

(2021) 10 DEL CK 0277

In the Delhi High Court

Case No : Civil Writ Petition No. 12238 Of 2021

We Are Saath Through Its Head Coordinator Advocate Prerna
Robin

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 10 DEL CK 0277

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Jyoti Singh, J

Bench : Division Bench

Advocate : Deepak Prakash, Nachiketa Vajpayee, Divyangna Malik, Abhishek Bhati, Chetan Sharma, Ajay Diggpaul, Kamal R. Diggpaul, Amit Gupta, Vinay Yadav, Rishav Dubey, Sahaj Garg

Final Decision : Dismissed

Judgement

D. N. Patel, CJ

C.M.No.38303-304/2021 (exemptions)

For the reasons stated in the applications and in view of the present prevailing situation, the present applications are allowed, subject to just exceptions. However, the applicant is directed to file duly signed and affirmed affidavits within a period of one week from the date of resumption of regular functioning of the Court.

Applications are disposed of.

W.P.(C) No.12338/2021

1. Present writ petition has been filed by the Petitioner, an NGO, seeking multiple reliefs. Learned counsel appearing on behalf of the Petitioner contends that there are several Foreign Nationals in India who have neither caused any wrongful loss to anyone or secured unlawful gains for themselves and are not a threat to the

Society but are unnecessarily detained or sent to judicial custody and therefore directions be issued to the Respondents herein to submit a status report to this Court indicating the details of such Foreign Nationals who are in custody, whether convicted or under-trial and who entered the territory of India legally but are not involved in any offence and have no criminal antecedents. Directions are also sought to the Respondents to frame guidelines to deport such Foreign Nationals who are unnecessarily detained or sent to judicial custody. Additionally, Petitioner seeks a direction to deport two citizens of Nigeria, whose names are specifically mentioned in the petition as well as in the prayer clause, as according to the Petitioner they have been illegally detained and are in unwarranted judicial custody.

2. We have heard learned counsel appearing on behalf of the Petitioner and have looked into the facts and circumstances involved in the case.

3. At the outset, it needs to be mentioned that the names of the two Nigerians referred to in the writ petition are not being mentioned in the present order and the two are being referred to as 'A' and 'B' respectively.

Having carefully perused the writ petition, it appears to us that it is not a public interest petition but has been filed only to seek directions for release and deportation of the two Nigerian citizens 'A' and 'B' mentioned therein and, therefore, has no public interest element. Petitioner has itself averred in the writ petition that 'A' was issued a passport in Nigeria, after which he applied for a student visa, on which he entered India for the purpose of studying in a University at Bhopal. Thereafter on receiving information, the local police registered an FIR against 'A' and 20 other foreign students. As per the averments in the petition, various bail applications filed by 'A' were rejected and finally, he has been convicted and sentenced under various provisions of the IPC read with provisions of the Passport Act and Foreigners Act. Appeal against the conviction is pending in the High Court of Madhya Pradesh. Similarly, as discernible from the pleadings, 'B' has also been convicted and sentenced for committing offences under the Passport Act, etc. and the appeal against conviction and sentence is pending before the High Court of Madhya Pradesh, alongwith application seeking suspension of sentence.

4. It is writ large that the main purpose of filing the present petition is to secure the release of 'A' and 'B', who stand convicted and are undergoing the sentence. Appeals against the judgments are pending before the High Court of Madhya Pradesh and needless to state, will be decided as and when they come up for hearing. Law is taking its own course and it goes without saying that if the Appellate Court allows the appeals, 'A' and 'B' shall be released. However, insofar as this Court is concerned, no orders can be passed directing the respondents herein to deport 'A' and 'B' while they are undergoing the sentence.

5. Petitioner ought to have known that while exercising jurisdiction under Article 226 of the Constitution in the realm of public interest litigations, it is neither the

domain nor the jurisdiction of this Court to act as an Appellate Court and adjudicate as to whether the judgments passed by the Trial Courts convicting Foreign Nationals for committing offences under the IPC/Passports Act/Foreigners Act are legal or otherwise. We are clearly of the view that while the present petition has been styled as a public interest litigation but the motive is to secure release of 'A' and 'B', after they have been unsuccessful in seeking release before the appropriate Courts, where 'A' and 'B' were undergoing trial or the Appellate Court where the appeals are pending.

6. If the relief sought for by the Petitioner is granted and directions are issued to the Respondent to release and deport 'A' and 'B', it would amount to adjudicating the legality or otherwise of the judgment of the Trial Court which has convicted and sentenced them to imprisonment and interdicting the criminal proceedings. This relief can certainly not be claimed by the Petitioner in the garb of a public interest litigation.

7. In view of the aforesaid, we see no reason to entertain this writ petition and the same is dismissed with costs of Rs.25,000/-, to be paid by Petitioner to the Delhi State Legal Services Authority within a period of eight weeks from today. The aforesaid amount shall be utilized for the programme 'Access to Justice'.

8. A copy of this order be sent forthwith to Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi.