

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**( Criminal Jurisdiction )**

**Reserved on – 11.06.2020  
Pronounced on – 12.06.2020**

**PRESENT**

**The HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**CRL OP(MD)Nos.5769, 6018 & 6103 of 2020**

**in CrI OP(MD)No.5769 of 2020 :**

- 1.Md Kameual Islam, S/o Abdul Kalai,  
Bangladesh.
- 2.Md Tanvir Raihan, S/o Aminul Haqde  
Bangladesh.
- 3.Md Monir Hasan, S/o Islam  
Bangladesh.
- 4.Md Solaiman, S/o Amied,  
Bangladesh.
- 5.Md Abdul Haleque, S/o Ardhed Ali  
Bangladesh.
- 6.Md Kamal Bapary, S/o Habib Bapary  
Bangladesh.
- 7.Md Abdul Rajjak, S/o Jafar Ali  
Bangladesh.
- 8.Md Mokter Ali, S/o Sadek Moral  
Bangladesh.
- 9.Md Robi Gazi, S/o Omar Ali Gazi,  
Bangladesh.

10.Md A.K.Shamsul Hooque, S/o Arsed Ali, Bangladesh.

11.Md Sheen Mahud, S/o A.M.Alan,  
Bangladesh.

... Petitioners/Accused Nos.1 to 11

**Vs.**

1.The State, rep.by  
The Inspector of Police,  
Dindigul Town South Police Station,  
Dindigul District.  
In Crime No.234 of 2020).

...1<sup>st</sup> Respondent/Complainant

2.The Secretary to Government,  
Ministry of Home Affairs,  
Union of India,  
New Delhi.

...2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent

(The 2<sup>nd</sup> respondent is suo motu impleaded  
in these proceedings by order dated 10.06.2020)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

**PRAYER** :-For Bail in Crime No. 234 of 2020 on the file of the  
Inspector of Police, Dindigul Town South Police Station, Dindigul  
District.

**in CrI OP(MD)No.6018 of 2020 :**

- 1.Zailani, S/o.Poniman,  
Indonesia, Passport No.C4253560.
2. Siti Rohana, W/o.Zailani,  
Indonesia, Passport No.C4253527.
- 3.Ramalan Bin Ibrahim, S/o.Ibrahim,  
Indonesia, Passport No.C4253150.
- 4.Aman Jahariah, W/o.Ramalan Jahariah,  
Indonesia, Passport No.C4253887.
- 5.Mohamed Nasir Ibrahim, S/o.Ibrahim,

Indonesia.Passport No.B4590114.

6.Kamariah, W/o.Mohamed Nasir Ibrahim,  
Indonesia, Passport No.C4249962.

7.Mariono, S/o.Misrin,  
Indonesia, Passport No.C4253517

8.Sumisni, W/o.Mariono,  
Indonesia, Passport No.C4253516.

... Petitioners / Accused Nos.1 to 8

**Vs.**

The State, rep.by  
the Inspector of Police,  
Kenikkarai Police Station,  
Ramanathapuram District.  
(In Crime No.188 of 2020)

...1<sup>st</sup> Respondent/Complainant

2.The Secretary to Government,  
Ministry of Home Affairs,  
Union of India,  
New Delhi.

...2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent

(The 2<sup>nd</sup> respondent is suo motu impleaded  
in these proceedings by order dated 10.06.2020)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

**PRAYER** :-For Bail in Crime No.188 of 2020 on the file of the  
Inspector of Police, Kenikkarai Police Station, Ramanathapuram  
District.

**in CrI OP(MD)No.6103 of 2020 :**

1.Mokhamad Sobiyil Arkham, S/o.Chudhori,  
Indonesia, P.P.No.C2009386.

