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2026:DHC:10120-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.09.2026
Pronounced on: 18.11.2026
Uploaded on: 18.11.2026

\# **CNR No. DLHC010292522021**

\+ CRL.REF. 2/2021

COURT ON ITS OWN MOTION ...Petitioner

Through: Mr. Harsh Prabhakar (*Amicus Curiae*), Ms. Pallavi Garg, Mr. Yash Kotak, Mr. Dhruv Chaudhry, Mr. Shubham Sourav and Mr. Vijit Singh, Advs.

versus

STATE ...Respondent

Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Adv. with SI Rahul, P.S. Tigri for State. Mr. Amit Tiwari, CGSC with Ms. Ayushi Srivastava, Mr. Arpan Narwal, Mr. Kushagra Malik and Mr. Ujjwal Tyagi, Advs. for UOI.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE ARUN BHARDWAJ

J U D G M E N T

ARUN BHARDWAJ, J.

1. **Reference**: In this Criminal Reference under Section

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395(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('hereinafter referred to as 'Cr.P.C.'), the learned Metropolitan Magistrate- 04, South District, Saket Courts, New Delhi has referred the following questions of law for the decision of this Court:

> *"Q.1 Would releasing the accused/ foreign national on unconditional bail, who is apprehended on charge of overstaying in India after expiry of his visa, not tantamount to legalizing his future stay in India without valid visa, which is otherwise an offence under section 14 of Foreigners Act, 1946? Can granting of bail to a foreign national overshadow the provisions of Foreigners Act, 1946 and can the bail order be used by a foreign national as a substitute for a visa to remain in country?*
>
> *Q.2 Should the matters of foreign nationals, who are accused for offence u/s 14 of Foreigners Act, 1946, and particularly where accused himself concedes that his visa has expired before date of his apprehension, be not treated differently than other criminal cases?*
>
> *Q.3 If bail is granted to a foreign national, can certain conditions be imposed on such foreign nationals including to keep them in detention centre till completion of their trail, so as to refrain them to evade the process of justice and not to allow them to remain the country without having any valid visa?"*

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Brief facts of the case:

2. The learned Magistrate was seized of the bail application of a Nigerian national, for the alleged offence under Section 14 of the Foreigners Act, arising out of FIR No. 267/2021 registered at Police Station Tigri, New Delhi.

3. It was found that the foreign national had come to India in the year 2016 on a tourist visa for a period of 3 months. However, he continued living in India even after the expiry of his visa.

4. It was submitted by the learned counsel appearing for the foreign national therein, that the foreign national was entitled to bail and that he would apply for an extension of visa, once he is granted bail. In furtherance, reliance was placed on the judgment of this Court in ***Omokhosio v. State (Govt. of NCT of Delhi)***, 2018 SCC OnLine Del 11966.

5. On the other hand, the learned APP for the State relied on the judgment of the High Court of Karnataka in ***Babul Khan v. State of Karnataka,*** 2020 SCC OnLine Kar 3438, to contend that if bail is granted to a foreign national, he should be kept in a detention centre.

6. The present reference was listed before this Court on 21.09.2021 and Mr. Harish Prabhakar, Advocate, was appointed as the *Amicus Curiae*, to assist this Court.

Subsequent developments:

7. Certain subsequent developments, which have taken place

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since the making of this reference, would show that the questions which arose in the case pending before the learned Magistrate stand considered and answered. Three such developments shall be discussed in the following paragraphs.

8. **First development**: The first development, since making of this reference, is that the Foreigners Act, 1946 (hereinafter referred to as, '1946 Act') has been repealed by the Immigration and Foreigners Act, 2025 (hereinafter referred to as, '2025 Act'). The Passport (Entry into India) Act, 1920 (34 of 1920), the Registration of Foreigners Act, 1939 (16 of 1939), and the Immigration (Carriers' Liability) Act, 2000 (52 of 2000) have also been repealed.

