

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

Thursday, the 15th day of September 2022 / 24th Bhadra, 1944
WP(CRL.) NO. 96 OF 2022(S)

PETITIONER:

OLORUMFEMI BENJEMIN BABA FEMI, AGED 44 YEARS, S/O OLORUMFEMI,
OVEWOLE ROAD STREET, AGEGE DISTRICT, LAGOS STATE, NIGERIA.

RESPONDENTS:

1. UNION OF INDIA, THROUGH CABINET SECRETARIAT, MINISTRY OF HOME AFFAIRS, 32, SOUTH BLOCK, PRITHVIRAJ ROAD, NEW DELHI-110 001.
2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.
3. STATION HOUSE OFFICER, KOTTAYAM WEST POLICE STATION, KOTTAYAM-686 013.
4. FOREIGNERS REGIONAL REGISTRATION OFFICER, FOREIGNERS REGIONAL REGISTRATION OFFICE, 594Q+477, NEDUMBASSERY, ERNAKULAM DISTRICT, KERALA-683 111.
5. ADDL.R5. THE ADDITIONAL CHIEF SECRETARY, HOME AND VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM [IS SUO MOTU IMPEADED VIDE ORDER DTD 4/2/2022 IN WP(CRL) 96/2022].

Writ petition (criminal) praying that in the circumstances stated in the affidavit filed along with the WP(CrL.) the High Court be pleased to:

i. Issue a writ of mandamus or any other appropriate writs, orders or directions directing the 4th respondent to specify any detention centre other than Central Prison, Viyyur.

ii. Issue a writ of mandamus or any other appropriate writs, orders or directions directing the 4th respondent to take appropriate measures, within a time frame fixed by this Honourable Court or as expeditiously as possible.

iii. Grant such other relief as this Honourable Court may deem fit and proper in the circumstances of the case.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(CrL.) and this Court's order dated 01/08/2022 and upon hearing the arguments of M/S RAHUL SASI & NEETHU PREM, Advocates for the petitioner, SRI.SUVIN R.MENON, CENTRAL GOVERNMENT COUNSEL for R1 & R4, SRI.P. NARAYANAN, ADDL. PUBLIC PROSECUTOR for R2, R3 & Addl. R5, the court passed the following:

P.T.O.

ZIYAD RAHMAN A.A., J.

W.P.(Crl.).No.96 of 2022

Dated this the 15th day of September, 2022

ORDER

As per the order dated 04.02.2022, this Court *suo motu* impleaded the Additional Chief Secretary, Home and Vigilance Department as the additional 5th respondent. The aforesaid impleadment was for the specific purpose of ensuring that proper measures are taken to establish detention centres/transit homes to accommodate foreign nationals involved in crimes.

2. In the said order, this Court specifically referred to various previous orders passed by this Court, wherein similar directions were issued, but no proper action was taken by the authorities concerned. Later, when this Crl.M.C. came up for consideration before this Court on 19.07.2022, as regards setting up of temporary detention centres/transit homes, it was pointed out by the learned Senior Government Pleader based on communication issued by the Additional Chief Secretary, Home Department that, they have already identified certain buildings for setting up the said facility on a provisional basis.

3. Later, as per the order dated 01.08.2022, this Court passed a further direction to the Secretary to the Social Justice Department to set up a temporary detention centre/transit home with more facilities within a period of two months from 01.08.2022. Today, when the matter came up for consideration, the learned Senior Government Pleader produced G.O.(Ms).No.10/2022/SJD dated 03.09.2022, as per which steps have been taken to set up permanent detention centre/transit home. As regards the temporary arrangement for setting up detention centre/transit home as ordered by this Court in the earlier orders, it was pointed out that, vide order dated 30.08.2022, the Government has directed the Director of Social Justice Department to identify the suitable building for accommodating eligible foreigners in a temporary facility on a provisional basis. Therefore, it is evident that even though a temporary facility was earlier reported to have been identified by the Home Department, the same did not materialise and now further orders are seen passed to achieve the said object. Therefore, it is evident that the Government is not taking proper steps in this regard despite various orders passed by this Court from time to time. As far as the necessity to set up the temporary facility pointed out by the Central Government Counsel is concerned, it should be established

urgently. It is reported that several foreigners including children are being forced to be accommodated in regular prisons along with other convicts, and it is causing serious problems for them. As per the norms, establishing separate and independent facilities for accommodating foreign nationals is the obligation of the Government. Therefore, as pointed out in the earlier orders, this is an urgent requirement for which immediate steps to set up at least temporary facilities have to be taken to address the concerns highlighted by the learned Central Government Counsel. Already there is a timeline in place as ordered by this Court vide order dated 01.08.2022, which is not yet over. Therefore, the additional 5th respondent and the Secretary to Social Justice Department are directed to take urgent steps to identify the building and to set up a temporary facility as directed by this Court on a war footing basis.

Post the matter on 14.10.2022. A report with regard to the compliance of the orders shall be submitted by the additional 5th respondent, in the meantime.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

DG/15.9.22