2.Rudianto, S/o.Dariadi,

3/29

- Indonesia, P.P.No.B7461433.
- 3.Triono, S/o.Katiman,  
Indonesia, P.P.No.B8743282.
- 4.Rianto, S/o.Munjari,  
Indonesia, P.P.No.C6110799.
- 5.Santoso, S/o.Tean,  
Indonesia, P.P.No.B9229942.
- 6.Iskandar Rasyid, S/o.Rasyidsalen,  
Indonesia, P.P.No.B7461423.
- 7.Syafis, S/o.Saman,  
Indonesia, P.P.No.C9756617.
- 8.Agus Junaidi, S/o.Sokesh,  
Indonesia, P.P.No.C5189263.
- 9.Agus Salim Firdaus, S/o.Firdaus,  
Indonesia, P.P.No.C4487959.
- 10.Husen Ali Muharram, S/o.Larakedu,  
Indonesia, P.P.No.C4673019.
- 11.Ismandi Saleh, S/o.Mangudin,  
Indonesia, P.P.No.B7832470.
- 12.Ahamed Basri, S/o.Sabri,  
Indonesia, P.P.No.C5356174.
- ...Petitioners/Accused Nos.1 to 12

WEB COPY Vs.

- 1.The State, rep.by  
The Inspector of Police,  
Adiramapattinam Police Station,  
Thanjavur District.  
(Crime No.182 of 2020). ...1<sup>st</sup> Respondent/Complainant

2.The Secretary to Government,  
Ministry of Home Affairs,  
Union of India,  
New Delhi.

...2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent

(The 2<sup>nd</sup> respondent is suo motu impleaded  
in these proceedings by order dated 10.06.2020)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

**PRAYER** :-For Bail in Crime No.182 of 2020 on the file of the  
Inspector of Police, Adiramapattinam Police Station, Thanjavur  
District.

For petitioners  
in Crl OP(MD)Nos.5769 : Mr.M.Ajmal Khan, Senior Counsel  
& 6018 of 2020 for Mr.J.Sulthan Basha

For petitioner  
in Crl OP(MD)No. : Mr.M.Ajmal Khan, Senior Counsel  
6103 of 2020 for Mr.A.Raja Mohamed.

For Respondent No.1  
in all cases : Mr.A.Natarajan,  
State Public Prosecutor assisted by  
Mr.A.Robinson, Govt.Advocate (crl.side)

For Respondent No.2  
in all cases : Mr.V.Kathirvelu,  
Assistant Solicitor General of India  
assisted by Mr.K.Prabhu

**COMMON ORDER**

**The run-up :**

The petitioners are foreign nationals. They entered India on  
tourist visas. The respondent police arrested them on the ground

that they had engaged in religious activities in breach of the visa conditions. They had also defied the lock down regulations promulgated by the Government in the wake of Covid-19 pandemic. Though the petitioners were fully aware that the Government had ordered closure of all places of worship, they stayed in groups in various mosques without observing the social distancing rules. Hence, the jurisdictional police registered FIRs against the petitioners herein alleging that they had committed offences under Sections 13 and 14 of the Foreigners Act, 1946, Sections 188, 269, 270, 271 and 278 of IPC, Section 3 of Epidemic Diseases Act 1897, Section 58(4), 134, 135 of the Tamil nadu Public Health Act, 1939 and Section 51(b) of the Disaster Management Act, 2005. The petitioners were arrested and remanded to judicial custody. While most of the petitioners are lodged in Central Prison, Puzhal, some of them are in Sub Jail, Saidapet. They now seek bail.

**Submissions made on behalf of the petitioners :**

2.The learned Senior Counsel appearing for the petitioners submitted that the petitioners are entitled to compulsive bail as the

final reports have not been filed within the statutory period. He wanted me to take note of the facts and circumstances of the case in its entirety and render substantial justice by issuing appropriate directions.

**Objections raised by the respondents :**

3.The learned State Public Prosecutor submitted that as on date the case against the petitioners is pending at the FIR stage and that the investigation is still going on. He drew the attention of this Court to the orders passed by the Government designating the transit yard of the Central Prison, Puzhal, Chennai as Special Camp to lodge the foreign nationals who have violated the visa conditions and committed the offences in question. Therefore, the petitioners on being granted bail will have to be shifted to the said special camp. They will have to necessarily stay there till the criminal prosecution is over or their deportation, whichever is earlier.

