

SUPREME COURT OF INDIA

Bhim Singh

Vs.

Union of India (UOI)

WP.(CrI.)No.310 of 2005

(Aftab Alam and R. M. Lodha JJ.,)

12.01.2011

ORDER

1. This writ petition filed under Article 32 of the Constitution sought this Court's intervention for release and repatriation of foreign nationals languishing in different jails in this country even after serving out their full sentence.

2. Following orders passed by this Court from time to time, a number of foreign nationals mainly Pakistanis were released and repatriated to their home country in batches. At the last hearing, there were 22 foreign nationals, who remained to be released and repatriated.

3. Mr. Gopal Subramaniam, learned Solicitor General informs the Court that 16 out of the 22 persons were earlier released and repatriated to Pakistan and only yesterday 5 out of the remaining 6 were also repatriated to Pakistan. This leaves out only one person, namely, Abdul Qadeer Khawaja. In his case, there is a dispute regarding his nationality. Pakistan does not accept him to be its national and it is suggested that in all likelihood he is a citizen of Afganistan.

4. Mr. Gopal Subramaniam, assures the Court that the Ministry of External Affairs, Government of India is taking up the case of Abdul Qadeer Khawaja with Afganistan Embassy and as soon as his nationality is determined, he would be released and repatriated to the country to which he belongs.

5. This is another petition filed under Article 32 of the Constitution seeking similar directions as in the earlier writ petition. In this writ petition, there is a list (at Annexure P-1) of 35 persons under the heading "List of foreign nationals (Illegal Border Crossers) recommended for deportation and are no more required by us". There is another list of 29 persons under the heading "List of foreign nationals (terrorists) recommended for deportation and are no more required by us". The two lists were apparently enclosures to a letter dated 27.2.2007 addressed by the Director (K-I), Ministry of Home Affairs, Jammu and Kashmir Division,

addressed to, amongst others, Shri Bhim Singh, Chairman, State Legal Aid Committee, who is appearing in this case on behalf of the Petitioner.

6. Mr. Subramaniam, learned Solicitor General on the basis of instructions received by him in Court, informs that, out of the total number of 64 detainees (35+29), 57 have already been released and deported to Pakistan.

7. Of the seven persons, who continued to remain in different prisons in India, five are in the list of illegal border crossers, they are as follows:

“1) Mohd. Asif Khan, s/o Yousuf Khan (at Sl. No. 11), who is being tried before a Court in Kot Belwal, J & K.

2) Asmatullah, s/o Mohd. Raz, (at Sl. No. 12), who is lodged in Sangrur Jail, Punjab.

3) Asgar Ali, s/o Mohd. Ali, (at Sl. No. 14) who is lodged in Sangrur Jail, Punjab.

4) Rafaqat Anjum, s/o Fazal Ahmad, (at Sl. No. 23), lodged in Kot Belwal, J&K.

5) Atta Arif, s/o Attaullah, (at Sl. No. 35), his deportation awaits his traveling documents and as soon as they received, he will be released and repatriated to his home country.

8. The remaining two persons are from the list of 29 terrorists recommended for deportation, they are as follows:

“1) Abdul Qadir code Iqbal, s/o Fida Mohd. (at Sl. No. 16), lodged in Naini Jail.

2) Akram Asif, s/o Mohd Asif (at Sl. No. 24) lodged in Tihar Jail.

9. In respect of these seven persons, the Solicitor General would get further updated position and apprise the Court on the next date of hearing.

10. Prof. Bhim Singh fairly states that he has no objection to the applicants' prayer for being impleaded as co- Petitioners in Writ Petition No. 310 of 2005.

11. The prayer for impleadment is allowed. The applicants are directed to be impleaded as co-writ Petitioners.

12. In this petition, a prayer is made for release and repatriation of foreign nationals lodged in Indian jails for different reasons.

13. Annexure A-2 is a list of 28 persons, who continue to languish in different jails in India even after serving out their sentences in full.

14. According to Mr. Gonsalves, appearing for the applicants, the nationality of those 28 persons is determined. The Pakistan Government accepts them as Pakistani nationals and their travelling documents are also complete.

