2025:KER:42092

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 16TH DAY OF JUNE 2025/26TH JYAISHTA, 1947

WP(CRL.) NO. 1353 OF 2024

CRIME NO.777/2024 OF KALPETTA POLICE STATION, WAYANAD

PETITIONERS:

1 MANJU SAUD, AGED 38 YEARS, W/O.AMAR SAUD,
6TH WARD, BHUMIRAJA,
NAPA PURCHADI MUNICIPALITY, VAITADI DISTRICT,
NEPAL, CURRENTLY DETAINED AT SHELTER HOME,
SHANTHI NAGAR ARATTUTHARA (P.O), MANANTHAVADY,
WAYANAD – 670645,
REPRESENTED BY HER NEXT FRIEND MR.KRISHNAKUMAR,
AGED 43, S/O.CHANDRAN, THONIPARAMBIL (H),
NELLARACHAL (P.O) SULTHAN BATHERY,
WAYANAD, PIN – 673593.

2 AMAR BAHADUR SAUD, AGED 45 YEARS,
S/O.JAGI SAUD, 6TH WARD BHUMIRAJA,
NAPA PURCHADI MUNICIPALITY, VAITADI DISTRICT,
NEPAL CURRENTLY DETAINED AT TRANSIT HOME,
KOTTIYAM, KOLLAM – 691020,
REPRESENTED BY HIS NEXT FRIEND MR.KRISHNAKUMAR
AGED 43, S/O.CHANDRAN, THONIPARAMBIL (H),
NELLARACHAL (P.O) SULTHAN BATHERY,
WAYANAD, PIN - 673593

3 ROSHAN SAUD, AGED 22 YEARS, S/O AMAR SAUD,
6TH WARD BHUMIRAJA, NAPA PURCHADI MUNICIPALITY,
VAITADI DISTRICT, NEPAL,
CURRENTLY DETAINED AT TRANSIT HOME, KOTTIYAM
KOLLAM – 691020,

REPRESENTED BY HIS NEXT FRIEND MR.KRISHNAKUMAR
AGED 43, S/O.CHANDRAN, THONIPARAMBIL (H),
NELLARACHAL (P.O) SULTHAN BATHERY,
WAYANAD, PIN – 673593.

BY ADVS.
SRI.PRANOY K.KOTTARAM
SRI.SIVARAMAN P.L

RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY SECRETARY,
THE MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
CENTRAL SECRETARIATE, NEW DELHI, PIN – 110001.

2 THE FOREIGNERS REGIONAL REGISTRATION OFFICER
(FRRO), OFFICE OF THE FRRO, 6TH FLOOR,
NIKARTHIL CHAMBERS,
NEAR BABY MEMORIAL HOSPITAL,
MINI BYPASS ROAD, CALICUT, PIN – 673004.

3 STATE OF KERALA, REPRESENTED BY SECRETARY,
HOME DEPARTMENT SECRETARIATE,
THIRUVANANTHAPURAM, PIN – 695001.

BY ADVS.
SRI.SUVIN R.MENON, CENTRAL GOVERNMENT COUNSEL

SRI.P.NARAYANAN,
SPECIAL GOVERNMENT PLEADER TO DGP AND ADDITIONAL
PUBLIC PROSECUTOR

SRI.JACOB P.ALEX, AMICUS CURIAE

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON 16.06.2025, DELIVERED THE FOLLOWING:

2025:KER:42092

'C.R'

JUDGMENT

"Bondage - though in a golden cage - remains bondage"

The question involved in this Writ Petition centers around the personal liberty of a foreigner, who is alleged to have committed a crime in India. The question has to be addressed in the context of orders passed under the Foreigners Act, 1946 imposing restriction on the movement of the petitioners, dehors bail having been granted in their favour in the crime in question.