9. The law regarding penalty for contravention of the 1946 Act, provided under Section 14 of the 1946 Act, is as under:

> ***"14. Penalty for contravention of provisions of the Act, etc.*** *—Whoever. —*
>
> *(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;*
> *(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;*
> *(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,*
> *shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3,*

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> *his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.*
>
> *Explanation.— For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920)."*

10. The corresponding provision in the 2025 Act, is in Section 23, titled '*Penalty for contraventions of other provisions of this Act*', and reads as under:

> "***23. Penalty for contraventions of other provisions of this Act.*** *— Whoever, —*
>
> *(a) being a foreigner, remains in any area in India for a period exceeding the period for which the visa was issued to him or stays in India without a valid passport or other valid travel document in contravention of provisions of section 3 or does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;*
> *(b) contravenes any other provisions of this Act, other than sections 17 and 19, or of any rule or order made thereunder or any direction or instruction given in pursuance of this Act or such order or direction or instruction for which, no specific punishment is provided under this Act,*
> *shall be punishable with an imprisonment for a term which may extend to three years or with a fine which may extend to three lakh rupees or*

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with both."

11. Section 25 of the 2025 Act also provides for compounding of certain offences.

12. Further, in exercise of the powers conferred by Section 7 read with Sections 3 and 11 of the 2025 Act, and in supersession of the Foreigners Order, 1948, the Foreigners (Protected Areas) Order, 1958, the Foreigners (Restricted Areas) Order, 1963 and the Foreigners (Tribunals) Order, 1964, the Central Government has issued the Immigration and Foreigners Order, 2025.

13. While there is no provision like Section 3(2)(g) of the 1946 Act, empowering the Central Government to make orders providing for the arrest and detention or confinement of a foreigner, Paragraph 8(2) of the Immigration and Foreigners Order, 2025 provides that "*Every State Government and Union territory Administration shall set up dedicated holding centres or camps for the purpose of restricting the movement of foreigners, till they are deported*".

14. The explanation added to Paragraph 12 of the Immigration and Foreigners Order, 2025 further explains that the term "illegal migrant", for the purposes of the aforesaid paragraph, shall have the same meaning as assigned to it in Paragraph (b) of Sub-Section (1) of Section 2 of the Citizenship Act, 1955 (57 of 1955), which is as under:

> *"**2. Interpretation.** —(1) In this Act, unless the context otherwise requires, —*
>
> *xxxx*
>
> *(b) "illegal migrant" means a foreigner*

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> *who has entered into India—*
> *(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or*
> *(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;…"*

15. Paragraph 12(4) of the Immigration and Foreigners Order, 2025 provides for the procedure, which shall be followed in the cases of illegal migrants apprehended within India.

16. Paragraph 12(4)(a) provides that a suspected illegal migrant shall be imposed with restrictions on movement in a holding centre or camp, as may be specified by the authorities referred to in sub-Paragraph (3), in terms of provisions of the Act and rules and Paragraph 8 of the Immigration and Foreigners Order, 2025, pending deportation.

17. Paragraph 16 of the Immigration and Foreigners Order, 2025, provides for constitution of Foreigners Tribunals, to determine whether a person is or is not a foreigner within the meaning of the 2025 Act.

18. As per Section 2(f) of the 2025 Act, "foreigner" means a person who is not a citizen of India.

19. **Second development**: The second development, during the pendency of the present reference, is that the Ministry of Home Affairs has issued a Circular, bearing No.25022/40/2021-F.I, dated 10.12.2025, containing the Standard Operating

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Procedure (hereinafter referred to as, 'SOP') for processing visa cases of foreign nationals who are involved in criminal cases and are granted bail and whose presence is required in India to attend the court proceedings or where an application has been filed under Section 360 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as, 'BNSS') for withdrawal from prosecution.

20. The said SOP is reproduced as under:

> ***"Standard Operating Procedure (SOP) to be followed for processing visa cases of foreign nationals who are involved in criminal cases & granted bail and whose presence is required in India to attend the court proceedings, or where an application has been filed under section 360 of BNSS, 2023 for withdrawal from prosecution***
>
> *1. Normally, any foreigner who is involved in criminal activities is to be deported from the country forthwith. However, in cases where an offence has been registered against the foreigner under the relevant provisions of the law for the time being in force, the foreigner can be deported only after completion of the legal proceedings or completion of the sentence, as the case may be. Ministry of Home Affairs has separately circulated a model SOP for withdrawal from prosecution in cases filed against foreigners under section 360 of Bharatiya Nagrik Suraksha Sanhita, 2023 (46 of 2023) so as to facilitate their early deportation from the country vide MHA's letter no. 25022/34/2024-F.I (Part-I) dated 25.11.2025. Notwithstanding the above, the presence*

