

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 2038/2026

1. Nurul Islam Son of Shri Abdul Jabbarar, Resident of Ithari Printing Paasha, PS Kulara, Molvi Bazar, Bangladesh, Haal Prison District Jail Gurugram, Hariyana (At Present Bandi, Central Jail, Jaipur)
2. M.D. Ahsaanul Kobir Son of M.D. Fajlur Rahman, Resident of Baargoriya, PS Sadar Sherpur, Rampur Bazar, Bangladesh Haal Prison District Jail Gurugram, Hariyana (At Present Bandi, Central Jail, Jaipur)

-----Petitioners

Versus

State of Rajasthan, through Public Prosecutor.

-----Respondent

For Petitioner(s)	:	Mr.K.C. Sharma
For Respondent(s)	:	Mr.Rajesh Choudhary, GA-cum-AAG assisted by Mr.Jitender Singh Rathore, Add.GA. Ms.Nehal Goyal, Mr.Vinod Kumar Sharma & Mr.Anirudh Singh
Counsel who appeared on instructions	:	Mr.Bharat Vyas, ASG (through VC) assisted by Mr.Sandeep Pathak, Mr.Rakesh Choudhary, Ms.Anima Chatturvedi & Ms.Anushka Khandelwal Mr.V.R.S. Bajwa, Sr. Adv. assisted by Ms.Savita Nathawat Mr.Tanay Goyal for Mr.Rajendra Prasad, AG Mr.Rajesh Sharma with Ms.Kamini Pareek

JUSTICE ANOOP KUMAR DHAND

Order



1.	Date of conclusion of arguments	13/05/2026
2.	Date on which the order was reserved	13/05/2026
3.	Whether the full order or only the operative part is pronounced	Full Judgment
4.	Date of pronouncement	21/05/2026

Reportable

1. The instant petition has been preferred for releasing the petitioner on bail in connection with F.I.R. No.319/2024, registered with the Police Station Jawahar Circle, District Jaipur City (East) for the offences punishable under Sections 419, 420, 471 & 120B IPC.
2. Learned counsel for the petitioners submits that the aforesaid F.I.R. was registered against certain accused persons with regard to committing the alleged offence of illegal kidney transplantation and human trafficking, wherein the petitioners and the other co-accused persons were arrested on 23.04.2024. Counsel submits that the petitioners became approver for the prosecution side and on the basis of their statements recorded by the Police, the co-accused persons were arrested and charge-sheeted. Thereafter, the co-accused persons were granted benefit of bail under Section 439 Cr.P.C., but the petitioners have not been released on the sole ground that they became approver for the prosecution side in the instant case. Counsel submits that when the trial did not proceed any further, the petitioners approached this Court by way of filing S.B. Criminal Misc. Petition No.5888/2025, with a prayer for releasing them on bail, but this Court while deciding the aforesaid petition, vide its order dated 24.11.2025, issued a direction to the Trial Court to record the

statements of the parties in pursuance of Section 306(4) Cr.P.C. Now, since the statements of the petitioners have been recorded and they are in custody since 23.04.2024, therefore, it is prayed that the petitioners be enlarged on bail till conclusion of the trial.

3. *Per contra*, learned Government Advocate-cum-Additional Advocate General and Public Prosecutor oppose the prayer and submit that as per the provisions contained under Section 306(4) Cr.P.C., the petitioners are required to be kept in custody until the conclusion of the trial and accordingly, the instant petition submitted by the petitioners is liable to be rejected.

4. Heard and considered the submissions made at the Bar and perused the material available on record.

5. Perusal of the record indicates that after the impugned F.I.R. No.319/2024 was registered with Police Station Jawahar Circle, District Jaipur (East) and the investigation came into motion, the petitioners were apprehended by the Police and subsequently, they became approver. On the basis of their statements so recorded by the Police, the co-accused persons were arrested and thereafter, the petitioners were also charge-sheeted along-with the co-accused persons for the above stated offences.