2. Brief facts:

The petitioners are Nepali citizens, who were working as cleaning and house keeping staff in a resort at Kalpetta from May, 2024 onwards. Citizens of Nepal can enter India without any visa, by virtue of Article 7 of the Treaty of Peace and Friendship between the Government of India and

Government of Nepal, 1950. A crime was registered against petitioners vide Ext.P1 F.I.R on 21.09.2024, alleging that the 1st accused (1st petitioner herein) committed murder of a new born baby by strangulation. Accused nos.2 and 3 (petitioners 2 and 3 herein) acted in aid of the 1st accused in committing the crime. The offences alleged are under Sections 302, 316, 318, 201, 313, 511 and 34 of the Penal Code. The petitioners were arrested on 21.09.2024 and were enlarged on bail, as per Ext.P2 Order dated 08.11.2024. One among the conditions for grant of bail was that the sureties should be Keralites and another condition imposed restriction on the petitioners in leaving the State of Kerala, except with the permission of the trial court. The third condition warrants the petitioners to surrender their passports before the jurisdictional court. While so, Exts.P3, P4 and P5 Orders were issued on petitioners 1, 2 and 3 respectively by the 2nd respondent Foreigners Regional Registration Officer ('F.R.R.O', for short)

under Section 3(2)(e)(ii) of the Foreigners Act and Clause 11(2) of the Foreigners Order, 1948 imposing restriction on the movement of the petitioners by confining them in a transit home. Exts.P3 to P5 are under challenge.

3. Having regard to the significance and complexity of the issues involved in this Writ Petition, this Court appointed **Sri. Jacob P.Alex**, as Amicus Curiae.

4. Heard the learned Amicus; **Sri. Pranoy K.Kottaram**, learned counsel for the petitioners; **Sri. Suvin.R.Menon**, learned Central Government Counsel for respondents 1 and 2; and **Sri. P.Narayanan**, learned Special Government Pleader to D.G.P and Additional Public Prosecutor for the 3rd respondent State. Perused the records.

5. **Arguments advanced by the petitioners:**

Learned counsel for the petitioners submitted that

Exts.P3, P4 and P5 Orders are illegal and arbitrary, since petitioners have already been enlarged on bail, for which reason, their movement in India cannot be restricted at all. Necessary conditions to safeguard the presence of the petitioners for the purpose of trial are engrafted in Ext.P2 bail order, which obviates the necessity for further orders like Exts.P3 to P5, avowedly for ensuring the presence of the petitioners for the trial. Learned counsel would submit that the petitioners have been deprived of their livelihood, as also, the benefit of bail order, inasmuch as they are virtually incarcerated in the transit home. Learned counsel would point out that there is no violation, whatsoever, of the Foreigners Act or the Foreigners Order, justifying issuance of Exts.P3 to P5 in terms of the said Act and Order. One important point highlighted by the learned counsel for the petitioners is the failure on the part of the respondents 1 and 2 in not affording an opportunity of being heard to the petitioners before passing

Exts.P3 to P5 Orders. Such right is all the more important, inasmuch as Exts.P3 to P5 Orders substantially infringed the personal liberty of the petitioners. According to the learned counsel, Exts.P3 to P5 Orders are unfair and arbitrary, besides being violative of Article 21, the protection of which is available to 'any person'; and not confined to the citizens of India. On law, it was argued that, even if the power under the Foreigners Act is taken as absolute, the procedure adopted should not be arbitrary, unfair and oppressive. In this regard, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Hans Muller of Nurenberg v. Superintendent, Presidency Jail, Calcutta and Others*** [AIR 1955 SC 367] and ***A.K.Gopalan v. State of Madras*** [AIR 1950 SC 27]. Relying on the judgment of the High Court of Delhi in ***Emechere Maduabuchkwu v. State NCT of Delhi and Another*** [2023:DHC:3872], it was argued that an opportunity of being heard ought to have been given, especially when 2nd respondent/F.R.R.O is a Civil

Authority. Relying on ***Maneka Gandhi v. Union of India and Another*** [(1978) 1 SCC 248], it was argued that, when the action to be taken is punitive, an opportunity of hearing should have been granted, even in the absence of an enabling provision. It was emphasised that the Orders in question were not issued for any reason in connection with national security, but only to ensure the presence of the petitioners for trial. The Treaty of Peace and Friendship between Nepal and India was also highlighted to contend that Exts.P3 to P5 Orders were against the spirit of the same.

