

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 548 OF 2020

1. Konan Kodio Ganstone,
Age:- 47 years, Occu- Business
R/o Ivori Kost.
2. Kone Pefigod Hamid
Age:- 39 years, Occu- Business
R/o Ivori Kost.
3. Kita Manado
Age:- Major, Occu- Business
R/o Ivori Kost.
4. Kome Atomo Kapale Mathisara
Age:- 39 years, Occu- Business
R/o Ivori Kost.
5. Tore Bakari,
Age:- 32 years, Occu- Business
R/o Ivori Kost.
6. Rashad Saiedi
Age:- 44 years, Occu- Business
R/o Tanzaniya.
7. Maya Sulemani Athomani
Age:- 24 years, Occu- Business
R/o Tanzaniya.
8. Abdulla Sulisha Saiedi
Age:- 45 years, Occu- Business
R/o Tanzaniya.
9. Haidarniya Abdul Nasir,
Age:- 25 years, Occu- Business
R/o Iran.
10. Dombiya Mori
Age:- Major, Occu- Business
R/o Ivori Kost.
11. Panchabhai Abdul Rahim
Age:- Major, Occu- Business
R/o Gujarat.

12. Mohammad Ali Ammen,
Age:- Major, Occu- Business
R/o Mumbai.
13. Mohammad Shakir,
Age:- Major, Occu- Business
R/o Tamilnadu.
14. Shaikh Alameen,
Age :- Major, Occu. Business,
R/o. Tamilnadu.

..... PETITIONERS

VERSUS

State of Maharashtra through Police Station
Officer, Jamkhed Police Station, Jamkhed,
Tq. Jamkhed, Dist- Ahmednagar.

.....RESPONDENT

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for petitioners.
Mr. M.M. Nerlikar, APP for respondent/State.

WITH
CRIMINAL WRIT PETITION NO. 554 OF 2020

1. Hammd Abdulkadar Banota
Age:- 33 years, Occu- Business
R/o. Jibuti Country.
2. Guled Abdilahi Abdi
Age:- 31 years, Occu- Business
R/o Jibuti Country.
3. Abdul Rajjak Yunus Arhe
Age:- 37 years, Occu- Business
R/o Jibuti Country.
4. Faran Yasin Bogorehe
Age:- 36 years, Occu- Business
R/o Jibuti Country.
5. Abdulla Ise Kamil
Age:- 41 years, Occu- Business
R/o Jibuti Country.
6. Abudu Mamudu

Age:- 42 years, Occu- Business
R/o Benin Country.

7. KuwasiKaumi Maksim
Age:- 44 years, Occu- Business
R/o Dikote Diwayar Country.
8. Foufana Sulemane
Age:- Major, Occu- Business
R/o Iverian Country.
9. Boyasari Abdul Gafar
Age:- 59 years, Occu- Business
R/o Iverian Country.
10. Mensaha Ismail Yusuf
Age:- 30 years, Occu- Business
R/o Ghnma Country.

.....PETITIONERS

VERSUS

State of Maharashtra through Police Station
Officer, Newasa Police Station, Newasa,
Tq. Newasa, Dist- Ahmednagar.

.....RESPONDENT

Mr. Shaikh Abdul Taher A.K. (A.T.A.K.), Advocate for petitioners.
Mr. M.M. Nerlikar, APP for respondent/State.

WITH
CRIMINAL WRIT PETITION NO. 552 OF 2020

1. Asalebin Mohammad Noor
Age:- 27 years, Occu- Business
R/o Brunei, Derusallam.
2. Iswan Dani Linga Alkadar Linga
Age:- 39 years, Occu- Business
R/o INDONESIA.
3. Sarikin Bin Marbiraja
Age:- 51 years, Occu- Business
R/o INDONESIA.
4. Sukup Husain
Age:- 74 years, Occu- Nil

R/o INDONESIA.

5. Mohammad Arif Amruddin Rambeli
Age:- 26 years, Occu- Business
R/o Brunei, Darussalam.
6. Wasiko Sama Santan
Age:- 51 years, Occu- Business
R/o INDONESIA.
7. Kamiyar Brunai Ahmed Rejo
Age:- 52 years, Occu- Business
R/o INDONESIA.
8. Mohmmad Amruddin Abdulla
Age:- 20 years, Occu- Education
R/o INDONESIA.
9. Mohmmad Firdos Haji Muner
Age:- 33 years, Occu- Business
R/o Brunei, Darussalam.
10. Mubalik Abdul Salim Pathan
Age:- 26 years, Occu- Business
R/o Kota, Rajasthan.
11. Munwar Riyakat Ali
Age:- 21 years, Occu- Education
R/o Rabarkhedi Fatak, Yashbagh
Stedium, Bhopal, Madhya Pradesh.

.....PETITIONERS

VERSUS

State of Maharashtra through Police Station
Officer, Ahmednagar Camp
Police Station, Ahmednagar,
Dist- Ahmednagar

.....RESPONDENT

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for petitioners.
Mr. M.M. Nerlikar, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

RESERVED ON : 11/08/2020

PRONOUNCED ON : 21/08/2020

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The first proceeding bearing Criminal Writ Petition No. 548/2020 is filed for relief of quashing of F.I.R. No.131/2020 registered in Jamkhed Police Station, Tahsil Jamkhed, District Ahmednagar and also for relief of quashing of the chargesheet which is filed in this crime. The second proceeding bearing No. Criminal Writ Petition No. 554/2020 is filed in C.R. No. 197/2020 registered in Newasa Police Station, Ahmednagar and the relief of quashing of the F.I.R. and case filed in the C.R. is claimed. The last proceeding bearing Criminal Writ Petition No. 552/2020 is filed in respect of C.R. No.496/2020 registered in Ahmednagar Camp Police Station, District Ahmednagar and similar reliefs are claimed. The chargesheets are filed in these crimes for offences punishable under sections 188, 269, 270, 290 of Indian Penal Code (hereinafter referred to as 'I.P.C.' for short), sections 37 (1)(3) r/w. 135 of Maharashtra Police Act, 1951 and section 11 of Maharashtra Covid-19 Measures and Rules, 2020, sections 2, 3 and 4 of Epidemic Diseases Act, 1897, section 14 (b) of Foreigners Act, 1946 and section 51(b) of the Disaster Management Act, 2005.

3) In Criminal Writ Petition No. 548/2020 the petitioners No.

1 to 10 are foreign nationals and petitioners No. 11 to 14 are Indian nationals. F.I.R. was given by the police constable for the State. In the first matter, it is his contention that on 25.3.2020 he and his colleagues were doing patrolling duty and the duty involved taking the steps for prevention of spreading of Covid-19 virus. It is his contention that they had received secret information that in Kazi Masjid of Jamkhed, some foreign nationals and Indian nationals were present and they were offering Namaz in the Masjid. It is his contention that they reached at Masjid at 20.45 hours and noticed that all the petitioners were present in the Masjid and they were together and they were offering Namaz. It is contended that these Muslim persons were also performing religious rites and giving speeches on the thoughts, on the philosophy of Muslim religion. It is contended that the foreign nationals had come on tourist visa, but they were found involved in such religious activity and they had committed breach of the order issued by District Collector. In respect of incident dated 25.3.2020, F.I.R. No. 131/2020 was given on 5.4.2020.

4) In Criminal Writ Petition No. 552/2020 petitioners No. 1 to 9 are foreign nationals and petitioner Nos. 10 and 11 are Indian national. In this case also, the F.I.R. was given by one police constable. Similar contentions were made by him like the contentions made in previous F.I.R. by the other police station.

According to him, he and his colleagues were doing patrolling duty on 30.3.2020 and they had received information that in Mehraj Masjid of Mukundnagar, Ahmednagar, there were nine foreign nationals and two Indian nationals and the trustees of the Masjid had given shelter to foreign nationals. According to him, they visited this Masjid on 30.3.2020 and they noticed that the trustees of Masjid had given shelter to foreign nationals. It is contended that on the same day, F.I.R. was given by him against the trustees for their act and C.R. No. 496/2020 was registered under sections 188, 269, 270 and 290 of I.P.C. and also under section 37 (1)(3) of Maharashtra Police Act for breach of the order made by the Collector. It is contended that these foreign nationals had come on tourist visa, but they were found spreading Muslim religion by giving speeches in Masjid. It is contended that there was the information that these foreign nationals had participated in the congregation in Markaj Nizamuddin Delhi and they had committed breach of lock down order issued by Collector, Ahmednagar. In respect of incident dated 30.3.2020 separate F.I.R. was given against petitioners on 4.4.2020 by police and the crime came to be registered.