6. This fact is not in dispute that the principal accused persons, who were involved in the alleged kidney transplantation racket, have been granted benefit of regular bail by the concerned Court under Section 439 Cr.P.C. This fact is also not in dispute that the petitioners have been in custody since 23.04.2024 and when the trial did not proceed further, the petitioners approached this Court by way of filing S.B. Criminal Misc. Petition No.5888/2025 with a

prayer to release them on bail, but the said petition was disposed of by this Court vide order dated 24.11.2025, while issuing directions to the Trial Court to record the statements of the petitioners and liberty was also granted to the petitioners to renew their prayer for grant of bail, after recording of their statements.

7. Presently, the statements of the petitioners have been recorded before the Trial Court, however, an objection has been taken by the Government Advocate-cum-Additional Advocate General that the petitioners' prayer to release them on bail cannot be considered, in terms of the provisions contained under Section 306(4) Cr.P.C., as the trial has not reached to its fag end and is still continuing.

8. This Court finds no substance in the aforesaid objection raised by the Learned Government Advocate-cum-Additional Advocate General because the provision contained under Section 306(4) Cr.P.C. lays down that every person accepting a tender of pardon, made under Section 306(1) Cr.P.C. shall be examined as a witness in the Court of Magistrate taking cognizance of the offences and at the subsequent stage of trial. However, this Court deems it fit to observe that the petitioners cannot be allowed to remain in custody until termination of trial by putting them in the circumstance worse than the principal accused persons, who have been granted the benefit of regular bail, more particularly, when their statements have been recorded before the Trial Court.

9. The issue involved in the instant petition came up for consideration before the Larger Bench of this Court in the case of **Noor Taki alias Mammu Vs. State of Rajasthan** reported in

AIR 1987 (Raj) 52, where a reference arising out of the Criminal Misc. Bail Application No.1687/1985 was decided by the three Judge Bench of this Court.

10. The issue before the Larger Bench was "whether an approver can be detained for indefinite period even when the principal accused in the case has been released on bail?"

11. The aforesaid question was answered by the Larger Bench of this Court and finally it has been held in Para Nos. 15 to 19, as under:-

"15. Taking the second point first, there is no question of holding whether Section 306(4)(b) is directory or mandatory as there is no specific provision in the entire Criminal Procedure Code which gives a right to the approver to apply for bail. As mentioned above Section 439 Cr.P.C. does not apply to an approver. It applies only to a person accused of an offence. An approver when once granted pardon, no more remains an accused unless he violates the conditions of pardon and sub-sequently tried for the offence. Hence as an approver his status is that of witness and not that of the accused. That being so, Section 439 Cr.P.C. would not apply and consequently the discussion on the point whether Section 306(4)(b) is directory or mandatory, is merely on academic exercise and that too in futility. So far as the provision of Sec. 439 Cr.P.C. being violative of Art. 21 of the Constitution of India, suffice it to say that argument has been advanced only to be rejected. Approver, as a matter of right, cannot claim bail and as mentioned above there is no provision granting him bail. We have already discussed above the reasons which appear to us persuaded the Legislature not to make a provision for granting bail to an approver. But Article 21 of the Constitution of India can be looked into for seeking an aid to the contention that the scope of inherent powers of this Court should be so explained so as to cover the cases of an approver

for consideration of bail in proper cases. In *Francis Coralia Mullin's case* (supra), their Lordships of the Supreme Court defined the scope of Article 21 of the Constitution of India. In that case the petitioner had challenged his detention under COFPOSA Act and an argument was advanced challenging the constitutional validity of certain clauses of the detention order. Their Lordships held,

"It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. This court expanded the scope and ambit of the right to life and personal liberty enshrined in Article 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights ...

The position now is that Article 21 as interpreted in *Maneka Gandhi's case* (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise."

16. In *Kadra Pahadiya's case*(supra), Hon'ble Mr. P.N. Bhagwati, J. (as he then was) sitting with Hon'ble A.P. Sen, J. considered a letter dated November 28, 1980 addressed by one Dr. Vasudha Dhagamwar, a Researcher and Social Scientist working in the Santhal Praganas of the State of Bihar. It represents one more instance of the utter callousness and indifference of our legal and judicial system to the under trial prisoners languishing in the jails. Their Lordships before issuing the notice passed a detailed order and considered the scope of Article 21 of the

Constitution of India and held "we fail to understand why our justice system has become so dehumanised that lawyers and Judges do not feel a sense of revolt at caging people in jail for years without a trial. It is difficult to comprehend how the Sessions Judge could have forgotten that he had called the petitioners to the court for commencement of the trial on 30th August, 1977 and thereafter done nothing in the matter."