6. <u>Arguments advanced by respondents 1 and 2:</u>

The primary point highlighted by the learned Central Government Counsel is the absence of fundamental right for a foreign citizen to travel across India, unrestrictedly. The rights in terms of Article 19(1)(d) is confined to citizens of India; and not available to a foreigner, as held by the Hon'ble Supreme Court in

Hans Muller of Nurenberg (supra). Secondly, it was contended that the power of the 2nd respondent, a Civil Authority, to pass orders in terms of Section 3 of the Foreigners Act, is wholly and completely independent of the power to grant bail, wherefore, Ext.P2 Order granting bail cannot stand in the way of issuance of Exts.P3 to P5 Orders. Reliance in this regard was placed on a recent judgment of the Hon'ble Supreme Court in ***Frank Vitus v. Narcotics Control Bureau and Others*** [(2025) 3 SCC 1]. On the issue of *audi alteram partem*, it is the submission of the learned Central Government Counsel that the Foreigners Act does not contemplate any such opportunity/right. It was coined that the rules of natural justice can be excluded expressly or by implication, as held by the Hon'ble supreme Court in ***Haradhan Saha and Another v. The State of West Bengal and Others*** [AIR 1974 SC 2154]. In the instant case, the conspicuous absence of a provision for hearing before issuance of Orders under section 3 of the Foreigners Act

is a clear indication of an implied exclusion of the rules of natural justice, if not express. Learned counsel relied upon the observations of the Hon'ble Supreme Court in ***Maneka Gandhi*** (supra) in this regard. Secondly, it was pointed out that, if an opportunity of being heard is granted, the same will defeat the purpose of the special law, the Foreigners Act. Incidently, it was pointed out that there is no challenge, whatsoever, to any of the provisions of the Foreigners Act. It was highlighted that an Order under Section 3, in many a situation, is necessitated to ensure the security of the State, in which case, it would be impracticable, besides frustrating the purpose, to grant an opportunity of being heard. It was finally argued that the Orders under Section 3 are based on the subjective satisfaction of the Authority, which is not amenable to judicial review.

7. <u>Arguments advanced by the learned Amicus</u>:-

Learned Amicus had elaborately taken this Court to the

concepts and issues involved, as also, the binding precedents on the point. The first submission is with respect to the nature of power under the Foreigners Act, 1946, which is 'absolute and unlimited' as held in ***Hans Muller of Nurenberg*** (supra). The Supreme Court also held that the procedure in terms of the Foreigners Act is fair, just and reasonable. It was highlighted by the learned Amicus that the language by the Hon'ble Supreme Court in that case is that, there is an unfettered right conferred to the Union Government as per the Foreigners Act to expel a foreign citizen. The proposition that the power of the Government to expel a foreigner is absolute and unlimited has been reiterated in ***Louis De Raedt and Others v. Union of India and Others*** [(1991) 3 SCC 554]. The proposition that the procedure under the Foreigners Act is just, fair and reasonable has been reiterated in ***Sarbananda Sonowal (II) v. Union of India*** [(2007) 1 SCC 174]. The second submission made by the learned Amicus is one endorsing the submission made by the

