



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION(ST) NO.23985 OF 2024**

Daniel Ifeanyichukwu Ezieke & Anr.] .. Petitioners
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.Taraq Sayed a/w Ashwini Achari, Alisha Parekh and Anish Pereira for the Petitioners.

Mr.S.V. Gavand, APP for the State.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 4th DECEMBER, 2024.

JUDGMENT (PER BHARATI DANGRE, J) :-

1. The two Petitioners, who are Nigerian citizens have approached this Court, by invoking Article 226 of the Constitution of India, seeking issuance of writ, order or direction in the nature Habeas Corpus for their release from the alleged illegal detention by the Respondent No.2, Senior Inspector of Police, Anti -Narcotics Cell (ANC), Bandra Unit.

We have the learned counsel Mr. Taraq Sayed for the Petitioners and Mr. S.V. Gavand, the learned Additional Public Prosecutor for the State.

2. On 12/01/2019, CR No. 1/2019 was registered under Section 8(c), 21(c) and 29 of the Narcotics Drugs and Psychotropic Substances

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Act, 1985 (for short “NDPS Act”) with respect to seizure of 1.005 kgs of Cocaine from the Petitioners, with ANC, Bandra Unit. The said CR also invoked Section 14-A and 14-B of the Foreigners Act, 1946 alongwith Section 12(1-A)(b) of The Passport Act, 1967 alongwith Section 465, 468, 471 of the Indian Penal Code.

The Petitioners came to be arrested in the wake of their alleged involvement in the above CR and since the date of their arrest, they remained in custody.

They were subjected to trial before the Sessions Court at Mumbai, when charge was framed against them on 03/07/2023 and the trial commenced.

The prosecution examined 8 witnesses in order to prove the guilt of the Petitioners and on 11/11/2024, the Sessions Court, by Judgment and order delivered in NDPS Special Case No. 108/2019, acquitted both the accused for the offences under NDPS Act.

However, they were convicted for the offence punishable under the IPC as well as under Section 14-A and 14-B of the Foreigners Act, 1946 and Section 12(1-A)(b) of the Passport Act, 1967.

On conviction under Section 465 of the IPC they were sentenced to undergo two years Rigorous Imprisonment each.

On being convicted under Section 468 of the IPC they were directed to undergo Rigorous Imprisonment of 5 years and 6 months alongwith fine of Rs.5,000/-, in default to undergo Simple Imprisonment for one month.

In addition, on being convicted under Section 471 of the IPC, they were sentenced to undergo 5 years and 6 months of Rigorous Imprisonment with fine of Rs.5,000/- and an identical default sentence.

On being convicted under Section 14-A and 14-B of the Foreigners Act, 1946 and also under Section 12(1-A)(b) of the

Passport Act, 1967, similar sentence was imposed.

All the sentences imposed were directed to run concurrently.

Since the Petitioners were already in judicial custody, the Sessions Court held them to be entitled for set off under Section 428 of the Code of Criminal Procedure, 1908 for the period of detention undergone during investigation, inquiry and trial, which had commenced from 12/01/2019.

3. The Judgment dated 11/11/2024 also directed deportation of the accused, as foreigners, who were illegally residing in India, in accordance with the procedure to be initiated as per law.

4. The Petitioners underwent the whole sentence imposed upon them and are likely to be deported as per the directions issued therein, but they have approached this Court with a grievance that their detention is continued by Respondent No.2, which is in violation of Article 21 of the Constitution of India, 1950. The Petitioners, therefore, seek relief of their release, as according to them, they have been illegally detained by Respondent No.2, despite they undergoing the entire sentence, in Taloja Central Prison, Navi Mumbai, who transferred their custody to Respondent No.2.

It is alleged that, the Respondent No.2 has curtailed their movements, despite they having undergone the sentence imposed on them through a long run process of trial.

5. Contending that the Petitioners, though are not the citizens of India, are entitled to the fundamental rights under Article 20, 21 and 22 of the Constitution of India, 1950, Mr. Sayed urge that their confinement, despite having undergone the sentence imposed, on their

conviction, is grossly illegal, as they cannot be detained by the Respondent No.2 indefinitely.

It is the case of the Petitioners that their detention in the lock up/ custody of Respondent No.2 is an abuse of power and this Court which is conferred with extraordinary powers under Article 226 of the Constitution of India, shall set them at liberty forthwith, in view of the completion of the sentence imposed upon them, by following due process of law.

6. During the course of hearing, we are informed by the learned Public Prosecutor that on 18/11/2024 the Foreigners Regional Registration Officer and the Civil Authority, Mumbai, in exercise of the power conferred by virtue of Government of Maharashtra General Administration Department Notification dated 14/02/1991 and Government of India, Ministry of Home Affairs Notification dated 12/08/1960 read with the Government of India Ministry of Home Affairs Notification dated 19/04/1958 and on request of ANC Bandra Unit Mumbai, has imposed restriction under Para 11 (2) of the Foreigners Order, 1948.

The order imposed restriction on the Petitioners/ Foreigners by declaring that they shall not move out of the premises of office of ANC Bandra Unit, Mumbai from 18/11/2024 till their deportation, as there is every likelihood that they may go untraceable and indulge in illegal activities in Mumbai. The order further record that non compliance of the same shall render them liable for prosecution under Section 14 of the Foreigners Act, 1946.

Separate orders are passed qua each of the Petitioner with identical contents.

7. On perusal of the Foreigners Order, 1948, issued by the Ministry of Home Affairs under Foreigners Act, 1946, in exercise of the power conferred under Section 3, we have noticed that for the purpose of the said order, 'Civil Authority' is an authority, as may be appointed by the Central Government for such area as it thinks fit.

