

Date – 25.03.2020

To,
The Hon'ble Chief Justice of India
Supreme Court of India
Tilag Marg
New Delhi- 110001

Subject: Release of "declared foreigners" from detention centres of Assam in the wake of Corona virus outbreak.

1. The present representation is being moved on humanitarian grounds by *Justice and Liberty Initiative*, an organization working on the ground in State of Assam to provide legal aid to Indian Citizens who, on account of their lack legal prowess, poor documentation or poor assistance, have not been able to prove that they are citizens of Indian in the State of Assam. The organization, Justice and Liberty Initiative, comprises of leading lawyers and academics who are intended to reinforce the faith of the poor citizens in the Constitution and the judicial system of India.
2. The applicant organization *Justice and Liberty Initiative* is aware that this Hon'ble Court has already taken a bold and decisive step towards ensuring that prisons do not become breeding grounds of COVID-19 and has ordered a high powered committee to come up with modalities of releasing prisoners on parole, and that undertrials awaiting trial for offences entailing maximum sentence of seven years also be extended a similar benefit. The concern of this Hon'ble Court is laudable.

3. The Applicant organization prays that similar benefit be also extended to persons "declared to be foreigners" facing perpetual detention in State of Assam. Being "human beings" they also have at least the basic right to live and to not die of COVID-19 in the precincts of a prison, which has despicable living conditions.

4. It is humbly submitted that there are six detention centres in Assam, which are inside six different prisons. That on 11.03.2020 the Minister of State in the Ministry of Home Affairs informed the Rajya Sabha that as on 06.03.2020 there are 802 persons kept in detention centres of Assam.

A copy of the reply of the Minister of State in the Ministry of Home Affairs dated 11.03.2020 is annexed herewith and marked as **Annexure – A**

5. That it is humbly submitted that many of the detainees are old and ailing. In fact, it is reported that at least 10 detainees have died in detention in the last one year, from 1st March 2019 to 29th February 2020, as informed by the Minister of State in the Ministry of Home Affairs in the Lok Sabha. Further, from 2016 till today about 29 detainees have succumbed to various ailments.¹

6. That it is not that this Hon'ble Court has not taken notice of "perpetual detention" of such stateless persons. This Hon'ble Court vide its order dated 10.05.2019 in WP (C) 1045/2018 was pleased to pass an order to release detainees who have

¹ <https://www.ndtv.com/india-news/man-lodged-in-assam-detention-centre-dies-29th-death-in-3-years-2158934>

completed more than three years in detention, subjection to following condition.

(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.

This order establishes that subject to certain conditions, "foreigners" in detention centers in Assam can also be released, as they are neither criminals nor a threat to society. In ordinary time, when the Hon'ble Supreme Court passed the order for detention, it imposed conditions of surety and financial bond. It is

stated that since most of these detenues being stateless persons are very poor to even afford legal services and have no property or rich friends to stand as surety. In the circumstances, it would only be fair and proper that this Hon'ble Court in its magnanimity allow release of such detenues and dilute the condition of financial surety.

7. It is pertinent to mention here that many were detained for around a decade but yet not deported to their alleged country of origin. It is apparent that those who are detained and have not completed three years in detention might also not be deported. Hence, it would be only reasonable to release them with an undertaking that they will be produced before appropriate authority if ever the occasion of deportation arises or that they would report to local police station once every 15 days.

A copy of the order dated 10.05.2018 in
WP(C) 1045/2018 is annexed herewith
and marked as **Annexure – B**

8. That subsequent to the order dated 10.05.2019 in WP (C) No. 1045/2018 large numbers of detenues who have completed 3 years in detention and could manage sureties have been released. It is pertinent to mention that detention of "declared foreigners" is not a sentence, detenues are detained to deport to their alleged country of origin.
9. The Govt of Assam in its affidavit filed in compliance to order dated 28.01.2019 in WP(C) 1045 /2018 have stated that since 13.03.2013 only 4 "declared foreigners" have been repatriated to their country of origin. Hence it is apparent that the Govt of India

has failed to deport "declared foreigners" to their country of origin. Hence, detaining "declared foreigners" when deportation is not foreseeable is unreasonable. Hence, they may be released from detention centre.

10. That in the wake of Corona virus outbreak, the detenues will be more vulnerable in the already crowded detention centres. This Hon'ble Court has registered a writ petition suo motu vide SUO MOTU WRIT PETITION (C) NO. 1/2020IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS. On 16.03.2020, this Court had issued notice to all the States and Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID-19) with regard to Prisons and Remand Homes

11. That it is humbly submitted all provisions of detaining a declared foreigners in detention centres is akin to civil imprisonment which is engrafted in section 55 of Code of Civil Procedure , 1908 as failure of prove one's citizenship has only civil consequence. It is in fact an interim measure to detain them till the time of their deportation to the respective countries of origin. It is pertinent to mention here that many of them are languishing due to the ex parte order passed against them. Moreover, many of those detenues have challenged the Foreigners Tribunals Orders which are either pending before the Hon'ble High Court or Hon'ble Supreme Court. As their detention may be compared with Civil Imprisonment, they should be given the benefit of Section 59 (3) (a) CPC which stipulates that-

59 (3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom,-

(a) by the State Government, on the ground of the existence of any infectious or contagious disease .