learned Central Government Counsel that the Order issued under Section 3(2)(e)(ii) of the Foreigners Act read with, clause 11(2) of the Foreigners Order is independent and different from Orders issued as per the Penal statutes. Such Orders, which restricts movement of a foreigner does not amount to arrest or detention. Support in this regard is drawn from a Full Bench decision of the Madras High Court in (i) ***Sree Latha v. The Secretary to Government, Public (SC) Department and Others*** [MANU/TN/2614/2007]; another judgment of the Madras High Court in (ii) ***Momin @ Momimwar Hussain @ Md.Monwar Hossain v. State and Others*** [MANU/TN/1357/2019]; (iii) ***Toichubek Uulu Bakytbek v. The State of Karnataka*** [MANU/KA/3091/2020]; (iv) ***Anwara Begum v. The State of Telengana*** [(2022) 09 TEL CK 0043] (v) ***Aizaz Kilicheva v. State NCT of Delhi*** [2025 SCC OnLine Del 216]; (vi) ***Innocent Amaeme Maduabuchukwi and Others v. State of Goa and Others*** [MANU/MH/0729/2020]; and finally on (vii) ***Frank Vitus*** (supra) of the Hon'ble Supreme Court.

Relying on the dictum held in these decisions, it is the submission of the learned Amicus that movement restriction under Section 3(2)(e)(ii) of the Foreigners Act is different from arrest/detention contemplated under Section 3(2)(g) of the said Act; that an Order under Section 3(2)(e) is not a punishment and that the powers under the Foreigners Act is independent and separate. Learned Amicus Curiae invited the attention of this Court to the differentiation of the terms employed in Sections 4(1) and 4(2), the former being "internee" and the latter, "person in parol". The third proposition canvassed by the learned Amicus is that the detention centres/transit homes are established to restrict movement of the foreigners in terms of Section 3(2)(e) of the Foreigners Act. Learned Amicus had produced various documents, which led to the setting up of a transit home in Kerala, inclusive of the decision of this Court in ***Madukoluchibuzor Samson and Another v. State of Kerala and Others*** [Crl.M.C.No.5300 of 2020]. Thus, according to

the learned Amicus, Exts.P3 to P5 Orders cannot be said to be illegal or without any authority. On the question of *audi alteram partem* before passing an Order under Section 3, learned Amicus pointed out one judgment of the Hon'ble Supreme Court in ***Hasan Ali Raihany v. Union of India and Others*** [(2006) 3 SCC 705], which afforded a limited right of hearing.

8. <u>Analysis of the issue</u>:-

Having heard the learned counsel for the respective parties, as also, the learned Amicus Curiae, the sole issue, which falls for consideration, centers around the question of *audi alteram partem* before passing an Order under Section 3 of the Foreigners Act, for, other propositions with respect to the independent nature and character of an Order under Section 3; that it does not amount to an arrest or detention etc., are too well settled. As pointed out by the learned Central Government Counsel, the issue is seen nailed by the

Hon'ble Supreme Court in ***Frank Vitus*** (supra), by holding that a foreigner, upon being released on bail, is not entitled to leave India, without the permission of the Civil Authority, as provided in clause (5) of the Foreigners Order, 1948. As per clause 5(1)(b) of the Order, a foreigner cannot leave India without the leave of the Civil Authority and such leave is liable to be refused as per Clause 5(2)(b), if the foreigner's presence is required in India to answer a criminal charge. ***Frank Vitus*** (supra) held that the power to impose movement restriction under Section 3 of the Foreigners Act is wholly independent of the power to grant bail; and that notwithstanding grant of bail, the power to arrest and detain a foreigner can be exercised, if the Central Government makes an Order in terms of Section 3(2)(g) of the Foreigners Act. In ***Frank Vitus*** (supra), the Supreme Court held that the Investigating Agency or the State, as the case may be, shall immediately inform the concerned Registration Officer about the grant of bail, so as to

enable him to bring that fact to the notice of the Civil Authority under the Foreigners Act. Therefore, the contention of the petitioners that Exts.P3 to P5 Orders are bad and illegal, inasmuch as adequate conditions have already been incorporated in Ext.P2 bail order, will crumble to the ground. In the light of the enabling provision of clause 5(2)(b) of the Foreigners Order, 1948, the same is the fate of the petitioners' contention that they have been deprived of the benefit of the bail order. Exts.P3 to P5 cannot, therefore, be held to be illegal on those counts.