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of the foreigner against whom an offence has been registered would be required in India during investigation / trial or till the consent of the Trial Court concerned is obtained for withdrawal from prosecution under section 360 of BNSS, 2023. Such a foreigner may require a visa for his/ her stay in the country. This is also necessary so as to keep a record of such foreigners and for tracking their movements. This SOP deals with the procedure to be followed in processing visa cases of such foreigners.

2. Following types of cases shall be covered by this SOP:-

(i) Cases where the foreigner is on bail and case is under trial
(ii) Cases where the FIR has been registered against the foreigner for his involvement in serious offences and case is under investigation
(iii) Cases where an application has been filed under section 360 of BNSS, 2023 for withdrawal from prosecution
(iv) Cases where the prosecuting agency (Central or State/UT) has filed appeal against orders of Trial / Acquittal court
(v) Cases where the Hon'ble Supreme Court/High Court/ Trial Court specifically orders for grant of visa to the foreign national to stay in India for completion of legal proceedings
(vi) Cases of following categories of dependents of the foreign national who is under trial: -
(a) A minor child to a single parent
(b) A critically-ill patient under medical treatment
(c) Old parent(s)

3. At the time of being charge-sheeted or prosecuted, if the foreign

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national is holding any type of valid visa, the same shall be cancelled by the FRRO/ FRO concerned with immediate effect, in terms of the provisions in the Visa Manual. All activities, which were permitted under the cancelled visa, shall be prohibited from the date of cancellation of the visa.

4. In all cases covered by para 2 above, FRRO concerned may grant X-Misc. Visa as indicated below, with the prior approval of the Bureau of Immigration: -

(i) In all cases covered in para 2 above [other than clauses (iv) & (vi)], X-Misc. Visa may be granted initially for a period of six months or till the completion of the legal proceedings or till the consent of the Trial Court concerned is obtained for withdrawal from prosecution against the foreign national, whichever is earlier.
(ii) In cases covered by clause (iv) of para 2 above, X-Misc. Visa may be granted for a period of six months or till the final orders of the Appellate Court on the appeal or deportation of the foreigner, whichever is earlier.
(iii) In cases covered by clause (vi) of para 2 above, X-Misc. Visa may be granted for a period of six months or till the completion of the legal proceedings against the foreign national under trial or till the consent of the Trial Court concerned is obtained for withdrawal from prosecution against the said foreign national, whichever is earlier.
(iv) In respect of cases covered by clauses (i) to (v) of para 2 above, X-Misc. Visa shall be granted with the endorsement "Permitted to stay for Court purpose". The passport/ Certificate of Registration of the foreign

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national concerned shall be endorsed accordingly.

(v) In respect of cases covered by clause (vi) of para 2 above, X-Misc. Visa may be issued with endorsement "Dependent of the foreigner permitted to stay for Court purpose". The passport/ Certificate of Registration of the said foreign national shall be endorsed accordingly.

(vi) In case there is a requirement of extension of visa, especially in cases covered by clause (i) in para 2 above, X-Misc. Visa may be further extended by FRRO concerned for multiples of six months depending upon the progress of the case subject to production of court orders, and ensuring that the foreign national is attending the Court and not deliberately delaying the trial. It may also be ensured that the foreigner gets his visa extended regularly, as and when required, until the case is disposed of.

(vii) A processing fee of Rs 10,000/- shall be levied irrespective of the nationality, for granting/ every extension of such X-Misc. Visa.

(viii) The foreign national shall not have any right under X-Misc. Visa granted for stay in India for court purpose. No other activities, such as employment, business, tourism etc., shall be allowed on such X-Misc. Visa.

5. In the case of any foreign national who is staying in India on a dependent visa to a foreign national who is charge-sheeted or prosecuted [other than those covered by clause (vi) of para 2 above], the dependent visa shall also be cancelled and the dependent(s) shall be issued Exit Permission/ Leave India Notice, as the case may be.

