

ITEM NO.49

COURT NO.11

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Transferred Case (Criminal) No.1/2013

MS MAJA DARUWALA . & ANR.

Petitioner(s)

VERSUS

STATE OF WEST BENGAL . & ANR.

Respondent(s)

(IA No. 35148/2025 - INTERVENTION/IMPLEADMENT)

Date : 16-05-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :

Mr. Zoheb Hossain, AOR

Ms. Vrinda Grover, Adv.

Mr. Soutik Banerjee, Adv.

Ms. Devika Tulsiani, Adv.

Mr. Aakarsh Kamra, AOR

Mr. S. Santanam Swaminadhan, Adv.

Ms. Abhilasha Shrawat, Adv.

Mr. Kartik Malhotra, Adv.

Mrs. Aarthi Rajan, AOR

For Respondent(s) :

Mr. Kunal Mimani, AOR

Mr. Prashant Alai, Adv.

Mr. Tushar Mehta, Solicitor General

Mrs. Aishwarya Bhati, A.S.G.

Mr. Raj Bahadur Yadav, AOR

Ms. Shagun Thakur, Adv.

Mr. Aditya Shankar Dixit, Adv.

Ms. Satvika Thakur, Adv.

Mr. Ishaan Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. This matter was heard finally some time back and the judgment was reserved.

2. Later in point of time, the learned Solicitor General of India and the learned Additional Solicitor General of India made a fervent request that the issue in question being very delicate one relating to illegal immigrants from Bangladesh and bilateral ties between two countries, i.e., India and Bangladesh, they be permitted to place some additional materials on record.

3. In such circumstances, we ordered that the matter be re-notified to enable the Union of India to place the necessary materials on record.

4. Our order dated 30-1-2025 makes the picture abundantly clear. We need not reproduce the same.

5. Today, we take notice of two affidavits filed by the Union of India dated 6-5-2025 and 15-5-2025 respectively duly affirmed by one Shri Pawan Kumar, the Under Secretary, Ministry of External Affairs. The two affidavits read thus:-

Affidavit dated 6-5-2025:-

"I. Pawan Kumar, S/o Late Shri Ram Kumar Prasad, aged about 48 years, presently working as Under Secretary, in my official capacity am well conversant with the facts and circumstances of the present matter and am competent to swear this Affidavit on behalf of the Respondent No. 2/ Union of India. I hereby solemnly affirm and state as under:-

1. That in my capacity as Under Secretary (Citizenship) I am conversant with the facts of the case from the official records maintained, which I believe to be true and correct. On the basis of the same, I am acquainted with the facts and circumstances of the case and accordingly competent to swear the present Affidavit.

2. That I have perused the contents of the present petition and I deny each and every averment made, and contentions raised therein except those which are expressly admitted herein.

3. It submitted that the present lis arises from the continued detention of illegal immigrants who have been convicted under the Foreigners Act, 1946, and thereafter have finished their period of detention. It is submitted that this Hon'ble Court is already seized of the present and ancillary issues raised a number of cases. It is submitted that in particular similar issues have been raised in Supreme Court Legal Services Committee v. Union of India and Another, 2019 SCC Online SC 1797, and subsequently in In Re: Contagion of Covid-19 Virus In Prisons, (2020) 20 SCC 735, wherein this Hon'ble Court has been pleased to issue a number of directions.

4. It is submitted that in the former case, i.e. Supreme Court Legal Services (supra) this Hon'ble Court had occasion to consider the larger issue of deportation of foreigners. In regard to the release of declared foreigners who have been detained pending deportation, this Hon'ble Court was pleased to prescribe specific conditions for the same. It is submitted that the release of such illegal immigrants was made subject to (i) the execution of two sureties, (ii) providing a verifiable address of stay, (iii) biometric data (iv) notification of change of address to the specified Police Station (2) quarterly reports on the appearance of the illegal immigrant to the concerned Police Station. This Hon'ble Court held as follows:

Insofar as the release of detainees who have served long period of detention in the detention centres awaiting their deportation is concerned, we are of the view that detainees who have completed more than three years may be released, subject to the following conditions:-

(a) Execution of bond with two sureties of Rs. 1,00,000/- (Rupees one lakh only) each of Indian citizens;

(b) He or she specifies verifiable address of stay after release;

(c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;

(d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and

(e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal."