4.The learned Assistant Solicitor General of India appearing for the Central Government also adopted the submissions of the learned State Public Prosecutor. He drew my attention to the order

dated 19.06.2019 made in CrI.RC Nos.468 & 469 of 2019 which also concerned foreign nationals and in which directions had been issued to ensure their presence for facing trial.

**Facts beyond dispute :**

5.The following facts are beyond the pale of controversy :

(a)The petitioners are foreign nationals and they had arrived in India **only** on **tourist** visas.

(b)It is not the case of the prosecution that the petitioners had indulged in proselytizing activities. Their acts have not prejudiced public tranquility.

(c)They have been in prison since 5<sup>th</sup>/9<sup>th</sup> April of 2020 and more than two months have elapsed.

(d)None of the petitioners tested positive for Covid-19 and there is absolutely nothing on record to indicate that they had contributed to the spread of the novel corona virus.

**Consideration of the issues involved :**

6.I have no doubt whatsoever in my mind that the petitioners are Tablighis even though this has not been expressly conceded. Tablighi Jamaat has come under severe and harsh criticism for its reckless and irresponsible conduct and rightly so. There are accusations that its puritanical and revivalist project prepares the

ground for islamic radicalization. Of course, this narrative has been contested by quite a few public intellectuals.

7.I must record at this juncture that Prof.Upendra Baxi's remark in his recent essay on "**Exodus Constitutionalism**" published by The India Forum that "there is, also, no such thing as 'migrants' but only persons and groups with distinctively (and often disturbingly) different needs and abilities..." helped me to see the petitioners before me as thirty one individuals instead of collectively thingifying them as "Tablighis". Categorization can have serious pitfalls. Justicing has to be an individualized exercise. There are scores of foreign Tablighis who are presently in detention. They hail from different countries. Some of them are women. Quite a few are senior citizens. They are normal human beings. They are now stuck in alien surroundings. The petitioners came here propelled by a sense of religious idealism. But their mission went awry. They are now eager to go back to their families. They are willing to file individual affidavits admitting that they had violated the visa conditions. They undertake that they will not enter India for the next ten years. They will make their own arrangements for return by coordinating with their respective Embassies and Consulates.

**Whether the petitioners are entitled to bail ? :**

8.The answer to the above question is obviously in the affirmative. The offences which the petitioners are alleged to have committed are not akin to those offences for which there are limitations for grant of bail. If a person is accused of having committed offences under NDPS Act, 1985 involving commercial quantity, he cannot be released on bail unless there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 mandates that an accused person shall not be released on bail or on his own bond if the court, on a perusal of the case diary or the final report is of the opinion that there are reasonable grounds for believing that the accusation is prima facie true. The restrictions for grant of bail set out in Section 437 of Cr.Pc are also absent in this case. Even though almost seventy days have elapsed since their arrest, final report is yet to be filed. Therefore, the onus is only on the

prosecution to convince me as to why I should deny bail to the petitioners. I must record that the respondent police have not placed any material or advanced any contention to impel me to dismiss these petitions.

9. In fact, there cannot be any objection for granting bail to the petitioners herein. They had been arrested in the first week of April, 2020 and there is absolutely no progress in the investigation. The continued incarceration of the petitioners is not going to serve any purpose. Since the petitioners are foreigners, it would obviously be difficult for them to arrange local sureties. Therefore, I direct that they shall be released on their own bond. The bonds can be submitted to the jurisdictional magistrates through e-mails and the jurisdictional magistrates are directed to accept the same and also issue appropriate release orders.

**Whether the petitioners after release can be detained in special camps?:**

10. The learned State Public Prosecutor asserts that after the petitioners are released from jail, they will have to be necessarily shifted to the special camp that has been designated to accommodate them. It appears that a Borstal School was

established by the Government in the premises of transit yard in Central Prison, Puzhal under Section 3(1) of the Tamil Nadu Borstal Schools Act, 1925 for detaining adolescent offenders belonging to Chennai, Kancheepuram and Thiruvallur Districts. While so, a letter dated 15.04.2020 was received from the Director General of Police, Chennai-4 stating that fourteen cases have been registered involving 129 foreign nationals including women for their violation of visa conditions and other offences. Proposals were submitted for lodging them in a special camp till their deportation as they may be released on bail shortly. Trichy special camp could not accommodate all of them since it was facing space constraint. Therefore, the DGP requested the Government to designate Borstal School, Puzhal Prison as a special camp to accommodate the foreign nationals. Accepting the aforesaid request, the Government rescinded its earlier notification establishing a Borstal School and issued G.O (2D) No.99, dated 22.04.2020 declaring the premises of transit yard in Central Prison, Puzhal as special camp to lodge the foreign nationals who have violated the visa conditions and committed other offences.

