

(2021) 06 DEL CK 0057

In the Delhi High Court

Case No : Criminal Writ Petition No. 902 Of 2020

Ruma Bibi

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 03-06-2021

Acts Referred:

Citation : (2021) 06 DEL CK 0057

Hon'ble Judges : Siddharth Mridul, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Ajay Verma, Mehak Nakra, Sanjay Lao, Amit Mahajan, Dhruv Pande, Dayan Krishnan, Manvi Priya, Aakash Lodha, Sukrit Seth, Sanjeevi Seshadri

Judgement

Anup Jairam Bhambhani, J

The present matter has been taken-up for hearing by way of video- conferencing on account of COVID-19 pandemic.

CRL.M.A. 8308/2021 (Seeking Directions For Release Of Petitioner's Husband)

By judgment dated 08.04.2021, this court had directed the immediate release of the petitioner's husband, who was until then being detained at the

Sewa Sadan Deportation Centre, Lampur Village, Narela, Delhi.

The crux of the directions for the husband's release are found in the following paragraphs of judgment dated 08.04.2021.

10. In the circumstances, the present habeas corpus petition is allowed and Asif Hossain is directed to be released from Sewa Sadan

Deportation Centre Narela, Lampur Village, Delhi forthwith. However, in view of the submissions made on behalf of official

respondents, Asif Hossain son of Badar Hossain, resident of Akra Krishna Nagar, Purba Para, Akra Station Road, P.S.: Maheshtala,

District South 24 Parganas, Batanagar, West Bengal is directed to participate in any proceedings that may be instituted by the official

respondents under the Foreigners Act or otherwise, in accordance with law, if and when required.

11. The process and/or notice to be issued by the official respondents in the event they proceed to take any further action against Asif

Hossain shall be deemed to have been served if received at his residential address recorded hereinabove. The proof of residential address

stated before this court shall be furnished by Asif Hossain to the SHO of the concerned police station forthwith. He also undertakes to

appear before the competent authority as and when a show cause notice is received by him from the official respondents, in accordance

with law.â??

(emphasis supplied)

It would appear however, that despite the aforesaid directions, the petitionerâ??s husband was not released from detention until late May 2021,

which impelled the petitioner to file an application dated 25.05.2021 bearing CRL.M.A. 8308/2021, seeking compliance of the aforesaid directions by

the State respondents.

The application came-up before this court on 28.05.2021; and thereafter, in evident haste, the State respondents released the petitionerâ??s husband

from the Lampur Deportation Centre on 31.05.2021. It however transpired that in release order dated 31.05.2021 issued to the petitionerâ??s

husband, a condition was imposed by the issuing authority to the effect that the petitionerâ??s husband would have to report once-a-week to the local

Police Station in West Bengal within the jurisdiction of which he proposed to reside. A copy of the release order has been screen-shared with the

court in the course of todayâ??s hearing.

In view of the foregoing actions from the State respondents, we called upon Mr. Sanjay Lao, learned Standing Counsel (Criminal) appearing on behalf

of respondents Nos. 1, 3 and 4 (State of NCT of Delhi and Commissioner of Police, Delhi and Director General of Prisons, Delhi) and Mr. Amit

Mahajan, learned CGSC appearing on behalf of respondent No. 2 (Union of India) to explain the incorporation of the condition on the release of the

petitionerâ??s husband, as mentioned above.

Prima facie, this court was of the view that the incorporation of the condition in the release order, requiring the petitioner's husband to report

weekly to the local Police Station in West Bengal amounted to modification of judgment dated 08.04.2021, whereby this court had directed his

unconditional release; while at the same time implicitly giving liberty to the competent authority to proceed against the petitioner's husband under

the Foreigners Act, if they so decided, in accordance with law, by issuing to him the requisite show cause notice.

Today, Ms. Suman Nalwa, DCP (Special Branch), New Delhi has joined the video-conference hearing and has explained in some detail that the

condition for the petitioner's husband to mark his presence at the local Police Station in West Bengal came to be incorporated in his release order

by inadvertence and innocent error; that there was no intention whatsoever to modify the directions issued by this court in its judgment dated

08.04.2021; and that such condition would, if deemed necessary, be imposed upon the petitioner's husband only after a show cause notice is

issued to him in proceedings under the Foreigners Act as per liberty granted by this court in its judgment, in accordance with law.

In light of what is stated by the DCP (Special Branch), Mr. Sanjay Lao submits that the explanation offered by the DCP be accepted and further

proceedings in the matter be closed, reserving liberty to the competent authority to proceed against the petitioner's husband, if so advised, under

the Foreigners Act, in accordance with law. On instructions of the DCP (Special Branch), Mr. Lao also submits, that the condition appearing in

release order dated 31.05.2021, namely '... this order is subjected to the conditions that he (Asif Hussain) will himself report to Station House

Officer (SHO) of local police station once in a week ... ' be treated as deleted.

Upon an overall conspectus of the circumstances of the case and upon considering the explanation offered by the DCP (Special Branch), we believe

that the condition came to be incorporated in the release order by inadvertence, or at worst by oversight and misunderstanding of the directions

contained in judgment dated 08.04.2021.

Mr. Ajay Verma, learned counsel appearing on behalf of the petitioner also fairly submits that the aforesaid position is acceptable to the petitioner; and

that the present application may be disposed of in the above terms.

Accordingly, we accept the explanation offered by the DCP (Special Branch), recording Mr. Lao's statement that the afore-extracted portion of release order dated 31.05.2021 shall be treated as deleted.

In the aforesaid terms, we close the matter at this point.

Needless to add that both the petitioner as well as the State respondents shall be bound by the directions contained in judgment dated 08.04.2021.

We appreciate the fair and forthright stand taken by Ms. Suman Nalwa, DCP (Special Branch) before this court.