(A copy of the judgement of this Hon'ble Court in Supreme Court Legal Services Committee v. Union of India and Another, 2019 SCC Online SC 1797 is annexed herewith as "Annexure R1" at pg. 19-20)

5. It is submitted that in In Re: Contagion (supra) this Hon'ble Court was pleased to modify the conditions as prescribed in the Supreme Court Legal Services Committee (supra). This Hon'ble Court took note of the COVID-19 pandemic and the prevalent conditions at the time. Accordingly, the time period of detention was reduced from three to two years.

This Hon'ble Court held as under:

"16. The only prayer made by the learned counsel is that the period of three years be reduced to one year so that detenues who have completed more than two years may be released, subject to the same conditions laid down by this Court vide order dated 10-5-2019 in Supreme Court Legal Services Committee v. Union of India [Supreme Court Legal Services RYquirement to furnish a bond in the sum of Rs 1,00,000 (Rupees one lakh only)

19. Having regard to the present circumstances prevailing in the country and having regard to the fact that we have already permitted the release of prisoners and people under detention in general, and such detenues who have completed three years upon their declaration as foreigners, we see no reason why the period should not be reduced from three years to two years, that is to say, the prisoners or detenues who have been under detention for two years shall be entitled to be released on the same terms and conditions as those laid down in the aforesaid order dated 10-5-2019 [Supreme Court Legal Services Committee v. Union of India, 2019 SCC OnLine SC 1797), except that they shall not be required to furnish a bond in the sum of Rs 1,00,000 (Rupees one lakh only). Instead, they shall be required to furnish a bond in the sum of Rs sooo (Rupees five thousand only) with two sureties of the like sum of Indian citizens. Rest of the conditions in the said order dated 10-5-2019 (Supreme Court Legal Services Committee v. Union of India, 2019 SCC OnLine SC 1797) reproduced above shall apply."

(A copy of the judgement of this Hon'ble Court in In Re: Contagion of Covid-19 Virus In Prisons, (2020) 20 SCC 735 is annexed herewith as "Annexure R2" at pg. 21-25)

6. It is submitted that the Petitioner is aware of the litigation pending before this Hon'ble Court, which pray for reliefs as prayed for in the present petition as well as wider relief is directly connected with the present petition. It clearly appears that the Petitioner wants the relief in the present petition to be pressed so as to affect the hearing of other petitions pending before inter alia a bench of Three Hon'ble Judges.

7. It is submitted that the prayers made in this petition are intrinsically linked to the wider and similar prayers made in other matter which are pending consideration before this Hon'ble Court in which the government has filed detailed affidavit(s) in reply. It was the duty of the Petitioner to correctly Hon'ble Court on this aspect.

8. It is submitted that the deponent is raising the present contention(s) which concerns the question of illegal immigrants, who are spread all across the country, and whose identification and deportation in accordance with law is a burning issue facing the nation. It is submitted that unless and until a holistic view is taken with regard to the wider relief(s) and the relief(s) similar to the present petition, there would be a serious miscarriage of justice.

9. It is also submitted that the deponent is made aware that the present petition is heard. However, the Petitioner did not place the pending proceedings for consideration of this Hon'ble Court. The Union of India also could not place the facts mentioned in this affidavit before this Hon'ble Court. It is earnestly prayed that if the present petition is decided based upon the pleadings, only this petition, it will have a serious ramification on the other pending petition(s).

10. At this stage it is submitted that in addition to the directions of this Hon'ble Court in the cases mentioned hereinabove, this Hon'ble Court remains seized of the issue(s) of detention pending deportation of illegal immigrants, along with other ancillary matters. In this regard, it is submitted that such issues range from inter alia the release of such illegal immigrants from detention facilities, their repatriation or deportation to their country of origin, the adequacy of basic facilities in such detention centres, provision of legal representation, verification of nationality status, etc. It is submitted that the issues pending before the various not limited to illegal immigrants belonging to any one category or nationality, but cover an extensive range of the same. A non- exhaustive list of such cases pending before this Hon'ble Court, along with the prayers sought in them, are tabulated hereunder for reference:

Sr. No.	Particulars	Prayer
1	W.P. (C) No. 1060/2023 Priyali Sur v. Union of India,	a. To issue writ of mandamus directing the respondents to release the Rohingyas who have been detained illegally and arbitrarily in jails/detention centres or juvenile homes, either without assigning a reason or for violation of the provisions of the Foreigners Act; b. To issue a writ, order or direction, to restrain the respondents from arbitrarily detaining any Rohingya for being accused of being an illegal immigrant or under the Foreigner's Act. c. Pass any such orders or directions as this Hon'ble court

		may deem fit and proper in the facts and circumstances present case.
2	W.P. (C) No. 495/2024 Rita Manchanda v. Union of India & Ors.	1. Issue a writ of mandamus, or any other writ, direction, or order of like nature direct the Respondents direct the Respondents to release the detainees who have been indefinitely detained for two years or above under provisions of the Foreigner's Act, 1946 and the Passports Act (Entry into India), 1929, subject to any reasonable restrictions in the interest of justice.; 2. Direct the Respondents to provide the names, gender and age of all Rohingyas across India who are indefinitely detained under the Passport (Entry into India) Act. 1929 and the Foreigners Act, 1946 along with their detention orders, last communication with Embassy regarding of Myanmar deportation, personal data/assessment forms and final orders of rejection of refugee status in accordance with the SoP dated 20 March 2019 in the interest of justice.; 3. Direct the Respondents to issue identity documents to the stateless detainees as per the provisions of The Passport Rules, 1980 (Schedule II, Part II) in the interest of justice.; 4. Direct the Respondents to assess the claim of refugee status of the detainees within 3 months in accordance Standard with the Operating Procedure, 2019 dated 20 March, 2019 and either grant the Rohingyas Long Term Visa or arrange for their third country resettlement as per the Standard Operating Procedure, 2019 within the prescribed time frame in the interest of justice.; 5. Pass any other relief which this Hon'ble Court deems fit in

		view of facts and circumstances mentioned above in the interest of justice.;
3	W.P. (Crl.) 139/2019 Fazal Abdali v. Union of India & Ors.	a. Issue a writ of mandamus or any other appropriate writ, order or direction to all the respondents to set all the Rohingya refugees in jails and shelter homes at liberty in the respondent states on disclosing their destination for residence and the undertaking to report to the local police station. b. Pass any such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances present case.
4	W.P. (C) No. 924/2017 Ashwini Kumar Upadhyay v. Union of India & Ors.	a. Direct the Central and State Governments to identify, detain and deport all illegal migrants and infiltrators, including Bangaldeshis and Rohingyas within one year; b. Direct the Central and State Governments to amend the respective laws to make illegal migration and infiltration, a cognizable non-bailable and non-compoundable offence c. Direct the Central and State Government to declare the making of forged / fabricated PAN Cards, AADHAR Cards, Passport, Ration Cards and Voter Cards and such other documents, a non-bailable, non-compoundable and cognizable offence and amend respective laws accordingly; d. Direct the Central and State Governments to identify the travel agents, government employees & other such people, who directly/indirectly provide PAN Card, AADHAR Cards, Ration Cards, Passport and Voter Cards to illegal migrants and infiltrators and take stern against them; e. Take such other steps as this Hon'ble Court may deem fit to curb illegal migration and allow the

		cost to Petitioner.
5	<i>I.A. No.43249 of 2025 in W.P. (C) No.1045/2018</i> <i>Supreme Court Legal Services Authority v. Union of India & Ors.</i>	<i>a. Allow the present application and direct the immediate release on bail of "declared foreigners" detained in detention centres in Assam pursuant to order of the Foreigners Tribunals, after modifying the order dated 10.05.2019 passed in W.P. (C) No. 1045 /2018, AND</i> <i>b. Allow such release on bail on the basis of personal bond in exceptional cases, AND</i> <i>c. Direct the Secretary, Assam State Legal Services Authority and the State of Assam to ensure that tall persons whose case is decided ex parte by any Foreigners Tribunal in Assam are provided legal aid to seek review of the opinion issued by the Foreigners Tribunal in respect of their cases and to consider the cases on merit.</i>
6.	<u><i>W.P. (Crl.) No.234/2020</i></u> <i>Rajubala Das v. UoI</i>	<i>a. Issue a writ, order or direction to the Government of Assam to not detain any person declared as a foreigner by the Foreigners Tribunals until it can show proof of possible deportation in the foreseeable future;</i> <i>b. Issue a writ, order or direction to the State of Assam to release all persons declared as foreigners by the Foreigners Tribunals who have been detained in the detention centres of Assam until proof of their possible deportation in the foreseeable future can be shown.</i> <i>c. For any other order/ direction that this Hon'ble Court may deem fit.</i>

