

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION.

WRIT PETITION (CRIMINAL) NO. 247 of 2018

IN THE MATTER OF:

Mr. S.Solomon [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

... Petitioner

VERSUS

1. The Union of India
Through its Secretary
Ministry of Home Affairs
North Block, Cabinet Secretariat
New Delhi -110001
 2. The Union of India
Through its Secretary
Ministry of External Affairs
South Block, Cabinet Secretariat
New Delhi -110001
 3. The Union of India
Through its Secretary
Ministry of Law and Justice
Cabinet Secretariat, New Delhi -110011
 4. The State of Nagaland
Through the Secretary
Ministry of Home
Kohima, Nagaland - 797001
 5. The Superintendent,
Dimapur District Sub-Jail
Dimapur, Nagaland -797117
- ... Respondents

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A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
SEEKING A WRIT OF HABEAS CORPUS FOR THE
IMMEDIATE RELEASE AND DEPORTATION OF THE
DETENUE, A NIGERIAN NATIONAL, WHO IS BEING
ILLEGALLY CONFINED IN DIMAPUR DISTRICT JAIL,
NAGALAND, OVER A SENTENCE THAT STOOD
COMPLETED ON 25th MAY 2017 [15 months ago].

TO THE HON'BLE THE CHIEF JUSTICE AND HIS HON'BLE
COMPANION JUDGES OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER

MOST RESPECTFULLY SHEWETH THAT:

1. The present Writ Petition is being preferred under Article 32 of the Constitution seeking a writ in the nature of habeas corpus for the immediate release and deportation of a detenue, Mr. Raymond Chinenyeuba Nweze [hereinafter "detenue"], a Nigerian National, who has been illegally detained in Dimapur districtsub-jail since 25.05.2017. This amounts to a complete denial of his basic fundamental rights, guaranteed by Articles 14 and 21 of the Indian Constitution to citizens and non-citizens alike.

- 1A. The petitioner has approached the respondent vide email dated 15.8.2018 by which the representation was made by the petitioner to the respondents (Annexure P-3). However, there has been no response from the Respondent Authorities to the said representation till date.
2. It is submitted that the detenu was sentenced on 25th May, 2017 for an offence under Section 14 of the Foreigners Act, vide judgement of the Chief Judicial Magistrate Dimapur, Nagaland in West P.S Case No. 175/2016. The detenu was sentenced to simple imprisonment for a period of 8 months and 17 days which, as per the aforesaid judgement, was to be set off against the term of incarceration already undergone by him. Since the detenu was committed to custody on 9th September 2016, his sentence stood completed on 25th May, 2017 when the CJM order was passed, as is borne out by the directions of the CJM to the District Magistrate/ Commissioner of Police to take urgent and necessary steps to ensure that the detenu reaches his Embassy.
3. The Petitioner is a public-spirited citizen who had come across the detenu's plight and met him in jail to verify the facts. The Petitioner on realizing that pathetic plight of the detenu, and the deprivation of his basic liberties, helped

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him make representations to the concerned authorities vide a representation dated 13th August, 2018. However, with no response having been received from any of the Respondent Authorities, particularly Respondent No.2; the Ministry of External Affairs, the Petitioner was constrained to approach this Hon'ble Court in its Writ Jurisdiction.

4. The Petitioner submits that given that this Court already being apprised of similar issues in *Bhim Singh Vs. Union of India and Ors*, which is pending judgement, and only having access to legal aid counsel in New Delhi, considered this to be an appropriate forum to seek relief in.
5. Respondent No.1 is the Union of India, through the Ministry of Home Affairs, that inter-alia governs issues pertaining to security and prisoners at the Central Level. Respondent No.2, is the Union of India, through the Ministry of External Affairs, which is that department that is responsible for issuing deportation orders for foreign nationals. Respondent No.3, is the Union of India, through the Ministry of Law and Justice, which is responsible for the administration of justice at the Centre. Respondent No.4 is the State of Nagaland, through its Ministry of Home, that is responsible for the

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administration of security and prisoners within the State of Nagaland. Respondent No.5, is the Superintendent incharge of the Dimapur sub-district jail where the detenu is being held illegally.

