

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	13.01.2021	<p style="text-align: center;">Misc. Criminal Application No.-136/2021 <u>CNR No. JHDH01-000358-2021</u></p> <p>Abdullah Sudiana @ Abdulloh Sudiana & Ors.....Petitioners</p> <p style="text-align: center;"><i>Versus</i></p> <p>State of Jharkhand.....Opp. Party</p> <p>Counsel for the petitioners: Anwar Hussain, Ld. Adv. Sahbaz Abdul Malik, Ld. Adv.</p> <p>Counsel for the State : P.P. Pandey, Ld. APP</p> <p style="text-align: center;">WWW.LIVELAW.IN</p> <p>Online attendance has been filed on behalf of the accused persons 1. Abdullah Sudiana @ Abdulloh Sudiana 2. Nasruddin 3. Satria Adiputra @ Satria Bayu Adiputra 4. Muhamad Yusuf Inskandar @ Muhamad Yusuf Iskandar 5. Muhammad Risky Hidayah @ Muhammad Rizky Hidayah 6. Taufique Sagla Lababa @ Taufik Sagala Lababa 7. Akhmadh Hamzah 8. Ahmad Onte 9. Undang Superman @ Undang Suparman 10. Andhika Fahmi 11. Md. Jaffar Islamuddin Munsu Ishaque 12. Masood Khan.</p> <p>Case is fixed today for hearing on the point of charge but in the mean time the petition filed through drop box and registered as MCA No.-136/2021 filed on behalf of above name accused persons has been placed on record u/s 227 r/w 228 of the Cr.P.C. for making discharge of the accused persons from the offences u/s 175/176/188/269/270/271 r/w section 34 IPC and Section 14B/14C/13 for Foreigners Act and section 3 of Epidemic Diseases Act 1897. Copy of this petition has been served upon the ld. Public prosecutor.</p> <p>In this case there is direction of Supreme Court of India</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Contd... 13.01.2021	<p>passed on 18.12.2020 in Writ Petition (Civil) Nos.-600, 603, 604 & 605 of 2020 and the Writ Petition (Criminal) No.- 295/2020 in I.A. No.-124203/2020 to the trial court to ensure that trial of the criminal cases arising out of FIR No.-105 as also FIR No.-0022 of 2020 to be concluded not later than 2 months from receipt of copy of the order. In view of such direction ld. P.P. requested to disposed of the petition for discharge after hearing the matter today itself.</p> <p>Hearing on this petition accordingly made though <i>Jitsi app.</i> and the petition is being disposed of by the following order.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>Pressing the petition ld. Counsels for the petitioners have stressed that the entire prosecution is abuse of law having no material available to frame valid charge and this is the first application of discharge their behalf. Briefing the allegation the prosecution story narrated in the statement of ASI of Govindpur P.S. dated 06.04.2020 that on secret information of staying some foreigners at Aasanbani Mosque he went there with Mukhiya and other villagers for verification and found 10 persons who disclosed themselves citizens of Indonesia and allegedly disclosed their participation in New Delhi Mohammad Nizamuddin Markaj on different dates according to their date of passport and have reached Dhanabd on 29.02.2020 along with Md. Jaffar Islamuddin and Munsu Ishaque. As per the FIR it is also narrated by the petitioners that they also visited different mosque in Dhanbad and surrounding localities, they organized Jamat, propagated the religion and on 23.03.2020 they reached at Asanbani Mosque where they were</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Cont... 13.01.2021	<p>offered shelter by secretary and president of the mosque but no information was given to local police and thereafter the petitioners were send to PMCH for Corona Test and were quarantined in the isolation ward in ISM Dhanbad and thereafter SDE No. 04/2020 dated 26.03.2020 was registered and their passport, mobile phones were seized. It is further submitted that though cognizance u/s 13/14B/14C of the Foreigners Act has been taken but section 13 is not a penal provision and no violation of section 14B and 14C being the penal provisions has been made and on that score no charge can be framed u/s 13. He also argued that there is no material to frame valid charges u/s 14B/14C of the Act as section 14 deals with penalty for using forged passport and where as section 14C provides for abatement of the offence but none of the passport seized have been found forged. Regarding other allegations of violation of direction of Central Govt./State Govt. during lock down, ld. Counsel submitted that the petitioners had come to India on tourist Visa but all of a sudden on announcement of lock down they remain stayed