India, Extraordinary dated 03-05-1988, the Government of Goa hereby requires the illegal immigrants/foreign nationals awaiting deportation to reside in the Detention Centre at Old Judicial Lock-up at Mapusa next to the Mapusa Police Station.

This order shall come into force with immediate effect.

*By order and in the name of
the Governor of Goa.*

Sd/-

(Neetal P. Amonkar)

Under Secretary (Home)

13. The affidavit dated 11th February, 2019, at paragraph 5 refers to the mechanism presently adopted to control the foreign nationals, the stay in India without proper travel documents or after expiry of visa.

14. The contents of paragraph 5 of the affidavit dated 11th February, 2019 are transcribed below for convenience of reference.

“I state that this Hon'ble Court has been pleased to direct to furnish the data in respect of overstay of foreign nationals in the State of Goa and mechanism provided for keeping control over such overstay. In that regard, it is respectfully submitted that, till date the mechanism provided for keeping control included the following. Police watch is maintained in the respective Police Station's jurisdiction. Intelligence/information is also collected in this regard. Whenever any foreign nationals are found staying without valid visa or valid documents/passport, the legal action is taken including registration of FIR etc. It is respectfully submitted that the concerned Embassies are also informed about such overstay so that the concerned Embassy can take steps to provide travel documents of their respective citizens.”

15. Affidavit dated 11th February, 2019 discloses a very disturbing feature. In paragraph 6 of the affidavit, there is a reference to Annexures 'B' and 'C' containing details of the foreigners against whom cases have been registered, *inter alia* for overstay. Annexure 'B' refers to cases in North Goa and Annexure 'C' refers to cases in South Goa. Annexure 'B' makes a reference to 46 cases registered in the year 2018 alone. Annexure 'C' refers to one case registered in South Goa District during the year 2018.

16. From a perusal of Annexure 'B', we find that a majority of the cases concern Nigerian nationals followed perhaps by Tanzanian and Russian nationals.

17. Although, by order dated 7th February, 2019, a Detention Centre has finally been set up, the same, has not been made operational. Mr. Faldessai, learned Additional Public Prosecutor however stated that all efforts are being made to make the said Detention Centre operational by providing necessary infrastructure and staff. Taking into consideration the magnitude of the problem, we direct the Respondents to make operational the Detention Centre as expeditiously as possible and in any case within a period of three months from today. The Respondent No.5 is directed to file an affidavit of compliance after serving an advance copy on the learned Amicus Curiae.

18. Mr. Faldessai has placed on record the communication dated 31st January, 2019 addressed by the Ministry of Home Affairs/Foreigners Division, to the Additional Chief Secretary (Home)/ (Principal Secretary(Home) of all State Governments and Union Territory Administrations as also DGPs of all the State Governments and Union Territory Administrations. This relates to the Model Detention Centre/Holding Centre/Camp Manual. Along with this letter, the Ministry of Home Affairs (Foreigners Division) has annexed Model Detention Centre/Holding Centre/Camp Manual to all concerned for implementation and strict compliance. This communication dated 31st January, 2019 refers to the earlier communication dated 9th January, 2019 on the same subject.

19. The communication dated 9th January, 2019, addressed by the Government of India, Ministry of Home Affairs (Foreigners Division), again addressed to the Additional Chief Secretary and DGPs of all the State Governments/UT Administrations refers to the earlier instructions regarding setting up of Detention Centres/Holding Centres/Camps in various States/UTs for restricting the movements of illegal immigrants/foreign nationals awaiting deportation after completion of sentence due to non-confirmation of their nationality. This communication states that based upon comments received from the State Governments/UT Administrations and other stakeholders and deliberations at the meeting held on 30th October, 2018 under the Chairmanship of Special Secretary (Border Management), Ministry of Home Affairs which was attended by the officers from various State Governments and UT Administrations and Bureau of Immigration, the Ministry has prepared a Model Detention Centre/Holding Centre/Camp Manual. This is the Manual which was forwarded *inter alia* to the Chief Secretaries and DGPs of all the State Governments and UT Administrations for implementation and strict compliance.

20. The aforesaid Manual refers to various legal provisions with regard to the deportation and detention of a foreign national.