5) In Criminal Writ Petition No. 554/2020, all the petitioners are foreign nationals. This F.I.R. was also given by police constable and similar contentions are made. According to him, on 30.3.2020 when they were on patrolling duty, they received secret information

and on that basis, they went to Bhaldar Masjid of Newasa city and there they found two trustees of Masjid with eight foreign nationals. It is contended that it was noticed that the foreign nationals were living in Masjid. It is contended that the F.I.R. No. 197/2020 was given on 5.4.2020. It is contended that it was noticed that as foreign nationals had come to India on tourist visa, but they were working for Tablig Jamat and they were found spreading Muslim religion and that was in breach of conditions of visa, F.I.R. was given against them.

6) It is the contention of the petitioners, who are mainly foreign nationals that they came to India on valid visa issued by the Government of India and they have come to experience Indian culture, tradition, hospitality and Indian food. It is their contention that on their arrival at airport, they were screened and tested for Covid-19 virus and only when they were found negative for virus, they were allowed to leave the airport. It is their contention that they were visiting various places of India and particularly, Ahmednagar to observe the religious practices of Muslims. It is their contention that after their arrival in Ahmednagar district, they had informed to District Superintendent of Police about their arrival and that was done much prior to the date of registration of the crime against them. Though they have contended that the lock down was declared by Maharashtra Government on 14.3.2020, actually the lock down

was declared on 23.3.2020. They have contended that due to the lock down the vehicular movement was stopped and the persons were not allowed to leave the residential places to prevent the spreading of Covid-19. It is contended that the Masjid had given shelter to them as due to lock down order, hotels and lodges were closed. It is their contention that some order was issued by Collector, but that was not actually prohibitory order and they were not involved in illegal activity including the breach of order of District Collector. It is their contention that even at Markaz, they had observed norms of physical distancing. It is their contention that while granting visa, they were not asked to inform to local authority about their visit to those places, but they had informed local officers. It is contended that under the conditions of visa, there was no prohibition to visit religious places like Masjids and there was prohibition to visit containment areas and the connected areas with regard to defence matter. It is their contention that they were not involved in breach of orders or in propagating Muslim religion.

7) In reply affidavit filed by District Superintendent of Police, Ahmednagar, he has contended that the petitioners were found visiting places for preaching Islam religion and so, crimes are registered against them. It is contended that after receipt of information against them, the petitioners were taken in custody, but first they were sent for institutional quarantine. It is contended that

some of them like five foreign nationals from three cases were found infected by the virus. It is contended that after quarantine period was over all the petitioners were shown to be formally arrested.

8) It is the contention of District Superintendent of Police that investigation was made in three crimes and there is sufficient material collected to show that the petitioners were involved in the offence committed under aforesaid sections of various Acts and so, the chargesheets are filed. It is contended that there is record of C.D.R. which is about congregation which was held at Markaz. It is contended that the foreigners had come to Ahmednagar in groups with some Indian nationals and they had visited many places, they were living in Masjids during their stay and thereby they committed the offences. The District Superintendent of Police has also contended that on 14.3.2020 lock down was declared by the State Government and by the notification dated 23.3.2020 direction was given to close the religious places. It is contended that powers were given to Local Authorities of the District places by the Government to exercise powers under Epidemic Diseases Act, 1897. It is contended that by exercising these powers District Magistrate had issued prohibitory orders and directions were given to close all public places. It is contended that in spite of prohibitory orders and conditions of visa, the petitioners indulged in Tabligh activity. It is his contention that announcements were made at public places to ask the persons who

had attended Markaz Masjid to come forward voluntarily for testing them in respect of virus, but they did not come forward voluntarily and they had created threat of spreading Covid-19 virus. It is contended that it was necessary for them to give necessary information to local authority in 'C' form, but they had given incorrect addresses in 'C' form and they were actually living in Masjids. In reply affidavit, the provisions of Visa Manual are quoted in support of contention of the Superintendent of Police and he has contended that visa conditions prohibited Tabligh work by foreign national tourists. In reply, some observations made by Gujrat High Court in P.I.L. No. 42/2020 are mentioned in support of the contentions.

9) It can be said that the main thrust of the prosecution will be on breach of so called conditions of visa. The other main contention is in respect of breach of orders issued by the authorities created under Disaster Management Act, 2005 and the orders issued under Epidemic Diseases Act, 1897. First this Court will discuss the conditions of visa of which breach is alleged and material collected to prove that offence.

Visa Conditions

10) If there is breach of visa conditions, it can be said that offence under section 14 (b) of Foreigners Act is committed by the foreigners. Section 14 (b) reads as under :-

“14. Penalty for contravention of provisions of the Act, etc. - Whoever -

(a)

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c)

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.”

The provision shows that to make out this offence, it needs to be shown that there was some visa condition in existence at relevant time and the foreigners have acted in breach of that condition. Let us see as to what was the condition. At the outset, it needs to be mentioned that the so called conditions are not in the form of provisions of Act or rules framed under any Act. They are in the form of so called guidelines or at the most executive instructions. This Court is quoting entire material made available by the State on those guidelines.

11) A photocopy of general guidelines issued for issuing visa under Passport Act, 1930 is produced. Clause 15 of those Guidelines

show that though restrictions are put on the foreigners who come to India on tourist visa to prevent them from engaging in Tabligh activity, there is no restriction on them to visit religious places to attend the normal religious activities like attending religious discourse. However, preaching the religious ideology, making speeches in religious places, distribution of audio or visual display/pamphlets pertaining to religious ideologies, spreading conversion etc. is prohibited. Along with another compilation, the State has produced details of visa granted by India and this is also a photocopy produced along with affidavit in the compilation by the State along with the other record in which eligibility for getting tourist visa is mentioned at clause No. 18. It is mentioned that tourist visa can be granted to a foreigner whose sole objective of visiting India is recreation, sight seeing, casual visit to meet friends or relatives, attending a short term yoga programme, short duration medical treatment, but the activity does not contain other purpose or other activity. There is no need to go into the other details of eligibility conditions.

12) The learned APP has produced one compilation showing some circulars issued by Ministry of Home Affairs in such matters. First circular is dated 10.4.1996 and it is as under :-

“Confidential
Circular No. 206

No. 25022/82/96-F-I

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS.

10-4-96

To

Home Secretaries of all the State Governments
and U. T. Administration.

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 of 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.

(SUBHASH MEHTANI)
Under Secretary to the Govt. of India.

Copy forwarded for similar action to:-

1. FRRO, Delhi, Hans Bhawan, New Delhi.
2. FRRO, Calcutta, 237 Acharya Jagdish Chandra Bose Marg, Calcutta.
3. FRRO, Head Police Officer, Annexe-II, near Crawford Market, Bombay. I
4. CHIO, 9- Village Road, Nungambakkam, Madras-260 034.

(SUBHASH MEHTANI)
Under Secretary to the Govt. of India.

Internal Distribution.

Copy to F.II, F. III, F. IV, F. V, F.VI, F.VII, F.VIII.

(SUBHASH MEHTANI)
Under Secretary to the Govt. of India.”

Clarification of circular dated 10.4.1996 was given in another circular issued on 20.11.1996 and it is as under :-

“CONFIDENTIAL

NO. 25022/82/96- F.I.
GOVERNMENT OF INDIA. BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
(FOREIGNERS DIVISION)

Lok Nayak Bhavan
Khan Market, New Delhi 110 003

November 20, 1996

To

Home Secretaries of all State Governments/
Union Territory Administrations.

Sub:- Action against foreigners indulging in religious/
tabligh work.