12. That detention centres are located in Prisons of Assam. Hence, it is humbly prayed that detenues languishing in detention centres should be given the benefit of SUO MOTU WRIT PETITION (C) NO. 1/2020. It is also a fact that most of the detention centres are now overcrowded and in the event of outbreak of COVID-19, the result is not difficult to perceive. Moreover, Article 21 applies to all natural persons. The right is available to every person, both citizen and alien. Thus, even a Foreigner can claim this right under Article 21 of the Constitution.

PRAYER

In the circumstances it is, therefore, most humbly and respectfully prayed that Your Lordship may graciously be pleased to

- A. direct immediate release of "declared foreigners" detained in six detention centres in Assam subject to compliance of conditions specified by this Hon'ble Court in order dated 10.05.2019 passed in WP (C) 1045/2018 SUPREME COURT LEGAL SERVICES COMMITTEE VS UNION OF INDIA AND ORS except conditions relating to (a)

- having undergone 3 year period of detention; (b)
financial surety;
- B. direct the Govt of Assam not to detain anymore
"declared foreigners" in to detention or arrest
them until the situation affected by COVID-19
returns to normalcy.

The detenues and their families would remain indebted to the
Hon'ble Supreme Court for its kind consideration and empathy,
and shall ever pray.

Yours Sincerely,

AMAN WADUD

On behalf of,

Justice and Liberty and Initiative

(Mail - justiceandlibertyinitiative@gmail.com)

ANNEXURE - A

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

RAJYA SABHA
STARRED QUESTION NO. *181

TO BE ANSWERED ON THE 11TH MARCH, 2020/ PHALGUNA 21, 1941
(SAKA)

DOCUMENTS LEGALLY VALID FOR PROVING CITIZENSHIP

†*181. CH. SUKHRAM SINGH YADAV:

Will the Minister of HOME AFFAIRS be pleased to state:

(a) the details of the documents which Government considers to be legally valid for proving one's citizenship;

(b) the details of States where Government consider to implement NRC in addition to Assam;

(c) the number of people in Assam who have failed to prove their citizenship; and

(d) the number of people having been kept in detention centres in Assam?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS
(SHRI NITYANAND RAI)

(a) to (d): A Statement is laid on the Table of the House.

STATEMENT REFERRED IN REPLY TO RAJYA SABHA STARRED QUESTION NO. *181 FOR 11.03.2020 REGARDING "DOCUMENTS LEGALLY VALID FOR PROVING CITIZENSHIP"

(a) Acquisition of Indian Citizenship is governed by the provisions of The Citizenship Act, 1955 and rules made thereunder. Citizenship of India can be acquired by birth or descent or registration or naturalisation or incorporation of territory.

(b) Till now, Government has not taken any decision to prepare National Register of Indian Citizenship (NRIC) at the National level.

(c) The hard-copies of the supplementary list of inclusion and on-line family-wise list of exclusions was published on 31st August, 2019 as per the directions of the Hon'ble Supreme Court. A total of 3,11,21,004 persons were found eligible for inclusion in the final NRC, leaving out 19,06,657 persons.

(d) As on 06/03/2020, 802 persons have been kept in detention centres in Assam.

ITEM NO.50

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No. 1045/2018

SUPREME COURT LEGAL SERVICES COMMITTEE

Petitioner

VERSUS

UNION OF INDIA & ANR.

Respondents

Date : 10-05-2019 This matter was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

Mr. Gourab Banerji, Sr. Adv./A.C. (N/P)

Mr. Prashant Bhushan, Adv./A.C.

For Petitioner

For Respondents

Mr. Tushar Mehta, SG
Ms. Aishwarya Bhati, Sr. Adv.
Ms. Binu Tamta, Adv.
Mr. B.V. Balaram Das, AOR

Mr. Tushar Mehta, SG
Mr. Shuvodeep Roy, AOR
Ms. Diksha Rai, Adv. (AOR)
Ms. Palak Mahajan, Adv.
Mr. Rajat Nair, Adv.
Mr. Ankit Roy, Adv.
Mr. Rijuk Sarkar, Adv.
Ms. Manreet Kaur, Adv.

Ms. Uttara Babbar, AOR
Mr. Manan Bansal, Adv.

Mr. Debojit Borkakati, Adv. (AOR)
Mr. Vivek Sonkar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

We have heard learned counsels for the parties.

Insofar as the larger issue, namely, deportation

of declared foreigners and setting up of additional Foreigners Tribunals in the State of Assam is concerned, upon hearing Mr. Tushar Mehta, learned Solicitor General, appearing for the State of Assam, we are of the view that the State should be given some further time to indicate the progress made on the diplomatic level etc.. Further, we would require the State to place on record a detailed scheme, in consultation with the Gauhati High Court (on the administrative side), with regard to the constitution of Foreigners Tribunals including appointment of Members, staff etc. The said details shall be placed on record as soon as possible and if required, the State will be at liberty to make a mention of the matter before the Vacation Bench.

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.

Matter be listed in the month of July, 2019 unless otherwise mentioned by the learned counsel for the State.

(Deepak Guglani)
Court Master

(Anand Prakash)
Court Master