

GUIDELINES ISSUED WITH REGARD TO ACCUSED WHO ARE FOREIGN NATIONALS

By Institutional Article

The Hon'ble High Court of Madhya Pradesh in ***Mohammad Luthfar v. State of Madhya Pradesh (Misc. Criminal Case No. 32735 of 2023, dated 23.08.2023)*** has reiterated guidelines for adjudicating matters wherein foreign nationals are accused as has been laid down in the case of ***Babul Khan and ors. v. State of Karnataka and ors., 2020 SCC Online Kar 3438*** by Hon'ble Karnataka High Court. They are reproduced as under:

(1) As soon as the offence under Foreigners Act and other Laws is detected and there is a strong *prima facie* material to show that the detected person is a foreign national, and if he has no Passport or Visa, or if the Visa is expired, and he has no right to stay in Indian Territory, proceedings shall be immediately started to deport him to his nation, without unnecessary delay, from the date of registration of FIR against such person.

(2) The jurisdictional police have to immediately take steps to inform the concerned competent authorities to initiate proceedings to deport such foreign national to his mother country vis-a-vis other competent authorities also share the details of such person amongst themselves and concerned jurisdictional Court.

(3) If the Court refuses to grant bail to those persons (foreign nationals) in any criminal case, the Court shall keep such person in regular jail, till the disposal of the case.

(4) If for any reason the Court grants bail including anticipatory bail, in any criminal case where the offender is a foreign national, and the offences are under the Foreigners Act and/or also under any other Laws for the time being in force, and their Visa is cancelled or lapsed, or they have no Passport, or they are illegal migrants, then the Courts shall specifically order to keep them in detention centers, unless the competent authority has passed any order under section 3(2)(a) to (f) of Foreigners Act, 1946, or till further orders of the court or till they are deported to their mother country.

(5) If the case registered against the foreign nationals, ended in conviction, they shall be ordered to be kept in regular prison of the State till they serve their sentence, and after serving the sentence, they shall be kept in detention centers till, they are deported to their country.

(6) If the case ends up in discharge, release of the accused or acquittal, and their nationality is in dispute before the competent Tribunal, they shall be ordered to be kept in detention centers till they are deported to their country unless they have any right or otherwise entitled to remain in India, or the competent authority has passed any orders under section 3(2)(a) to (e) of Foreigners Act 1946, the acquittal, discharge or release of the accused is no bar for the concerned competent authorities to question the nationality of that person before the competent Tribunal.

(7) The Public Prosecutors, the defence Counsel and the Courts shall make all their efforts to expeditiously deal with such cases by giving priority, for its early disposal, so as to enable other competent authorities to take appropriate steps under the facts and circumstances of each case for deportation of such foreign national (accused) as early as possible. The Court may also if permissible under law, and applicable to the facts and circumstances of a case may invoke sections 265A to 265L under chapter XXI (A) of Code of Criminal Procedure, after following due procedure.

(8) As far as possible where a foreign national is involved in a case, the courts shall make their endeavor to record evidence and write the judgment in English Language, if the accused in such case is not conversant with the local language.

(9) The Central Government and the State Governments shall take all necessary steps to establish as many as necessary Detention Centers, at Cities, Districts and Taluka places as per the detention Center Manual referred to in this judgment, with all necessary basic facilities, as per the detention centre manual, as per the directions and guidelines of the Hon'ble Apex Court in the case of ***R. D. Upadhyaya v. State of A.P. and others*** reported in ***(2017)15 SCC 337***, so as to keep the foreign nationals, till their deportation whenever they are ordered to be kept in detention centers by competent authorities or by the Courts.

(10) In case, the accused/foreign national is a woman or a woman having a child or the child itself, the competent authorities, including jail authorities, detention centers, and the Courts and Juvenile Justice Boards have to follow the Guidelines of the Hon'ble Apex Court laid down in Upadhyaya's case (supra), in addition to the provisions under the Prisons Act as well as Prisons Rules, and Juvenile Justice Act and Rules strictly and meticulously in their letter and spirit.

(11) If a mother who is a foreign national, is in custody and having infant below the age of six years or up to six years, the court may order the child to accompany the mother during her custody. If, either of parents got arrested, then the custody of the child may be given to the other parent who is not arrested. If both the parents are arrested and they are in custody in same or in some other case, court may order custody of children to their close relative or to Government shelter home, or to any other organization recognized or undertaking of the government where government or concerned authorities can monitor the well being of the child, as per Juvenile Justice (Care and Protection of Children) Act, 2015 and Rules.

(12) If a foreign national is convicted by the Court, and any application for parole is made, the jail authorities have to take in to consideration the conditions enumerated under Section 4 of the Foreigners Act, 1946, in addition to the Prisons Act and Rules.

(13) If a Foreign National is found to be an illegal migrant and not a citizen of India, and has been involved in criminal offences under other law of the land for the time being in force, apart from Foreigners Act, the State Government or the Central Government as the case may be, take immediate necessary steps by exercising their discretion after applying their mind to the facts and circumstances of the case, if necessary and if the circumstances warrants, if the said offences are not heinous or anti- social, or not punishable with imprisonment for more than three years, or with fine only to withdraw those cases under Section 321 of Cr.PC., so as to enable the concerned authorities to take necessary steps to deport such persons to their mother country, as expeditiously as possible.

(14) The State Legal Services Authority, District Legal Services Authorities and Taluka Legal Services Committees, shall make a periodical visit to the jails and detention centers to ensure and satisfy itself that the concerned authorities have taken necessary steps to implement the directions issued by the Hon'ble Apex Court in ***Upadhyay's case*** (supra) and also the Detention Center Manual, so as to take appropriate action to inform the concerned authorities to rectify their mistakes and also the Legal Services Authorities *suomotu* can take steps in accordance with law to get the mistakes or errors rectified on the legal side.

(15) The Central Government and the respective State Governments shall often revise the Detention Center Manual and also the Prisons Act and Rules based on the need of the hour to bring necessary changes, so as to effectively and efficiently implement the very object of such Manual and laws.

(16) The Central Government, the State Government, the State Legal Services Authority, Judicial Academy and Police Academy in the State shall take appropriate necessary swift action to sensitize all the stakeholders, Judges, Prosecutors, Police Officers, Custom and Immigration Officers (FRRO-FRO), Jail Authorities and Officers delegated in Detention Centers, in this regard.