Reference is invited to this Ministry's letter of even number dated 10.04.96 addressed to Home Secretaries of all State Government/Union Territory Administrations on the above subject (copy enclosed for ready reference). In the letter under reference, it was mentioned that foreign nationals who enter India on tourist visas and indulge in religious/tabligh work should be detected and action including their deportation under the Foreigners Act should be taken. It is clarified that attending tabligh jamat ijtemah (congregations) does not amount to tabligh work prohibited under instructions contained in the letter under reference. However, tabligh work does include place to place preaching, speaking from tabligh platform/canvassing during congregations etc and action against foreign nationals indulging in these activities has be to taken.

(SUBHASH MEHTANI)
Under Secretary to the Govt. of India.

Copy to :-

1. Shri. N. C. Padhi, Joint Director, IB
2. Shri. P. N. Dixit, Deputy Director (I), IB
3. FRRO, Delhi, Mumbai and Calcutta
4. CHIO, Madras

Copy also forwarded to all Indian Missions/Embassies/Posts abroad. It is requested that provisions contained in para 111 of the Visa Manual must be kept in view while dealing with applications for grant of visa for Tabligh work. All such applications together with necessary details are required to be referred to Ministry of Home Affairs for prior clearance.

Internal distribution

F.I to F. III Sections.”

The third circular was issued on 3.11.2011 and it was as under :-

“SECRET
MOST IMMEDIATE

No. 25022/116/2011-F.I
Government of India
Ministry of Home Affairs
(Foreigners Division)

.....
Jaisalmer House, 26 Man Singh Raod,
New Delhi- 110 011, 03 November, 2011.

To

- (i) Home Secretaries of all State Governments/
Union Territory Administrations.
- (ii) FRROs Delhi, Mumbai, Chennai, Kolkata,
Bangalore, Hyderabad and Amritsar.

Subject:- Action against foreigners indulging in religious/Tabligh work.

Sir,

Please refer to this Ministry's circular No. 206 (File No. 25022/82/96-F. I) dated 10.04.1996 and subsequent letter of even number dated 20/22/11/1996 on the above mentioned subject (copies enclosed for reference).

2. It has been reported that the instructions issued by the Ministry vide above mentioned circulars are not being followed strictly.

3. It is reiterated that State Govts./UT Administrations should keep a close watch on the activities of foreigners entering India on the strength of 'Tourist' Visa and including in religious/Tabligh work. As and when any foreigner is found indulging himself in any religious activity/Tabligh work, action must be taken against him under the Foreigners Act, and he/she should be deported to the country of his/her origin under the powers already delegated to State Govts/Uts. Immediately after the deportation of the foreigners, a proposal should be sent to the Ministry of Home Affairs (Foreigners Division) for placing the name of the said foreigner in the Black List.

4. You are requested to enforce the instructions strictly.

Yours faithfully,

(P.V. Sivaraman)
Director (Foreigners)

Copy to:

- (1) Joint Secretary (PV), Ministry of External Affairs
- (2) Joint Director, Bureau of Immigration
- (3) Deputy Secretary (R&AW), Cabinet Secretarial

(P.V. Sivaraman)
Director (Foreigners)

Copy also forwarded to:

- (1) JS (F) Dir (I&C)/DS (F)/US (F)/US (OC1)
- (2) All Sections in Foreigners Wing

(P.V. Sivaraman)
Director (Foreigners)"

The fourth circular was issued on 15.4.2015 and it is as
under :-

"SECRET"

Gurbachan Singh
Additional Director

D.O. NO. 3/SMAC (MUM) 2015
Subsidiary Intelligence Bureau,
(Ministry of Home Affairs)
Government of India
Mumbai- 400 051

Dear Shri. Kohatriya,

Dated: April 15, 2015

It has been noticed that there is a significant increase in the number of foreign Tabligh Jamaats (TJs) visiting India, mostly from Indonesia, Malaysia, Myanmar, Sri Lanka, Saudi Arabia, Algeria, France, UAE, Qatar, Bangladesh and Egypt on Tourist Visa. Such teams usually stay at various mosques/madarsa and engage themselves in religious preaching, which is clear violation of Visa Rules.

2. In this regard, MHA vide their Nos. 25022/82/96-F.I. dated April 10, 1996 no. 25022/82/96-F.I. dated November 20, 1996 and No. 25022/116/2011-F.I. dated November 03, 2011 (copy enclosed) has issued guidelines to State Governments and Union Territories to keep a close watch on the activities of foreigners entering India on Tourist Visa and found indulging in religious/Tabligh work.

3. It is therefore requested that the concerned authorities in the state may be sensitized to follow the guidelines already issued by the Union Home Ministry, so that foreigners do not indulge in other activities

violating visa provisions.

Yours

(Gurbachan Singh)

Shri Swadhin Kshatriya, IAS,
Chief Secretary,
Govt. Of Maharashtra,
Mumbai.

Encl: As stated above.

Below a copy of letter No. 3/SMAC (MUM) 2015-43, dated 15.04.2015 received from Shri. Gurubachan Singh, Additional Director, Subsidiary Intelligence Bureau (Ministry of Home Affairs) Government of India, Mumbai regarding "Watch on the activities of foreign nationals."

All the concerned authorities may be informed accordingly.

No. MIS-0615/CR-488/FOR-I,
Home Department,
New Administrative Building,
9th floor, Opp. Mantralaya,
Mumbai- 400 032.
Dated: 09.06.2015

Copy for information and necessary action to:

- 1) Foreigners Regional Registration Officer, Mumbai (Deputy Commissioner of Police, Special Branch-I & II, C.I.D. Mumbai).
- 2) Deputy Commissioners of Police, Special Branch, Pune (C.I.D.), Thane (C.I.D.), Nagpur (C.I.D.), (Foreigners Registration Officers).
- 3) Deputy Commissioners of Police, Nashik/Aurangabad/Solapur/Navli Mumbai-Vashi/Amravati, (Foreigners Registration Officer).
- 4) All Superintendents of Police in Maharashtra State (Foreigners Registration Officers)

- 5) Commiositioner, S.I.D. Maharashtra State, Mumbai.
- 6) The Deputy Secretary, Home Department, Mantralaya, Mumbai- 400 032.
- 7) The Section Officer/F-II, Home Department, Mantralaya, Mumbai- 400 032.
- 8) Select File.

(V. P. Thorat)
Section Officer, Home Department,
Government of Maharashtra”

13) The aforesaid circulars were issued either as confidential correspondence or secret correspondence. All the four circulars show that if it is found that there was breach of visa conditions, ordinarily such foreigner was to be deported immediately. In the second circular, it was made clear that attending Tabligh Jamat, Istema (congregation) does not amount to Tabligh work prohibited under the instruction given under the first circular.

14) The two new circulars which came to be issued on 31.3.2020 and 2.4.2020 and which are titled as ‘Office Memorandum’, are as under :-

“SECRET

No. 25022/25/2020- F.I.
Government of India
Ministry of Home Affairs
Foreigners Divison

Major Dhyan Chand National Stadium,
New Delhi- 110002
Dated: 31.03.2020

OFFICE MEMORANDUM

Subject: Action against foreign nationals who have reportedly participated in Tabligh activities under the guidance of Tabligh Jammah Hq. at Nizamuddin, Delhi-regarding.

It has come to notice of this Ministry that about 2000 foreign nationals, reportedly on tourist visa, from over 70 countries are in India for Tabligh works under the guidance of Tabligh Jammah (TJ) headquarter at Nizamuddin (Delhi). Majority of these foreign nationals belong to Bangladesh (493), Indonesia (472), Malaysia (150) and Thailand (142). It has also been reported that the TJ headquarter is reportedly in the process of calling the foreign nationals involved in Tabligh activities from different states and sending them back to their respective countries.

2. As per para 1.25 of the Visa Manual, 2019, foreign nation is granted any type of visa and OCI cardholders shall not be permitted to engage themselves in tabligh work unless they are granted specific permission in accordance with para 19.8 of the Visa Manual, 2019. As per para 19.8 of the Visa Manual, 2019, all applications from foreigners intending to visit India in connection with tabligh work or for training in such work, shall be referred to MHA before a visa is granted.