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6. Foreign nationals involved in petty offences which are usually punishable with nominal fine or shorter term of imprisonment may be deported to their native country immediately after completion of the sentence or after paying the penalty. In case any such foreigner expresses his/her inability to pay the penalty, he/she may be deported forthwith and he/she may be blacklisted under appropriate category as per the prevailing Black list guidelines of MHA.

7. On completion of the trial or on receipt of final orders of the Appellate Court on the appeal or receipt of consent of the Trial Court concerned for withdrawal from prosecution the X-Misc. Visa shall be cancelled forthwith. Necessary action shall be taken immediately to issue Leave India Notice (LIN) or deportation, except in those cases where the foreign national has been sentenced to undergo imprisonment. In cases where the foreign national has been sentenced to undergo imprisonment, necessary action will be taken to issue Leave India Notice (LIN) or deportation after completion of the sentence. After the exit/ deportation of the foreign national, he/she may be blacklisted under appropriate category as per the prevailing Black list guidelines of MHA.

8. The Law Enforcement Agency shall ensure that cases involving foreign nationals are fast tracked and must try to ensure that the case is completed before the expiry of the X-Misc. Visa, so that the requirement of the foreigner for stay in India is not prolonged due to reasons of court cases.

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> *9.* ***The bail granted by Hon'ble Court may be with certain conditions including the place of stay and police reporting at regular intervals etc. Civil Authority/Distt. SP/FRO are empowered under Para 7(2)(f) of the Immigration and Foreigners Act, 2025 to impose restriction on movements of a foreign national.*** *If the investigation authority or State Govt. wants, they can request the Hon'ble Court to get the condition, as envisaged under Section 7(2)(f) of the Immigration and Foreigners Act, 2025, incorporated in the court order itself considering the gravity of offence committed by the foreigner, chances of evading court trials by absconding from India by using different means etc."*
>
> ***(emphasis supplied)***

21. This Court, in its order dated 24.03.2026, noted that the said Circular does not clarify if a foreign national who, *inter alia*, is being prosecuted for the offence under Section 14 of the 1946 Act and/or under Section 23 of the 2025 Act, shall also be eligible for grant of an X-Misc. Visa.

22. The Foreigners Regional Registration Office (hereinafter referred to as, 'FRRO') then filed an affidavit dated 17.07.2026, wherein it was clarified that a foreign national, who, *inter alia*, is being prosecuted for the offence under Section 14 of the 1946 Act and/or under Section 23 of the 2025 Act, shall not be eligible for the grant of an X-Misc. Visa. It was then suggested by the FRRO that for such foreign nationals involved in the offences under the 1946 Act or under the 2025 Act, another option in the form of compounding of offence is available under Section 25 of

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the 2025 Act. The foreign nationals fulfilling the eligibility conditions, as mentioned in the 2025 Act, can pay the requisite penalty amount and get the offence compounded.

23. Section 25 of the 2025 Act reads as under:

> ***"25. Compounding of certain offences.—***
>
> *(1) Notwithstanding anything contained in the Bharatiya Nagarik Suraksha Sanhita, 2023, any offence punishable under sections 21, 23 or section 24 whether committed by an individual or a company or an organisation or any officer or employee or a representative thereof, may, either before the institution of prosecution or during trial, be compounded by such officers or authorities and for such sums as the Central Government may, by notification, specify in this behalf:*
> *Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed under sections 21 or 23 for the offence so compounded.*
> *(2) Nothing contained in sub-section (1) shall apply to an offence committed, by an individual or a company or an organisation or any officer or employee or representative thereof within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.*
> *(3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the directions, control and supervision of the Central Government.*
> *(4) Where any offence is compounded before the institution of any prosecution or before commencement of trial, no prosecution shall be instituted in relation*

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> *to such offence, against the offender in relation to whom the offence is so compounded.*
> *(5) Where the compounding of an offence is made after the institution of prosecution or during trial, such compounding shall be brought by the authority specified for such compounding in writing, to the notice of the court in which the prosecution or trial is pending and on such notice of the compounding of offences being given, the individual or the company or the organisation or any officer or employee in relation to whom the offence is so compounded shall be discharged.*
> *(6) For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence."*

24. At this stage, it is pertinent to note a few judgments which have been referred by Mr. Harsh Prabhakar, Advocate (*Amicus Curiae*).