in mosque, never committed or abetted any act of violence against the health care service personnel or cause damaged or loss to any property and similarly no offence u/s 175, 176, 188, 269, 270 and 271 r/w 34 IPC is made out but the police official arrested them and remanded in judicial custody. He submitted that on the other hand the petitioners while reaching Dhanbad being the mandatory provision under the Foreigners Act they already reported about their presence being the Indonesian citizens to SSP Dhanbad on 01.03.2020 on writing that they will</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Cont... 13.01.2021	<p>stay till 27.03.2020 annexing their entire documents, which has been acknowledge by office of S.S.P. also but without taking into consideration present case has been filed. Ld. Counsel submitted that only due to announcement of lock down the petitioners were forced to confine them self in a save place in the mosque and no case thus is made out to frame charge against any of the sections under which cognizance has been taken. It has also been submitted that considering all these facts Hon'ble High Court has been pleased to release them on bail.</p> <p>Ld. P.P. opposed the prayer for discharge regarding all sections but conceded on the facts that passport and visa of the petitioners have not been found forged in course of investigation so far as the Indonesian citizens as accused are concerned.</p> <p>Having heard both the sides and from perusal of the record it transpires that the case has been committed to the Court of Sessions only on the insertion and cognizance of section 14B/14C/13 of the Foreigner Act 1946. Let us first discuss about the ingredients of these sections. Section 13 of the Act defines the offence that any foreigner who contravenes, abets or failed to comply any direction under the Act or the Rules then the offence shall be deemed to have been committed and it also includes attempts as well. Such person if interfere with his arrest, trial of punishment are also covered thereunder. Section 14 deals with the penal provisions regarding contravention of provisions of the Act that if any foreigner remains in India exceeding the Visa period, or violates the conditions of Visa Rules, in such a situation such foreigner shall be punished for a</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Cont... 13.01.2021	<p>period which may extend to 5 years and shall also be liable to fine. Section 14A deals with penalty for entry in restricted areas prescribing punishment not less than 2 years but may extend to 8 years with fine. Section 14B deals with penalty for using forged passport prescribing punishment not less than 2 years but may extend to 8 years with fine and Section 14C deals with penalty for abatement for offence punishable u/s 14 or 14A or 14B prescribing similar punishment. WWW.LIVELAW.IN</p> <p>In the present case cognizance has been taken u/s 14B/14C/13 of The Foreigner Act also, but from the investigation no material/evidence has been brought that accused petitioner No.1 to 10 who are Indonesian Citizens entered into the territory of India on the basis of forged passport. Section 14B specifically states about penalty for using forged passport.</p> <p>So far as section 14C of the foreigners Act is concerned, it deals with penalty for abatement for any offence u/s 14 or 14A or 14B. This section appears to have been alleged against two Indian Nationals as accused petitioner No.-11 & 12 acted as guide of Indonesian Citizen. In this section the word “Whoever” has been included which may include any person other than the foreigner in abating any act in violation of section 13/14A/14B. But nowhere in the investigation it has brought that entry in India has been made by the Indonesian Citizen (Petitioner No.-1 to 10) on the basis of forged passport in which the petitioner No.-11 & 12 had any role of abatement of such act. In seizure list, original passports of petitioner No.-1 to 10 on tourist Visa is mentioned and during investigation</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Cont... 13.01.2021	<p>the same have never been found forged or violating any Visa and passport rules. In the entire case diary no reason for submitting charge sheet against the petitioners under the penal provisions of Foreigners Act has been assigned. These provisions are very specific and before moving ahead to book any foreigner under the penal provisions, even prima facie evidence with cogent foundation is required. On the other hand in Para-22 of the case diary, which is statement of sub inspector of police, it has been admitted that after all necessary inquiry regarding the Indonesian Citizens, it was revealed that they have been issued Tourist Visa for visiting in territory of India. It is alleged that they after including in Tabligi Jamat of Nizamuddin Markaj, New Delhi they visited different mosque by preaching their religion and had come to Dhanbad on 29.02.2020 with the guides Petitioner No.