3. In view of above, Bureau of Immigration is requested to identify the foreign nationals who participated in tabligh activities on tourist or other kind of visa. Without obtaining permission of MHA for this purpose. BoI shall also initiate necessary penal action against them for violation of visa conditions under intimation to this Ministry. FRROs/FROs may be directed to proceed as per law in this regard. They should immediately contact the relevant police authority under The Foreigners Act, 1946 for action in the matter as soon as the COVID-19 health issues regarding these foreigners are sorted out.

4. This issues with the approval of competent authority.

(Manoj Kumar Jha)
Deputy Secretary to Government of India
Tel: 23070168

To,
The Additional Director,
Bureau of Immigration,
East Block, R.K. Puram,
New Delhi- 110066.

Copy for information to Joint Secretary (IS), MHA w.r.t. their letter no. 11011/15/2020- MHA C/R dated 28th March, 2020."

.....

"Immediate

No. 25022/25/2020-F.I
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
(Foreigners Division)

Major Dhyan Chand National Stadium
New Delhi, Dated: April 02, 2020

Office Memorandum

Sub: Action against Foreign Nationals who participated in Tabligh Activities on Tourist Visa.

Please refer to the MHA OM No. 25022/116/2011/ F.I dated 03/11/2011 and OM No. 25022/25/2020-F.I. dated 31/03/2020 (copies enclosed) and Bureau of Immigration (BOI) letter No. 25/Imm-I/2020 (1)-102 dated 1st April, 2020 (copy enclosed) on the subject cited above.

2. It has come to the notice of MHA that 960 foreigners of different nationalities as identified on the basis of their travel documents have been found to be involved in Tabligh Jamaat activities on the strength of their Tourist Visa in the premises of Tabligh Jamaat Markaj, Nizamuddin, New Delhi. Their Tabligh activities have endangered many lives in the ongoing COVID- 19 public health emergency. They have violated the provisions of Para 1.25 read with Para 19.8 of the Visa Manual, 2019. They are also liable under the provisions of Sections 13 and 14 of The Foreigners Act, 1946.

3. In view of the above, it is advised that legal action against all these foreigners and Indian nationals involved in the matter must be taken under the provisions of The Foreigners Act, 1946 as well as for violation of statutory orders issued under The Disaster Management Act, 2005 and for offences committed under relevant Sections of IPC as applicable in this matter. It may also be ensured that the protocols issued by the Ministry of Health & Family Welfare are fully adhered to while taking action in the matter.

Encls: As above

(Pratap Singh Rawat)
Under Secretary to the Government of India

To

Sh. S.N. Shrivastava, Commissioner, Delhi Police,
Jai Singh Road, New Delhi.

Copy to:

DGPs of all States & UTs with a request to initiate similar appropriate action in their respective areas against violators of the provisions of The Foreigners Act, 1946 and orders issued under The Disaster Management Act, 2005.

(Pratap Singh Rawat)
Under Secretary to the Government of India”

15) Then the State has produced the Visa Manual which is

updated upto 30.9.2019 and which is mentioned as 'confidential' document. Para No. 1.25 of this Manual and para No. 19.8 of this Manual are as under :-

“1.25 Restriction on engaging in tabligh activities

Foreign nationals granted any type of visa and OCI cardholders shall not be permitted to engage themselves in tabligh work unless they are granted specific permission in accordance with para **19.8** of this Visa Manual. There will be no restriction in visiting religious places and attending normal religious activities like attending religious discourses. However, preaching religious ideologies, making speeches in religious places, distribution of audio or visual display/pamphlets pertaining to religious ideologies, spreading conversion etc. Will not be allowed.

19.8 Foreigners visiting for tabligh work

All applications from foreigners intending to visit India in connection with tabligh work, or for training in such work, shall be referred to the Ministry of Home Affairs before a visa is granted. The Mission/Post must send full particulars, including details about the applicant, institution/organization sponsoring the applicant, the organization/institution where the foreigner intends to work, the places proposed to be visited, details of financial status, etc. All such foreign nationals shall mandatorily report to FRRO/FRO concerned within 14 days of arrival in India irrespective of the duration of the visa.”

These paras are mentioned in aforesaid two recent circulars by the Central Government.

16) Copies of two more correspondence made by Bureau of Immigration (Ministry of Home Affairs), Government of India dated

3.4.2020 and 6.4.2020 are produced by the State and they are as under :-

"CONFIDENTIAL"

**Rajeev Rajan Verma
Commissioner**

No. 25/Imm- I/2020 (1)-107
BUREAU OF IMMIGRATION
(Ministry of Home Affairs)
Government of India

New Delhi, the April 03, 2020

Subject:- **Action against Foreign Nationals who reportedly participated in Tabligh Activities on Tourist Visa-Additional List.**

This is in continuation of our earlier communication of even number, dated April 01,2020 on the subject cited above. Enclosed please find an additional list of 315 (three hundred and fifteen) foreigners who have been identified, who participated in Tabligh activities at the Tabligh Jamaat Markaz, Nizamuddin Delhi, before moving out to various states and districts in India; and who have still not departed from India. With the instant list of 315, now a total of 1275 (960+315) foreigners have been identified who were associated with Tabligh activities. It is noteworthy that all the above mentioned foreigners came to India on Tourist Visas and are in violation of Visa provisions.

2. The list is being shared with all State and UT law enforcement agencies so that those foreigners who may be found in their respective jurisdiction, may be tracked down for action.

3. MHA has already provided guidelines on action to be taken vide their OM NO. 25022/25/2020-F.I. dated April 02, 2020 (copy enclosed).

4. These foreigners are also being blacklisted, preventing their future entry into India.

(Rajeev Ranjan Verma)
Commissioner

The Chief Secretaries/Administrators of all States and UTs
The Additional Chief Secretaries (Home) of all States and UTs
The Directors General of Police/Commissioners of Police of all States and UTs.

Copy for information to:

Shri Sanjeeva Kumar
Special Secretary
Ministry of Health & Family Welfare
Government of India

Shri Anil Malik
Additional Secretary/F
Ministry of Home Affairs
Government of India

Ms. Punya salla Srivastava
Joint Secretary
Ministry of Home Affairs
Government of India

Shri. Adarsha Swalke
Joint Secretary
Ministry of External Affairs
Government of India

Shri. Pankaj Agarwal
Joint Secretary
Cabinet Secretariat
Government of India

Shri. Lav Agarwal
Joint Secretary
Ministry of Health & Family Welfare
Government of India

All FRROs

Rajeev Ranjan Verma
Commissioner

CONFIDENTIAL

**Rajeev Rajan Verma
Commissioner**

No. 1/Comm/Bol/2020-1146
BUREAU OF IMMIGRATION
(Ministry of Home Affairs)
Government of India

New Delhi, the April 06, 2020

Subject: **Action against foreign nationals who reportedly participated in Tabligh activities on Tourist Visa- reg.**

The information pertaining to foreigners of different nationalities who were identified on the basis of travel documents, found involved in Tabligh Jamaat activities, and have still not departed from India have been shared with all the states and UTs vide our letters of even number dated April 01, 03 & 04, 2020. MHA has also issued instructions to take legal action against all these foreign nationals vide MHA OM No. 25022/25/2020-F.I. dated April 02 & 03, 2020.

2. The foreigners mentioned in the above lists participated in Tabligh jamaat activities at Markaz in Nizammuddin, Delhi and travelled to various states and participated in Tabligh activities in various districts while staying in mosques affiliated to the Tabligh jamaat. In addition to these foreign nationals, some other foreigners may also be located in your respective jurisdiction, who participated or conducted Tabligh activities in different parts of the country in recent months. They may be residing in mosques or nearby locations, State Police may conduct survey of all such locations to identify such foreigners by checking their travel documents and take legal action as per the above mentioned MHA Oms.

3. States/UTs Police headquarters are requested to kindly intimate the legal action initiated against such foreigners in the format enclosed at Annexure I. This report may be forwarded to us on daily basis on the mail ID ajay.kumar62@gov.in with info to ddboi-mha@nic.in and jdboi-mha@nic.in.

4. The details of Look Out circulars (LOCs) and Blacklists (BLs) forwarded in the matter may also be

provided in the above mentioned daily report. Further, the requests for issuance of Look Out Circular (LOC) and Blacklist (BL) may be forwarded in duly filled LOC and BL proforma enclosed at Annexure-II & III on the mail ID boihq@nic.in.