9. Now, coming to Section 3 of the Foreigners Act, this Court notice that the powers have been couched in the most expansive language possible. The power can be exercised either generally; or with respect to all foreigners; or with respect to any particular foreigner; or any prescribed class or description of foreigners. Again, the power under Section 3 can be exercised for

(i) prohibiting (ii) regulating (iii) restricting the entry of foreigners into India or their departure therefrom; or their presence or continued presence therein. It is without prejudice to the generality of the sweeping powers under Section 3(1) that the specific powers are seen engrafted in Section 3(2). Section 3(2)(e) is extracted here below:

> *"3. **Power to make orders**.—(1) The Central Government may, by Order, make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India, or their departure therefrom or their presence or continued presence therein.*
>
> *(2) In particular and without prejudice to the generality of the foregoing powers, orders made under this section may provide that the foreigner—*
>
> *(a) xxxx*
>
> *(b) xxxx*
>
> *(c) xxxx*

(d) xxxx

(e) shall comply with such conditions as may be prescribed or specified–

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in

> *activities of a prescribed or specified description;*
> *(viii) prohibiting him from using or possessing prescribed or specified articles;*
> *(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;"*

10. Of the above, what has been pressed into service in the instant facts is the power of imposing restriction in movement, as envisaged in Section 3(2)(e)(ii). Interpreting the powers of the Foreigners Act, a Constitution Bench of the Hon'ble Supreme Court in ***Hans Muller of Nurenberg*** (supra), authored by **Vivian Bose, J.** held in paragraph 35 that the Foreigners Act confers power on the Central Government to expel foreigners from India with absolute and unfettered discretion and therefore the power is unrestricted. The proposition as regards the absolute and unfettered power of the Central Government in this regard is seen reiterated in

paragraph nos.39 and 40. ***Hans Muller of Nurenberg*** (supra) has been quoted with approval in ***Louis De Raedt*** (supra). The proposition in ***Hans Muller of Nurenberg*** (supra) that the procedure in the Foreigners Act is fair, just and reasonable is quoted with approval in ***Sarbananda Sonowal (II)*** (supra).

11. In the light of the above legal position, there cannot be any dearth of power for the 2nd respondent F.R.R.O to issue Exts.P3 to P5 Orders. The challenge in this regard is liable to be repelled straight away.

12. Now, the remaining question - as indicated earlier - is only with respect to the right of *audi alteram partem* before passing such orders under Section 3. On the first blush, a court of law cannot sideline the arguments of the Central Government Counsel that there is no enabling provision in the Foreigners Act affording a right of hearing; and that the right of hearing, if afforded, may

perhaps defeat the purpose of the special law, besides prejudicing the security of the State and larger public interest. Learned Central Government Counsel relies on the doctrine of exclusion of natural justice, by implication. Despite the statute makers being aware of the deleterious impact on a foreign citizen when Order under Section 3 is passed, the omission to grant an opportunity of being heard can only be conscious and cannot be inadvertent, is a possible argument. The concept of exclusion of the rules of natural justice by implication is well settled, as held in ***Maneka Gandhi*** (supra), the relevant findings of which are extracted here below:

> *"in A.S.de Smith, Judicial Review of Administrative Action, 2nd ed., where the learned author says at page 174 that "in administrative law, a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication-where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt*

action, especially action of a preventive or remedial nature". Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from 'fair play in action, it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in Judicial Review of Administrative Action, 2nd ed., at page 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word 'exception' is really a misnomer because in these exclusionary cases the audi alteram partem rule is held inapplicable, not by way of an exception to "fair play in action", but because nothing

> *unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands.”*

13. However, it would equally be a possible argument that, if the statute makers specifically wanted to exclude the rules of natural justice, the same would have been expressly incorporated, so as to avoid any doubt or confusion in this regard, which obviously, has not been

done in the Foreigners Act, especially at Section 3. Therefore, a hearing before the issuance of such an Order – at least, immediately after such Orders in cases, where it is not practicable to afford a pre-decisional hearing – cannot be considered as a concept completely alien to Orders of the nature referred to in Section 3 of the Foreigners Act.

