

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 2844 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

RASIDABEN W/O SIDIKBHAI DAUDBHAI SHAIKH
 Versus
 STATE OF GUJARAT

Appearance:

MR AJ YAGNIK(1372) for the Applicant(s) No. 1
 MR CHINTAN V ACHARYA(10558) for the Applicant(s) No. 1
 for the Respondent(s) No. 2,3
 MS JIRGA JHAVERI, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
 No. 1

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 04/02/2022
CAV JUDGMENT

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This is a petition preferred under Article 226 of the

Constitution of India seeking issuance of writ of habeas corpus for production of the corpus Amir - son of the petitioner, before this Court who is alleged to have been illegally detained by the Special Operation Group (SOG herein after).

2. It is the case of the petitioner that she resides with her family at the address given in the cause title, Siyasatnagar, Chandola Lake, Isanpur, Ahmedabad. She has three sons and three daughters. The corpus Amir is one of her sons who is married and he also has three children; two sons and one daughter. The petitioner has her Election Card, Ration Card as also Aadhar Card to substantiate her version. She is residing in Ahmedabad with her family for a long time. She was doing the labour work in Ahmedabad on construction site in her young age when the corpus Amir was born at work place. She being an illiterate lady, the requirement of registration of birth was not known to her and therefore, the birth of the Amir was not registered. However, he is married and has three children who are all born in Ahmedabad.

2.1. It is further the say of the petitioner that in the aftermath of Godhra incident in the year 2002, the State Government had rehabilitated the families as per the order

passed in Special Civil Application No. 14664 of 2008 on dated 28.01.2010. The petitioner also received a plot and Rs. 50,000/- from the Ahmedabad Municipal Corporation in the name of her husband Sidiq Doudbhai Shaikh.

2.2. On 18.06.2020, it is the grievance of the petitioner that when her son was working near octroi point, the respondent - SOG with a suspicious mind that he is a Bangladeshi National and is staying in India without any valid authorization and permission, he was taken to the detention centre. It was given to understand to the family that after finishing certain inquiry, he would be released, however, he is continued to be in detention centre from 18.06.2020. This is nothing but an illegal custody. It is further the say of the petitioner that the custody of the corpus is with SOG, Juhapura Police Station. It is under the false allegation and pretext that his son is Bangladeshi National that he is kept at detention centre.

2.3. The petitioner visited the detention centre as also the police station and substantiated her version with Election Card and Aadhar Card of her and those of her husband so also the Ration Card of theirs where, in the Ration Card, names of her family members have been mentioned. Petitioner therefore approached this Court, inter alia, stating that

number of visits have been made to the concerned authority, however, her son is not released from the detention. Therefore, she is before this Court with the following prayers:

“(a) Your Lordship may be pleased to admit this petition;

(b) The Hon’ble Court may be pleased to issue a writ of Habeas Corpus or any other appropriate writ, order or direction, directing the respondent no.2 herein to produce petitioner’s son Amirbhai, respondent no.3 herein before this Hon’ble Court;

(c) Your Lordship may be pleased to grant interim relief and by way of interim order be pleased to direct the respondent authority- SOG to produce corpus of Amirbhai, respondent no.3 before this Hon’ble Court, pending admission and final disposal of this petition;

(d) The Hon’ble Court may be pleased to issue a writ of Habeas Corpus or any other appropriate writ, order or direction, directing the respondent no.2 herein to release the petitioner’s son, Amirbhai from illegal detention forthwith.

(e) Your Lordship may be pleased to pass such orders as through fit in the interest of justice.”

3. This Court issued notice on 14.07.2020 and directed the corpus to be produced before it on 16.07.2020 through video conference from the nearest Court where Assistant Commissioner of Police, SOG was asked to remain personally present. Dr.Harshad Patel, Deputy Commissioner of Police, SOG also was present as directed by this Court and the following order came to be passed on 16.07.2020.

“1. Today, the Corpus is present before this Court through Video Conference. He is kept at SOG Office,

Juhapura, Ahmedabad.

2. Dr. Harshad Patel, DCP, SOG, is also present before us through video conference. According to him, the corpus is suspected of being Bangladeshi national and though inquired, no documents have been produced by him for verification of certificate of birth or any other document, which may confirm his nationality, and therefore, restriction order came to be passed against him on 30.06.2020. He also has further submitted that his mother has furnished the documents, indicating his Aadhar Card and other documents for verification on 08.07.2020 and the same have been sent to the concerned authority for verification yesterday, i.e. on 15.07.2020. According to him, along with four other Bangladeshis, who travelled to this Country two to four years back, the Corpus has been placed under restriction order. According to the corpus, he has no been kept with all facilities and no cause of concern is given.

2. The corpus does not complain of anything although, he has been asked, by asking Mr. Annirudhsinh Parmar, PI, to remain out of the chamber, from where, the corpus remained present for video conference.

3. Learned PP, Mr. Amin, appearing with learned APP, Mr. Manan Mehta, has urged that the legality of stay of the corpus on the Indian soil requires to be examined. He, therefore, has sought one day's time for verifying from the authority which has issued Aadhar Card, since, the base documents for issuance of Aadhar Card are birth certificate or proof of birth and residential proof, required by the authority concerned.

4. Considering the fact that there is no criminal antecedent, as confirmed by Dr. Harshad Patel, DCP, SOG, on a specific query from the Court, it has been urged that the man possibly travelled to this Country from Bangladesh, as a child aged 3 to 4 years.

5. Let the details be furnished to this Court on the part of the State or by the Office of the SOG, in particular. Dr. Harshad Patel, DCP, SOG is directed to ensure that the corpus shall be looked after properly. The corpus shall be presented before this Court tomorrow through

video conference, which shall be arranged at City Civil Court, Ahmedabad, in the presence of a Presiding Officer of the City Civil Court.

6. S.O. to 17TH JULY, 2020. To be listed at the top.”

3.1. As the corpus was not produced from the nearest Court but from the SOG Office, Juhapura, we deemed it appropriate to fix the matter the next day i.e. on 17.07.2020 and directed the corpus to be present through video conference held at City Civil and Sessions Court, Ahmedabad. Accordingly, on 17.07.2020, he was kept present in presence of presiding officer.