CHAPTER – 1

LEGAL PROVISIONS WITH REGARD TO
DEPORTATION AND DETENTION OF A FOREIGN
NATIONAL

- 1.1. *In terms of section 3 (2) (c) of the Foreigner's Act, 1946, Central Government may by order provide that the foreigner shall not remain in India or in any prescribed area therein. Further, in terms of section 3(2)(e) of the Foreigner's Act, 1946, Central Government may by order provide that the foreigner shall comply with such conditions as may be prescribed or specified - (i) requiring him to reside in a particular place, (ii) imposing any restrictions on his movements.*
- 1.2. *The powers vested in the Central Government under sections 3(2)(c) and 3(2)(e) of the Foreigner's Act, 1946 and the Foreigner's Order, 1948 have also been delegated to the State Governments and UT Administrations vide Notifications S.O. Nos. 590 & 591 [F.No. 4/3/56-(I)F.I] dated 19th April, 1958. These powers have also been delegated to the Joint Director, Bureau of Immigration vide Notification G.S.R 605(E) [F.No. 25022/96/99-F.I] dated 13th July, 2000. Subsequently, separate notifications were issued from time to time delegating these powers to new State Governments/UTs formed by re-organization of States/UTs.*
- 1.3. *Paragraph 11 of the Foreigner's Order, 1948, issued in exercise of the powers conferred by section 3 of the Foreigner's Act, 1946 provide that the civil authority may, by order in writing, direct that any foreigner shall comply with such conditions as may be specified in the order in respect of –*
 - (1) *his place of residence;*
 - (2) *his movements;*
 - (3) *his association with any person or class of persons specified in the*

order; and

(4) *his possession of such articles as may be specified in the order.*

1.4. *Further, in terms of section 3(2)(g) of the Foreigner's Act, 1946, the Central Government may by order provide that the foreigner shall be arrested and detained and confirmed.*

1.5 *Section 4 of the Foreigner's Act, 1946 reads as follows:-*

*“4. **Internees.** – (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.*

(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force an order under clause (e) of sub-section (2) of section 3 requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall while residing therein, be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.

(3) No person shall –

(a) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbor an escaped internee or person on parole, or

(b) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

(4) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in India where internees or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed.”

CHAPTER – 2

INSTRUCTIONS ISSUED BY THE MINISTRY OF HOME AFFAIRS WITH REGARD TO DETENTION CENTRES

Instructions issued on 02.07.1998

2.1 *In the letter no. 25019/3/97-F.III dated 02.07.1998 issued by the Ministry of Home Affairs to all State Governments and Union Territory Administrations, it was suggested that the State Governments/UT Administrations who have been delegated powers under section 3(2)(e) of the Foreigner's Act, 1946 may exercise these powers to restrict the movements of the foreign nationals who are awaiting deportation after completion of the sentence awarded to them pending confirmation of their nationality. It was also provided therein that movements of such foreign nationals should be restricted in one of the detention centres/camps of foreigners to ensure their physical availability at all times for expeditious repatriation/deportation as soon as the travel documents are ready.*

Instructions issued on 23.11.2009

2.2 *In the letter no. F.14011/55/09-F.VI dated 23.11.2009 issued by the Ministry of Home Affairs addressed to all State Governments/ UT Administrations conveying the detailed procedure to be adopted for*

deportation of illegal immigrants from Bangladesh, State Governments/ UT Administrations were requested to set up sufficient number of detention centres in each State/UT where the suspected illegal immigrants would be detained pending their deportation.”

21. The Manual then refers to amenities to be provided in the Detention Centres/Holding Centres/Camps in Chapter 4. The amenities referred to in paragraphs 4.1 to 4.39 of Chapter 4 of the Manual read as follows:-

CHAPTER – 4

AMENITIES TO BE PROVIDED IN THE DETENTION CENTRES/HOLDING CENTRES/CAMPS

- 4.1. *Detention Centres/Holding Centres/Camps shall be set up outside the jail premises.*
- 4.2 *Naming of such places i.e. whether as Detention Centre or Holding Centre or Camp may be decided by the State Governments/ UT Administrations concerned.*
- 4.3 *No specific approval is required from the Ministry of Home Affairs for setting up of Detention Centres/Holding Centres/ Camps.*
- 4.4 *Pending acquisition of land and construction of building, State Governments/UT Administrations may consider hiring of suitable accommodation for this purpose. In case of non-availability of Government buildings, State Government/UT Administration concerned may look in for hiring private building, subject to production of non-availability certificate and rent assessment by CPWD/PWD. If it is decided to hire a private building for the*

Detention centre/Holding centre/Camp, it may be ensured that all existing codal formalities under General Financial Rules (GFRs) are strictly followed.