17. Their Lordships referred to *Hussainara-Khatoon's case* (supra) wherein it has been held that speedy trial is a fundamental right of an accused implicit in Article 21 of the Constitution. *Hussainara Khatoon's case*, which has been reported in (1980) 1 SCC 108 : AIR 1979 SC 1377 is a land mark in judicial history of this country. Cases of several under trial prisoners, who are languishing in jail for years together, were considered. Some of them were such where the under-trial prisoners had remained in jail without trial for periods which are longer than the maximum term for which they would have been convicted. They were directed to be released even without obtaining a bail bond. His Lordship Mr. Justice Bhagwati speaking for the Court, said,

"We fail to see what moral or ethical justification could the State have to detain these unfortunate persons for such unreasonably long periods of time without trial. We feel a sense of relief that they should once again be able to breathe the air of freedom. But we find that there are still many more under trial prisoners who fall within this category of persons who have been in detention for periods longer than the maximum term without their trial having been commenced."

There are 59 under-trial prisoners whose names and particulars are set out in this chart and we direct that they should be released forthwith as their continued detention is clearly illegal and in violation of Article 21 of the Constitution.

18. A perusal of the aforesaid cases coupled with that of many other cases, like that of *Sunil Batra v. Delhi Administration* (15) and yet

another case of *Hussainara Khatoon* reported in (1980) 1 SCC 81 : AIR 1979 SC 1360, we have no hesitation in holding that detention of a person even by due process of law has to be reasonable, fair and just and if it is not so, it will amount violation of Article 21 of the Constitution of India. Reasonable expeditious trial is warranted by the provisions of the Criminal Procedure Code and in case this is not done and an approver is detained for a period which is longer than what can be considered to be reasonable in the circumstances of each case, the Court has always power to declare his detention either illegal or enlarge him to bail while exercising its inherent powers. Section 482 Cr.P.C. gives wide power to this Court in three circumstances. Firstly, where the jurisdiction is invoked to give effect to an order of the Court. Secondly—if there is an abuse of the process of the Court and thirdly, in order to secure the ends of justice. There may be occasions where a case of approver may fall within latter two categories. For example in a case where there are large number of witnesses a long period is taken in trial where irregularities and illegalities have been committed by the Court and a re-trial is ordered and while doing at the accused persons are released on bail, the release of the approver will be occasioned for securing the ends of justice. Similarly, there may be cases that there may be an abuse of the process of the court and the accused might be trying to delay the proceedings by absconding one after another, the approver may approach this Court for seeking indulgence. But this too will depend upon the facts and circumstances of each case. Broadly, the parameters may be given but no hard and fast rule can be laid down. For instance, an approver, who has already been examined and has supported the prosecution version, and has also not violated the terras of pardon coupled with the fact that no early end of the trial is visible, then he may be released by invoking the powers under Section 482, Cr.P.C. Sec. 482 Cr.P.C. gives only power to the High Court. Sessions Judge cannot invoke the provisions of the same. High

Court therefore in suitable cases can examine the expediency of the release of an approver. We are not inclined to accept the contention of the learned Public Prosecutor that since there is a specific bar under Section 306(4)(b), Cr.P.C., Section 482 Cr.P.C., should not be made applicable. Their Lordships of the Supreme Court has said it in terms without number, that there is nothing in the Code to fetter the powers of the High Court under Sec. 482 Cr.P.C. Even if there is a bar in different provisions for the three purposes mentioned in Sec. 482 Cr.P.C., and one glaring example quoted is that though Sec. 397 gives a bar for interference with interlocutory orders yet Sec. 482 Cr.P.C. has been made applicable in exceptional cases. Second revision by the same petitioner is barred yet this Court in exceptional cases invoke the provisions of Sec. 482 Cr.P.C. Therefore, Sec. 482 Cr.P.C. gives ample power to this Court. However, in exceptional cases to enlarge the approver on bail, and we answer the question that according to Section 306(4)(b) Cr.P.C. the approver should be detained in custody till the termination of trial, if he is not already on bail, at the same time, in exceptional and reasonable cases this Court has power under Section 482 Cr. P.C., to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much prolonged, which would otherwise out-live the period of sentence, if convicted, his detention can be declared to be illegal, as violative of Article 21 of the Constitution.