11. It is submitted that in fact in its order dated 25.03.2025 in Fazal Abdali v. Union of India & Ors., W.P. (Crl.) 139/2019 and the order dated 21.03.2025 in Jaffar Ullah & Ors. v. Union of India & Ors., W.P. (C) No. 859/2013 this Hon'ble Court has noted the pendency of various petitions touching upon similar issues as in the present matter.

(A copy of the order of this Hon'ble Court dated 25.03.2025 in *Fazal Abdali v. Union of India & Ors.*, W.P. (Crl.) 139 / 2019 is annexed herewith as "Annexure R3" at pg. 26-28).

(A copy of the order of this Hon'ble Court dated 21.03.2025 in *Jaffar Ullah Union of India & Ors.*, W.P. (C) No. 859/2013 is annexed herewith as Annexure R4" at pg. 29-35).

12. Accordingly, it is submitted that this Hon'ble Court is also seized of the matter concerning the deportation of illegal Rohingya immigrants, and other issues concerning their detention, before it in *Jaffar Ullah & Ors. v. Union of India & Ors.*, W.P. (C) No. 859 / 2013 and connected matters. The issues under consideration before this Hon'ble Court in the said batch of petitioners range from health, sanitation, access to clean water, habitation conditions, access to education etc.

(In this regard order dated 11.05.2018 in *Jaffar Ullah & Ors. v. Union of India & Ors.*, W.P. (C) No. 859/2013 may be noted which is annexed herewith as "Annexure R5" at pg. 36-49)

13. At this stage, it is submitted that reference to the directions passed by this Hon'ble Court in the above cases is important. For instance, in W.P. (Crl.) No. 234/2020, *Rajubala Das v. UoI*, this Hon'ble Court has undertaken a wide-ranging inquiry into the methods and status of deportations of detained illegal Bangladeshi immigrants. This Hon'ble Court has been pleased to consistently direct the production of status reports on the stage of proceedings qua deportation, in addition to ensuring fast-tracking of the same. This Hon'ble Court has called for reports both at the State and Central level and therefore is apprised of the larger issue(s) that arise in the deportation of these illegal immigrants.

14. It is submitted that this Hon'ble Court in its order dated 16.05.2024 in *Rajubala Das v. UoI*, W.P. (Crl.) No. 234/2020 directed the Union of India (the Respondent therein as well) to take immediate steps for the OlApation of no less than 17 foreigners concerned therein. It is submitted that the direction was passed particularly in view of the fact that these individuals had spent more than 2 years in the Detention Centres. The observations and direction of this Hon'ble Court are reproduced as under:

"We are of the view that the Union of India must take immediate steps for deporting these 17 declared foreigners as it is not the case that there are any offences registered in India against them. Priority should be given to deport 04 persons who have spent more than 02 years in the Detention Centre."

(A copy of the order of this Hon'ble Court dated 16.05.2024 in *Rajubala Das v. UoI*, W.P. (Crl.) No. 234/2020 annexed herewith as "Annexure R6" at pg. 50-51)

15. It is submitted that further in its order dated 09.09.2024 in the same case, this Hon'ble Court was pleased to note as follows:

"We have perused the affidavit dated 14th August, 2024 filed on behalf of the Ministry of Home Affairs of the Government of India. It will have to be a joint effort by both, the Union of India and the State Government, to deport the foreigners.

Before we go into the larger issue, both, the Government of India and the State Government, must tell us in what manner the foreigners, who are detained in the Transit Camp at Matia, will be deported. In paragraph 6 of the affidavit of the Ministry of Home Affairs, it is stated that in the case of two declared foreign nationals, the nationality status verification is pending with the Ministry of External Affairs from 2019. We direct the State Government to respond to the said affidavit within a period of two weeks from today."

It is submitted that accordingly, the present Respondent has filed a detailed affidavit in compliance with the above order outlining the active steps being taken to effect the deportation of the said individuals. It is also submitted that the said affidavit lays out in detail the practice and procedure for the deportation of illegal immigrants.