14. Having bestowed my attention, I am of the definite view that the question as to whether rules of natural justice stands excluded or not would essentially depend upon the nature of the Order to be passed; and the circumstances, in which it is made. In cases where, the interest of the State or public is not sacrificed/jeopardised, or where the purpose of the special statute is not being defeated by affording an opportunity of being heard, it is only logical - besides being in consonance with the settled principles of law - to vote for an opportunity being granted, especially when

such Orders are to visit the foreign citizen with serious and dire consequences. Per contra, if the issuance of such notice for hearing would either defeat the purpose of the special statute or would jeopardise the interest of State or public, an exclusion of the rules of natural justice should be readily interfered. Say for example, if the concerned authority is in receipt of an information that a foreign national has entered India, though legally, for an unlawful purpose, deleterious to national interest and that it is impracticable to afford him a hearing, for, that may defeat or render infructuous the proposed Order under Section 3, Orders may have to be passed instinctively or instantaneously, depending upon the gravity of the situation. However, in cases of Orders like Exts.P3 to P5, affording an opportunity of being heard would not defeat the purpose of the Orders proposed to be passed. Nor would it jeopardise the State/National interest. In such cases, an opportunity ought to have been granted. Such a right necessarily flows from

Article 21 of the Constitution, since an Order under Section 3 restricting the movement of a foreign citizen – which in fact confines him to a transit home, a euphoric expression to a place of incarceration – definitely deprives him of his personal liberty. *Bondage, though in a golden cage, remains bondage*. If the authority is of the opinion that issuance of notice will pave the way for foreigners like the petitioners to escape from the clutches of law, this Court is, again, of the opinion that a provisional order can be passed, so as to ensure their availability by restricting their movement, and then afford an opportunity of being heard, which procedure will always be in tandem with the requirements of fairness and non-arbitrariness. As rightly contended by the learned counsel for the petitioners, an opportunity of hearing will enable them to point out a less onerous course, alternate to Section 3(2)(e)(ii), but which is recognised by the provisions of the Foreigners Act.

15. The Hon'ble Supreme Court has almost recognised such right of a foreign citizen in ***Hasan Ali Raihany*** (supra). In that case, the residence visa permitted to the petitioner was cancelled and he was sought to be deported to Tehran. The issue before the Hon'ble Supreme Court as could be seen from paragraph no.6 is whether the authorities are obliged to disclose to the petitioner the reasons for his proposed deportation. In paragraph no.7, the Supreme Court took stock of the fact that the petitioner, though not an Indian citizen, has entered the territory of India, on the basis of a valid visa – and not stealthily with any ulterior motive – and therefore he should at least be informed of the reasons, why he is sought to be deported. The Hon'ble Supreme Court relied on its earlier judgment in ***Sarbananda Sonowal v. Union of India*** [(2005) 5 SCC 665]. The following observations were extracted from ***Sarbananda Sonowal*** (supra):

> *"Like the power to refuse admission this is regarded as an incident of the State's territorial sovereignty. International law*

does not prohibit the expulsion enmasse of aliens. (page 351). Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant to a decision reached by law, and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa etc. and not to those who have entered illegally or unlawfully."