- 4.5. The number and size of detention centres/holding centres/camps to be set up in each State/UT may be determined by the individual State Government/ UT Administration keeping in view the actual requirements based on the number of such foreign nationals to be housed (as mentioned in para 3.1 above) as well as the progress in deportation proceedings. State Governments/ UT Administrations may consider setting up of one detention centre in the city /district where major Immigration Check Posts (ICPs) in the State are located.*
- 4.6 State Governments / UT Administrations may prescribe the authority that will be in charge of the detention centres. On completion of the sentence of the foreigner, the Jail authorities concerned may hand over the foreign national to the authority in charge of the detention centre. The jail authorities shall also send all the medical records of that particular foreigner to the detention centre.*
- 4.7 A thorough medical checkup of the foreigner will be done at the time of admission in a detention centre. Complete medical records of the foreigner will be maintained in the detention centre.*
- 4.8 There should be a provision for transfer of foreigners in detention from one detention centre to another due to administrative reasons or to facilitate their stay in Metros during the waiting period for issuance of travel documents or to facilitate the foreigner's interview with their concerned Mission/Embassy/Consulate etc.*
- 4.9 Every detention centre shall have a cell which will provide help to the detainee foreigners for contacting their concerned Mission/Embassy/Consulate or their family through proper*

procedures.

- 4.10 The detention centre/holding centre/ camp should be designed to provide all the necessary facilities for the inmates to maintain standards of living in consonance with human dignity. All basic amenities like electricity with generator, drinking water (including water coolers), hygiene, accommodation with beds, sufficient toilets/baths with provision of running water, communication facilities, provision for kitchen etc. shall be provided. There should be proper drainage and sewage facilities.*
- 4.11 All accommodation provided for use of inmates, particularly for sleeping, will meet basic requirements of healthy living. Accommodation shall be built in a manner so as to ensure adequate cubic contents of air, floor space, lighting, ventilation and climatic protection.*
- 4.12 It may be ensured that LPG connection is provided in the Kitchen. It may also be ensured that LPG cylinders are kept under proper security to avoid any fire hazards and misuse by the foreigners.*
- 4.13 CCTV cameras shall be installed at various places for monitoring purposes.*
- 4.14 Adequate fire safety systems shall be installed in the detention centre/holding centre/camp.*
- 4.15 The requirements of administration and supervision will be taken into account while planning buildings.*
- 4.16 There should be a proper boundary wall with dense barbed wire fencing above the boundary wall. The boundary wall should be minimum 10 ft. high with main gate, wicket gate and strict access*

control measures. Proper illumination should be provided all along the wall and in the Centre.

- 4.17 Adequate number of security personnel for round the clock security, sentry posts and guard room etc. shall be provided.*
- 4.18 While allotting the security personnel, the requirement for monitoring the perimeter security/ watch towers/ vulnerable / strategic points may also be kept in view. A path way along the perimeter wall may be provided for the patrol by the security personnel. Adequate Lady security may also be deployed commensurate with the women detainees.*
- 4.19 There should be a periodic security audit by the appropriate authorities.*
- 4.20 There should be sufficient open space within the compound for detainees to move around in a secure environment.*
- 4.21 There should be properly segregated accommodation for male and female detainees.*
- 4.22 It should be ensured that members of same family are not separated and all family members are housed in the same detention centre.*
- 4.23 There should be a provision for a Safety Cell for segregation of foreigners with behavioral issues that may be criminal in nature which may be detrimental to the safety and security of other inmates or Detention Centre staff.*
- 4.24 Strict prison regimes applicable to under trial and convicted prisoners should not made applicable to the foreign nationals housed in the detention centres/holding centres/camps.*