19. Having answered the reference as above, we have perused the facts of this case. The occurrence relates to July, 1983, and the accused was arrested on March 12, 1984. He moved an application before the Chief Judicial Magistrate seeking pardon on April 27, 1984 and his application was allowed by the learned Chief Judicial Magistrate and he was declared as an approver. The petitioner's statement as an approver has been recorded in the court of Sessions during trial as is apparent from the order of the Additional Sessions Judge No. 4, Jaipur City, Jaipur. It is not denied that he has

fulfilled all the conditions on which pardon was granted to him. He is in detention for more than 22 months now. Accused persons have been released on bail, and we feel in these circumstances approver have been put in the circumstances worse than those who are facing the charge sheet. The end of the trial is not insight as more than 20 witnesses are yet to be examined as stated before us. In these circumstances, we confirm the order of interim bail granted by Hon'ble Mehta, J. by his order dated Oct. 28, 1985 and direct that the approver shall continue to remain on bail during the pendency of the trial on entering into a personal bond in the sum of Rs. 5,000/- (Rs. Five thousand) to the satisfaction of the Deputy Registrar (Judicial), Rajasthan High Court, Jaipur Bench, Jaipur."

12. The answer to the issue referred to the Larger Bench is clear and specific, that the approver should be detained in custody until his statement is recorded.

13. In the instant case also, the statements of the accused-petitioners have been recorded before the Trial Court and they have been in custody since 23.04.2024.

14. Now, the issue which emerges for consideration of this Court is "whether the petitioners are entitled to be released on bail? If yes, whether they can be allowed to leave India to go back to their native country, their motherland, i.e., Bangladesh?"

15. Counsel for the State submits that the petitioners are Bangladeshi Foreign Nationals and they came to India on a Medical VISA and meanwhile, they were arrested in the instant case in relation to illegal kidney transplantation. Now, their Medical VISAs have expired and in case, they leave India, their



chances to return to India are quite bleak, hence, they should not be enlarged on bail.

16. This Court requested Senior Advocate Mr. Bharat Vyas, Additional Solicitor General and Mr. V.R.S. Bajwa, Senior Advocate to assist this Court on the aforesaid issue. They have submitted that the Foreign Nationals are also conferred the rights contained under Article 21 of the Constitution of India and in case, the bail is granted to the Foreign Nationals such as the petitioners, in the present case, it is the duty of the State Government/ Prosecuting Agency to communicate the order granting bail to the concerned Registration Officer, appointed under Rule 3 of the Registration of Foreigners Rules, 1948 (repealed by the Immigration and Foreigners Act, 2025), who in turn, shall communicate the order to all the concerned Authorities including the Civil Authorities. If such information is furnished, it will enable the authorities concerned under the Foreigners Act, 1946, Foreigners Rules, 1992 and Foreigners Order, 1948 to take appropriate steps in accordance with the law.

17. They further conjointly submit that this view has already been taken by the Hon'ble Apex Court in the case of **Frank Vitus Vs. Narcotics Control Bureau & Ors.** reported in **(2025) 3 SCC 1**. Counsel submits that appropriate orders be passed in light of the view already taken by the Hon'ble Apex Court in the case of **Frank Vitus** (supra).

18. The issue whether the petitioners can be allowed to depart from India to their motherland, i.e. Bangladesh, needs to be answered in the instant petition.

19. An identical situation came up before the Hon'ble Apex Court in the case of **Frank Vitus** (supra) and the situation was dealt with by the Hon'ble Apex Court in Para 1 to 8, as under:-

"**1.** By judgment and order dated 08th July, 2024, two main issues concerning bail conditions were decided. Now, the issue that remains to be answered is whether it is necessary to implead a Foreign Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 (for short 'the Rules') in the bail application filed by a foreigner within the meaning of the Foreigners Act, 1946 (for short 'the Act'). Under Section 2(a) of the Act, a foreigner means a person who is not a citizen of India.