25. The learned *Amicus Curiae* has referred to the judgment of the Supreme Court in ***Louis De Raedt v. Union of India and Others***, (1991) 3 SCC 554; of this Court in ***Lambert Kroger v. Enforcement Directorate***, (2000) SCC Online Del 208; and ***H.B. Chaturvedi v. C.B.I.***, (2010) SCC Online Del 2155; and of the High Court of Allahabad in ***Sagynbek Toktobolotov and Ors. v. State of U.P.***, 2020 SCC OnLine All 754.

26. A reading of these judgments shows that it has been observed that a foreign national is protected by Article 21 of the

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Constitution of India for his life and liberty. The law does not authorise or permit any discrimination between a foreign national and an Indian national in the matter of grant of bail. What is permissible is that, considering the facts and circumstances of each case, the court may impose different conditions to ensure that the accused, who is a foreign national, will be available for facing the trial. An application for bail, therefore, cannot be rejected solely on the ground that the applicant is a foreign national.

27. Reference is also made by the learned *Amicus Curiae* to the judgment in ***Mr. Junia Erastus Mayemba v. The Bureau of Immigration***, 2017:KHC:10760, wherein the High Court of Karnataka at Bengaluru was of the view that in a case where the accused has overstayed, in violation of the law, such accused is to be penalised and if he is to suffer imprisonment, his overstay would only be extended further. Any such proceedings taken against him would necessarily be at the cost of the State exchequer. The Court opined therein that as the justice dispensation system of this country is also over-loaded therefore, there is no need to add more cases of such kind. It was opined that it would be in the interest of all, particularly the State exchequer, to ensure that the accused, in such cases, leaves the country at the earliest. The FRRO was, accordingly, directed to issue an exit permit to the petitioner therein, without insisting upon the petitioner facing action for violation of rules and regulations, as already alleged. It was further directed that the

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criminal case pending against the petitioner therein should also be dropped, provided that it is ensured that on issuance of such exit permit, he is escorted by the airport police till he is subjected to security check and proceeded on his onward journey to his country.

28. The learned *Amicus Curiae* has also referred to ***Tshibambula Jennifer Kabantobelu v. State of Karnataka***, 2018:KHC:8276, decided by High Court of Karnataka. The petitioner therein, a Congo national, was facing trial for the offence under Section 14 of the 1946 Act and Clause 7(2) of the Foreigners Order, 1948. The petitioner had approached the FRRO for grant of exit permit to return to her country and after considering her representation, the FRRO had imposed a penalty of ₹10,400/- for overstaying in the territory of India, which was duly paid. Thereafter, she had purchased an air ticket and submitted before the FRRO for grant of exit permit to leave the country (India) and an exit permit was granted. But when she was about to travel from Mumbai to Brussels, the immigration authorities at Mumbai Airport detained her, took her into custody and later remanded her to judicial custody. As no other case was pending against the petitioner therein, the High Court of Karnataka observed that permitting the petitioner to continue to stay in the country would only be legalising the overstay and would not serve any purpose. Therefore, the proceedings pending against the petitioner were quashed and she was acquitted of the alleged offence, with the direction to the petitioner to exit the

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country within two weeks. The authorities were directed to provide her exit permit and the Look Out Circular issued against her was directed to be withdrawn.

29. In the case of ***Mr. Freddy Tshimanga Kanyama v. The Bureau of Immigration & Ors.***, 2016 SCC OnLine Kar 3874, referred by learned *Amicus Curiae*, the petitioner therein was prosecuted for the offence under Section 14 of the 1946 Act. It was held therein:

> *"Since the object of the Act and Rules are to deter foreigners from over-staying in India and if the petitioner for one reason or other did not obtain extension of visa from 2013, the petitioner being prosecuted and remaining in India would run counter-productive. It is best to get him rid of India at the earliest."*

30. The petitioner therein was directed to catch the next flight to his country after 8 days, with the direction that if he remains in India beyond one hour of his flight time, he shall be arrested and kept in prison till the case is over.