- 4.25 *The persons housed in the detention centres/holding centres/camps should be permitted to meet/ communicate with the family members and no restrictions shall be imposed on this account.*
- 4.26 *As regards meeting visitors other than family members, the provisions in the model prison manual 2016 may be followed.*
- 4.27 *State Governments/ UT Administrations / FRROs/FROs etc. may devise appropriate system for keeping records of the visitors etc.*
- 4.28 *The staff posted at the detention centre/ holding centre/ camp should be well trained to ensure that the detainees are treated with due dignity.*
- 4.29 *State Governments / UT Administrations may decide the complement of staff including wardens, security personnel, Superintendents, office personnel etc. to be provided at the detention centre/ holding centre/camp depending upon the average number of inmates housed in the detention centre/holding centre/camp. They may also consider engagement of interpreters of different languages as and when needed.*
- 4.30 *Adequate provision should be made for medical attendance for the detainees. A mobile medical dispensary may also be made available. An ambulance facility may be provided for attending to the medical emergency 24 x 7. Posting/ detailing of a staff nurse/training of some staff for giving first aid may also be considered. Any additional medical facilities to be provided may be considered by the State Governments/ UT Administrations concerned.*
- 4.31 *Special attention may be given to the women/ nursing mother, transgender detainees, children, etc.*

- 4.32 *Creche facilities for children may be provided.*
- 4.33 *Children lodged in the detention centre may be provided educational facilities by admitting them in local schools nearby.*
- 4.34 *A skill centre may also be provided within the detention centre.*
- 4.35 *Total area required for a Detention Centre/ Holding Centre/Camp may be decided by the State Government/ UT Administration concerned taking into account the approximate number of foreigners to be accommodated at any given point of time and various amenities to be provided. Apart from the basic facilities to be provided like living area, toilets & bathrooms, kitchen, dining hall etc., other facilities like covered lobby outside rooms, open area, library, recreational facilities, space for indoor games, space for yoga & meditation and open space for outdoor games etc. may be provided depending upon availability of space.*
- 4.36 *The scales of diet for inmates may be prescribed by the State Governments/ UT Administrations following the scales prescribed in the model Prison Manual 2016, which is drawn from the ICMR guidelines on the same. The scales may vary according to local customs and dietary habits of the inmates but should as far as possible in compliance with the prescribed standards. State Governments/ UT Administrations may also modify the scales at any time if it deems fit. They may also draw up their own procedures for supply of food items to the inmates.*
- 4.37 *State Governments /UT Administrations may consider entrusting the maintenance of such Detention Centre/Holding Centre/ Camp and for providing ancillary staff to maintain such facilities like sweepers etc. to the Social Welfare Departments in the State/UT or to any other agency as they deem fit.*

4.38 A Grievances Redressal Cell may be set up. In case of complaints by the detainee, it should be investigated thoroughly by a Grievances Redressal Cell and appropriate action taken.

4.39 Besides the above, it may be ensured that amenities as incorporated in the model Prison Manual 2016, which are not specifically covered above, are also provided at the Detention Centres/ Holding Centres/Camps to the extent possible.”

22. As pointed out by Mr. Faldessai, the learned Additional Public Prosecutor, we appreciate that it may not be possible for the State to provide for all the aforesaid amenities at the Detention Centre now established vide order dated 7th February, 2019. However, we expect that all the efforts are made so as to ensure compliance to the extent possible, so that, the Detention Centre, which is now notified becomes operational within a period of three months from today.

23. Mr. D. Pangam, learned Amicus Curiae as well as Mr. Faldessai, learned Additional Public Prosecutor raised at least two concerns in relation to the issue of overstaying by the foreign nationals :-

(i) They point out that there are several instances where foreigners are charged for commission of petty offences and as long as such cases are pending, it becomes difficult for the Authorities to deport such foreign nationals even though they may have no proper travel documents or even though the period

of their visa may have expired. They submit that many a times, foreign nationals, in order to stay in India without proper travel documents or beyond the period permitted by the visa granted to them, indulge in petty offences only so that they may not be deported from India. They point out that invariably such foreign nationals secure bail from the Courts and one of the conditions of bail is that such foreign nationals do not leave India. They point out that undue advantage is then taken and the foreign nationals continue to stay in India on the basis of the condition in bail order;

(ii) They further point out that at the stage at which the foreign nationals are released on bail, the Courts usually do not verify as to whether such foreign nationals have valid travel documents or whether visa period has already expired. They submit that as a result, such foreign nationals are released on bail and on the basis of such bail orders, the foreign nationals even resist detention or action for deportation.