**11.** Interestingly, after so declaring, the Principal Secretary to

Government, Public Department vide Letter No.SR.III/717-1/2020 dated 23.04.2020 called for a report on the following :

“whether the place is fit and ready to lodge the foreign nationals who are to be lodged in the Special Camp under the provision of Section 3(2)(e) of the Foreigners Act, 1946.

Necessary prior arrangements like security, feeding and other basic amenities that have to be made.

Whether the facilities like civil, electrical, water, sanitation, lighting etc and sufficient number of toilets for the use of inmates, are available keeping in mind the social distancing to be maintained in view of Covid-19 out-break.”

The letter added “If the above facilities are not available, a proposal with regard to cost of estimate for the repair works to be carried out may be sent.” The sequence of events set out above would clearly show that the authorities acted out of haste and there was really no application of mind.

**12.**Section 3 of the Foreigners Act, 1946 enables the Central Government to make orders for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or

their presence or continued presence therein. Section 3(2)(e) is more relevant. It states that orders made under this section may 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;
- (iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
- (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
- (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
- (vi) prohibiting him from association with persons of a prescribed or specified description;
- (vii) prohibiting him from engaging in activities of a prescribed or specified description;
- (viii) prohibiting him from using or possessing prescribed or specified articles;
- (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

Section 4(2) of the Foreigners Act, 1946 is as follows :

“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.”

The learned State Public Prosecutor is relying on the aforesaid provisions to sustain his contention that the Government is having every authority to shift the petitioners to the special camp even after they are granted bail. I must necessarily sustain the said contention since they are rooted in statutory provisions. But the issue is something else. While no exception can be taken to the encampment measure of the Government, the question is what will be the resultant ambience and conditions of stay. The answer lies in examining the statutory scheme and by contrasting Section 3(2) (e) r/w Section 4(2) with 3(2)(g) and Section 4(1) of the Act. As per Section 3(2)(g), the order passed by the Government under Section 3

can provide for the arrest and detention or confinement of the foreigner. The foreigners who fall under Section 3(2)(g) are dealt under Section 4(1) of the Act. It is as follows :

“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 and 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.”

Section 4 of the Foreigners Act, 1946 dealing with internees classifies them under two categories. Sub-section (1) deals with those foreigners who have been directed to be detained or confined. The sub-section mandates that they shall be detained or confined. But, the other category who are referred to as persons on parole are required to reside at a place set apart for their residence. The provision makes a distinction between “detention or confinement” on the one hand and “residence” on the other. The petitioners herein fall within the purview of Section 3(2)(e) r/w Section 4(2) of the

Foreigners Act. Therefore, the conditions of the camp in which they are to be accommodated cannot be that of a detention camp and the distinction must be clear and apparent and felt. I do not for a moment suggest that the conditions of a detention camp can be anything. Far from it ; even those camps will have adhere to certain parameters laid down in international humanitarian law. For instance, right to sanitation and safe drinking water is a basic human right. I only emphasise and highlight that the conditions of a camp envisaged in Section 4(2) must be superior and better compared to the one contemplated by Section 4(1) of the Act.

**13.**If this distinction is borne in mind, the petitioners obviously cannot be confined in the transit yard of the Central Prison, Puzhal. The learned Senior Counsel appearing for the petitioners states that the management of Jamia Qasmiyah Arabi College, Washermenpet, Chennai is willing to accommodate the petitioners herein. The petitioners have not committed any act that is prejudicial to public tranquility or security of India. The petitioners are not going to abscond. Their travel documents are only with the authorities. Since the petitioners want to return to their native country at the earliest, they would obviously extend their fullest cooperation to any

condition that may be stipulated by the authorities.