4. The School Leaving Certificate and other materials also had been directed to be produced before this Court as the corpus studied upto 3rd standard in Municipal School No. 6, Urdu Medium, situated near Haveli, Khamasa, Raikhad and accordingly, the Principal, Municipal School No. 6, Urdu Medium, situated near Haveli, Khamasa, Raikhad was directed to produce Birth Certificate, School Leaving Certificate and the General Register of the School reflecting birth date or any other material which the school has in connection with the date of birth and admission of the corpus in the school.

4.1. It was also noticed that in the Election Card issued by

the Election Commission of India in the name of the corpus, there was a requirement of certain directions as three to four years back, the request had been made for such correction however, no response has been given by the authority concerned. The corpus was permitted to approach the concerned authority and it was directed to provide necessary assistance, if the corpus approached the authority concerned. The School Leaving Certificate obtained by the applicant was permitted to be verified through advocate.

5. Pursuant to the order passed by this Court on 24.07.2020, learned advocate Mr. Anand Yagnik appeared for the applicant and he made a request to permit him to meet the corpus. Learned Public Prosecutor had no objection to the lawyer meeting the client, however, according to him, it was to be permitted in presence of the officer of the SOG as he was apprehending undesired and unsustainable allegations, on the ground of right of privacy. It was objected to by learned advocate Mr. Yagnik as according to him, that would frustrate the very purpose of meeting and he urged that the police officer can remain at an inaudible distance. He also had objected to the very act of detention at SOG Centre.

5.1. This Court, after hearing both the sides at length,

permitted the meeting at the City Civil and Sessions Court, Ahmedabad where the corpus was directed to be produced and the meeting was to be conducted at the Mediation Centre which was to take place in presence of the judicial officer as may be deputed by learned Principal Judge, City Civil and Sessions Court. The Police Officer who was to take the corpus to the City Court was also directed to remain outside the mediation centre.

6. On 31.07.2020, when the matter was fixed for hearing, learned advocate Mr. Yagnik had expressed his satisfaction for the arrangement made for meeting the corpus and over the physical and mental condition of the corpus.

7. As per the request of learned advocate, the matter was thereafter fixed for the petitioner to file its further affidavit which was filed by the petitioner on 05.08.2020.

7.1. According to her, at the time of filing the affidavit, her son was almost for 45 days in the custody of SOG. He is illegally detained in absence of any FIR or any formal complaint and without any sincere efforts to identify the genuineness of his citizenship. This conduct has become a trend and the only victims of this atrocious conduct are the poor citizens of India staying in slums and who are

marginalized and voiceless.

7.2. According to the petitioner, the detention and the witch hunt of the detenu by the SOG with an attempt to partake the application of the Foreigners Tribunal established pursuant to Foreigners (Tribunals) Order, 1964 envisaged under the Foreigners Act, 1946 and to determine issues of citizenship, is completely de hors its powers, jurisdiction and authority and hence, is illegal and unconstitutional. What is fundamentally flawed in the whole attempt to detain and question the citizenship of the detenu is the fact that when his parents' citizenship is not questioned and they are deemed to be citizens of India then, how could their child's citizenship be put to scrutiny and that too, in the complete violation of due process.

7.3. It is further urged that the respondents are bent upon scrutinising the birth certificate of the detenu, which is unfortunately because of circumstances out of the control of the petitioner and the detenu not available and the respondents have completely failed to investigate the lineage of the detenu, which has put all doubts of the respondents to rest. According to the petitioner, there were several people living in slum around the Chandola Lake including the family

of the detinue because of their West Bengal origin and the suspicion loomed large for them. The detinue had been similarly detained earlier and on the very ground, however, he was released by the end of the day.

7.4. According to the petitioner, the detinue is born out of the wedlock of Sidikbhai Daudbhai Shaikh and the petitioner herself. Not only the detinue is not Bangladeshi but, her parents do not have any relatives and acquaintances in Bangladesh. They have nothing to do with Bangladesh. Several years ago, they have migrated from Bangladesh to Gujarat and have been residing in the slum areas around Chandola Lake, Ahmedabad. The petitioner and her family belong to the lowest strata of the society. They live in extremely poor condition and are illiterate. They are engaged in manual work to earn their livelihood like those of Masoners, Carpenters, and Rag Pickers and other casual labour. According to him, the detinue has four children and a wife to look after. His family and children are sleeping hungry as he is the only bread earner.

7.5. According to the petitioner, the father of the detinue is around 61 to 64 years of age who was born in Simulia Village of Chhapra Taluka of Nadia District in the State of West

Bengal. Because of his search of work, he came to Gujarat State. Likewise, the corpus was born in Deganga which is a community developed block that forms an administrative division in North 24 Parganas District in the State of West Bengal. The parents of petitioner resided at Ahmedabad for a long time and in fact the petitioner and her husband got married at Ahmedabad.

7.6. The grandfather and great grandfather of the detenu were residing in Simulia Village of Chhapra Taluka of Nadia District in the State of West Bengal. The name of the grandfather is Hajra Shaikh and the name of the great grandfather was Dhiru Shaikh. He was called and referred to in the village as Dal-lada and the story of how he had daal he cooked for feeding the villagers which had led the people to give him this name.

7.7. It is further the say of the petitioner that these are the evidences which require consideration while examining the person's citizenship. It is further her say that her parents and maternal grandparents of the detenu also lived in Ahmedabad. It is further his say that she has seven children; four girls and three boys. The eldest son is Munir who is 40 years of age, second child is detenu Amir who is 36 years of

age and the third one is Munira who is 34 years of age and other four being younger to her.

7.8. The corpus - detenue being 36 years of age was born in the year 1984, which is also reflected in the Identification Card available with him and since Section 3 of the Citizenship Act, 1955 provides that all those who are born on or after 26th Day of January, 1950 but before the 1st Day of July, 1987, shall be citizens by birth, the corpus having been born prior to 1987, is citizen by birth. His parents also are citizens of this country.