31. In the case of ***Farhan Hussain v. State & Ors.,*** 2020 SCC OnLine Kar 1194, also referred by learned *Amicus Curiae*, the petitioners therein were tried for the offence under Section 14 of the 1946 Act. It was directed that the FRRO shall provide an exit permit to the petitioners and ensure their exit from the country forthwith, if their presence is not required in any other case, and subject to paying of fine as may be levied by the competent authority.

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32. **Third development**: The third development since making of this reference is that in the case of ***Efrance Namatende v. State***, Bail Application 2214/2022 dated 09.01.2023, a judgment passed by a learned Single Judge of this Court, the condition in the bail order passed in the case of the petitioner therein, who was being prosecuted under Section 14 of the 1946 Act, that she shall remain in an observation home till she is granted a valid visa for India, was quashed observing that for a violation of Section 14 of the 1946 Act, there is no requirement that the applicant is to be confined to an observation home.

33. In the case of ***Emechere Maduabuchkwu v. State NCT of Delhi & Anr.,*** 2023:DHC:3872, a learned Single Judge of this Court was dealing with a case in which the petitioner therein was being tried for the offence under Sections 33/38/58 of the Delhi Excise Act, 2009 and Section 14 of the 1946 Act. He was granted bail by the learned Magistrate with a condition to keep him in a detention centre till the conclusion of the trial. The learned ASJ, subsequently, on an application, admitted the petitioner on bail and directed for his release from the detention centre, however, he was still not released from the said detention centre. It was held by this Court that granting such foreigners a special permit/visa/travel document would not legitimize their earlier offence of having overstayed in violation of the provisions of the 1946 Act, but would in fact ensure that they are not confined in a detention centre at state expense, but instead are restricted to a place on conditions as may be prescribed and furnish

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bond/sureties to ensure compliance of such conditions. This would ensure a judicious balance between recognizing liberty and a human right and ensuring the presence of foreign nationals for the purpose of trial and being subject to restrictions/regulations/conditions. It was further held that a Court or Magistrates or a Sessions Court cannot, as part of enlarging foreign national on bail, also direct the said person to be sent to a detention centre since the court is not competent to pass such a direction when granting bail. Detention centres are not for judicial custody but a place where a foreign national is detained on an executive order and is the prerogative of the competent authority under the 1946 Act. The Court was of the view that there are other possibilities under the 1946 Act which can be considered by the FRRO, that is, keeping such a person at a particular place (not necessarily a detention centre), imposing restrictions on his movements (like restricting him to an area), regulating his conduct and association with persons reporting requirements to an authority. The order passed by the FRRO retaining the petitioner in a detention centre was, accordingly, set aside subject to the conditions mentioned therein.

34. Further, the Hon'ble Supreme Court in the case of ***Frank Vitus v. Narcotics Control Bureau & Ors.***, 2025 SCC OnLine SC 30, observed that:

> *"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*

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> *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."*

35. It was further held that under the Foreigners Order, 1948 the appropriate civil authority can impose various restrictions on movements of a foreigner. It was also observed that under Paragraph 11 and other relevant paragraphs of the said order, various restrictions can be imposed on a foreigner while he is in India. The said power was opined to be wholly independent of the power to grant bail. It was held that 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 1946 Act.

36. In the case of ***Aizaz Kilicheva @ Aziza @ Maya v. State NCT of Delhi***, 2025:DHC:294, the question before the learned Single Judge of this Court was whether, while considering the bail petition filed by a foreign national, it is permissible for this Court to also direct the State authorities to grant visa to such a person, to enable the foreign national to continue to reside in the country and participate in the pending criminal proceedings. It was held that a foreign national, charged under Section 14 or

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14A of the 1946 Act, is to be tried for contravention of those provisions committed *in the past* and may be released from judicial custody on bail, while facing those charges; *but* the same person may be placed in executive detention by the Central Government towards enforcement of the provisions of Section 14 and 14A of the 1946 Act for the *future period*. It was further held that it is not necessary that once released on bail, the petitioner would be escorted straight to a detention centre/restriction centre, because Section 3 of the 1946 Act gives several options to the Central Government to adopt different measures for different persons, such as requiring the person to reside at a particular place (not necessarily a detention centre/restriction centre) or imposing other restrictions on movements within India.