**14.**Of course, on account of Chennai becoming a Covid-19 hot spot, the Government under Epidemic Diseases Act and Disaster Management Act can stipulate severe conditions on the college management. The entire campus can be directed to be handed over to the district administration for inspection and for disinfecting. The petitioners also can be directed to observe strict conditions. The Government should therefore consider the offer made by the management of Jamia Qasmiyah Arabi College, Washermenpet, Chennai. I however cannot straightaway direct the Government to designate the Jamia Qasmiyah Arabi College, Washermenpet, Chennai as a special camp for the purpose of Section 4(2) of the Foreigners Act, 1946 and shift the petitioners to the said campus. But I can definitely direct the Government of Tamil Nadu to consider this proposal bearing in mind that the petitioners cannot continue to be treated as prison inmates.

WEB COPY

**Whether the petitioners have the right to return to their native country ? :**

**15.**I again go back to Upendra Baxi. The objections raised by the State authorities cannot obscure the “lived reality” of the petitioners. The petitioners had come to India to serve the cause of their religion. Circumstances suddenly turned adverse and landed them in prison. They have spent more than 70 days in what are truly difficult conditions. Saidapet sub-jail in which some of them have been lodged adjoins the infamous Coovam river.

**16.**Covid-19 should teach us to care for each other rather than use the arsenal of law. Merely because the petitioners have contravened the visa conditions, they cannot be seen as criminals. The situation calls for empathy and understanding. The petitioners are yearning “to breath the native air in their own ground”. The longing felt by those who are stuck in an alien place is captured in the following lines :

*“From the lone sheiling of the misty highland  
Mountains divide us, and the waste of seas -  
Yet still the blood is strong, the heart is Highland,  
And even in dreams we behold the Hebrides.”*

In Tamil Sangam Poetry, there is a poem “Naaraai.. Naaraai.. Sengaal Naaraai”. The husband hailing from Kumbakonam had

come to Madurai in search of fortune. Circumstances did not unfold in the way he hoped. He fell into severe adversity. He therefore requests the bird (flamingo) to carry a message to his poor wife. The lines make a heart rending reading.

17.I feel sensitive to the petitioners' misery particularly in these pandemic times. I posed a question to myself if I am acting beyond jurisdiction ? The Hon'ble Chief Justice has allotted the subject of Criminal Original Petition-Bail, Anticipatory Bail Petitions, Criminal Appeal and Criminal Revision Petitions to be dealt with by me. But, in view of my being a Judge of the High Court, I certainly have the inherent power to make such orders as may be necessary to secure the ends of justice. The Constitution Bench of the Hon'ble Supreme Court in the decision reported in **(2002) 4 SCC 578 (P.Ramachandra Rao v. State of Karnataka)** had held as follows :

“...In appropriate cases, the High Courts have exercise their jurisdiction under Section 482 of Cr.P.C. for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the

Constitution. The Constitution Bench in A.R. Antulay's case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the Courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting to an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.”

**18.**To quote Baxi, at the heart of every constitution there pulsates a distinction between 'us' and 'them', the constitutional self and the constitutional others. But there are provisions transcending this distinction, being applicable to “all persons”. Article 21 of the Constitution surely applies to the petitioners also. Failure to respond to the petitioners' existential horror would amount to judicial abdication. If I come to the conclusion that the petitioners have already suffered enough and that they are being put to “surplus or unnecessary suffering”, I am obliged to intervene.

**19.**I assume that the petitioners have committed the offences in question. That need not deter me from granting relief. A learned Judge of the Bombay High Court in **2006 CRL. L.J. 618 (Usha**

**Badri Poonawalla v. Kurien Babu**) held that the power under Section 482 of Cr.PC is available even in those cases where there is prima facie material available to show that the offence has been made out. It is not that the inherent powers of the High Court are to be invoked only when the offence is not made out. Even when the offence is made out, if the continuance of the prosecution would amount to an abuse of process, this inherent power can be tapped.