7.9. It is further the say of the petitioner that in the year 2009, in complete violation of due process of law and without availing any opportunity of hearing, the dwelling place of the petitioner and her family had been demolished. Therefore, Public Interest Litigation was made essentially for rehabilitation. Thereafter, the petitioner lived in Ganeshnagar along with her children whereas detenue Amir lived near Chandola Lake with his wife and children.

7.10. It is the say of the petitioner that she and her husband both are possessed Election Card, Aadhar Card, Document issued by Ahmedabad Municipal Corporation (AMC), Allotment letter issued by AMC. The petitioner - mother also

had Pan Card. The elder brother of the detenu and the eldest son of the petitioner also possess Election Card, Election Receipt, School Leaving Certificate and Aadhar Card. **The detenu himself possess Election Card, Ration Card, his daughter's birth certificate, Slum Survey Receipt, Aadhar Card and Aadhar Card of his family members.** It is reiteratively urged that the petitioner has got Election Card which is sufficient to decide all the doubts regarding the citizenship of the detenu.

7.11. It is further urged, on the basis of the various laws, that the detention of the detenu is illegal and his confinement by the respondents and SOG is violative of his fundamental rights. It is mentioned that in School Leaving Certificate of the corpus the place of birth is mentioned as Bengal - Devadanga. There is no document to show that Bangladesh is the birth place of the petitioner. The corpus has been born in the city of Ahmedabad and he has been living there with his parents. Even otherwise, their origin also is West Bengal and they are citizen of India. The petitioner has her origin at Deganga, it sounds like Devaganga or to some it may sound like Devadanga which is a community developed block. Someone as illiterate as the deponent on being asked her native during

the admission of the ward in the school must have stated Deganga and hence, without any application of mind, in the place of birth, the school authorities have mentioned the same instead of mentioning the actual birth place of the ward which is Ahmedabad. However, the personnel of the SOG with a fixed mindset are certainly not equipped to understand the concept of Anglicisation and the play of accent that may lead to some discrepancies here and there and hence is bent upon proving that the detinue is a Bangladeshi with malafide intention and indicated in their affidavit in reply that the detinue is an original resident of Village Diyadanga, Post Kaile, Thana Kaliya, District Nodail (Bangladesh).

7.12. The grievance is also made that the petitioner when was permitted to produce the School Leaving Certificate of the corpus, the request is made to the Principal however, her approach had completely changed on 23.07.2020 as on 22.07.2020, some of the officers visited the school premises. It was further urged that the original school extract or concerned record be called for which would indicate true and relevant details.

7.13. It is further the say of the petitioner that there is a tribunal in fact to examine the issue of citizenship, moreover,

the condition precedent is that the detenu being a foreigner or an illegal immigrant, the exercise of power for detaining him does not exist. It is further her say that 15 to 18 other detenu in the SOG premises are there and one detenu named Zahid is lodged there for about more than 8 years. One Mr. Pannu is there for more than 4 years. A lady is also there for a long time who is separately kept in presence of women police. There is one detenu namely Saiful who was brought a day prior to the corpus and others and they are languishing there without any proper inquiry or trial in SOG Centre. There the corpus is provided food and permitted to meet the family members. He has no complaint of custodial violence or ill treatment by the SOG.

8. The affidavit-in-reply has been filed by Dr. Harshad Patel, Deputy Commissioner of Police, SOG, Ahmedabad City on dated 16.07.2020 where he has denied all the allegations. It was insisted that her son Amir Sidikbhai Shaikh is the citizen of Bangladesh and is originally resident of Village: Diyadanga Post Kaile, Thana: Kaliya, District: Nodail (Bangladesh). He, when was detained in the office of this respondent, he never produced or supplied any documentary evidence to justify that he is a citizen of Republic of India. His office undertook the exercise of finding out the non-nationals

of India and during the drive, near Chandola Lake, Ahmedabad, on 20.06.2020, the corpus Aamir Sidikbhai Shaikh along with four other similar such persons was arrested by the officers of SOG, Ahmedabad City Police. None of the five persons has supplied any document indicating citizenship of Republic of India. Photocopy of Aadhar Card was also not supplied at the relevant point of time but now, it has been produced in this petition. Their COVID-19 virus test had been carried out and the report came negative.

8.1. Thereafter, on taking cognizance of the report submitted by the office of this respondent, on 02.07.2020, the office of the Additional Commissioner of Police, Special Branch, Ahmedabad by exercising powers under Section 3 (2)(g) of the Foreigners Act, 1946 and under Section 5 of the Foreigners Order, 1948 so also as per the notification of State Government dated 02.12.1960, had passed an order to keep the corpus and others under restriction till their deportation.

8.2. The joint interrogation was carried out on 09.07.2020 by six agencies namely; (i) The Intelligence Bureau, Central Government, (ii) The Intelligence Bureau, State of Gujarat, (iii) Special Branch, Ahmedabad City Police, (iv) The Border Security Force, Frontier Headquarter, Gandhinagar, (v) The

Air Force Agency (Warrant Officer 9 - AFLU) and; (vi) Special Operation Group (SOG), Ahmedabad.

8.3. It was revealed that they are Bangladeshi and their entry was without any document and permission. He is residing in India illegally and therefore, as per the provisions of Foreigners Act, 1946 and Foreigners Order, 1948, the process needs to be completed. According to this respondent, except the copy of the Aadhar Card, no other document had been produced and as per the provision of The Aadhar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016, more particularly as per Section 9 of the Aadhar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016, the Aadhar Card is not the document of citizenship. Section 9 of the Act reproduced as under: -

“9. Aadhar number not evidence of citizenship or domicile, etc.

The Aadhar number or the authentication thereof shall not, by itself, confer any right of, or be proof of, citizenship or domicile in respect of an Aadhar number holder.”