2. Under Section 3 of the Act, there is a power vested in the Central Government to issue an order making provisions either generally or concerning any particular foreigner or class of foreigners of prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence. Under clause (g) of Section 3(2), a power has been conferred on the Central Government to issue an order directing that a foreigner shall be arrested or detained or confined.

3. In the exercise of the power conferred under Section 3 of the Act, the Foreigners Order, 1948 (for short, 'the Order') has been issued. Clause 2(2) of the Order provides for appointing a Civil Authority by the Central Government. Clause 5 of the Order deals with the power to grant permission to depart from India. Clause 5 of the Order reads thus:

"5. Power to grant permission to depart from India.

(1) No foreigner shall leave India:-

(a) otherwise than at such port or other recognised place of departure on the borders of India as a Registration Officer having jurisdiction at that port or place may appoint in this behalf, either for foreigners generally or for any specified class or description of foreigners; or

(b) without the leave of the civil authority having jurisdiction at such port or place.

(2) Leave shall be refused if the civil authority is satisfied that

(a) the foreigner has failed to comply with the formalities of departure prescribed under the Registration of Foreigners Rules, 1939;

(b) the foreigners presence is required in India to answer a criminal charge;

(c) the foreigners departure will prejudice the relations of the Central Government with a foreign power;

(d) the departure of the foreigner has been prohibited under an order issued by a competent authority.

(3) (a) Notwithstanding anything contained in the above sub-paragraphs, a civil authority may prohibit the departure of a foreigner where it is satisfied that such departure would not be conducive to the public interest.

(b) Whenever a civil authority issues an order under clause (a), it shall report the matter forthwith to the Central Government which may cancel or modify the order in such manner as it thinks fit."

(emphasis added)

Under sub-clause (2) of clause 5, leave must be refused by the Civil Authority if it is satisfied that the foreigner's

presence is required in India to answer a criminal charge.

4. Shri Vinay Navare, learned senior counsel appointed as Amicus Curiae, has suggested that considering the powers vested in Civil Authorities under the Order, it will be appropriate to direct that while considering the prayer for granting bail in case of a foreign national who is accused of serious offences, a notice should be issued to the Civil Authority so that the said authority can be heard on the prayer for grant of bail and on bail conditions, in the event the court is inclined to grant bail. Shri. Vikramjeet Banerjee, learned Additional Solicitor General of India has also submitted that it is always advisable to give notice of the bail application to the authorities under the Act and the Rules.

5. Under clause (b) of Section 3(2) of the Act, there is a power vested in the Central Government to issue an order generally or with respect to any particular foreigner or class of foreigners that they shall not depart from India or shall depart subject to observance of such conditions on departure as may be prescribed. The Rules do not impose any such restriction on departure from India. However, as noted earlier, according to clause 5(1) (b) of the Order, no foreigner shall leave India without the leave of the Civil Authority having jurisdiction. When a foreigner's presence is required in India to answer a criminal charge, permission to leave India must be refused. Under the Order, the Civil Authority can impose restrictions on the movements of a foreigner. Therefore, once a foreigner is released on bail, he cannot leave India without the permission of the Civil Authority, as provided in clause 5 of the Order. Under clause 11 and other clauses of the Order, various restrictions can be imposed on a foreigner while he is in India. The said power is wholly independent of the power to grant bail.

As of today, there is no order passed by the Central Government for giving effect to clause (g) of Section 3(2) of the Act. In any event, even if such an order is issued, the power to arrest or detain a foreigner under the Act is independent of the power of the criminal court to grant bail. Notwithstanding the bail granted by a criminal court, the power to arrest and detain a foreigner can be exercised, provided the Central Government makes an order in terms of clause (g) of Section 3(2) of the Act.

6. Therefore, we do not see any propriety in issuing a direction that either the Civil Authority or the Registration Officer should be made a party to a bail application filed by a foreigner or a notice of the bail application be issued to the said authorities. The reason is that the authorities under the Act and the Order have no locus to oppose bail application filed by a foreigner unless bail is sought where the allegation is of the offence punishable under Section 14 of the Act. The impleadment of the Civil Authority or Registration Officer in all bail applications filed by foreigners may result in unnecessary delay in deciding the bail applications.