15. There is another list of 58 persons at Annexure A-3. These persons have served out their sentences, but their nationality is yet to be finally determined.

16. There is yet another list at Annexure A-4 of 34 persons, who are lodged in different Indian jails as under-trial prisoners.

17. At Annexure A/2 in this petition, there is a list of 23 persons, who following the confirmation of their national status are awaiting their repatriation to Pakistan.

18. There is another list at Annexure A/3 of 36 persons who are described as Pakistani Fishermen awaiting repatriation to their home country. In their case also, their national status has been confirmed.

19. There is yet another list at Annexure A/4 of 13 persons. They are described as under-trials.

20. In addition to the above Crl.M. Ps., Mr. Gonsalves has today submitted before us a compilation which contains a list of 10 persons under the heading 'List of 10 Pakistani Civilian Prisoners awaiting Repatriation to Pakistan'.

21. The Solicitor General accepts notice in all the three Crl.M. Ps. and also in regard to the list enclosed with the compilation submitted before the Court today.

22. Mr. Solicitor General needs four weeks' time to file a comprehensive affidavit dealing with all the issues raised in these two writ petitions and giving updated information about the detainees in the lists annexed to the writ petitions. He also assures us that the case of 61 persons (list of 28 persons in unnumbered Crl. M.P., list of 23 persons at Annexure A-2 in Crl. M.P. No. 730/2010 and list of 10 persons in the compilation submitted before the Court today) shall be verified forthwith and in case their national status is determined and they have actually served out their sentences, they would be released and repatriated to Pakistan even during the period of four weeks and without waiting for any formal order by this Court.

23. Put up after four weeks.

24. On hearing Prof. Bhim Singh and Mr. Sunil Fernandes, learned Counsel appearing for the State of Jammu & Kashmir and having regard to the over all facts and circumstances of the case, the applicant Reyaz Ahmed Haji is directed to be released on bail in connection with Sessions Trial No. 19 of 2009 (arising from Case Crime No. 136 of 1995, Police Station Parimpora, District Srinagar) pending before the Sessions Judge, Varanasi, on furnishing bail

bond of ' 20,000/- with two sureties each of the like amount to the satisfaction of the trial court.

25. Copy of this order be given dasti to the counsel for the Petitioner.

26. In this petition, a prayer is made to recall the order dated 10.11.2008, insofar as it relates to the trial arising from FIR No. 110 of 2002 of Police Station Raj Bagh, Srinagar. By that order a large number of cases in which some of the accused were foreign nationals were directed to be tried at different places where the foreign nationals, accused in the respective cases, were lodged in jail outside the State of Jammu & Kashmir, even though the offences were committed in the State of Jammu & Kashmir and FI Rs were instituted there.

27. In FIR 110 of 2002, there were three foreign nationals, apart from 9 local Kashmiries, who were cited as accused. One of the foreigner accused, namely, Tariq Mohd Mir @ Khalid s/o Khalid Mohd Mir is now dead and this leaves only 2 foreigners and 8 locals as accused. By the Order dated 10.11.2008, the trial was transferred to the Sangroor Court, where the foreign nationals were lodged in jail,

28. In pursuance of an earlier order passed by us the counsel representing the State of Jammu & Kashmir has filed details of the FI Rs showing the nationalities of the accused in all the cases transferred by order dated 10.11.2008. We find that in at least 8 cases, that is to say (1) Police Station Rajbagh, Srinagar, FIR No. 110 of 2002 (In regard to which the present CrI. M.P. is filed), (2) Police Station Kupwara FIR No. 274/1998, (3) Police Station Parimpore FIR No. 136 of 1995, (4) Police Station Garota FIR No. 70/2006, (5) Police Station Handwara FIR No. 146/1998, (6) Bahu Fort Jammu FIR No. 134/2002,(7) Nawabad, Jammu FIR No. 222/2001 and (3) Pacca Danga, Jammu 102/2002, the majority of the accused are Indians.

29. We want the State of Jammu & Kashmir to file a clear and unambiguous affidavit stating why it may not be possible to hold trials in those cases at a suitable place in the State itself. The affidavit, as directed, must be filed within four weeks.

30. Put up this case after four weeks.

31. No orders.