(Rajeev Ranjan Verma)
Commissioner

**The Directors General of Police/Commissioners
of Police of all States and UTs**

Copy for information to:-

1. Shri Anil Malik, Additional Secretary/F, MHA
2. Ms Punya Salila Srivastava, Joint Secretary, MHA
3. Shri Lav Agarwal, Joint Secretary, MH & FW.”

17) The aforesaid material produced on the record shows that even under recent updated Manual of Visa, there is no restriction on foreigners for visiting religious places and attending normal religious activities like attending religious discourses. Ordinarily tourist is not expected to follow the procedure laid down in para No. 19.8 if he does not want to preach the religious ideologies etc. as mentioned in para No. 1.25.

18) Admittedly, on the tourist visa issued to all the petitioners, who are foreigners the purpose of visiting is mentioned as recreation and site seeing. The prohibition is also mentioned and they are prohibited from visiting the places involving defence services. To these foreigners, the visas are given for the period of 365 days with multiple entries, but continued stay during each visit

is not to exceed 90 days. In the same compilation, the State has produced more information in respect of petitioners arrival in India, the dates of taking them in custody, the dates of actual arrest and dates of testing positive for corona virus are mentioned. This record shows that most of these foreigners had arrived in India in February 2020, some of them had arrived in March 2020, but before 10th of March 2020. This court is quoting some instances as illustrations to show the relevant dates. The first person shown in the chart of C.R. No. 496/2020 is Asalebin Mohammad Noor, who had arrived on 24.2.2020 and he had allegedly halted at Markaz Masjid, Delhi from 24.2.2020 to 27.2.2020. From there he had proceeded to Bhopal and he had reached Bhopal on 28.2.2020 and on the same day, he had departed for Ahmednagar and he had arrived at Ahmednagar on 29.2.2020. From 29.2.2020 till the date when he was taken in custody, he was present in Ahmednagar district though he had paid visits to the places like Rahuri and Kolhar. He was taken in custody on 30.3.2020 by police, but he was kept in quarantine from 30.3.2020 to 17.4.2020 at District Civil Hospital, Ahmednagar. It is shown that they had taken halt at Mehraj Heights, Mukund Nagar, Ahmednagar from 20.3.2020 to 30.3.2020. In other chart showing infection, it is mentioned that he was tested after the period of quarantine was over and he was shown to be arrested formally on 17.4.2020. His test was negative. All the foreigners from C.R. No. 496/20 are shown to have similar record in the information supplied

in tabular form by the police.

19) Mr. Konan Kodio Ganstone, other foreign national from C.R. No. 131/20 had arrived in Delhi on 9.3.2020 and had stayed at Markaz Masjid, Delhi from 9.3.2020 to 14.3.2020. He had left Delhi on 14.3.2020 for Ahmednagar and he had reached Ahmednagar on 15.3.2020. He was taken in custody on 29.3.2020 at Mukundnagar, Ahmednagar and he had kept in Civil Hospital, Ahmednagar in quarantine till 17.4.2020. He was shown to be formally arrested on 17.4.2020 and he tested negative for Covid-19 virus.

20) Mr. Hammd Abdulkadar Banota from C.R. No. 197/2020 had come to India on 2.3.2020. He stayed at Markaz Masjid, Delhi from 2.3.2020 to 7.3.2020 and then he proceeded to Ahmednagar. He reached Ahmednagar on 7.3.2020. He was taken in custody on 30.3.2020 and he was kept in quarantine in Civil Hospital from 30.3.2020 to 17.4.2020. He was shown to be formally arrested on 17.4.2020. He also tested negative. It appears that the persons who were tested positive were arrested much later like the dates 7.5.2020 and 15.5.2020, but they were taken in custody on the aforesaid dates. The table shows that one person who had come to India on 8.2.2020 from C.R. No. 131/20 was tested positive and one person from C.R. No. 197/20 who had tested positive had come to India on 2.3.2020. One person who had come to India on 24.2.2020

from C.R. No. 496/20 was tested positive. In the table only three such persons are mentioned and this circumstance also shows that by using scientific proposition available at that time, it was not possible to presume that these persons were already infected when they reached India.

21) Submission was made by the learned APP that **Writ Petition (Civil) No. 603/2020** is pending in Hon'ble Supreme Court of India and in that matter relief is claimed by some similar foreigners to declare that black listing of 950 foreigners by the Central Government, the decision taken on 2.4.2020 and black list of more foreigners and the decision taken by the Central Government on 4.6.2020 is unconstitutional and void as due process of law was not followed before making such declaration by the Central Government. The learned APP submitted that as this proceeding is pending in Supreme Court, it is not desirable to decide the present proceeding. This submission is not at all acceptable. Criminal cases are filed by State/police though apparently they did it as per the directions given in aforesaid circulars and memorandums. It is the duty of the Court to ascertain as to whether any offence mentioned in the chargesheets is made out, whether there is material to make out prima facie case for these offences. This Court is not considering the relief of setting aside the aforesaid so called circulars and memorandums, but the circulars can be considered to ascertain as to

whether there was breach of them and also whether there was malice behind the action taken against these foreigners. With the proceeding which is filed in Supreme Court, it appears that some press notes issued by Press Information Bureau, Government of India are produced as aforesaid circulars and memorandums were not available at that time to those petitioners.

22) The record of the three cases filed against the petitioners show that foreigners were taken in custody in these matters and first, the F.I.Rs. were given against only the persons, who had given shelter to foreigners and subsequently i.e. on 4th or 5th April 2020. F.I.Rs. were given against these foreigners. It can be said that initially there was no intention of police to go against the foreigners, but subsequently after getting directions from Central Government, which are mentioned already, Maharashtra police gave F.I.Rs. and filed cases in those crimes. Updated provisions regarding the visa quoted above show that there is no prohibition to such foreigners to visit the religious places and to have religious discourse. The information about the Tabligh Jamat is appearing on the record also which is record of the Government and it shows that reform movement was founded by Maulana Mohammad Ilyas in 1927 in Delhi and this movement is popular in villages and peasants. This movement is focused on religion rather than political aspects of Islam and this movement spread throughout Muslim world from 1950

onwards. More information about this Tabligh Jamat can be found on Oxford Islamic Studies Online on Google. The record shows that many Muslims from all over the world come to India as they are attracted to the reform movement of Tabligh Jamat and they visit aforesaid Markaz Masjid from Delhi. It is a continuous process and it appears that there are arrangements of the stay also made by the Muslims at Markaz Delhi. Considering the dates of arrival of the petitioners to India and their departure from Delhi also shows that there was no particular day fixed for congregation or any function. Initially this Court thought that for some function arranged by Tabligh Jamat at Markaz, the foreigners had come, but the record shows that there was no function and it is a continuous activity. The aforesaid record also shows that from so many years Muslims from various countries have been coming to India to visit that place and they have been coming on tourist visa. The aforesaid material shows that the visits of these foreigners to Masjids from India were not prohibited and even discourse was not prohibited. Activity of Tabligh Jamat got stalled only after declaration of lock down in Delhi and till then it was going on. There is nothing on the record to show that this activity is prohibited permanently by the Government. These things needs to be kept in mind while considering the cases filed against the petitioners.

23) Dictionary meaning of the word 'discourse' as given in

merriam-webster.com is as under :-

“formal and orderly and usually extended expression
of thought on a subject”.

The material on the record shows that Tabligh Jamat is not a separate sect of Muslim, but it is only movement for reformation of religion. Every religion has evolved over the years due to reformation as reformation is always necessary due to the changes in the society and the development achieved in the material world. In any case, even from the record, it cannot be inferred that the foreigners were spreading Islam religion by converting persons of other religion to Islam. The record shows that the foreigners were not talking Indian languages like Hindi or Urdu and they were talking languages like Arabian, French etc. In view of the aforesaid discussion, it can be said that the foreigners may have intention to know the ideas of Tabligh Jamat about the reformation. It is already observed that reformation is continuous process in every religion and such process is necessary for peaceful co-existence. Unless a particular programme of such foreigner or idea of such foreigner or doctrine or set of principles proposed by him do not create unrest in that religion or society, one cannot prevent the foreigner from expressing his ideas about reformation. There is no such specific allegation also against the foreigners. Nothing is said as to which ideas the foreigners were propagating. The record shows that there is allegation that they were reading Quran and religious books of Muslims and delivering lectures

to Muslims in Masjid. The allegations are very vague in nature and from these allegations inference is not possible at any stage that they were spreading Islam religion and there was intention of conversion. It is also not the case that there was element of persuasion on any point from these foreigners.