7. All that can be done is that while releasing a foreigner on bail, the Court should direct the investigating agency or the State, as the case may be, to immediately inform the concerned Registration Officer appointed under Rule 3 of the Rules about the grant of bail so that the Registration Officer can bring the fact of the grant of bail to the notice of concerned Civil Authority.

8. In addition to what we held by judgment and order dated 08th July, 2024, we issue the following directions:

- (i) While granting bail to a foreigner within the meaning of the Act, the concerned court shall issue direction to the State or prosecuting agency, as the

case may be, to immediately communicate the order granting bail to the concerned Registration Officer appointed under Rule 3 of the Rules who, in turn, shall communicate the order to all concerned authorities including the Civil Authorities. If such information is furnished, it will enable the authorities under the Act, the Rules and the Order to take appropriate steps in accordance with the law; and

(ii) A copy of this order shall be forwarded to Registrar Generals of all the High Courts, who in turn will forward the copies of the order to all the criminal courts in the respective States.”

20. It is worthy to note here that the Foreigners Act, 1946, Foreigners Rules, 1992 and the Foreigners Order, 1948 have been repealed by the Legislature by enacting the Immigration and Foreigners Act, 2025, the Immigration and Foreigners Rules, 2025 and the Immigration and Foreigners Order, 2025 respectively.

21. The provisions contained in the old repealed Act and Order and the newly enacted Act and Order are *para materia* and almost identical.

22. Order/ Clause 5 of the Immigration and Foreigners Order, 2025 deals with the powers and provisions of granting permission to depart from India, and the same is reproduced as under:-

“5. Power to grant permission to depart from India

(1) In addition to the grounds specified in first proviso to sub-section (2) of section 3 of the Act, a person may be refused permission to depart from India on the following grounds, namely:-

(a) if his presence is required in India by any court;

(b) if he is suffering from diseases which are danger to public health or safety;

(c) if his exit may adversely affect relations with a foreign State; or

(d) if he cannot be allowed to depart or exit from India either under specific orders of the Central Government or by an order issued by any law enforcement authorities or other designated Government agencies as may be authorised by the Central Government.

(2) Notwithstanding anything contained in sub-paragraph (1), the Immigration Officer may prohibit the departure of a foreigner by passing an order, when he is satisfied that such departure may not be in the public interest.

(3) Whenever an Immigration Officer passes an order under sub-paragraph (2), it shall report the matter forthwith to the Central Government which may cancel or modify the order.

(4) The Bureau of Immigration shall maintain an updated list of persons who shall not be granted permission to depart from India.”

Bare perusal of the aforesaid provision make it explicitly clear that the discretion lies with the Immigration Officer concerned for granting permission to any Foreigner to depart from India or not.

23. Now, this Court reverts to first issue that whether after recording of the statements of the approver like that of the petitioners, are they entitled to be released on bail or not?

24. Looking to the rider contained under Section 306(4) Cr.P.C., this Court while deciding the earlier Criminal Misc. Petition No.5888/2025 vide order dated 24.11.2025, directed the Trial

Court to record the statements of the petitioners. Thereafter, their statements have been recorded as PW-1 Nurul Islam & PW-2 M.D. Ahsaanul Kobir. Now, the prayer of the petitioners seeking their release on bail can be considered in the light of the judgment passed by the Larger Bench of this Court in the case of **Noor Taki alias Mammu** (supra).

25. The petitioners are Foreign Nationals being residents of Bangladesh and they are in judicial custody since 23.04.2024. Till date only their statements have been recorded as PW-1 & PW-2 and the trial is pending against the petitioners and co-accused persons for last more than two years. The chances of conclusion of trial in near future are very bleak. They have the fundamental rights of speedy trial under Article 21 of the Constitution of India.

26. The protection under Article 21 of the Constitution of India, which guarantees the right of life and personal liberty, extends to all persons and this right is not confined to the Indian Citizens alone and it is available to the Foreign Nationals as well. The Right to Life with Dignity guaranteed under Article 21 is available to all human beings, including foreigners.

27. As per Article 21 of the Constitution of India "No person shall be deprived of his life or personal liberty except according to the procedure established by law. The right to fair and speedy trial is an integral part of Article 21 of Constitution of India. Moreover, a fair procedure, in the criminal trial is an essential component of Article 21 of the Constitution of India and it does not differentiate between Indian Citizens and foreign Nationals.