**20.**I now turn to Article 12 of the International Covenant on Civil and Political Rights. It is as follows :

*“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

*2. Everyone shall be free to leave any country, including his own.*

*3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*

*4.No one shall be arbitrarily deprived of the right to enter his own country.”*

India is a signatory to this covenant. It has also ratified it. This Convention has been relied on in quite a few decisions of the Hon'ble Supreme Court. In ***Navtej Singh Johar vs. Union of India, (2018) 10 SCC 1***, it was observed as follows :

“523.International law today has evolved towards establishing that the criminalization of consensual sexual acts between same-sex adults in private contravenes the rights to equality, privacy, and freedom from discrimination. These rights are recognised in international treaties, covenants, and agreements which India has ratified, including the UDHR, ICCPR, and the ICESCR. India has a constitutional duty to honour these internationally recognized Rules and principles. Article 51 of the Constitution, which forms part of the Directive Principles of State Policy, requires the State to endeavour to "foster respect for international law and treaty obligations in the dealings of organised peoples with one another.”

Of course, the petitioners having violated the visa conditions cannot demand that they must be allowed to return as a matter of right. But then, the authorities cannot arbitrarily deny the said request.

Since the petitioners have already been in prison for seventy days, there is a requirement to undertake a proportionality review. I am of the view that the prison term already undergone by them should be considered as sufficient punishment. When the petitioners have already paid the price for their misadventure, to insist that they should continue to remain in India in prison-like conditions till the proceedings are concluded grossly offends the principle of proportionality and fairness.

**21.** During times of armed conflict or emergency, the right to leave any country can be invoked. The current pandemic times are no different. The petitioners fortunately have not tested positive so far. The position may be different tomorrow. The lives of the petitioners may be in danger. Times may be uncertain but rights have to be certain. The petitioners are willing to bear the cost of transportation. They will coordinate with their embassies and consulates and arrange their return. All that the respondents need to do is to play a facilitatory role. Instead of doing so, if the respondents insist on detaining the petitioners and prosecuting them, it can only be characterized as unreasonable, unjust and unfair. I, therefore, hold that the continuance of the criminal

prosecution against the petitioners herein would certainly amount to an infraction of their fundamental right under Article 21 of the Constitution of India and directing their closure on appropriate terms alone would secure the ends of justice. Since the petitioners have already suffered enough for their transgression of law and there is prevalence of medical emergency, the petitioners are having the right to return to their native countries at the earliest opportunity.

**22.**In fact, I am not issuing any direction contrary to law. I am merely echoing what is already a settled executive policy. The Government of India vide O.M.No.25022/82/96-F.1 dated 10.04.1996 mandated the State Governments to keep a watch on all persons who engage in religious activities in violation of tourist visa conditions and to deport them immediately. It reads as under :

“It has come to notice that some foreigners who enter India on the strength of tourist visas, indulge in religious/Tabligh work against the Visa rules/regulations and thus render themselves to action under the Foreigners Act, 1946. State Governments are required to keep a watch on the activities of such foreigners and as and when any foreigner coming on

tourist visa is found indulging himself in religious activities/Tabligh work, action should be taken against him under the Foreigners Act and he should be deported to the country of his origin under the powers already delegated to the State Govts. A report should also be sent to this Ministry so that such persons are put on 'Prior Reference Category' for the purpose of grant of visa to them in future.”

Thus by facilitating the immediate deportation of the petitioners to their respective countries, the Government of Tamil Nadu would only be acting in terms of the aforesaid memorandum.

**23.**I, therefore, issue the following directions :

1.The petitioners are granted bail. Accordingly, they are ordered to be released from the respective prisons wherein they are presently detained on submission of their own bonds. The jurisdictional magistrates will accept the same and issue the release orders.

2.After the petitioners are released on bail, it is open to the authorities to require the petitioners to stay at the special camp earmarked under Section 3(2)(e) r/w 4(2) of the Foreigners Act, 1946. But, the Secretary to Government, Home Department, Government of Tamil Nadu is directed to consider the proposal submitted by the management of Jamia Qasmiyah Arabi College, Washermenpet, Chennai to house the petitioners and

pass appropriate orders in the light of the observations made supra.

3.If the petitioners execute appropriate affidavits expressing their regret for having violated the visa conditions, proceedings against them shall be concluded by filing final reports recording the same.