24. According to us, both the aforesaid issues raised by Mr. D. Pangam, learned Amicus Curiae and Mr. Faldessai, learned Additional Public Prosecutor, are, in a sense, interconnected. The cognizance of somewhat similar issue was taken by the learned Single Judge of Karnataka High Court

in the case of *Christian Chidieere Chukwu Vs The State of Karnataka and Others*¹. In that case, the learned Single Judge of Karnataka High Court was concerned with Nigerian national, who had applied for bail, after he was charged with commission of offences under Sections 376 and 506 of I.P.C. read with Section 14 of the Foreigners Act, 1946.

25. The learned Single Judge of Karnataka High Court after analysing the legal provisions as also the Office Memoranda on the subject, dismissed the application for bail, however, some directions were issued for enforcement of provisions of Foreigners Act, 1946. Some directions were also issued to the Courts to take up the cases of foreign nationals for trial on priority basis where such foreign nationals were on bail or in judicial custody. The learned Single Judge observed that if there is delay in conducting trial, it would be as good as allowing such foreign nationals to be in India even after expiry of the visa period. The learned Single Judge also took cognizance of several cases where the Magistrates impose “*flea-bite*” sentence upon the foreign nationals overstaying visa period or otherwise violating the provisions of Foreigners Act, 1946 as also the rules or orders issued thereunder. The learned Single Judge held that while convicting a foreign national either on the basis of such national, pleading guilty or upon the Court finding him guilty after contest, the Magistrate will have to take into consideration the

1 MANU/KA/0277/2016

mitigating and aggravating circumstances, while imposing sentence. However, there should not be any “*flea-bite*” sentence and the Courts can use discretion only in exceptional cases to impose lesser punishment and there must be exceptional grounds to adopt such a course. The leaned Single Judge also directed that whenever passports are seized by the Investigating Agency and are produced before the Court or whether the passports are ordered to be produced before any Courts while executing bail bonds, they must be kept in safe custody and if possible, a certificate should be given to the passport holder that such passport is produced before the Investigating Officer or that the same is deposited in the Court in compliance with the Court orders or bail conditions. This would also assist the foreign national in explaining why he is not in a possession of the original passport containing visa details.

26. According to us, in such cases, the State/Prosecution can also make applications before the Magistrate/Courts where such matters are pending to expedite the matters by clearly pointing out the circumstances of overstay and apprehension that the involvement in petty offences is perhaps to facilitate such overstay. The Magistrate/Courts before whom such cases are pending should, as observed in *Christian Chidieere Chukwu* (supra) must endeavour to dispose off such cases expeditiously otherwise it would amount to facilitating such foreign nationals to stay in India even though they may not have proper travel documents or their visa period may have already

expired. In short, this would virtually facilitate such foreign nationals from defeating the provisions of the Foreigners Act, 1946, rules and orders made thereunder. No doubt, this cannot be the approach when the foreign nationals are found to be involved in serious offences say under N.D.P. S. Act, cyber fraud, rape etc. We make it clear that this list is by no means exhaustive. Such matters will have to be considered on a case to case basis.

27. Although, it may neither be possible nor advisable to issue any specific directions in the aforesaid regard, some observations, are certainly in order. Since, the State is itself conscious that some foreign nationals, at times, deliberately involve themselves in petty offences, only in order to facilitate their overstay in India or otherwise defeat the provisions of the Foreigners Act, 1946, rules and orders made thereunder, we can only say that the State/Prosecution, in such cases, must either seek expedition of such matters by filing appropriate application before the Magistrate or Courts where such matters are pending or even consider whether withdrawal from the prosecution is a better option. In either cases, however, all arrangements must be made to forthwith deport such foreign nationals who are found to have no proper travel documents or whose visa term had already expired, no sooner such matters are disposed off by the Magistrate or Courts.