16. Relying upon the above observations, the Hon'ble Supreme Court held in paragraph no.8 in ***Hasan Ali Raihany*** (supra) that it is only fair that the competent authority informed the petitioner, the reasons for his deportation. The Hon'ble Supreme Court went on to hold that the

petitioner must be given an opportunity to submit his representation against his proposed expulsion, which the competent authority has to consider and pass appropriate orders. The Hon'ble Supreme Court also took exception to the said procedure laid down, by holding that the same can be departed from for compelling reasons of national security etc., simultaneous with the finding that no such reason exists in the given facts before it .

17. Coming to the facts at hand, this Court notice that the petitioners have allegedly involved in a heinous crime involving offence under section 302 of the Penal Code and as per Clause 5(1)(b) of the Foreigners Order, they cannot be permitted to leave the State, without the leave of the Civil Authority, since their presence is required in India to answer a criminal charge. If that be so, affording an opportunity of being heard may be an empty formality, is a possible argument. Two fold answer emerges to that argument. Firstly, as pointed out

earlier, the petitioners may be able to point out some other provision, which is recognised by the Foreigners Act, but of a less onerous or cumbersome nature. Secondly, it is now settled by the principles of administrative law that an opportunity of being heard cannot be deprived for the reason that such pre-decisional hearing cannot impact the post hearing decision.

18. In this regard, it is profitable to refer to the following excerpts from the celebrated treatise of Administrative Law by ***H.W.R Wade & C.F.Forsyth (9th edition)*** at page no.554:

> *"Lord Denning suggested that a hearing should at least be required before a deportation order is executed [R. v. Brixton Prison Governor ex p. Soblen [1963] 2 QB 243. This was done in Pagliara v. Attorney-General [1974] 1 NZLR 86 and in Cesnovic v. Minister of Immigration (1979) 27 ALR 423]. The Court of Appeal of New Zealand has held, without mention of the case of 1920, that the principles of natural justice must be observed in*

the statutory procedure for deporting an over-stayed immigrant [Daganayasi v. Minister of Immigration [1980] 2 NZLR 130 (minister's decision invalidated for failure to disclose medical referee's report)]. The judgment of Cooke J firmly puts the subject into the general context of procedural fairness, instead of treating it in isolation - a lead which the High Court of Australia has followed in holding that an immigrant threatened with deportation on personal grounds is entitled to a fair opportunity to contest them as a matter of natural justice [Kioa v. Minister for Immigration (1985) 62 ALR 321 (deportation order quashed for breach of natural justice; previous decisions not followed). See likewise Waniewska v. Minister for Immigration (1986) 70 ALR 284; Minister for Immigration v. Taveli (1990) 94 ALR 177]. The Privy Council quashed a deportation order where an official undertaking gave rise to a legitimate expectation of a fair hearing, but they assumed, without deciding, that in the absence of such an undertaking there would be no right to be heard [Attorney-General of Hong Kong v. Ng Yuen Shiu [1983] 2 AC 629; above, p. 500. See similarly Haoucher v. Minister for Immigration (1990) 93 ALR 51 (minister's policy statement raised legitimate expectation)]. The High Court also quashed the

> *Home Secretary's decisions refusing political asylum to immigrants who had not been given a fair opportunity to put forward their claims [R. v. Home Secretary ex p. Thirukumar [1989] COD 384; affirmed [1989] Imm AR 270 (CA)].*
>
> *It may be necessary to distinguish illegal immigrants from aliens lawfully in this country who are ordered to be deported on account of overstaying, criminal offences or other misconduct. It may be justifiable for an illegal entrant's exit to be as unceremonious as his entry, subject to his right to claim asylum and to judicial review of the illegality of his entry."*

