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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 09.01.2024*

+ W.P.(CRL) 1950/2023 & CRL.M.A. 18031/2023

KINADHAN CHAKMA Petitioner

Through: Mr. S. Narayan, Mr. Arvind Kumar
Ojha, Mr. Manish Bhardwaj, Mr.
Satish Chandra & Mr. Hari Kumar,
Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Anurag Ahluwalia, Advocate
(CGSC) with Ms. Avshreya Pratap
Singh Rudy, Advocate with Mr.
Satish Kumar, Inspector, FRRO

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 Code of Criminal Procedure, 1973 has been instituted on behalf of the petitioner, praying as follows: -

'(a) To issue of appropriate writ, order or direction for producing Shri Azal Chakma before this Hon'ble Court by invoking the Writ of Habeas Corpus;

(b) To award compensation to Shri Azal Chakma in the amount of Rs20 lakhs for the illegal detention and custody of Shri Azal Chakma over a period of 9 months without any charges and trial by the Respondent No 2; and



(c) Such other and further order(s) as this Hon'ble Court deems fit and proper in the interest of justice, equity and good conscience.'

2. However, on 25.07.2023, learned counsel appearing for petitioner limited his prayer to Clause (a) only as is evident from observations made in order dated 25.07.2023. Accordingly, limited notice was issued to the respondents on the aforesaid solitary relief pressed by the petitioner.

3. Petitioner Mr. Kinadhan Chakma is material uncle (Mama) of one Mr. Azal Chakma.

4. It is claimed that Mr. Azal Chakma was born in India on 12.07.1991 and was brought up in India by his mother Mrs. Jayati Chakma. His mother had earlier solemnized marriage in India with Mr. Uttam Kumar who had come to India from Bangladesh in 1986. According to petitioner, Mr. Azal Chakma has acquired Indian citizenship by birth and he had his initial education also in Gomati, Tripura and later on in Shilong, Meghalaya. It is averred that he lived in India all his life except for a very brief period and he is holding Indian Passport, AADHAR Card, PAN Card, driving licence issued by Indian authorities and is running business at Kolkata.

5. According to petitioner, his such nephew is in illegal custody of Respondent No. 2 w.e.f. 13.10.2022. He was arrested on 13.10.2022 from IGI Airport, New Delhi from where he was about to board a flight to Dhaka to perform ritual of his late grandfather. It has been claimed that he is in continuous illegal custody of Respondent No. 2 and is languishing in Detention Centre at Inderlok, Daya Basti and he has been falsely implicated. It is also contended that he has never been produced before any Court of



Law or any authority and his detention is absolutely illegal and against due process of law and also against the provisions of Indian Citizenship Act, 1955.

6. It is in the aforesaid backdrop that Habeas Corpus jurisdiction of this Court has been invoked.

7. All such contentions have been refuted by the respondents.

8. It has been claimed that Respondent No. 2 i.e. Foreign Regional Registration Office (FRRO) is a civil authority and which is vested with numerous powers, *inter alia*, under the Foreigners Order 1948. It is claimed in the counter-affidavit that on the intervening night of 12.10.2022 & 13.10.2022, Mr. Azal Chakma was apprehended at IGI Airport, Delhi during immigration clearance when he was attempting to depart for Dhaka, Bangladesh on the strength of fraudulently obtained Indian Passport. It was in the aforesaid backdrop that his movements were restricted. It is claimed that after scrutiny, it came to fore that such Mr. Azal Chamka had been visiting India till 2016 on the basis of multiple Indian visas on a passport issued to him by the Bangladesh. It is claimed that lastly, he had departed from India on Bangladeshi Passport on 17.06.2016 from Kolkata and there is nothing to show as to how he subsequently sneaked into India. According to respondents, quite possibly, he entered into India illegally through porous border and thereafter managed to obtain Indian documents in fraudulent and dishonest manner. It is apprised that the Indian Passport, which he had obtained in a fraudulent manner, has already been revoked by the Indian authorities on 21.06.2023. According to the respondents, it is abundantly