8.4. The Unique Identification Authority of India (UIDAI) has said that Aadhar is not the document of citizenship. The press release dated 18.02.2020 by the UIDAI has also been annexed to that effect. It is further stated in the reply that the office of

the deponent had made attempts to verify the genuineness of the Aadhar Card and also asked for documents, on the basis of which, Aadhar Card was issued in the name of the corpus Aamir, by sending e-mail to the office of Assistant Director General, UIDAI, Mumbai dated 14.07.2020 and a reminder also had been sent on 16.07.2020. The report is awaited.

8.5. According to this respondent, the corpus is kept at SOG, Ahmedabad and on completion of requisite procedure, he would be deported to Bangladesh. Following the Foreigners Act, 1946 and Foreigners Order, 1948 and the notification of the State Government dated 02.12.1960 the corpus is kept in restrictions as he is the citizen of Bangladesh.

9. The further affidavit is also filed by Mr. Mukeshkumar Naranbhai Patel, Deputy Commissioner of Police, SOG, Ahmedabad City on 10.08.2020 where he has pointed out the inconsistency emerging from the material and documents submitted by the petitioner, more particularly, his date of birth and place of residence.

9.1. So far as the date of birth of the petitioner is concerned, as per the Election Card, the petitioner was 38 years of age as on 01.01.2002. It means her year of birth is 1964 and the identity card is issued on 05.07.2003. As per the Election Card

submitted by the petitioner, her date of birth is XX.XX.1961. This has been issued in January, 2011. As per her Pan Card, the date of birth is 01.03.1961 and as per the Aadhar Card, her birth date is 01.01.1961.

9.2. The date of birth of the husband of the petitioner as per the Identity Card issued by Election Commission is XX.XX.1956. Aadhar Card mentions the date of birth of her husband as 01.01.1951. The passbook of Canara Bank of her husband mentions the date of birth on 15.04.1961.

9.3. So far as the date of birth of the corpus - Aamir Sidikbhai Shaikh is concerned, the Aadhar Card placed along with the record shows his date of birth as 01.06.1984. The Election Card placed along with the additional affidavit shows his age as on 01.01.2002 as 22 years. As per the inquiry, the Election Card has become invalid. As per the communication received from the Government of India, Ministry of Electronics and Information Technology, Unique Identification Authority of India (UIDAI), Regional Office, Mumbai on dated 20.07.2020 addressed to Dr. Harshad Patel, DCP, Ahmedabad and the concerned authority has proceeded for deactivation of Aadhar Card. As per the School Leaving Certificate of respondent no.3, the date of birth is 01.06.1984 and as per

the petitioner's affidavit, his birth is not registered.

9.4. So far as the place of birth is concerned, petitioner has stated that the place of birth of all children is Ahmedabad. As per the School Leaving Certificate of respondent no.3, the corpus's place of birth is Devadanga. The said certificate is dated 23.07.2020.

9.5. The school leaving certificate of respondent no.3's brother Munir mentions the place of birth as mentioned for respondent no.3 where his date of birth is 01.06.1982. The Election Card of his shows the date of birth as XX.XX.1981. The School Leaving Certificate issued on 03.04.2010 reflects reason for leaving the school as continuous absence.

9.6. The School Leaving Certificate of his sister also shows the reason for leaving as going out of town. As per the interrogation report dated 09.07.2020, the place of birth of the respondent - corpus is Village-Diadanga, Post-Kaile, Thana-Kalia, Jilla-Nodail, Bangladesh.

9.7. It is urged that he has been detained on the basis of suspicion and confinement also followed. This respondent denied that the respondent no.3 is rightful citizen of India. There is no material prior to 24.07.2020 and subsequent to

24.07.2020 to show that he is a citizen of India. It is further the say of this respondent that the Deputy Director, UIDAI had communicated that the documents related to Aadhar Card are not available and the process for deactivating the same in initiated as mentioned in the written communication dated 20.07.2020.

9.8. Aadhar Number is issued only if there is no duplication / matching biometric found in UIDAI system for which Aadhar is already issued. Aadhar as a means of identity is different than other documents due to use of biometrics to ensure uniqueness and there is no possibility of obtaining duplicate Aadhar due to biometric de-duplication. Further vide letter from Dr. Patel dated 17.07.2020 request was made to provide documents of Aadhar Number belonging to the corpus and as per the records of UIDAI, the Aadhar Number was active and documents were not available in UIDAI system and therefore, as per Chapter VI of the Aadhar (Enrolment and Update) Regulation, 2016 (as amended), in absence of any valid supporting documents, the Aadhar Number needed to be deactivated till its updated by the Aadhar Holder after furnishing its valid and supportive documents and accordingly, the office proceeded for deactivation of Aadhar in compliance of Chapter VI. This will be referred to in

appropriate time further.

10. All in all, it is urged that petitioner has inconsistently attempted to gain the sympathy by placing certain details at paragraph 22 in her affidavit which is unacceptable and moreover, in Special Criminal Application (Habeas Corpus) No. 315 of 2017 vide order dated 25.01.2017 the Division Bench had not entertained the writ petition and had also observed that the question of nationality cannot be decided in habeas corpus petition. Therefore, this Court should not entertain this any further.

11. This Court has heard learned advocate Mr. Anand Yagnik appearing with learned advocate Mr. Chintan Acharya and Mr. Vanraj Gohel appearing for the petitioner. He has extensively argued and taken this Court through various provisions of the Foreigners Act, 1946, the Foreigners Order, 1948, the Foreigners (Tribunal) Order, 1964, the Foreigners (Tribunals) Amendment Order, 2019, the Citizenship Act, 1955, the Citizenship (Amendment) Act, 2019, the Citizenship Rules, 2019, the Registration of Electors Rules, 1960, the Aadhar Act, 2016 and the Aadhar (Enrolment and Update) Regulations, 2016.

11.1. His principal submission is that there is a serious error

committed by not allowing the applicant to discharge his onus, moreover, he cannot be deprived of his life and liberty under Article 21 without following the due process. According to him, without issuance of notice and without giving opportunity of hearing, he has been detained. There is an abject violation of principle of natural justice and therefore, the action is illegal and unsustainable. He needs to be enlarged forthwith. There is no trial contemplated and what all he is required is to be given is an opportunity before the Civil Authority and unless there is a modification or cancellation by the Central Government, he cannot be deprived of his right.