37. In the recent judgment of the Supreme Court in ***Union of India v. Chidiebere Kingsley Nawchara & Ors***., 2026 INSC 870, while considering the issue regarding grant of bail to foreign nationals and the conditions that can be imposed thereupon, the Court opined that merely because an accused/convict is a foreigner, his right to bail cannot be circumscribed. The Court held as under:

> *"13.4 The Delhi High Court in* ***Lambert Kroger v. Enforcement Directorate*** *while dealing with the bail application of a German national accused under the Foreign Exchange Regulation Act 1973, which undoubtedly is a special statute, referred to the oft-repeated saying of bail is the rule and jail is the exception, and as such released him on bail subject to the conditions that his passport shall*

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> *be deposited; he shall not leave the NCT of Delhi; and that he would report to the Enforcement Officer, every Monday at 11 am.*
> *13.5 From the above judgments as also others, inter alia,* ***Sartori Livio v. The State (Delhi Admin)****;* ***Haroub Slaum Sleyoum v. Shri Abdul Qadir*** *the following principles emerge:*
> *(i) Foreign nationals are entitled to protection under Article 21 of the Constitution of India;*
> *(ii) The State has power as the sovereign to regulate, restrict and expel foreign nationals;*
> *(iii) Merely because an accused/convict is a foreigner, the right to bail cannot be circumscribed. It is permissible to impose special conditions on them while keeping in view the right to privacy and personal liberty under Article 21.*
> *(iv) The conditions of bail must be reasonable, proportionate and capable of compliance."*

38. After noticing the aforesaid three developments, now this Court will answer the questions raise in this reference.

39. Question No.1 raised in the reference is again reproduced, as under:

> *"Q.1: Would releasing the accused/foreign national on unconditional bail, who is apprehended on charge of overstaying in India after expiry of his visa, not tantamount to legalizing his future stay in India without valid visa, which is otherwise an offence under Section 14 of Foreigners Act, 1946? Can granting of bail to a foreign national overshadow the provisions of Foreigners Act, 1946 and can the bail order be used by a foreign national as a*

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> *substitute for a visa to remain in country?"*

40. A foreign national who is charged under Section 14 or Section 14A of the 1946 Act (or Section 23 of the 2025 Act) is to be tried for the contravention of those provisions committed *in the past*. Therefore, while dealing with the bail application of such an accused, the Court is considering contravention of provisions of the 1946 Act (or contravention of provisions of the 2025 Act) committed *in the past*.

41. While ordinarily, granting bail in every offence, every court considers the possibility of the accused repeating the same offence, if released on bail. However, for enforcing the provisions of Section 14 or Section 14A of the 1946 Act (or Section 23 of the 2025 Act) for the *future period*, it is for the Central Government to adopt different options given under Section 3 of the 1946 Act/Paragraph 11 and other paragraphs of the Foreigners Order, 1948 (or Section 7 of the 2025 Act/ Paragraph 8 and other paragraphs of the Immigration and Foreigners Order, 2025) and adopt different measures for different persons, such as requiring the person to reside at a particular place (not necessarily arresting and detaining or confining in a detention centre/restriction centre) or imposing other restrictions on movement within India. The said power is wholly independent of the power to grant bail and can be exercised by the Central Government, notwithstanding the bail granted by a criminal Court. It is reiterated that there is a '*vast*

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menu of options' [as noted by the learned Single Judge in the case of ***Emechere Maduabuchkwu*** (supra)] available for the FRRO to apply, such as requiring the accused to be at a particular place (not necessarily a detention centre), imposing restrictions on his movements (like restricting him to an area), regulating his conduct and association with persons; reporting requirements to an authority which may be more in consonance with the rights under Article 21 of the Constitution than a summary '*plain vanilla order*' [borrowed again from the order passed by the learned Single Judge in the case of ***Emechere Maduabuchkwu*** (supra)] of continuing in the detention centre.