24) In view of the Articles of Indian Constitution like Articles 25 and 21, when visa is granted to foreigners, such foreigners cannot be prevented from visiting Masjids, if they go there to observe religious practices or to offer only Namaz. This Court is referring the orders issued by the competent authority under the aforesaid Special Enactments subsequently. For the present purpose this Court is observing that there is nothing on the record to show that the Indians were prevented from accommodating persons in the Masjid or from supplying meals to the persons including the foreigners. The statements of the witnesses recorded by police are stereotype and it can be said that word to word, line to line and para to para of the statements are copied. Further, some trustees of the Masjids are made accused in these proceedings and also in separate proceedings and there are statements of those trustees which cannot be used against foreigners or against those trustees. Most of the information shown to be given by the witnesses is apparently hearsay in nature.

25) It is true that in view of wording of Article 19 of Constitution of India, the freedoms given under this Article are not available to the foreigners, to the person who is not and who cannot be a citizen of India. However, it needs to be kept in mind that when the permission is given to the foreigners to come to India under visa, atleast Article 25 of Constitution of India comes in to play. Then there are Articles 20 and 21 of Constitution of India and they are also available to the foreigners. The aforesaid record shows that it was not made known to the holders of visa that they were prohibited from visiting Masjids or staying in Masjid. On the contrary, in the past and in updated guidelines instructions were issued to the effect that they were allowed to visit the religious places. It is true that when there is breach of conditions of visa, the visa itself can be cancelled and the said person can be sent back to his country. Admittedly, such step is not taken in the present matters. It can be said that even before issuing of the instructions by the Central Government in aforesaid first office memorandum dated 31.3.2020, action was taken by police against Indian Muslims who were helping the foreigners, but no action was taken against foreigners. Though an attempt is made to contend that they had not given correct address in form 'C' prepared under Visa Manual, the record is sufficient to infer even at this stage that the whereabouts of the foreigners were known to the police right from the beginning. It is noticed that people are afraid of test taken for detection of virus. That is why the

infected persons are brought very late to the hospitals and they die. In the present matter, it is not the case of the State that the petitioners were hiding themselves in Masjid or other place in Ahmednagar to avoid the test. Further, the notifications issued by the Central Government and the State Government and also the Local Authorities show that from 14th March 2020, the hospitals were to record the history of the travel of the person to any country or area during period of 14 days where Covid-19 had been reported and then action was to be taken either to isolate him or to ask him to observe quarantine guidelines.

26) The relevant dates are already mentioned by this Court in respect of the arrival of these persons in India. Many of the petitioners had come to India before that period and only few like four persons from C.R. No. 131/2020 and many petitioners from C.R. No. 197/2020 had come in first week of March to india. There is no specific proposition in the medical field as yet evolved to show that the virus remains in the body for a particular period when the patient is asymptomatic and virus remains in the body for particular period when the patient is symptomatic. Considering the dates on which these persons were taken in custody, it can be said that there is more possibility that they got infected in India and they were not already infected when they arrived in India. Further, admittedly screening at the airport was done of these petitioners before

allowing them to leave the airport. The entire aforesaid exercise was done by the Central Government against the persons like petitioners with presumption that they were already infected when that contention cannot be substantiated. Even in the chargesheet there is no mention that there were cases of patients reported in all the countries of which the petitioners are nationals. The criminal case cannot be tried on the basis of such suspicion. These circumstances need to be kept in mind while considering other material in the present matters.

27) There was big propaganda in print media and electronic media against the foreigners who had come to Markaz Delhi and an attempt was made to create a picture that these foreigners were responsible for spreading covid-19 virus in India. There was virtually persecution against these foreigners. A political Government tries to find the scapegoat when there is pandemic or calamity and the circumstances show that there is probability that these foreigners were chosen to make them scapegoats. The aforesaid circumstances and the latest figures of infection in India show that such action against present petitioners should not have been taken. It is now high time for the concerned to repent about this action taken against the foreigners and to take some positive steps to repair the damage done by such action.

28) The material of the present matter shows that the propaganda against the so called religious activity was unwarranted. The record and the submissions show that the activity was going on for more than 50 years. This can be found in the information about Tabligh activity supplied by the Central Government on 31.3.2020. This information also shows that such activity is there throughout the year. Thus, this activity was not started only after arrival of the foreigners like the petitioners. In these days, there are more alternate media for such discourse. Islamic television networks are thematic channels, that have developed across the world in response to various Muslim audiences, preferences. Islamic television network is form of alternative media that appeals to some Muslims on socio religious values. In United Kingdom (UK) also, there are many Islamic television networks and radio channels. Tatasky channel No. 183 gives publicity about its contents. On this channel, there are quotation of Ayat and interpretation of Ayat and the channel is devoted to Islamic religion. There is Tatasky channel bearing No. 786 called as Ibadat channel. Other channels like Al-zazira also can be viewed in India. There is another channel like iTV. On these channels many foreigners come for debate or for expressing their thoughts. There is another channel like Q-TV where we can find interpretation of Quoran. Zee media also has channel like Zee Salam and there is other channel like Aalami Samay. There are channels for Hindu religion, Christian religion, Sikh religion etc. In this era, it is not

practically possible to prevent discourse on religious matters. Many times such discussion can also be called as preaching the religion and there may or may not be intention to spread Islam. The definition of Muslim person is also important in this regard. In view of all these circumstances, one needs to be very practical. For doing such things, now it is not necessary to visit places like mosques from India and particularly for the foreigners like petitioners who do not know Indian languages.

29) In our culture, there is saying like “अतिथी देवो भवः” which means that our guest is our God. The circumstances of the present matter create a question as to whether we are really acting as per our great tradition and culture. During the situation created by covid-19 pandemic, we need to show more tolerance and we need to be more sensitive towards our guests particularly like the present petitioners. The allegations made show that instead of helping them we lodged them in jails by making allegations that they are responsible for violation of travel documents, they are responsible for spreading of virus etc.

30) If there was any substance in the contention that there was possibility of spreading virus by these persons, proper action would have been taken against them, to send them back to their own country without taking action like present one. In the situation

created by pandemic near and dear of every person who is out of house and particularly out of country are worried about the well being of such persons. The actions against such persons harass not only such person, but also there near and dears. They are from many countries like Ivori Kost, Tanzaniya, Jibuti country, Ghana, Derusallam, Indonesia etc.

31) The aforesaid material and the situation created by the action of the Government reminds us the famous speech delivered by Swami Vivekanand in Shikago address of 1893 in Parliament of Religions. For arranging such parliament in America, Swami Vivekanand praised and congratulated America. He felt that it was achievement of America. He had started his speech with the words like 'sisters and brothers' showing that he believed in universal brotherhood. He believed that all religions are true. While interpreting the provisions of Constitution we always keep in mind the history, constitutionalism. In our Constitution, we have used word 'fraternity' and it can be said that this concept has background of our past connections with the entire world and the philosophy of great persons like Swami Vivekanand. We look towards America as ideal democracy due to things like aforesaid approach of America, allowing Parliament of Religions in that country. We have borrowed many principles and parts of American Constitution which include preamble, fundamental rights, independence of judiciary etc. All

these things need to be kept in mind not only by the Courts, but also the Executive before taking such action.

32) This Court is now considering the relevant provisions of Constitution of India though for limited purpose. This Court has already referred Article 19 of Constitution of India which gives various freedoms, though they are given only to citizens. When we grant visa to foreigner, the other Articles of Constitution which can be used by any person who is in India get attracted and Article 25 of Constitution is one of those Article. Though some limitations can be imposed for the purpose of defence etc. against the foreigners to restrict their movement, before taking other action we need to keep in mind Articles 20, 21 and 25. It needs to be presumed that before granting visa, necessary inquiry about such foreigner was made by us and only after ascertaining that his presence in India will not be against the interest of the country the visa was granted to him. The record in respect of the restrictions which were there on movements of foreigners is already discussed. The record produced does not show that subsequent to the record which is discussed above, further restrictions were imposed on these foreigners. Thus, there is no necessity to set aside any condition of visa for granting reliefs in the petitions.