12. We had called upon learned Additional Solicitor General and Senior Advocate Mr. Devang Vyas to address the Court on the procedure of deportation of illegal nationals. On seeking instructions, he has urged that there are two kinds of persons who can be called illegal; those who have already travelled on a travel document and such document has expired and they continued to stay illegally, thus, their entry is legal however, by sheer afflux of time, their stay become illegal and second category of people are those who have entered illegally. The procedure of both would vary. According to him, once the person travels to India with valid travel document, the FRRO

would permit the person to enter the country and continue being in the country. Once the travel document expires, he is required to be deported after getting a travel document prepared for such persons. So far as other category of persons is concerned, the first step would be for deportation process of verification of nationality. The State Authority would contact the ministry of external affairs and would request the nationality verification as prescribed by the nationality verification form, more particularly, in respect of Bangladesh nationals, the ministry would send to the High Commission of Bangladesh in New Delhi or in four other places where Deputy High Commission functions i.e. at Kolkata, Mumbai, Agartala and Guwahati requesting them to verify the nationality of an individual and thereafter, to issue a travel permit and upon verification of nationality, such travel permit is issued and deportation of detainee happens. However, there is no standard time frame observed with regard to the time taken by Bangladeshi Authorities to verify the nationality for particular individual.

12.1. He further added that Bangladeshi Nationals who are intercepted at border while crossing into India unauthorizedly would be immediately sent back by the Border Security Force (BSF) however, in case of those who have inadvertently

crossed the border, they would be interrogated and after once they are found innocent, they are handed over to the border guards after holding a flag amity and the details are being furnished to the Ministry of Home Affairs, Foreign Division every month.

12.2. All State Governments or Union Territory Administrations need to set-up Special Task Force in each district of the State for detecting, identifying and intercepting illegal immigrants from Bangladesh settled in the State. For those immigrants who are apprehended in the country, the action is taken under Section 14(A)(b) of the Foreigners Act, 1946 and those cases which are referred to Bangladesh High Commission for nationality verification, till the nationality of such Bangladeshi nationals is confirmed, they are kept at detention centres set-up by the State and the Union Territories concerned. It is further his say that in respect of Bangladeshi nationals found to be staying unauthorizedly in any particular State or Union Territory, proper inquiry is required to be conducted by the State Government or the Union Territory Administration and if the person concerned claims Indian citizenship and residence of a place in any other Indian State, the concerned State Government or Union Territory would send to the Home Secretary of that State and

District Collector, from where the suspected person claims to hail and also for the details of near relatives etc. and proper report needs to be sent by the concerned State Government or District Magistrate to the deporting State Government after proper verification within a period of 30 days. If no report is received within the period of 30 days, the competent authority is empowered to take necessary action to deport suspected national. There are bound to be sufficient number of detention centres in each State where the illegal immigrants would be retained, pending their deportation.

12.3. He has also further stated that after completion of the inquiry, the illegal immigrants from the neighbouring country detected in the State or Union Territory other than the border States with the Bangladesh would be properly escorted in group as far as possible and handed over to the BSF in West Bengal. Those who are being escorted, should also carry with them, the order issued by the competent authority of the State Government or Union Territory Administration under Section 3(2)(c) of the Foreigners Act, 1946.

12.4. The BSF also is required to inform all the State Governments and Union Territories, the name, designation, telephone, e-mail ID of designated officer of BSF to whom the

illegal immigrants are to be handed over. The State Police which will be escorting the illegal immigrants also needs to carry the appropriate order issued by the competent authority of the State Government under Section 3(2)(c) of the Foreigners Act. The State Government would initially incur expenditure of transportation up to the designated point before being handed over to the BSF and subsequently such amount is to be reimbursed along with the amount incurred for performing the functions by the agencies on behalf of the Central Government under the Foreigners Act, 1946.

12.5. He has also urged the Court that there is no time limit for completing the procedure since a lot would depend on the response being given by the Bangladesh High Commission as a lot would depend on the authority of Bangladesh as the response may not come well in time. According to learned ASG, thus, when it is in relation to those persons whose documents or the visas have expired and the travel documents' invalidity is the issue for being illegally in the country, generally the same is being responded promptly and within one month ordinarily, such person is being transported. Whereas, in case of those who have illegally entered the country, it may take a little longer time as Bangladesh authority usually takes a longer time to conduct the inquiry at

their end, since accepting the illegal immigrants is the responsibility of the neighbouring State. He also has urged that there are certain circulars of Ministry of External Affairs which are confidential in nature and therefore, he can always share the same with the Court, the gist of which he has already argued before the Court.

13. Having thus heard both the sides and also on careful examination of entire material, it can be safely noted that it is a matter of record that on 20.06.2020 the Police Sub-Inspector Mr.M.N.Solanki and Mr. Siyadia and others, when were patrolling in the area of Isanpur Chandola Lake near Aisha Mosque and other Mosque, the five Bangladeshi persons were caught, by keeping the panch witnesses with the team of the Police Officers, namely Ubeidullmulla s/o Ibaduttmulla, Saaiful s/o Mandar Dulal, Umar Aaifbhai Shaikh, Aamirbhai Sidikbhai Shaikh, Mustakin s/o Kurbab Paudud. They were inquired of their passport and visa however, none of them had either the passport or the visa and they also admitted of being Bangladeshi Nationals. They had no other proof of Election Card, Driving Licence, Pan Card or any other proof. No objectionable material against India was found from them and there was no other objectionable item found.

13.1. The statement had been recorded by the Police Sub-Inspector Mr. N.M.Solanki and as they continued to be in India without any passport or visa, they had been detained at 7:45 pm on the very day i.e. on 20.06.2020. The report has been prepared by the Deputy Commissioner of Police, SOG, Crime Branch which specifies that as they have entered India without any valid document of passport or visa and as there is an absence of any document indicating that they have Indian Nationality like Election Card, Ration Card, Driving Licence passport or visa, they are infiltrated and illegal immigrants and therefore, the report is submitted to the Additional Police Commissioner, Special Branch, Ahmedabad City with the enclosure of the report of the PSO, Panchnama, Statemen of these five persons, Interrogation Form, Application Form of Foreign Prisoner of his/her personal data and the photographs.