Brief Facts Of The Case:

6. The detenu is a citizen of Nigeria who came to India on 10.06.2014 for business purposes and took residence at Tirupur, Tamil Nadu. The Petitioner traded in garments and visited several cities in India in pursuit of his business.
7. As per the report of the investigating officer, on 06.09.2016 the detenu along with some friends had boarded an Indigo flight from Bengaluru to Imphal. However, the detenu and his friends were sent back by the Immigration Officials at the Imphal Airport for reasons unknown. On the same day the detenu and his friends flew back to Guwahati but boarded a bus towards Nagaland soon thereafter.
8. On 07.09.2016, at around 6 a.m, the detenu's bus arrived at a check post at Dimapur where police personnel led by the officer in-charge of the gate detected that the

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detenue did not have necessary travel documents. During examination it was found that the detenue was not in possession of a valid visa except a photocopy of his passport and accordingly, the Police lodged a FIR against the detenue for contravening various provisions of the Foreigners Act 1946.

9. During further investigation it was found that the detenue was in possession of a passport at the time of arrest but his visa could not be produced as it was purportedly stolen from his residence in Tiruppur in Tamil Nadu.
10. A prima facie case under section 14 of Foreigners Act, 1946 was framed against the detenue and a charge sheet was submitted under section 173 of the Cr.P.C for trial by the Chief Judicial Magistrate [CJM], Dimapur.
11. The detenue pleaded guilty when the charge was read over and explained to him, and plea of guilt was recorded by the CJM, Dimapur. The detenue was accordingly held guilty for an offence under section 14 Foreigners Act.

12. While the CJM, Dimapur convicted the detenu under section 14 Foreigners Act, the learned judge was of the opinion that the ends of justice would be served if the detenu was sentenced to imprisonment for the period already undergone. The lenient view was opted since the detenu had no criminal antecedents and this was his first offence. Moreover, the detenu also pleaded for an opportunity to lead a reformed life.

It is pertinent to note that the order also directed the District Magistrate/Commissioner of Police, Dimapur to take urgent and necessary steps to ensure that the detenu reaches his embassy.

13. The detenu, having been in continuous custody since 9th September 2016, ought to have been released on 25th May, 2017 but continues to languish in prison even after 15 months since his sentence was completed. This amounts to a complete denial of his basic fundamental rights, guaranteed by Articles 14 and 21 of the Indian Constitution to citizens and non-citizens alike.

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14. It is also extremely unfortunate to state that the detainee's mother passed away in June 2017 and his father also passed away thereafter in October 2017, all while he was being illegally detained. The detainee also states that as per his family customs in his country of nationality, it is the eldest son who has to complete the funeral rites of the parents. However, the detainee, who is the eldest son is unable to carry out the last rites of his parents and their deceased bodies are still lying in mortuary of the State Hospital, Ebony, awaiting cremation by the detainee. The detainee also states not able to attend the wedding of his siblings due to his illegal incarceration.

15. The Petitioner seeks to move this Hon'ble Court as it is presently seized of similar issues in *Bhim Singh v. Union of India* [Criminal Writ Petition No. 310 of 2005] and has intervened by passing orders to ensure the immediate release and deportation of foreign nationals who are languishing in prison even after having completed their sentences in India. A copy of the order dated 12.07.2010 passed by this Hon'ble Court in Writ Petition (Crl) No. 310 of 2005, is hereto marked and annexed as **ANNEXURE P-1[Pages 20 to 23]**. A copy of the order dated 24.01.2012 passed by this Hon'ble court in Writ

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Petition (Crl.) No. 310 of 2005 is hereto marked and annexed as **ANNEXURE P-2** [Pages 24 to 28].

16. Accordingly, the detinue was convicted for an offence under Section 14 of the Foreigners Act and sentenced to simple imprisonment for a period of 8 months and 17 days. The order of the CJM also set off the sentence from the period already undergone and stated as under:

"In view of the aforesaid, the accused is hereby convicted for an offence under section 14 Foreigners Act and sentenced to a simple imprisonment for a period of 8 months 17 days. The detention period already undergone by the convict in custody is hereby set off under section 428 Cr.P.C."