4.It is for the petitioners to coordinate with their respective embassies/consulates and arrange their return to their respective nations. The Government of Tamil Nadu or the Government of India will only play a facilitatory role.

**24.**The criminal original petitions are allowed on the above terms.

Index : Yes / No  
Internet : Yes / No  
Skm

(G.R.S, J.)  
12.06.2020

**Note :** In view of the present lock down owing to Covid-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.The Judicial Magistrate No.3, Dindigul.

2.The Judicial Magistrate, Pattukottai.

27/29

- 3.The Judicial Magistrate No.2, Ramanathapuram.
- 4.Do-Through The Chief Judicial Magistrates,  
Dindigul, Thanjavur , Ramanathapuram Districts.
- 5.The Superintendent, Puzhal Central Prison, Chennai.
- 6.The Superintendent, 'Sub Jail, Sydapet, Chennai.
- 7.The Secretary to Government, Ministry of Home Affairs,  
Union of India, New Delhi.
- 8.The Inspector of Police, Dindigul Town South Police Station,  
Dindigul District.
- 9.The Inspector of Police, Kenikkarai Police Station,  
Ramanathapuram District.
- 10.The Inspector of Police, Adiramapattinam Police Station,  
Thanjavur District.
- 11.The Public Prosecutor,  
Madras High Court, Chennai.

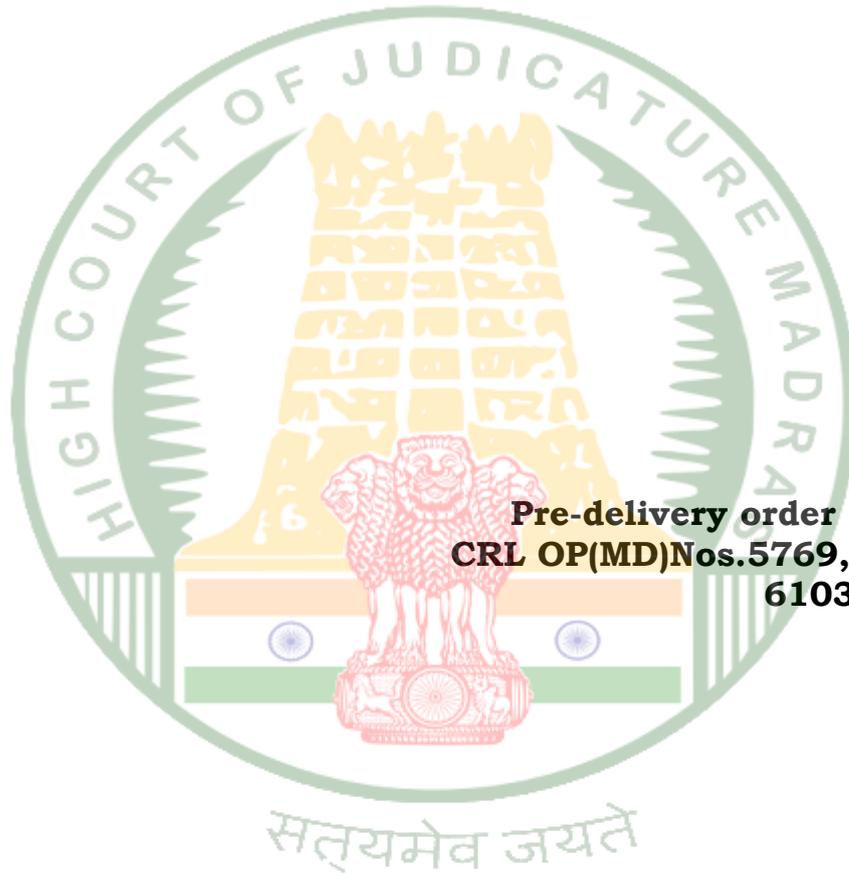


WEB COPY

CRL OP(MD). No.5769 of 2020

**G.R.SWAMINATHAN, J.**

Skm



**Pre-delivery order made in  
CRL OP(MD)Nos.5769, 6018 &  
6103 of 2020**

**WEB COPY**

**Date : 12/06/2020**