

(2021) 04 DEL CK 0094

In the Delhi High Court

Case No : Criminal Writ Petition No. 902 Of 2020

Ruma Bibi

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 419, 420, 466, 468, 471, 474
Official Secrets Act, 1923 — Section 3, 9
Foreigners Act, 1946 — Section 9, 14A, 14B

Citation : (2021) 04 DEL CK 0094

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

Bench : Division Bench

Advocate : Ajay Verma, Mehak Nakraand, Aakanksha Bansal, Dhruv Pande, Dayan Krishnan, Manvi Priya, Aakash Lodha, Sukrit Seth, Sanjeevi Seshadri

Final Decision : Disposed Of

Judgement

Siddharth Mridul, J

1. The present habeas corpus petition has been instituted by Ruma Bibi, the wife of Asif Hossain, essentially praying for a direction to the official respondents to produce the latter before this court; and with a further prayer to order his release from illegal detention.

2. Briefly stated, the facts that are necessary for deciding the present proceedings are that Asif Hossain was apprehended from New Delhi Railway Station on 13.12.2012 in connection with FIR No.36/2012 registered at P.S.: Crime Branch under sections 419/420/468/471/120B IPC, sections 3/9 of the Official Secrets Act, 1923 and sections 14A and 14B of the Foreigners Act 1946. Upon trial, Asif Hossain was convicted under section 3 of the Official Secrets Act, 1923 and section 474 IPC vide judgment dated 28.10.2016. Further vide order dated 09.11.2016, Asif Hossain was sentenced to undergo incarceration for a period of 09 years for the offence under section 3 of Official Secrets Act, 1923 and for 04 years alongwith fine of Rs.10,000/-, with default imprisonment of 09

months for the offence under section 474 IPC. However, Asif Hossain was given benefit of doubt for the commission of offences u/s 419, 466 IPC and section 14A and 14B of the Foreigners Act 1946 and was accordingly acquitted qua those offences.

3. Aggrieved by the aforesaid judgment, Asif Hossain preferred an appeal bearing CrI. A. No.428/2017 before a learned Single Judge of this court. Vidé order dated 07.11.2019, whilst upholding the order of conviction, as rendered by the trial court, the learned single Judge modified the impugned order to the extent that the sentences imposed on Asif Hossain under section 3 of the Official Secrets Act, 1973 and section 474 IPC were directed to run concurrently instead of consecutively as directed by the trial court.

4. Upon duly serving the entire sentence, in terms of aforesaid judgment dated 07.11.2019, Asif Hossain was released from Central Jail No.14, Mandoli Prison Complex Delhi; but was sent by the State to undergo detention at the 'Sewa Sadan Deportation Centre', Narela, Lampur Village, Delhi for the purpose of awaiting deportation.

5. Mr. Dayan Krishnan, learned senior counsel, who was appointed as Amicus Curiae to assist this court in the present matter, invites our attention to judgment dated 28.10.2016 rendered by the learned trial court to urge that prosecution was unable to establish beyond reasonable doubt that Asif Hossain was guilty of commission of offences under sections 14A and 14B of the Foreigners Act 1946 ('Foreigners Act' for short); and consequentially acquitted him inter alia for the said offences. It is the learned Amicus's submission that having been acquitted for the commission of offences under sections 14A and 14B of the Foreigners Act, which acquittal has been upheld by the learned Single Judge of this court vidé order dated 07.11.2019 in CrI. A. No.428/2017, the further detention of Asif Hossain at the 'Sewa Sadan Deportation Centre' Narela, Lampur Village, Delhi, is without any justification and contrary to the relevant provisions of the Foreigners Act.

6. Mr. Dhruv Pande, learned counsel appearing on behalf of official respondents, however, submits that although proceedings under section 9 of the Foreigners Act, to determine whether Asif Hossain is or is not a foreigner are under contemplation; but the same have yet to be initiated against Asif Hossain.

7. In the present case, this court observes that Asif Hossain has already undergone the entire sentence awarded to him by the learned trial court, as modified by this court pursuant to his initial detention on 13.12.2012. It is further observed that the order acquitting Asif Hossain for commission of offences under sections 14A and 14B of the Foreigners Act has since attained finality as the same has not been impugned by the official respondents. In other words, the official respondents have been unable to establish that Asif Hossain is a foreign national. There is also no quarrel with the factual position that Asif Hossain is not wanted in any other case or that he has other criminal

antecedents.

8. At this juncture, it is also pertinent to observe that Asif Hossain holds a valid Indian Passport bearing No.J9614711 issued by the competent authority in Kolkata and also holds a valid voter ID card bearing No.XXR1212604 issued by the Election Commission of India. Lastly, it is evident from the record that prior to remanding him to 'Sewa Sadan Deportation Centre' Narela, Lampur Village, Delhi, the official respondents did not issue any show cause notice to Asif Hossain nor did they afford him an opportunity of being heard in that regard.

9. In view of the facts and circumstances elaborated hereinabove, it can clearly and unequivocally be held that Asif Hossain is being detained by the official respondents without any legal cause, occasion or justification; and in gross violation of the procedure established by law.

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.

12. No further directions are called for in the present matter.

13. With the above directions, the habeas corpus petition is disposed of.

14. However the matter be listed for consideration of the report filed by the Judicial Officer qua the conditions prevalent at Lampur Detention Centre and for further directions to be issued qua the lack of hygiene and proper living conditions at the said centre on 21.05.2021.