13.2. According to the respondent - State, they have been given the opportunity on the very day and after inquiring from them when they failed to adduce any necessary material establishing their nationality, they have been put under the restriction and this is an interim measure permissible under the law.

13.3. The challenge is made by way of the writ of habeas corpus where the challenge is essentially made to the order passed on 02.07.2020 by the Civil Authority i.e. the Additional Police Commissioner, Special Branch, Ahmedabad City, which on the strength of this report tendered to him, exercised the powers under Section 5 of the Foreigners Order, 1948, Section 3(2)(g) of the Foreigners Act, 1946 and a Notification of the State Government numbering as R.G.F/1160(II) dated 02.12.1960 and till they were deported from India, they are kept under the restriction at SOG, Crime Branch, Juhapura, Ahmedabad.

13.4. It is given to understand that this is an interim measure meant for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continuous presence. It is also further the say of the State that there is no violation of principle of natural justice and this is simply placing the persons under restriction and nothing beyond the same. Once such order is passed by the Additional Commissioner of Police, it is for the Ministry of External Affairs and Ministry of Home Affairs to decide. The time factor of which cannot be ascertained as it would depend on the response of the country from which the illegal immigrants have come.

14. It is a matter of record that there are three affidavits filed by the petitioner who is the mother of the detenu who when was produced before this Court and when was permitted to meet the lawyer, has not complained of any ill treatment. Supply of food and meeting the family members at SOG Centre also is permitted. The serious grievance raised is of undefined and unregulated confinement and that too, without fulfilling principle of natural justice. By way of circular issued by the Government of India, Ministry of Home Affairs and as also submitted before this Court by the learned ASG that those Bangladeshi nationals who enter India illegally after 25.03.1971 are treated as illegal immigrants. Those infiltrated and those who overstayed unauthorizedly after expiry of visa are to be deported back to Bangladesh. The procedure has been also prescribed as per the instructions issued by the Ministry of Home Affairs.

14.1. There are different ways in which this procedure of deportation is carried out. Firstly, if they are intercepted at the border while crossing unauthorizedly into Indian Border, they shall be immediately sent back by the BSF. Secondly, in case of inadvertent crossers, if they are found innocent, they are being handed over at the flagmity. Thirdly, the Special

Operational Group in the State and in the Union Territory, are set-up for identifying and intercepting illegal immigrants. Those who are illegal immigrants, if are apprehended in the country against whom the action is taken under Section 14(A) (b) of the Foreigners Act, they are referred to the Bangladesh High Commission for nationality verification through the Ministry of External Affairs and till the nationality of such Bangladeshi nationals is confirmed, they are kept in detention centre set-up in the State or Union Territory.

14.2. Proper inquiry is conducted by the State Government and if the person concerned claims citizenship and residence of a place in any other Indian State, that State or Union Territory would be sent the details addressed to the Home Secretary of the State including the name, parentage, residential address, details of near relatives etc. and that State will ensure the appropriate report is sent within 30 days. The competent authority will ensure with the detention of such person to ensure the physical availability and if no report is received within 30 days, the competent authority may take necessary action to deport the suspected Bangladeshi national.

14.3. After completion of the inquiry, the illegal immigrants

are taken by the concerned State or Union Territory Police with proper escort in a group or individually and handed over to the BSF in West Bengal at the places designated and the BSF would facilitate their exit from India to Bangladesh. The appropriate order issued by the competent authority of the State or Union Territory Administration under Section 3(2)(c) of the Foreigners Act after proper inquiry, shall need to be carried out. The State Police shall need to escort the illegal immigrants from Bangladesh to carry out the appropriate order issued by the competent authority of the State Government under Section 3(2)(c) of the Foreigners Act. There is a sufficient number of detention centres also in the State for the said purpose.

15. These instructions very clearly require the State Governments or the Union Territory Administrations to ensure proper supervision on the inquiry process and to maintain a complete record of the illegal immigrants who are being handed over for the purpose of deportation. Consolidated instructions regarding the procedure to be followed for deportation or repatriation of the foreign nationals also requires that as per Section 3 of the Foreigners Act, 1946, *“the Central Government may by order make provision, either generally or with respect to all foreigners or with respect to*

any particular foreigner or any prescribed class or description of a foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein." The powers for deportation/repatriation of foreigners are vested in Central Government in terms of Section 3 (2)(c) of the Foreigners Act, 1946 and according to which orders made under section 3 may provide that foreigners may not and shall not remain in India or in any prescribed area therein. Further under Section 3(2)(e) of the Foreigners Act, 1946 read with para 11 (2) of the Foreigners Order, the Central Government has powers to issue orders requiring the foreigners to reside in a particular place and of imposing restrictions on his movement. These powers under Section 3(2)(c) and 3(2)(e) of the Foreigners Act and Foreigners Order, 1948 have also been delegated to the State Government and Union Territory Administration. Separate Notifications have been issued from time to time delegating these powers to the State Government and Union Territory Administration.

15.1. Worthwhile it is to be reproduced at this stage Section 2 of the Foreigners Act, 1946 which defines "*foreigner who is a person who is not citizen of India.*" The power to make orders is provided under Section 3 which is as follows: -

"3. Power to make orders.—

(1) The Central Government may by order¹ make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into 2[India] or, their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter 2[India], or shall enter 2[India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from 2[India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in 2[India], or in any prescribed area therein; 3[(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;]

(d) shall remove himself to, and remain in, such area in 2[India] as may be prescribed; tc" (d) shall remove himself to, and remain in, such area in 1[India] as may be prescribed;"

(e) shall comply with such conditions as may be prescribed or specified— tc" (e) shall comply with such conditions as may be prescribed or specified—"

(i) requiring him to reside in a particular place; tc" (i) requiring him to reside in a particular place;"

(ii) imposing any restrictions on his movements; tc" (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; tc" (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; tc" (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; tc" (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; tc" (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; tc" (vii) prohibiting him from engaging in activities of a prescribed or specified description;"

(viii) prohibiting him from using or possessing prescribed or specified articles; tc" (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; tc" (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;"

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions; tc" (f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;" 4[(g) shall be arrested and detained or confined;] and may make provision 5[for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act. 5[(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) 6[or clause (f)] of sub-section (2).]"