(A copy of the order of this Hon'ble Court dated 09.09.2024 in *Rajubala Das v. UoI*, W.P. (Crl.) No. 234/2020 annexed as "Annexure R7" at pg- 52- 53)

16. It is further submitted that vide subsequent orders dated 04.02.2025 and 21.03.2025, this Hon'ble Court has been pleased to pass detailed directions regarding the procedure and progress in the deportation of foreign nationals detained in Detention Camps. In this regard, it is submitted that this Hon'ble Court was also pleased to seek the Nationality Verification Status, the names and status of the various illegal immigrants languishing in Detention Camps. Furthermore, it is also submitted that this Hon'ble Court has also been pleased to direct furnishing of information that includes detailed actions undertaken to ensure the deportation of such illegal immigrants.

(A copy of the order of this Hon'ble Court dated 04.02.2025 in *Rajubala Das v. UoI*, W.P. (Crl.) No. 234/2020 annexed herewith as "Annexure R8" at pg. 54-57)

(A copy order of this Hon'ble Court dated 21.03.2025 in *Rajubala Das v. UoI*, W.P. (Crl.) No. 234/2020 annexed herewith as "Annexure R9" at pg. 58-67)

17. It is submitted that likewise in *Harsh Mander v. Union of India & Anr.*, W.P. (C) No. 1085 / 2018 this Hon'ble Court

has issued extremely wide directions calling for details on the number of detention camps and their population, the period of detention of such inmates etc. The directions this Hon'ble Court in its order dated 28.01.2019 are as under:

"The Court would like to have on record the following facts, which would be submitted by the Competent Authority in the form of an affidavit.

1. The total number of detention centres and the inmates therein;

2. The period for which such inmates have been lodged in the detention centres;

3. Whether all the inmates in the detention centres have been declared foreigners or such inmates include person whose references are pending before the Foreigners Tribunal;

4. The number of foreigners declared by the Foreigners Tribunal in the last decade; a year-wise break-up of the figure may be given.

5. Out of the declared foreigners, in how many cases repatriation was tried and the result thereof;

The aforesaid affidavit will be filed within three weeks from today..."

(A copy of the order of this Hon'ble Court dated 28.01.2019 in *Harsh Mander v. Union of India & Anr.*, W.P. (C) No. 1085 / 2018 is annexed herewith as "Annexure R10" at pg. 68-69).

18. It is submitted the detention and deportation of illegal immigrants concerns a number of stakeholders at multiple levels. This often results in competing interests. It is submitted that the two judgments above and the orders passed by this Hon'ble Court are an exercise in balancing those competing interests. It is submitted that the guidelines set out in the Supreme Court Legal Services Authority (*supra*) and *In Re: Contagion* (*supra*) strike the correct balance between these competing interests.

19. It is also submitted, that in addition to the above guidelines, the release of the detained illegal immigrants has wider security-based and social ramifications that are being considered in detail by this Hon'ble Court in the various petitions pending before it. It is submitted that this is a continuous exercise that must constant consideration and evaluation of various factors including but not limited to the ones referred to herein above.

20. It is submitted that the identification and declaration of an individual as a foreigner is followed by a complex procedure which ultimately culminates in deportation. It is submitted that this procedure operates at several levels and requires the

input and active participation of several stakeholders. It is submitted that considering the social and security ramifications pending deportation, a declared foreigner may be detained, unless they are able to secure release in compliance with the guidelines as set out by this Court in Supreme Court Legal Services Authority (supra) and In Re: Contagion (supra). It is further submitted that deportation is not a unilateral act, which can be carried out in the absence of the participation of the various stakeholders involved.

21. It is submitted that in view of the above, the affidavit may be taken into consideration by this Hon'ble Court."

Affidavit dated 16-5-2025:-

"I. Pawan Kumar, S/o Late Shri Ram Kumar Prasad aged about 48 years, presently working as Under Secretary, in my official capacity, am well conversant with the facts and circumstances of the present matter and am competent to swear this Affidavit on behalf of the Respondent No. 2/ Union of India. I hereby solemnly affirm and state as under:-

1. That in my capacity as Under Secretary (Citizenship) I am conversant with the facts of the case from the official records maintained, which I believe to be true and correct. On the basis of the same, I am acquainted with the facts and circumstances of the case and accordingly competent to swear the present Affidavit.