28. The Magistrate and Courts must also take cognizance of the

subterfuges employed by some foreign nationals to secure bail and thereafter delay the matters, only to facilitate their overstay or otherwise defeat the provisions of the Foreigners Act, 1946, rules or orders made thereunder. As noted earlier, it may neither be possible nor feasible to issue any specific directions in this regard since these matters will have to be essentially dealt with on a case to case basis by both, State/Prosecution as well as the Magistrate/Courts. All that we emphasize, is that both State/Prosecution as well as the Magistrate/Courts must be conscious of such issues and accordingly take necessary steps to see that the process of the Court is not abused to defeat the provisions of the Foreigners Act, 1946, rules and orders made thereunder.

29. Accordingly, we direct the State/Prosecution to specifically bring these aspects to the notice of the Magistrate/Courts in pending matters involving the foreign nationals who have no valid travel documents or who have overstayed by the visa term, by, if necessary, filing specific applications and furnishing all details. We also direct the Magistrate/Courts to take cognizance of such aspects, particularly at the stage of consideration of bail applications made by such foreign nationals.

30. We therefore dispose of the Suo Motu Writ Petition No.1 of 2019 with the following order/directions : -

(i) The Respondents, including in particular, Respondent Nos.1, 2 and 5 are directed to make the Detention Centre constituted by order dated 7th February, 2019 at the Old Judicial Lock Up at Mapusa, fully operational by providing necessary infrastructure and staff, as expeditiously as possible, and in any case, within a period of three months from today. Respondent No.5 is directed to file an affidavit of compliance on or before 3rd June, 2019, in this Court;

(ii) The Respondent Nos.1, 2 and 5, in making operational the aforesaid Detention Centre, are directed to comply with, to the extent possible, guidelines set out in “*Model Detention Centre/Holding Centre/Camp Manual*” circulated by the Government of India, Ministry of Home Affairs (Foreigners Division) by communication dated 31st January, 2019. In particular, Respondent Nos.1, 2 and 5 must endeavour to provide the amenities set out in Chapter 4 of the aforesaid Manual within timelines as indicated above;

(iii) The Respondents are directed to take emergent steps as may be permissible in law, in order to deport the foreign nationals in Goa, who have no proper/valid travel documents or whose visa terms have since expired, or such like reasons, where there are no legal impediments for taking such steps. Respondent No.5 is also directed to file affidavit of compliance on or before 3rd June, 2019, indicating the statistics/status of the action/steps taken in this regard in this Court;

(iv) In pending matters involving foreign nationals who have no proper/valid travel documents or whose visa term has expired or for like reasons, State/Prosecution must file appropriate applications before the Magistrate/Courts to

bring this aspect to the notice of the concerned Magistrate/Courts where such matters are pending. Similarly, the State/Prosecution must, by filing a reply bring to the notice of Magistrate/Courts such circumstances when the foreign nationals who have no proper travel documents or whose visa term has expired, apply for grant of bail;

(v) The Magistrate/Courts where the matters involving foreign nationals who have no proper/valid travel documents or whose visa term has expired or like reasons must take cognizance of such aspects and thereafter make appropriate orders in accordance with law so that the legal process is not used as an instrument to facilitate overstay or otherwise violate the provisions of Foreigners Act, 1946, rules and orders made thereunder.

(vi) We direct the Chief Secretary, State of Goa, to circulate a copy of this judgment and order to all State Government/Prosecution agencies within a period of four weeks from today, for necessary action and compliance;

(vii) Similarly, we direct the registry of this Court to circulate a copy of this judgment and order to the Principal District Judges of North and South Goa Districts within a period of four weeks from today, for necessary action and compliance. The Principal District Judges should, circulate a copy of this judgment and order to the Magistrate/Courts for necessary action and compliance;

(viii) We also request the Principal District Judges of North and South Goa Districts to consider holding a special workshop to develop a set of best practices to deal

with the cases involving the foreign nationals, who have no proper/valid travel documents or whose visa term has already expired. The two Principal District Judges may also consider involving the officials from the Ministry of Home Affairs (Foreigners Division), Government of India, as also the State Government/Prosecution agencies, in such workshop so that some coordinated action on the subject, becomes feasible.

31. Finally, we record our appreciation and gratitude to the assistance rendered to us by Mr. D. Pangam, learned Amicus Curiae and Mr. Faldessai, learned Additional Government Advocate/Additional Public Prosecutor in the present matter.

Nutan D. Sardesai, J

M.S. Sonak, J

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