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

+ **CRL.REF. 2/2021**

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr. Harsh Prabhakar, Amicus Curiae,
with Ms. Pallavi Garg, Mr. Yash
Kotak, Mr. Dhruv Chaudhary, Mr.
Anirudh Tanwar, Mr. Adeeb Ahmad
and Ms. Eshita Pallavi, Advocates
(M-9999309014).

versus

STATE

.....Respondent

Through: Mr Amit Tiwari, CGSC with Mr.
Ayush Tanwar and Mr. Rahul
Bhaskar, Advocates (M-8527271621).
Ms. Mahamaya Chatterjee, GP (M-
9163221870).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% 04.11.2024

1. This hearing has been done through hybrid mode.
2. This is a criminal reference under Section 395(2) of the Cr.P.C by the
ld. Metropolitan Magistrate with respect to the following questions:

"Q.1 Would releasing the accused/ foreign national on unconditional bail, who is apprehended on charge of overstaying in India after expiry of his visa, not tantamount to legalizing his future stay in India without valid visa, which is otherwise an offence under Section 14 of Foreigners Act, 1946? Can granting of bail to a foreign national overshadow the provisions of Foreigners Act, 1946 and can the bail order be used by a foreign national



as a substitute for a visa to \remain in country ?

Q.2 Should the matters of foreign nationals, who are accused for offence u/s 14 of Foreigners Act, 1946, and particularly where accused himself concedes that his visa has expired before date of his apprehension, be not treated differently than other criminal cases?

Q.3 If bail is granted to a foreign national, can certain conditions be imposed on such foreign nationals including to keep them in detention centre till completion of their trial, so as to refrain them to evade the process of justice and not to allow them to remain the country without having any valid visa?

3. A compilation on behalf of the Union of India has been handed over in Court today and is taken on record. The Court has heard some submissions from Id. *Amicus Curiae* as also from the Id. Counsel appearing on behalf of Union of India.

4. Mr. Tiwari submits that at a policy level the Government is also seized of the matter, however, no decision has been taken yet as to whether foreigners who are granted bail can be detained in a detention centre or whether their visas would have to be extended for them to face the trial before the concerned court.

5. It is stated that the issue that arises in the present reference has a major impact on the manner in which the bail orders are passed by Courts for foreign nationals. Thus, it is submitted by all counsels that the issues that arise may be considered and adjudicated by this Court. It is their submission that the pendency of the ***Special Leave Petition (Crl.) No.(s). 7285/7286/2024*** may not affect this case and the Court may take a view on the questions referred.



6. In view of the submissions made, it is directed that the decision at a policy level deserves to be taken expeditiously on the question as to whether foreigners who are accused of offences and are given bail ought to be retained in detention centres and whether their visas ought to be extended. A policy decision also deserves to be taken as whether certain guidelines ought to be framed at a national level, in respect of foreigners against whom criminal cases are lodged and whose Indian visas have expired. Let a decision be taken on these issues and the same be placed on record before the next date of hearing.

7. List on 16th December, 2024 at 2:30 p.m.

8. Copy of the present order be sent to the Secretary, Ministry of Home Affairs, as also Secretary, Ministry of External Affairs, UOI. The present order be communicated through counsel to the concerned officials, for necessary information and compliance.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

NOVEMBER 04, 2024/sn/pr/ks