33) Religion is part of life atleast for those who are believers

and so, Article 21 is applicable in case like present one. In view of this Article and Article 25, after granting of visa to the foreigners, the authority could not have prevented visit of the foreigners to Masjids or even the places like Markaz. They are entitled to offer Namaz in Masjid if there is practice to offer Namaz in the Masjid. They cannot be prevented to enter and stay in Masjid. This is what updated guidelines of visa say. Thus, before taking any action by police or by the State they ought to have given thought to the rights of these foreigners. Article 20 of Constitution of India shows that the acts which were not prohibited at the time when they were committed cannot be treated as offence and violation of law subsequently. In view of the record which is already discussed, it was not possible to go with the presumption that there was a violation of visa conditions. Due to all these circumstances, this Court holds that the material is not sufficient to make out prima facie case for the offence punishable under section 14 (b) of the Foreigners Act.

Background of Malice

34) The question arises as to what must have tempted the authority to issue such directions against the foreigners like the petitioners. The record of this matter and the submissions made show that action of Central Government was taken mainly against Muslim persons who had come to Markaz Delhi for Tabligh Jamat. Similar action was not taken against other foreigners belonging to

other religions. Due to these circumstances, the background of the action and what is achieved needs to be considered by the Court.

35) There were protests by taking processions, holding Dharana at many places in India from atleast from prior to January 2020. Most of the persons participated in protest were Muslims. It is their contention that Citizenship Amendment Act, 2019 is discriminatory against the Muslims. They believe that Indian citizenship will not be granted to Muslim refugees and migrants. They were protesting against National Registration of Citizenship (NRC). There were protests on large scale not only in Delhi, but in the most of the States in India. It can be said that due to the present action taken fear was created in the minds of those Muslims. This action indirectly gave warning to Indian Muslims that action in any form and for any thing can be taken against Muslims. It was indicated that even for keeping contact with Muslims of other countries, action will be taken against them. Thus, there is smell of malice to the action taken against these foreigners and Muslim for their alleged activities. The circumstances like malice is important consideration when relief is claimed of quashing of F.I.R. and the case itself.

Material on other offences

36) This Court is now considering the remaining offences for

which chargesheet is filed. The chargesheet is for the offence punishable under section 51(b) of the Disaster Management Act, 2005. This provision shows that when there is refusal to comply the directions given by the District authority, State authority or Central authority under this Act, after conviction punishment of one year imprisonment or fine can be given. There will be charge for offence punishable under section 3 of Epidemic Disease Act, 1897. This offence involves disobedience of regulation or order made under this Act and if there is such disobedience, there is presumption that the offence is committed under section 188 of the Indian Penal Code. Thus, the breach of some order made under the Special Enactment is involved in this offence also. The provisions of these two Acts need to be read with various orders or measures or regulations made by the authorities mentioned in these two Enactments.

37) The chargesheet is filed also for the offence punishable under sections 37 (1)(3) r/w. 135 of Maharashtra Police Act. This provision also involves prohibition like prevention of assembly of persons and the penalty of imprisonment of one year and fine is provided for such offence. This offence also involves breach of some order made by the authorities. The record shows that the provision of section 144 of Cr.P.C. is also mentioned and it empowers the officers mentioned in the section to issue order to persons to abstain from certain acts.

38) Section 188 of I.P.C. provides punishment for disobedience of orders like orders issued under aforeseaid Special Enactments and the penalty of imprisonment of six months or fine is provided.

39) The chargesheet is filed for the offence punishable under section 269 of I.P.C. which provides for penalty when there is negligent act which is likely to spread infection of disease dangerous to life. For this offence punishment of imprisonment of six months or fine is provided. The chargesheet is filed for the offence punishable under section 270 of I.P.C. also and it shows that when a person malignantly does act which he knows or he has reason to believe that to be likely to spread infection dangerous to life and in such case penalty provided is imprisonment for two years or fine. In respect of the offences punishable under sections 269 and 270 of I.P.C. this Court has already discussed the relevant material and it is already observed that it is not possible to infer under any circumstances that these persons were infected when they arrived to India. It is also not possible to infer that their acts amount to offences punishable under sections 269 and 270 of I.P.C. There may be charge for the offence punishable under section 290 of I.P.C. This provision shows that this is in respect of public nuisance and if some public nuisance is not made punishable by other provision, this

provision can be used. The material discussed shows that no such nuisance was created by the foreigners or Indian Muslims and only an attempt was made by others to create such atmosphere against them.

40) The remaining aforesaid offences are based on some orders which the authority created under aforesaid Special Enactments or the officers mentioned in Acts like Maharashtra Police Act and Criminal Procedure Code ('Cr.P.C.' for short) have issued order and there is breach of those orders. In view of these circumstances the orders made at the relevant time by the authorities and officers need to be seen. Photocopy of the orders are produced on record. There is virtually no mention in the Ferist given in the chargesheet of the orders, though aforesaid provisions are mentioned. Only due to the directions given by this Court, photocopies of some orders are produced and those orders are being discussed hereinafter.

41) First notification is of Public Health Department of State Government dated 14.3.2020. It is called as The Maharashtra COVID-19 Regulations, 2020. Clause 8 of this notification is as under :-

"8. Any person with a history of travel in last 14 days to a country or area from where COVID-19 has been reported, must voluntarily report to State Control Room (020-26127394) or to the State Surveillance Officer, IDSP (020-27290066) / Toll Free number 104 or

to such numbers as may be assigned, so that necessary measures may be initiated by Commissioner, Health Services, Director of Health Services (DHS-I &II), Director, Medical Education & Research (MDER), and the Collector/Municipal Commissioner as the case may be.”

This Court has carefully gone through all the clauses of this notification and aforesaid is the only clause which needs to be considered for the present purpose. The aforesaid clause shows that the person must have come from country or area where covid-19 cases were reported to make this clause applicable. In chargesheet and in any paper filed with chargesheet, there is no mention that in the country of petitioners' covid-19 cases were reported at the relevant time. The relevant dates, dates of arrival in India are already mentioned by this Court. If clause 8 was applicable, the concerned persons were expected to report to Collector, Commissioner of Corporation etc. of the place where they were living. It can be said that this clause was applicable against both Indians and foreigners. Here only it needs to be mentioned that it is noticed that penal actions are taken mainly against persons like present foreigners for such breach.

42) By way of illustration, to ascertain as to whether clause 8 was applicable to the petitioners, this Court is mentioning some relevant facts again. The record shows that all the foreigners shown

as accused in C.R. No. 496/20 had reached Delhi on 24.2.2020. Considering the time when they had arrived and aforesaid clause of the notification, it can be said that the notification was not applicable against them. From C.R. No. 131/20, three foreigners had come to India, to Mumbai on 3.2.2020 and other foreigners had come between 7.3.2020 and 9.3.2020. They had reached Delhi. In C.R. No. 197/20, two foreigners had come in the first week of February 2020 in India and remaining foreigners had come to India in the first week of March 2020. These circumstance ought to have been considered separately by police before registration of crime and filing of chargesheet. But, these circumstances are not considered in their favour by police.

43) In para No. 14 of the reply filed by Superintendent of Police, Ahmednagar, it is admitted that the foreigners had reported about their arrival in form 'C'. However, it is mentioned that they had made the report after declaration of lock down by the Central Government. In clause 8 of aforesaid State Government notification dated 14.3.2020, no period of reporting was prescribed. Here only it needs to be kept in mind that for the present purpose, for considering the breach of order, we need to see the contents of this order and not the provisions with regard to visa. The aforesaid order of the State Government also does not mention the countries where according to the Government, covid-19 cases were detected. Such

things cannot be left with the person concerned who have come from abroad. When criminal action is taken, all these things need to be very specific and such loopholes cannot be allowed as they show that basic ingredients of the offences cannot be made out. Thus, prima facie offence for breach of order dated 14.3.2020 of the State Government is not made out.