A copy of the order dated 25.05.2017 passed by the Court of Shri Ajongba Imchen, Chief Judicial Magistrate, Dimpaur, Nagaland in West P.S. Case No. 175/2016, is hereto marked and annexed as **ANNEXURE P3** [Pages 29 to 31].

17. The Petitioner herein is an activist and socially concerned person in the locality who came across the case of the detinue and also found that the detinue did not have

access to necessitated legal aid assistance. The Petitioner was hence moved to help the detinue make a representation dated 13.08.2018 to Respondent No.2, seeking his immediate release and deportation on humanitarian grounds. A copy of the representation dated 13.08.2018 sent by Nweze Raymond Chinenyeuba to the Hon'ble Prime Minister of India through the Hon'ble Minister of External Affairs is hereto marked and annexed as **ANNEXURE – P4** [Pages 32 to 33]. A copy of the email dated 15.08.2018 by which the representation was made by the Petitioner to the Respondent Authorities is hereto marked and annexed as **ANNEXURE-P5** [Pages — to 34]. However, there has been no response from the

18. Respondent Authorities to the said representation till date, and the detinue continues to languish in prison.

19. The Petitioner, being based in Dimapur, some distance from the Nagaland bench of the Guwahati High Court, and being aware of a legal aid network in New Delhi, has not approached the High Court or any other court for the same relief.

19. The Petitioner, deeply moved by the plight of the detinue, who is continuing to languish in prison against basic norms of dignity, is constrained to move this Hon'ble Court in its Writ Jurisdiction, under Article 32 on the following grounds:

GROUNDS

- A. **BECAUSE** the detinue's sentence stood completed on 25.05.2017, as per the order of the learned CJM dated 25.05.2017, in Case No.175/2016, West P.S., Dimapur Nagaland. Therefore, his continued illegal incarceration for over 15 months, since 25.05.2017, is in gross violation of his fundamental rights under Article 14 and Article 21 of the Constitution of India.
- B. **BECAUSE** this Hon'ble Court by way of its orders in *Bhim Singh Vs. Union of India and Ors*[Criminal Writ Petition No. 310 of 2005] has held that failure to deport foreign prisoners after they have served their sentence is a violation of their right to liberty and they must be deported with utmost urgency.

This Honourable Court vide its order dated 12.07.2010 in the aforesaid matter held as under:

"Undoubtedly the prisoners belong to a foreign country and they have committed offences in this country of a serious nature. But they been duly punished by the Indian Courts following the procedure established by law. After they have served out the sentences awarded to them they need to be deported with the utmost dispatch. The protection of Article 21, arguably the most precious right guaranteed under the Constitution is available to them as much as to any other person. And it is one of the foremost duties of this Court to uphold that right of every person."

This Honourable Court, again vide its order dated 24.01.2012, in the above matter held:

"We are pained to observe that the Union of India has failed to see the concern and urgency that is called for by the prisoner's right to personal liberty. The matter has been lingering for repatriation of large number of foreign prisoners on one ground or the other although they have served out their respective sentences awarded to them."

"It is only under the orders of this Court that repatriation of many of these foreign nationals has taken place by now. We disapprove of the off hand and ad hoc manner in which the whole exercise has been done by the Government of India concerning foreign nationals who have served out their sentences awarded to them following the procedure established by law in our country. The protection provided by Article 21 of the constitution of India requires that the foreign nationals who have served out their sentences are deported to their respective country with utmost dispatch and without delay."

- C. **BECAUSE** this Hon'ble Court in *Bhim Singh v. Union of India* [Criminal Writ Petition No. 310 of 2005] has intervened in ensuring the immediate release and deportation of foreign nationals who are languishing in prison even after having completed their sentences in India.
- D. **BECAUSE** the order of the learned CJM dated 25.05.2017, in case No.175/2016, West P.S., Dimapur Nagaland, which sentenced the prisoner, had also

directed that urgent necessary steps be taken by the District Magistrate/Commissioner of Police, Dimapur to ensure that the convict reaches his embassy. His incarceration is therefore in violation of the aforesaid order.