2. That I have perused the contents of the present petition and I den each and every averment made, and contentions raised therein except those which are expressly admitted herein.

3. It is submitted that the present Petitioner has filed the present petition with the following prayers.

"a. grant leave of the instant Letter Petition as being in the nature of Public Interest Litigation and issue notice to the Central Government of India (through Ministry of External Affairs) State Government of West Bengal (and the concerned departmental bodies in the State) as well as the Government of Bangladesh through its local consulate;

b. order/ direct the immediate release of all persons who, despite having completed their terms of sentence under the Foreigners Act, 1946, continue to be detained/imprisoned in Indian correctional facilities;

c. order/direct that as per the administrative deportation/repatriation procedures, Clause (4) of Memo No. 241-43 FNB/12-01-06 dated 06.03.2007 and Clause (iv) provided in Circular No. F1401/55/09-FVI dated 23rd November 2009 are unconstitutional insofar as they prescribe continued detention in respect of persons who have already completed their prescribed terms of

sentence.

d. order/ direct the concerned governmental authorities to accordingly revise their present standard procedures for deportation/repatriation of foreign nationals and evolve comprehensive and sound procedures in conformity with the law;

e. pass any such further orders/directions as this Hon'ble Court may deem fit."

4. The prayers can broadly be divided in three categories:

I. Release of all prisoners from prison who have completed their sentence under Foreigner's Act;

II. Challenge to the deportation, repatriation procedure contained in the Memorandum dated 06.03.2007 and 23.11.2009 as being unconstitutional; and

III. To evolve, comprehensive and sound procedure for deportation and repatriation.

5. It is respectfully submitted that the holistic issue concerning the conviction, detention and deportation of foreign nationals, including illegal Bangladeshi immigrants is pending before a Three Judge Bench of this Hon'ble Court in Jaffar Ullah & Anr. v. Union of India & Ors., W.P. (C) No. 859/2013 which is already reflected in the earlier affidavit filed.

6. It is also submitted that a similar petition has been filed by one Rajubala Das, namely W.P. (Crl.) No. 234/2020, which also involves the same issue. I crave leave to refer to and rely upon the orders passed in the said petition. In this regard, it is humbly stated in the abovementioned mentioned petition, vide its order dated 04.02.2025 (enclosed herewith), this Hon'ble Court was pleased to direct the Union of India to place on record the steps intended to be undertaken to ensure the deportation and repatriation of illegal immigrants.

(A copy of the order dated 04.02.2025 in Rajubala Das v. Union of India & Ors., W.P. (Crl.) 234 / 2020 is annexed herewith as "Annexure A1" at pg. 7-10)

7. It is submitted that on the subsequent date of hearing, i.e. 25.02.2025, in the above petition, this Hon'ble Court was pleased to record the statement made on behalf of the Union of India, that issue of the deportation of illegal immigrants is being dealt with at the highest executive level. It is also submitted that in its order dated 21.03.2025, this Hon'ble Court was pleased to direct the Union of India to place on record the manner in which the identification and deportation of illegal immigrants is intended to be undertaken.

(A copy of the order dated 25.02.2025 in Rajubala Das v. Union of Ind & Ors., W.P. (Crl.) 234 / 2020 is annexed herewith as

"Annexure Az pg. 11-13)

(A copy of the order dated 21.03.2025 in Rajubala Das v. Union of India & Ors., W.P. (Crl.) 234/2020 is annexed herewith as "Annexure A3" at pg. 14-18)

8. I state and submit that the Union of India is actively considering a policy for the detention and deportation of illegal immigrants as per the order(s) of this Hon'ble Court in Rajubala Das v. Union of India & Anr., W.P. (Crl.) No. 234/2020.