The Foreigners Order, 1948 confer a power to grant or refuse permission to enter India and Civil Authority may refuse such leave on the contingency stipulated therein and may also impose such conditions as it thinks fit, to grant leave to enter and may vary or cancel such conditions from time to time.

In addition, the order also provide for permission to deport from India and no foreigner is authorized to leave India otherwise than at such port or other recognized place of departure on the borders of India or without the leave of the Civil Authority having jurisdiction as such port or place. Leave can be refused by the Civil Authority on the satisfaction being expressed that the foreigner has either failed to comply with the formalities of departure or his presence is required in India to answer a criminal charge or if his departure is likely to prejudice the relations of the Central Government with the foreign country.

8. The Foreigners Order, also permit imposition of restriction on a foreigner, by prohibiting his entry into certain places/areas as well as imposition of restrictions on employment and this to a large extent has participation of the Civil Authority.

In continuation, Clause 11 of the said Order authorizes the Civil Authority to impose certain conditions in respect of i] his place of residence; ii] his movements; iii] his association with any person or class of persons specified in the order and iv] his possession of such articles as may be specified in the Order.

The Foreigners Order of 1948 also prescribe the manner in which expenses for deportation of a foreigner shall be arranged for.

9. In exercise of the power, a restriction order is passed by the Civil Authority against the Petitioners on 18/11/2024, imposing restriction on their movement, by prescribing that they shall not move out of the premises of the office of ANC, Bandra Unit until their deportation.

This restriction is imposed by expressing a likelihood that they may go untraceable and indulge in criminal activities in India.

10. When we specifically inquired with the learned APP about this condition of their detention in ANC Bandra Unit, Mumbai, we were informed that since the detention centre for foreigners was not functional, the Petitioners have been directed to confine themselves to ANC Bandra Unit, Mumbai and we are also informed that the Respondent No.2 is catering for their lodging and boarding including supply of food.

11. We are astonished by the exercise of power in form of restriction order passed under Foreigners Order, 1948 by the Civil Authority by confining the Petitioners to the Office of ANC Bandra Unit Mumbai and this, is despite the fact that they have undergone the sentence imposed upon them and it is specific statement made by Mr. Sayed, the learned counsel for the Petitioners, and which is not denied by the learned Prosecutor that there are no other criminal cases which the Petitioners are facing in India.

Since it is not in dispute that the Petitioners, though foreign nationals enjoy the right under Article 21 i.e. the right to Life and Liberty and in the backdrop of availability of this right, confinement

of Petitioners in the office premises of Respondent No.2 according to us to be completely unjustified.

The Petitioners, have completed their sentence but are detained only on an apprehension that they may indulge in some other offence or may not make themselves available at the time of deportation.

Mr. Sayed, would specifically submit before us, that both the Petitioners are very eager to go back to their own country, but the procedural formalities of their deportation after they having undergone the sentence imposed upon them in a criminal trial held in India, is taking time.

12. We find the justification offered for detention of the Petitioners to be highly unjustifiable as liberty of a person which is most inviolable, cannot be taken away on the mere apprehension, that they would flee away or indulge in any other offence. Their detention in the office of Respondent no.2 despite having undergone the sentence imposed, is definitely not consistent with Article 21 of the Constitution of India.

It is not the case of the Respondents that the Petitioners pose a security threat or their freedom will have an adverse impact bearing on the national security and if process for their deportation is ongoing, the stand of the Respondent/Authorities defy the logic as it has denuded the Petitioners of their right to be free persons, with a right to move freely.

The process for their deportation may consume time, but there is no power vested or a legal justification to detain the Petitioners with Respondent no.2, while this process is ongoing, as the Petitioners are free men having undergone the entire sentence imposed upon them and since no trial or any criminal proceeding is pending against them, they are entitled for deportation. Once the Petitioners have been

released by the prison authorities on undergoing the sentence imposed upon them including the default sentence, they definitely cannot be continued in detention and we are informed that since 18/11/2024 they are detained in the office of ANC, Bandra Unit.

13. The Hon'ble Apex Court in *Ana Paraveen & Anr. vs. Union of India & Ors.*¹, dealing with the Petitioner, who was detained in Detention Centre, at Lampur, Narela, New Delhi, on invoking jurisdiction under Article 32 of the Constitution of India, seeking his release, held that, keeping the detenu in detention would not be consistent with the mandate of Article 21, since no security threat or adverse impact bearing on national security has been placed on record and though this was pending the procedure for grant of Visa or a long term Visa in favour of the detenu and 7 years have lapsed, since he had served out his sentence following the conviction under the Foreigners Act, his release was secured by furnishing a personal bond of Rs.5,000/- with two sureties of Indian citizens in the like amount.

Since we are of the opinion that the order restricting movement of the Petitioners in form of 'Restriction Order' cannot be passed after the Petitioners have undergone the entire sentence imposed upon them and while the process for their deportation is in progress, this restriction definitely is in violation of their right to 'Life and Liberty'.

14. While directing their release from the detention of Respondent no.2, we must also ensure their presence in the city so that the process of deportation can be completed.

While allowing the Writ Petition, securing the release of the Petitioners, we direct that till the process of their deportation is not

¹ 2022 LiveLaw (SC) 1038

complete, they shall report to ANC Bandra Unit on Monday of every week between 11.00 am to 12.00 noon and they shall not leave city of Mumbai without permission of the Respondent No.2.

In addition, the Petitioners shall furnish their residential address and contact number to the Respondent No.2, who is entitled to verify the address and contact number provided.

We also direct the Respondents to expedite the process of their deportation.

With the aforesaid directions, Writ Petition is made absolute.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)