19. Legal considerations apart, this Court also takes into account the present international scenario, wherein trade and commerce have been made very liberal between the countries, thus necessitating frequent visits of foreigners into this country, and vice versa. That apart, cross country tourism is in its peak and the same constitutes substantial revenue for the States. In this scenario, it is time that we start recognising certain minimal rights of the foreign citizens, since we are

bound to think from their shoes as well. This should precisely be the reason for extending the protection of Article 21 to all 'persons'; and not confined to the Indian citizens, as in the case of many other Articles. We may have to construe that the founding fathers of our Constitution have recognised, in their farsighted vision, scenarios like the present one to include a larger genus, insofar as protection under Article 21 is concerned. In recognising rights to foreign citizens within the sweep of Article 21, all what this Court mean and contemplate is only those rights, which will not cause any sort of fetter or threat to the security of the State, the larger national interest or even public interest. If an order under Section 3 is necessitated in a situation and circumstance, which will not jeopardise such national interest, an opportunity of being heard should necessarily be conceded within the sweep of Article 21, is the conclusion surfacing from the above discussion.

20. In the light of the above discussion, this Court can only hold that Exts.P3 to P5 Orders are illegal for want of affording an opportunity of being heard to the petitioners. Compliance to natural justice being a fundamental facet will vitiate an Order for its non-compliance. Exts.P3 to P5 Orders are thus declared illegal. However, for that reason, this Court is not directing the release of the petitioners from the transit home, since the same may provide room for the petitioners to escape from the clutches of Indian law, as regards a person, who has to answer a criminal charge in this country. This Court, therefore, in exercise of its powers under Article 226, direct continuance of the petitioners in the transit home for a period of one more month, within which, the 2nd respondent F.R.R.O will pass fresh orders under Section 3 of the Foreigners Act, read with the appropriate order of the Foreigners Order, 1948, after affording an opportunity of being heard to the petitioners.

21. My whole-hearted appreciation to Sri.Jacob P.Alex, the learned Amicus, who unfurled the convoluted issues of law in an effulgent manner, is recorded. I also acknowledge the learned counsel who argued the matter on both sides, appreciably.

22. In the circumstances, this Writ Petition is allowed as indicated above.

(i) Exts.P3 to P5 are held illegal.

(ii) The petitioners will remain in the transit home for a period of one more month, within which time, the F.R.R.O shall hear the petitioners and then, pass fresh orders under Section 3 of the Foreigners Act, read with, Foreigners Order, 1948, in accordance with law. Needless to say that, this exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment, until which time, the petitioners will remain confined to the transit home.

Sd/-

C.JAYACHANDRAN, JUDGE

WW

APPENDIX OF WP(CRL.) 1353/2024

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE FIR DATED 21.09.2024 REGISTERED AS CRIME NO.777/2024 OF KALPETTA POLICE STATION, WAYANAD.**
EXHIBIT P2	**TRUE COPY OF THE ORDER DATED 08-11-2024 IN CRL.M.C NO.780/2024 GRANTING BAIL TO THE PETITIONERS BY THE COURT OF SESSIONS JUDGE KALPETTA.**
EXHIBIT P3	**TRUE COPY OF THE ORDER DATED 09.11.2024 ISSUED BY THE 2ND RESPONDENT AGAINST THE FIRST PETITIONER.**
EXHIBIT P4	**TRUE COPY OF THE ORDER DATED 08.11.2024 ISSUED BY THE 2ND RESPONDENT AGAINST THE SECOND PETITIONER.**
EXHIBIT P5	**TRUE COPY OF THE ORDER DATED 08.11.2024 ISSUED BY 2ND RESPONDENT AGAINST THE 3RD PETITIONER.**
EXHIBIT P6	**TRUE COPY OF THE GENERAL POLICY GUIDELINES RELATING TO INDIAN VISA ISSUED BY THE MINISTRY OF HOME AFFAIRS AS UPLOADED IN THEIR WEBSITE.**

RESPONDENT EXHIBITS

EXHIBIT R2(A)	**A TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF DELHI IN BAIL APPL 1872/2024, DATED 21.01.2025**
EXHIBIT R2(B)	**A TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KARNATAKA, IN CRL.P.NO.6578/2019, DATED 19.05.2020.**