42. Therefore, the grant of bail to a foreign national accused under Section 14 of the 1946 Act (or the corresponding Section 23 of the 2025 Act) does not, by itself, tantamount to legalising his continued stay in India or operate as a substitute for a valid visa. So far as his continued stay in India *in future* is concerned, that is for the Central Government to examine under Section 3 of the 1946 Act/Paragraph 11 and other paragraphs of the Foreigners Order, 1948/Section 7 of the 2025 Act/Paragraphs 8 and other paragraphs of the Immigration and Foreigners Order, 2025.

43. The Court is empowered to grant bail and to impose conditions while granting bail. The grant of bail cannot, by itself, be treated as conferring any right on the foreign national to remain in India without a valid visa and, therefore, cannot overshadow the provisions of the 1946 Act or the 2025 Act.

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44. Question No.2 raised in the reference is again reproduced below:

> ***"Q.2:*** *Should the matters of foreign nationals, who are accused for offence u/s 14 of Foreigners Act, 1946, and particularly where accused himself concedes that his visa has expired before date of his apprehension, be not treated differently than other criminal cases?"*

45. The answer to this question is No.

46. While dealing with the matters involving foreign nationals who are accused of the offence under Section 14 of the 1946 Act, and particularly where the accused himself concedes that his visa has expired before the date of his apprehension, such matters are not to be treated differently than other criminal cases, as a foreign national charged under Section 14 or 14A of the 1946 Act is to be tried for the contravention of those provisions committed *in the past* and may be released from judicial custody on bail, subject to such conditions as the court may deem appropriate, but certainly not the condition to detain him in a detention centre till the pendency of the trial. In so far as the *future period* is concerned, the same is the subject matter to be considered by the Central Government under Section 3 of the 1946 Act read with Paragraph 11 and other paragraphs of the Foreigners Order, 1948 (or Section 7 of the 2025 Act read with Paragraph 8 and other paragraphs of the Immigration and Foreigners Order, 2025).

47. The 2025 Act also has a provision in the form of Section 25, dealing with "compounding of certain offences".

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48. The stand of the FRRO, Union of India in their affidavit dated 17.07.2026 is also that foreign nationals involved in offences under the 1946 Act or under the 2025 Act have an option for compounding the offences under Section 25 of the 2025 Act. The foreign nationals fulfilling the eligibility as mentioned in the statute can pay the requisite penalty amount and get the offence compounded. The SOP also provides that in case any such foreigner expresses his/her inability to pay the penalty, he/she may be deported forthwith and he/she may be blacklisted under appropriate category as per the prevailing Black list guidelines of the Ministry of Home Affairs.

49. This is in tune with the directions of Karnataka High Court as well as Kerala High Court in the case ***Junia Erastus Mayemba*** (supra), ***Tshibambula Jennifer Kabantobelu*** (supra), ***Mr. Freddy Tshimanga Kanyama*** (**supra**) and ***Farhan Hussain*** (supra). Once these options are exercised, there may not be any need for granting any bail to such a foreign national.

50. Question No.3 raised in the reference is as under:

> *"Q.3 If bail is granted to a foreign national, can certain conditions be imposed on such foreign nationals including to keep them in detention centre till completion of their trail, so as to refrain them to evade the process of justice and not to allow them to remain the country without having any valid visa?"*

51. Bail may be granted to a foreign national subject to reasonable conditions, including regarding the place of residence,

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restriction on movement, and periodic reporting, having regard to the gravity of the offence and the risk of the accused evading trial. However, a direction imposing a condition wherein the foreign national is restricted to a detention centre would frustrate the very order of bail and hence, cannot be imposed. Such a power can be exercised by the Central Government by an order under Section 3(2)(g) of the 1946 Act, or under Paragraph 8 of the Immigration and Foreigners Order, 2025.

52. The Criminal Reference is answered, accordingly, and disposed of.

53. We express our gratitude to Mr. Harsh Prabhakar, the learned *Amicus Curiae*, for rendering assistance to us in answering the questions referred.

54. A copy of this order be sent to the learned Metropolitan Magistrate- 04, South District, Saket Courts, New Delhi/Successor Court.

ARUN BHARDWAJ, J

NAVIN CHAWLA, J

NOVEMBER 18, 2026/akr/ps