E. **BECAUSE** the detinue has undergone further trauma due to the inaction of the state that has resulted in him not being allowed to cremate his parents who have died while he was undergoing illegal incarceration. This violates the very right to life and dignity of the detinue.

F. **BECAUSE**, the rights guaranteed under Article 21 is available to citizens and non-citizens alike and it is the duty of the State to protect the life and liberty of every individual. In *National Human Rights Commission Vs. State of Arunachal Pradesh and Ors.* (1996) 1 SCC 742 it was held that "We are a country governed by the Rule of Law. Our Constitution of India confers certain rights on every human being and certain other rights on citizens. No person could be deprived of his life and personal liberty except according to the procedure

established by law. The State is bound to protect the life and liberty of every citizen, be he a citizen or otherwise

G. **BECAUSE**, in spite of the representation made by the detenu dated 13.08.2018 to the concerned Respondent Authorities, he continues to be illegally held in custody.

20. The petitioner has not filed any other petition before this Hon'ble court or any other court seeking similar relief.

PRAYER

It is therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- a) Issue a writ of habeas corpus or any other order or a direction of similar nature for the immediate release and deportation of the detenu in Case No.175 of 2016, West P.S. Dimapur, Nagaland from Dimapur District Sub Jail, Nagaland;
- b) For costs to be paid to the detenu for the violation of his fundamental rights;

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- c) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

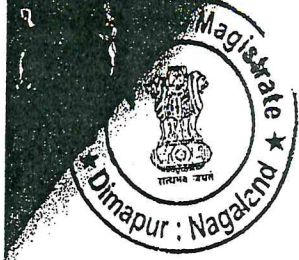
FILED BY

NISHE RAJEN SHONKER

COUNSEL FOR THE PETITIONER

Drawn on: 29.8.2018

Filed on: 6.9.2018



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ANNEXURE - P/3

IN THE COURT OF

SHRI AJONGBA IMCHEN, CHIEF JUDICIAL MAGISTRATE

DIMAPUR: NAGALAND

GR-840/2016

State of Nagaland

West P.S. case No. 175/2016

Vs.

U/s.14 Foreigners Act.

Mr. Raymond Chinenyenba Nweze &Anr

Date of Order: 25-05-2017

ORDER

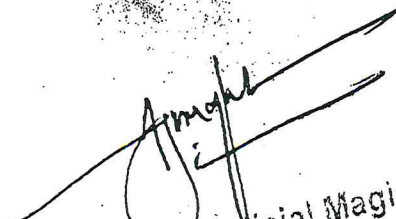


Present Shri Sashi Kichu, the learned APP for the state and Smti Esther Aye, learned defence Counsel for the accused. Accused Mr. Raymond Chinenyeuba Nweze produced from judicial custody. Co-Accused Mr. Tobias Chizoba Anijunsi absent warrant not returned. No progress report from the concern O.C. P.s.

1. The brief fact of the prosecution case is that on 07-09-2016, at about 0710 hours two Nigerians identified as (i) Mr. Tobias Chizoba Anijunsi and Mr. Raymond Chinenyeuba Nweze were apprehended from New Field Police check Gate, Dimapur for not possessing valid passports. During the course of investigation, it was ascertain that on 6-9-2016 the two accused along with Miss Haobijam Hemapati Chanu boarded Indigo flight from Bengaluru via Kolkota to Imphal. However, the two Nigerian Nationals were sent back purportedly by the immigration Officials at the Imphal Airport. On the same day the two accused and their friend flew back to Guwahati and on 07-09-2016 they arrived to New Field Police check gate Dimapur by a Night Super Bus at about 6:00 am. Police personal led by SI Adono Kent in-charge of the said gate detected the two foreigner passengers and during examination of the travel documents found that they were not in the possession of valid Visas except a photocopy of passport. Accordingly, the in-charge of the police gate lodged FIR against the two Nigerian Nationals for contravention of the provision of Foreigners Act 1946.
2. In the further course of investigation, it was found that both the accused persons were in valid possession of passport at the time of arrest. The validity of the passport of accused (A-1) Tobias Chizoba Anijunsi is 24 May 2017 and (A-2) Raymond Chinenyeuba Nweze is 19 February 2018. Later original Visa and passport in respect of accused Tobias Chizoba Abijunsi, was produced by his girlfriend namely Haobijam Hemapati Chanu however, the Visa was found to have expired on 23-09-2012 and accused (A-2) could not produced the visa which was purportedly stolen