44) This Court has gone through the Maharashtra Government Lockdown order dated 23.3.2020. This order shows that for the period from 23.3.2020 to 31.3.2020 first time lock down was declared by the State Government. This order shows that order was made mainly to prevent the movements of persons on roads and in public places. The particulars of movements of petitioners' show that some from 16.3.2020 and others from 20.3.2020 had no movements and they were at Ahmednagar at fixed places from those dates. Thus, they did not commit breach of the order of the State Government dated 23.3.2020.

45) Another peculiar and strange contention is made against the petitioners/foreigners that they were living in Masjids and so offence is committed. If there is provision of residence in Masjid that may be or may not be in the form of hostel and if the persons were living in Masjid, it cannot be said that there was congregation of five persons in public place. The place which is meant for residential

purpose and where the persons are living by restricting their movements cannot be treated as public place in view of the aforesaid provisions. It needs to be presumed that gathering of persons on public roads, gardens etc. which have access to all the public was restricted. Further, the record does not show that the Masjids mentioned in the cases were kept open for public after 23.3.2020.

46) Clause 11 of the order dated 23.3.2020 of the State Government shows that specific appropriate order was expected from local/district authority to close religious places. The record produced does not show that any such specific order was made by Ahmednagar district authority. This Court has seen the prohibitory orders made by district authority dated 19.3.2020, 22.3.2020 and 23.3.2020 which are on the record. There is no statement showing that any witness had seen the public of that locality entering Masjid for offering Namaz. Thus, on the basis of material available, inference is not possible that Masjids were not closed. Thus, there is no material to make out prima facie case for breach of order of the State Government dated 23.3.2020 and consequential orders made by the District Authority by management of Masjids. The orders of District Authority show that it was interested in prohibiting the movements of public on roads, gardens and places of entertainment.

47) In Marathi, there is saying meaning of which is “missing Fakir/begger can be found in Masjid”. In big religious places including Masjids there are arrangement of stay made for religious persons or the persons who are involved for maintaining of the Masjids. If they allow some persons like foreigners to stay with them, it cannot be said that they have committed the offence of breach of the aforesaid orders. In the present matters, even the trustees of the Masjids are made accused by making allegations against them that they had given shelter to foreigners and they had supplied meals to the foreigners. During lockdown period, all over India in many religious places arrangement was made for destitute persons, to give them shelter and to provide them meals. Such arrangements were made in Gurudwara, Masjids and other religious places. During lockdown period even beggars were not found on the road and some N.G.Os. and such religious institution had made arrangements for them also. The migrant labours were accomodated accordingly. Due to prohibition orders hotels and restaurants were closed. Thus, giving shelter to such persons could not have been treated as offence, commission of the act of disobedience of aforesaid orders.

It is already observed that the Muslim persons who had given shelter to the foreigners are made accused probably with some purpose. This action must have created pressure on Indian Muslims. The persons of this community may avoid to keep contact with Muslims of other country now due to such actions. The material in

respect of possibility of spreading of infection by the petitioners is already discussed with relevant dates. This situation created by the present action is against the promotion of idea of universal brotherhood. So, this Court holds that there is no material on record to make out prima facie case for the breach of aforesaid orders. No other order was produced on record and as already observed, the orders are not specifically mentioned in the chargesheet and copies of the orders are not shown to be supplied by showing them in the chargesheet.

48) The learned counsel for the petitioners placed reliance on the decision of **Kerala High Court** delivered in **Cri.M.C. No. 4720/2014 decide on 2.12.2014 (Jonathan Baud Vs. State of Kerala) reported in ILR 2015 (1) Kerala 410**. In that case, the learned Single Judge of Kerala High Court quashed the F.I.R. which was filed for the offences punishable under section 14 (b) of the Foreigners Act, 1946. In that case, the accused had attended the condolence meeting organized by a political faction, which was said to be a radical group. There was no reason for the foreigner to believe or know that such group was radical and group was treated as radical political group. In similar situation, Kerala High Court held that there was no condition in visa to prevent the foreigner for attending such condolence meeting. The Kerala High Court observed that cynic suspicion action was taken by police. The facts of the

present matter are also similar to the facts of the case of Kerala High Court.

49) The learned counsel for petitioners also referred common order made by the learned Single Judge of **Karnataka High Court** while deciding **Criminal Writ Petition No. 2376/2020 (Farhan Hussain Vs. State and Anr.) decided with other matters on 5.8.2020**. Karnataka High Court quashed the proceedings which were similar to the present proceeding and which were filed against the foreigners who had attended Markaz Delhi and against whom, there were allegations that they were involved in Tabligh work. The order shows that the counsels of respondents representing State Government and the authority relating to visa had given concession by making submissions and there were some orders of coordinate benches made in the year 2017 in similar circumstances. Karnataka High Court quashed all the cases and F.I.Rs. and directed the accused persons to pay fine as may be directed by the authority of the Central Government. This decision was not given on merits and it appears that only due to concession proposed by the counsels of the State and Central Authority, such order was made. In the present matters, the learned counsel for petitioners vehemently argued for giving the decision on merits. The aforesaid circumstances and other circumstances like concession given on plea bargain were pointed out to him. But, he submitted that he wanted to get the decision on

merits. He submitted that only due to pressure and as most of the foreigners are interested to leave India due to pandemic situation created, these persons either pleaded guilty or requested the directions of aforesaid nature. The learned APP also insisted to give the decision on merits. Even when this Court had asked the learned APP to see that the foreigners are sent to their countries, he submitted that there is no such inclination from the Government.

50) It is a fact that many foreigners of other countries are sent back by the Central Government without making any inquiry. Social and religious tolerance is practical necessity for unity and integrity in India and that is also made compulsory by our Constitution. By hard work over the past years after independence we have reconciled religion and modernity to great extent. This approach helps participation of most in developing process. We have been respecting both religious and secular sensibilities since independence and by this approach we have kept India as united.

51) The aforesaid material and discussion of law shows that Maharashtra police acted mechanically. It appears that the State Government acted under political compulsion and police also did not dare to exercise powers given to them under provisions of procedural law like Cr.P.C. and substantive laws. The record shows that there was non application of mind by police and that is why even when no

record was available to make out prima facie case, charge sheets are filed by police. The Government cannot give different treatment to citizens of different religions of different countries. Article 14 of the Constitution of India shows that there needs to be 'law' as mentioned in this Article and for some object the classification can be made which needs to be reasonable. Such law can be subjected to the test of constitutional validity. The 'contents' of 'the law' can also be sufficient to rebut the presumption of reasonableness for the classification and the rebuttal of presumption of reasonableness is possible after consideration of even extraneous material. Further, whether such discrimination can be made without making such classification under law, whether such administrative or executive instructions can be issued, will be a question, but this Court is not going in to that question. For the limited purpose, this Court is holding that the police action is based on such instructions probably of the executive and apparently there is discrimination as mentioned above. On this ground also, the malice is inferable and the cases needs to be quashed.

52) In view of the discussion made by this Court, this Court holds that it will be abuse of process of law if the petitioners are directed to face the trial in aforesaid cases. In the result, following order :-

ORDER

- (I) All the petitions are allowed.
- (II) Relief of quashing of the F.I.Rs. and the cases filed in those F.I.Rs. as claimed by the petitioners is granted in all the matters.

Rule is made absolute in those terms in all the matters.

[T.V. NALAWADE, J.]

OPERATIVE ORDER : (PER M.G. SEWLIKAR)

I had the privilege to read the judgment of brother Hon'ble Justice Shri. T.V. Nalawade. I agree with the operative part of the judgment, but do not agree with some reasoning. My judgment with reasons will follow.

[M.G. SEWLIKAR, J.]

The learned APP Shri. Nerlikar requested for granting stay to the operative part of the judgment. He submits that he has instruction of the Government and the Government may challenge this decision. He submitted that these are the oral instructions. Though the decision is given, the foreigners involved in this matter cannot immediately leave India and there is long procedure for granting permission to them and then sending them to their

countries. Some arrangement will have to be made between two countries if international flights are not operating. In view of these circumstances and as the cases are quashed and set aside, there is no question of granting stay. It is the job of the Government to see as to what needs to be done afterwards.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/