-11 & 12 and lastly Asanbani Masjid under Govindpur police station on 23.03.2020 without giving information to the local police station and allegedly violated the lock down guidelines. On the other hand it has been asserted in the petition that after coming to Dhanbad on 29.02.2020, the petitioners informed the office of S.S.P. on 01.03.2020 and being their defense it was required to be taken into consideration by the investigating agency. It is a fact that from 24.03.2020 nation wide lock down was announced and the petitioners were subjected to Corona Test and they were kept quarantine in the same mosque for 14 days by the police when their test report came negative and ultimately they were remanded to judicial custody by instituting the present case against them. So far overstay in India is concerned,</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Cont... 13.01.2021	<p>these accused persons had their valid Visa within which they have to live in India which had not expired and only because of the lockdown proclaimed by the Central Government followed by the State Government, they overstayed. Had the lockdown was not proclaimed then these accused persons could never have been subject to criminal case.</p> <p>From the above discussion I come to a finding that there is acute absence of materials to proceed further and framing any charge u/s 14B, 14C/13 of The Foreigners Act 1946 and accordingly the petition made for discharge u/s 227 of the Cr.P.C. is allowed to that extent. The petitioners are thus discharged from the allegations of offences u/s 14B, 14C/13 of The Foreigners Act 1946. So far as other section viz 175, 176, 188, 269, 270, 271 r/w 34 of the IPC and section -3 of the Epidemic Deceases Act are concerned, the same are within the jurisdiction of Judicial Magistrate First Class to consider the material on record to proceed further by giving an opportunity of hearing to the accused/petitioners.</p> <p>Regard being had to the discussion made above, and in exercise of power and provision enumerated u/s 228 (1) (a) of the Cr.P.C. I pass an order to transfer the case for trial u/s 175/176/188/269/270/271 r/w section 34 IPC and section 3 of Epidemic Diseases Act 1897 to the court of Smt. Ritwika Singh, J.M. 1st Class, Dhanbad.</p> <p>Ld. Court below is directed to follow the time line as indicated and directed by the Hon'ble Supreme Court of India passed on 18.12.2020 in Writ Petition (Civil) Nos.-600, 603, 604 &</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Cont... 13.01.2021	<p>605 of 2020 and the Writ Petition (Criminal) No.- 295/2020 (Copy of the order available in LCR).</p> <p>The petition Dt. 12.01.2021 filed in the form of MCA No.- 136/2021 is hereby disposed of with aforesaid direction.</p> <p>Office is hereby directed to remit back the lower court case record with copy of this order to the court concern forth with.</p> <p>The accused persons are directed to remain physically present before the court Smt. Ritwika Singh, J.M. 1st Class Dhanbad on 16.01.2021.</p> <p>In view of the disposal of Criminal Misc Case this S.T. case is also disposed of. Let the record of S.T. No.-15/21 be consigned to Record Room.</p> <p style="text-align: right;">WWW.LIVELAW.IN (Dictated) sd/- Dist. & Addl. Sessions Judge-III, Dhanbad</p> <p>Memo No..... Dated</p> <p>Copy of order forwarded to Smt. Ritwika Singh, J.M. 1st Class, Dhanbad to proceed further in the matter in accordance with law.</p> <p style="text-align: center;">Dist. & Addl. Sessions Judge-III, Dhanbad</p> <p style="text-align: center;">WWW.LIVELAW.IN</p>	

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad <u>S.T. - 15/2021</u> <u>(Misc. Criminal Application No.-136/2021)</u>	Office notice taken with date
1	2	3	4

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4
	Cont... 13.01.2021		

Serial No.	Date order of proceeding	Order with signature of the court of ADJ-III, Dhanbad S.T. - 15/2021 (Misc. Criminal Application No.-136/2021)	Office notice taken with date
1	2	3	4