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to
Chief Judicial Magistrate
Dimapur Nagaland
Authorized U/S 76, ACT- 1872


Chief Judicial Magistrate
Dimapur : Nagaland



from his resident at Tiruppur in Tamil Nadu. Furthermore, it was ascertain that both the accused persons were indented to proceed to IMphal, Manipur along with accused Tobias 's girlfriend as they were to wed purportedly on 07/09/2016.

3. Sub Inspector (S.I) K.Nivito Yeptho, I.O of the case, during the course of investigation, a prima facie case established U/s. 14 Foreigners Act against accused Mr.Tobias Chizoba Anijunsi and Mr.Raymond Chinenyeuba Nweze and submitted charge sheet U/s. 173 Cr.P.C for trial.
4. Upon perusal for the charge sheet, there being a prima facie case, charge for the offence punishable under section 14 Foreigners Act was framed against the accused Mr. Raymond Chinenyeuba Nweze. The accused pleaded guilty when the charge was read over and explained to him. I have recorded the plea of guilty of the accused. Accordingly, I hold him guilty for the offence under section 14 Foreigners Act.
5. On his above plea of guilty, the accused is hereby convicted for the offence as charged against him. However, upon conviction, I am not inclined to release the accused on probation since he had entered to Nagaland without having any valid original documents with regards to his Visa and passport. Hence, I propose to punish the accused for his crime.
6. I have heard the learned APP for the State and Ld. Defence counsel for the accused Mr.Raymond Chinenyeuba Nwez on the question of sentence.

Learned defence counsel prayed to showing leniency in respect of punishment since this is the first offence committed by him and moreover, there is no one to assist the accused for his arrangement to reach his embassy. Per contra, Ld.APP for the State submits that the prosecution case stand proved by the accused pleading guilty and as such, the accused person deserves no leniency and that appropriate punishment be imposed upon him.

7. Upon considering the above rival submissions advanced and also considering the surrounding facts and circumstances of the case, I am of the opinion that the ends justice would be served if the accused is sentenced to imprisonment for the period already undergone. The lenient view is opted since the accused have no criminal antecedents and this was his first offence. Moreover, the accused pleads for an opportunity to lead a reformed life.
8. Accordingly, In view of the aforesaid, the accused is hereby convicted for an offence under section 14 Foreigners Act and sentenced to simple imprisonment for the period of 8 MONTHS 17 DAYS. The detention period already undergone by the convict in custody is hereby set off under section 428 Cr.P.C.

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a True Copy

Peshkar

to
Chief Judicial Magistrate
Dimapur Nagaland
As per Section 115 of ACT. 1872

Chief Judicial Magistrate
Dimapur : Nagaland



The District Magistrate/Commissioner of Police, Dimapur is hereby ask to take urgent necessary steps to make sure that the convict Mr. Raymond Chinenyeuba Nweze reaches his Embassy.

- 10. Furnished copy of this Order to District Magistrate/Commissioner of Police, Dimapur for compliance.
- 11. Issue warrant of arrest through Deputy Commissioner of police (Crime) Dimapur, against accused Mr. Tobias Chizoba Anijunsi (NBW) and notice to his bailor Shri. K. Khutovi suml, warden of Cental Jail, Dimapur. Returnable on or before 29-06-2017. Other accused/Not petitioner → Raymond

Order is pronounced in the open court and in presence of the parties.

Issued
25/5/17

(AJONGBA IMCHEN)
 Chief Judicial Magistrate
 CHIEF JUDICIAL MAGISTRATE
 Dimapur, Nagaland

DIMAPUR



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 a True Copy

 Peshkar
 to
 Chief Judicial Magistrate
 Dimapur Nagaland
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