9. It is submitted that in the petition pending before a Bench of Three Hon'ble Judges, i.e. Jaffar Ullah & Anr. v. Union of India & Ors., W.P. (C) No. 859/2013 and connected matters, which is coming up for hearing on 31.07.2025, similar issues concerning illegal immigrants is under consideration. It is submitted that on the last date of hearing, i.e. 08.05.2025, arguments were raised in Jaffar Ulla (supra) to the effect that illegal immigrants cannot be deported at all on several grounds. I state and submit that an interim order was declined against the deportation of some illegal immigrants. It is submitted that the Union of India relied upon an earlier order dated 08.04.2021 passed by a bench of Three Hon'ble Judges in I.A. No. 38048 of 2021 in Mohd. Salimullah & Anr. v. Union of India & Anr., W.P. (C) No. 793 of 2027. Taking note of the said order this Hon'ble Court was pleased to reject the prayer made by some of the petitioner against the deportation of illegal immigrants

(A copy of the order dated 08.04.2021 in in I.A. No. 38048 of 2021 in Mohd. Salimullah & Anr. v. Union of India & Anr.. W.P. (C) No. 793 of 2017 is annexed herewith as "Annexure A4" at pg. 19-24)

(A copy of the order dated 08.05.2025 in Jaffar Ullah & Anr. v. Union of India & Ors., W.P. (C) No. 859/2013 is annexed herewith as "Annexure A5" at pg. 25-34)

10. I respectfully submit that in view of the aforesaid factual position, it is desirable that rather than deciding the present petition which only takes care of a part of the main problem, this Hon'ble Court may be pleased to wait till the group of matters in Jaffar Ullah & Anr. v. Union of India & Ors., W.P. (C) No. 859/2013 is heard and finally decided. I respectfully submit that Union of India would also request that Rajubala Das v. Union of India & Ors., W.P. (Crl.) 234/2020 be heard with the group of matters pending before the Bench of Three Hon'ble Judges."

6. What we have been able to gather is that there are two petitions pending before larger Benches dealing with the very same issue of deportation.

7. We believe that judicial propriety demands that when the very

same issue is being looked into by a larger Bench, we should not say anything further in the matter and allow the larger Bench to take an appropriate decision.

8. We believe that we should order that this matter be tagged with Writ Petition (Civil) No.859/2013 and allied matter(s).

9. We order accordingly.

10. However, we should clarify one aspect of this matter. In this particular matter, there is a specific challenge to the validity of clause 4 of a Memorandum issued by the State of West Bengal dated 6-3-2017.

11. The challenge to this clause 4 is essentially on the ground that once an illegal immigrant is tried, held guilty, sentenced and he undergoes the entire sentence, he cannot be kept in prison any longer.

12. Undoubtedly, if any person is put to trial for a particular offence, be it a citizen of this country or he may be an illegal immigrant, once he is tried, sentenced and has undergone the sentence, he cannot be kept in a prison, but at the same time, he being an illegal immigrant has to be kept in a correctional home/detention centre in its true sense.

13. Unfortunately, the State of West Bengal does not have a correctional home or a detention centre and in such circumstances, although an illegal immigrant has undergone the entire period of sentence, yet he is being detained in prison awaiting deportation.

14. The aforesaid is a little delicate issue and should be looked into by the State of West Bengal at the earliest.

15. We are informed by the learned counsel appearing for the State of West Bengal that the State Government is coming up with a separate correctional home/detention centre and the construction is likely to be completed within a period of six months.

16. We do not know when the construction would be completed.

17. We are of the view that if there is any illegal immigrant as on date in any of the prisons within the State of West Bengal, who has undergone the entire sentence and is still confined in any of the prisons past three years from the date of completion of his/her

original sentence, he/she be released on bail subject to the following conditions:-

"(a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees one lakh only) each of Indian citizens;

(b) He or she specifies verifiable address of stay after release;

(c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;

(d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and

(e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal."

18. The Authority concerned shall undertake the necessary exercise to identify all such illegal immigrants who are still confined in different prisons.

19. Let this exercise be completed within a period of four weeks from today.

20. Once the list is prepared, our order should be given effect to.

21. It is needless to clarify that, no sooner the construction of correctional home/detention centre is completed, then immediately thereafter, all such illegal immigrants shall be shifted to such Correctional Home/Detention Centre.

22. We further clarify that if any of these illegal immigrants are being prosecuted for any other offence, then this order will not apply for the purpose of bail.

23. The Transferred Case shall now be heard along with Writ Petition (Civil) No.859/2013 and allied matter(s).

(VISHAL ANAND)

(POOJA SHARMA)

ASTT. REGISTRAR-cum-PS

COURT MASTER (NSH)