28. Foreign Nationals, including the petitioners, who are facing trial in India are also entitled to Right to Life with Dignity under Article 21 of the Constitution of India. This right has been established as a powerful shield of protection, ensuring that Right to Life with Dignity extends beyond borders, safeguarding all human beings.

29. The Hon'ble Apex Court in the case of **Sunil Batra v. Delhi Administration** reported in **1980 (3) SCC 488** has held that even a convicted individual holds a right to dignified life, which Article 21 of the Constitution of India recognizes, as an inherent right in every human being including foreigners.

Even in the case of **K. S. Puttaswamy & Anr. Vs. Union of India & Ors.** reported in **2017 (10) SCC 1**, the Hon'ble Apex Court has held that anything personal is part of one's privacy and unless it is enabled by law, it cannot be invaded even if an accused person is a Foreign National.

30. Prolonged detention without trial amounts to violation of the Right to Life and Personal Liberty contained under Article 21 of the Constitution of India.

31. Looking to the overall facts and circumstances of the case and considering the fact that the petitioners' statements as approvers have already been recorded before the Trial Court as PW-1 and PW-2, it is not denied that the petitioners have fulfilled all the conditions for which benefit of pardon was granted to them. Their detention has continued for a period of more than 24 months by now. All the principal and main accused persons have already been granted bail way back and since, the end of the trial

is not insight, as more than dozens of witnesses are yet to be examined, hence, detention of the petitioners for indefinite period would violate their right of speedy trial under Article 21 of the Constitution of India.

32. Considering the proposition of law, as propounded by the Hon'ble Apex Court in the case of **Frank Vitus** (supra), the instant criminal misc. petition submitted by the petitioners stands allowed subject to their furnishing personal bonds in the sum of Rs.5,00,000 (in words Rupees Five Lakh) each along-with two sureties in the sum of Rs.2,50,000 (in words Rupees Two Lakh and Fifty Thousand) each to the satisfaction of the Trial Court with the condition that the petitioners would appear before the Trial Court as and when called upon to do so.

33. A direction is issued to the Principal Secretary, Department of Home, Government of Rajasthan, Jaipur; the Director General of Police, Police Head Quarters, Jaipur; the Commissioner of Police, Police Commissionerate, Jaipur; Director, Department of Prosecution, Government Secretariat, Jaipur; and Rajesh Choudhary, Government Advocate-cum-Additional Advocate General to communicate this order to the Immigration Officer/ Reporting Officer, in terms of the provisions contained under Sections 3 & 7 of the Immigration and Foreigners Act, 2025, Immigration and Foreigners Rules, 2025 and Immigration and Foreigners Order, 2025. Let a copy of this order be sent to each one of them for necessary compliance of this order.

34. Let a copy of this order be also sent to the Immigration Officer to take appropriate steps in accordance with law.



35. This Court also places on record its appreciation to Senior Advocate Bharat Vyas, Additional Solicitor General; Mr.V.R.S. Bajwa, Senior Advocate; and Mr.Rajesh Choudhary, Government Advocate-cum-Additional Advocate General for their invaluable assistance rendered to this Court on the issue involved in the present criminal misc. petition.

36. Before parting with the order, this Court deems it just and proper to issue a direction to the Trial Court to speed up the proceedings pending before it and take all appropriate steps and endeavours to conclude the trial expeditiously, as early as possible, looking to the fact that the trial is pending since 2024 and more than two years have passed and the same is proceeding at a snail's pace. Looking to the fact that the petitioners, who are the Foreign Nationals, are involved in the present case, the trial cannot be allowed to remain pending for indefinite time and infinite period. The Trial Court is directed to send letter to the jurisdictional Superintendent of Police to serve the summons/bailable warrants upon the prosecution witnesses for their appearance before the Trial Court in the witness box, so that the trial can conclude expeditiously. The Trial Court is further directed not to entertain any unnecessary & unwarranted delaying tactics of any of the accused persons to defer/adjourn the matter. Let a copy of this order be also send to the Trial Court for necessary compliance.

(ANOOP KUMAR DHAND),J