clear that Mr. Azal Chakma is a Bangladeshi national who was having Bangladeshi Passport. His mother was also holding a Bangladeshi Passport and on various earlier occasions, when he had applied for visas for India, he claimed himself as citizen of Bangladesh by birth and also claimed that his parents were citizens of Bangladesh. It is claimed that all such documents have come to the possession of the respondents through concerned authorities of Bangladesh and there is nothing which may even remotely indicate that detention in question is illegal and unlawful or without adhering to the due process of law. His movements have been restricted under Section 3 (2) (e) of the Foreigners Act, 1946 r/w Section 11 (2) of the Foreigners Order 1948. It is also claimed that High Commission of Bangladesh has already issued travel permit documents for his repatriation, being a Bangladeshi national and he would be deported as soon as respondents get confirmed air-ticket for him from Embassy of Bangladesh.

9. We have heard both the sides and carefully gone through the averments made in the petition and the facts mentioned in the counter-affidavit. We have also gone through various documents submitted on record.

10. Mr. Azal Chakma has been detained as he was allegedly found travelling on the basis of Indian Passport which he had, as alleged, fraudulently procured. As noted, such passport has already been revoked. Documents collected by the respondents clearly indicate that he was holding Bangladeshi Passport and had come to India multiple times on the basis of such passport. When he had applied for visa, he claimed himself to be a Bangladeshi national by birth and also claimed that his parents were also



Bangladeshi citizens. Petitioner has not given any response, much less a plausible one, to the aforesaid documents and the passport issued to him by the Bangladeshi authorities. He has also failed to apprise as to how and when he entered India after he had gone to Dhaka on the basis of Bangladeshi passport.

11. There is no qualm about the provisions contained under Citizenship Act, 1955 as well as the Foreigners Order, 1948 but fact remains that there is nothing which may indicate that detention of Mr. Azal Chakma is illegal or without any authority.

12. We may also note that even as per averments made in the petition, after the alleged illegal detention, an application under Section 97 Cr.P.C. was filed by the petitioner before the concerned Magisterial Court claiming that he had been illegally detained. His such application has already been disposed of by the learned ACMM-II, Patiala House Courts, New Delhi on 17.07.2023 observing that alleged confinement of Mr. Azal Chakma did not amount to any offence and, therefore, such application was dismissed. We have already noted above that passport issued to him by Indian authorities has already been revoked as he was suspected Bangladeshi national who had obtained Indian Passport in a fraudulent manner.

13. Prayer in the present writ petition is limited to relief related to Habeas Corpus and there is nothing which may indicate that detention of Mr. Azal Chakma is illegal. Moreover, his movement has been restricted so that he remains available for deportation and such restriction cannot be said to illegal. Reference in this regard be made to order dated 15.12.2023 passed



by Hon'ble Supreme Court in *Himar Kulsuma (Through Noor Alam) Vs. Union of India & Ors. WP (Crl.) No. 383/2023*. We may also note that foreign national cannot claim that he has right to reside and settle in India in terms of Article 19 (1) (e) of Constitution of India. Reference be made to *Hans Muller of Nurenburg Vs. Superintendent, Presidency Jail, Calcutta: AIR 1955 SC 367* wherein the Supreme Court has observed that power of the Government of India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering such discretion. Fundamental Right of any such foreigner or suspected foreigner is limited to the one declared under Article 21 of Constitution of India i.e. Fundamental Right for life and liberty and there is nothing which may suggest that his liberty has been curtailed in an illegal or unlawful manner. He himself is to be blamed for his miseries as he has failed to explain as to how he came back to India when he had left India on a Bangladeshi passport.

14. It is not a case of preventive detention. His movements have been restricted in accordance with law so that he can be deported back.

15. As lastly contended by learned counsel for petitioner, Mr. Azal Chakma cannot be deported unless his Indian Citizenship is terminated, we hold that even such contention is without any substance. As per his own admission made before the Bangladeshi authorities when he had applied for visa for India way back in the year 2010 and 2011, he claimed himself to be a Bangladeshi national by birth and in such a situation, there is no question of termination of his alleged Indian citizenship which he never seemed to have acquired.



16. Finding no substance in the writ petition, same is dismissed.
17. Respondents shall be at liberty to take further appropriate steps in accordance with law as expeditiously as possible.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

JANUARY 09, 2024
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