15.2. Section 3(2)(g) provides that the orders made under this section may provide that the foreigner shall be arrested and detained or confined.

15.3. Section 8 of the Foreigners Act, 1946 provides for determination of nationality. Worthwhile it would be to reproduce the same: -

“8. Determination of nationality. —

(1) When a foreigner is recognized as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected: Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognized as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court: Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.”

15.4. Section 9 of the Foreigners Act, 1946 provides for burden of proof, profitable it would be to reproduce the said provision: -

“9. Burden of proof.—If in any case not falling under

section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person."

16. It is thus clear that for the purpose of prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence, the Central Government has the power to make provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners. This also authorizes the Central Government to make the order and provide that foreigner shall be arrested or detained or confined and may make a provision for such incidental or supplementary matters, which in the opinion of the Central Government, is expedient and necessary for giving effect to this act. Therefore, to say that by way of interim measures, the powers exercised are of only restriction, does not go with the scheme of the provision which does not provide for the restriction but speaks of the arrest, detention or confinement.

17. With regard to the examination of nationality, Section 8 provides that when a foreigner is recognised as a national by

the law of more than one foreign country or where for any reason, it is uncertain what nationality is to be ascribed to a foreigner, he may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected, decision as to the nationality given under sub-section (1) shall be final and shall not be called in question in any Court, provided of course that the Central Government either on its own motion or an application by the foreigner concerned, may revise any such decision. So far as burden of proof is concerned, Section 9 provides that if in any case not falling under Section 8, any question arises with reference to this Act or any order made or direction given thereunder whether any person is or is not a foreigner, the onus will be upon such person notwithstanding anything contained in the India Evidence Act, 1872.

18. Worthwhile it would be to refer to the Foreigners Order, 1948 at this juncture. A notification has been issued by the Ministry of Home Affairs on 10.02.1948 in exercise of the powers conferred by Section 3 of the Foreigners Act, 1946 and in supersession of the Foreigners Orders, 1939 and all

notifications amending the same, the Central Government has made the said order of 1948. The definition clause of Order 2 provides for civil authority which means such authority as may be appointed by the Central Government in this behalf for such areas as it thinks fit. Order 5 provides for power to grant permission to depart from India. It states that no foreigner shall leave India without the leave of the civil authority having jurisdiction at such port and leave shall be refused by the civil authority if it is satisfied that the foreigner has failed to comply with the formalities of departure, or when his presence is required in India to answer a criminal charge, or in the event when his departure may prejudice the relation of the Central Government with the foreign power and the departure of the foreigner has been prohibited under the order issued by the competent authority. The civil authority also may prohibit the departure of the foreigner where it is satisfied that such departure would not be conducive to the public interest. Whenever the civil authority issues an order under Clause-A, it would report the matter forthwith to the Central Government which may cancel or modify the order. Order 5(A) provides for power to examine the persons. It would be profitable to reproduce the same: -

“5. (A) Power to examine persons: The civil authority may examine any person who seeks leave to enter India

or to depart there from or during his stay in India for the Purposes of the Foreigners Act, 1946, or of any order made thereunder; and it shall be the duty of every such person to furnish to the civil authority such information in such manner and at such times, as that authority may require.”

18.1. It is clear from this order that the civil authority has power to examine any person who seeks leave to enter India or to depart therefrom or during his stay in India for the purposes of Foreigner Act, 1946 or any other made thereunder and it is the duty of every such person to furnish to the civil authority such information in such a manner and at such times as the authority may require.

19. The Court is conscious of the Foreigners (Tribunal) Order, 1964. The order passed by the Ministry of Home Affairs on 23.09.1964 authorizes the Central Government to refer the question as to whether a person is or is not a foreigner within the meaning of Foreigners Act, 1946, to the tribunal, to be constituted for the said purpose, for its opinion. The tribunal can dispose of such questions by following the procedure prescribed. The powers of the tribunal are the powers of the civil Court while trying a suit under the Code of Civil procedure in respect of summoning or enforcing the attendance of the person or examining him on oath, requiring the discovery of production of document and issuing the

commission for examination of the witnesses.

20. This Court is conscious of the two decisions which are sought to be relied upon by the respondent - State, where the Division Bench of this Court has chosen, in a matter of writ of habeas corpus, not to enter into the aspect of nationality on the ground that it would be open for the detinue or the relatives to apply to the competent authority under Section 8 of the Foreigners Act, 1946.

20.1 In Special Criminal Application (Habeas Corpus) No. 8527 of 2016, the husband of the petitioner was a citizen of Bangladesh and several criminal cases were registered against him. He resided in India without proper documents. The petitioner was granted bail in connection with the criminal cases. The order came to be passed under Section 11(1) and 11(2) of the Foreigners Act ordering to keep the husband of the petitioner in confinement/restrictions. The petitioner also produced certain documents that he was an Indian national. As the question of nationality surfaced, the Court directed him to approach the concerned authority under Section 8 and disposed of the habeas corpus petition.

20.2 Likewise, in Special Criminal Application No. 315 of 2017, it was contended by the respondent - State that prima

facie material emerged that the petitioner's wife was a Bangladesh national and she was staying in India without permission. She was, therefore, kept in confinement by the Special Operational Group. The concern was voiced about the wellbeing of hers and the authorities had been directed to produce her before the Court. On inquiry, there was no ill treatment found. As there was a question of nationality of the lady, the Court held that the same cannot be decided in the habeas corpus petition. There were several original documents such as Voter's Card, Aadhar Card etc. concerning the lady which had been supplied to the SOG to show that she was a citizen of India. The Court directed that it would be open for the petitioner to bring these to the notice of the authorities and produce the copies of such documents for consideration and despite that exercise, if the question of nationality remain undecided, it would be always open to the petitioner to take up the issue with the concerned ministry or the Central Government in terms of the Foreigners Act.

21. Being conscious of these decisions and also conscious of the fact that in the event of deciding the question of nationality, the issue shall have to be raised before the appropriate authority by the petitioner, this Court is restricting its inquiry into the validity and propriety of the

order passed by the civil authority by examining the principles of administrative law. It shall have to be questioned as to whether the order passed was legal, rational and the procedural propriety also shall need to be inquired into. The principle of natural justice would demand the hearing as also considering the material which has been placed before the authority concerned.

22. Without entering into the aspect of the nationality, if one looks at the report prepared by the Deputy Commissioner of Police in his capacity as a senior officer reporting to the Additional Commissioner of Police who has been made a civil authority, it is quite apparent that the inquiry has been limited to the visa and the passport. The person concerned since could not produce the same on the very day of patrolling i.e. on 20.06.2020, the respondent no.3 along with other four persons has been detained at the detention centre of SOG and since then, the corpus continues to be at the SOG Centre.

23. It is to be noted at this stage that there are various documents which have been produced before this Court, which in the report, are missing. There has been no inquiry at all made of the parents of the present corpus as the mother is the petitioner and her nationality is not questioned nor

doubted even. There are six children of the petitioner and the corpus is one of them. Several years before, the SOG had also made an inquiry and detained the respondent no.3 and later on, he was released on having not found anything adverse. The corpus has been once again during the patrolling questioned by the authority and since he could not show his passport and visa, he has been detained on the ground that he is a Bangladeshi national. It is admitted by the respondent authority that he has no criminal background. He is a labourer working for his livelihood. He has his wife who is an Indian national and four children are born out of their wedlock. The documents of his parents, his siblings, his wife and his children have not been regarded by the authority concerned as there was no opportunity given for him to establish his nationality. The Central Government has delegated the powers to the civil authority which is from the State Government and the powers also are given to them to inquire into the nationality of a person, therefore, the powers are to be exercised in accordance with law. The least that is expected of the person who has been given such wide and vital powers of recommending the deportation of a person on the basis that he is not an Indian national, is to avail an opportunity of hearing to the person concerned. We had

pertinently queried learned Public Prosecutor as to whether there is any notice given and a separate opportunity has been made available for those who have been suspected as foreign nationals, to adduce the relevant material for proving the nationality. So far as the corpus is concerned, his education from 3rd standard is in the school at Juhapura. He also has produced before this Court his Aadhar Card so also his Election Card. Certain anomalies in the names from Aamir to Amir is much emphasized. It is to be highlighted here specifically that the report of the Deputy Police Commissioner and of the Additional Police Commissioner, Special Group also refers him as Amir and not Aamir and thus, this anomaly can surely not be blown out of proportions.

24. Be that as it may, there is no doubt with regard to his identity. His entire family is in India. The order mentions his relatives and family being in Bangladesh, this being a common order for all the five persons who had been detained on the same day, the authority possibly being unmindful of the individual case, has reported it. The form filled-in by the authority also gives the details which are incorrect and based on the same, the Additional Police Commissioner has on 02.07.2020 exercised the powers under Section 3(2)(g) of the Foreigners Act, 1946, Section 5 of the Foreigners Orders and

the authorization he received vide notification dated 02.12.1960 of the State Government and directed the order or detention till the order of deportation is received.

25. Worthwhile it is to make a mention that when this Court requested the learned ASG to address the Court on possible time period for the deportation in case of the foreign nationals and particularly Bangladeshi nationals, he fairly submitted that depending on the response received from the Bangladesh Authority, on due verification of the nationality of those persons for whom the proposal is sent for deportation, the implementation is made. There is no fix period, as a lot depends on other outer agencies. Although, it is not confirmed by the respondent, by way of an affidavit it is claimed that there are persons who are not deported for more than four to eight years. This Court is not choosing to enter into that as this is not the scope of this petition, at the same time, so far as the case on hand is concerned, when it has been noticed by this Court incidentally while addressing the issue raised by the petitioner, let this aspect be taken up with requisite seriousness by the concerned authority dealing with issue of deportation at the level of External Affairs Ministry and learned ASG is expected to play a vital role in streamlining this aspect and its due implementation, up-keeping the human

dignity. It is quite obvious from the order passed on 02.07.2020 that the same is without availing any opportunity to the corpus to adduce the necessary material.

26. Without evaluating the material which has been produced before this Court by the corpus, we deem it appropriate to direct the authority concerned to avail that opportunity and for the corpus to produce, for consideration of the authorities, the necessary testimonials.

27. Admittedly, as mentioned above, the report prepared by the DCP was without even availing opportunity to the corpus and the Additional Commissioner has acted upon the same. We are conveyed that till date, nothing has moved and the corpus continues to be at the detention centre. When serious flaw is noticed in observing principles of natural justice, without entering the issue of nationality, on a limited ground of non-availment of opportunity, this Court deems it appropriate to intervene and to that limited extent, indulgence would be inevitable, noticing unbridled powers assigned to the authority, of course, for catching illegal/unauthorized nationals. Resultantly, the opportunity requires to be availed noticing apparent breach of administrative law and very peculiar facts concerning respondent no.3 and his family.

28. Till that exercise is completed, the petitioner shall be released on the reasonable terms and conditions, as deemed appropriate by the concerned authority within one week of receipt of copy of this order, so as to ensure his availability if he cannot satisfy the authority on the strength of his testimonials.

29. The corpus since has questioned his confinement at the SOG, without entering into the issue of nationality and its nuances, to be determined by the concerned authority as the same is found to have been done in disregard to the basic requirement of availing opportunity. This petition to that limited extent is allowed and disposed of in above terms.

सत्यमेव जयते
THE HIGH COURT OF GUJARAT (SONIA GOKANI, J)
WEB COPY

(NIRZAR S. DESAI, J)

Bhoomi