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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**INTERIM APPLICATION (L) NO. 15750 OF 2025**  
**IN**  
**WRIT PETITION (L) NO. 14253 OF 2025**

Mohammed Qassim Mohammed Al Shibah .....Applicants  
and ors

Vs.

The Foreigners Regional Registration .....Respondents  
Office (FRRO) Mumbai and ors

Mr. Weseley Menezes a/w Mr. Waqar Pathan, Mr. Ayaan  
Bhattacharya, Ms. Trupti Kudtudkar, Ruben Mascareinhas, Mr. Arjun,  
Mr. Kasim Motorwala, Mr. Vinay Kadam i/b Amanchi Legal and Co. for  
the applicants

Smt. P. H. Kantharia for respondent nos. 1 to 4

Mr. Rakesh Pathak AGP for respondent no. 5

Mr. Santosh Dhavale, API, SB-II and FRRO Office

Mr. Pravin Dhoiphade, API, SB-II and FRRO Office

**CORAM : GAURI GODSE,  
SOMASEKHAR SUNDARESAN, JJ.**

**DATE : 27<sup>th</sup> MAY 2025**

**ORDER:**

1. Learned counsel for the petitioners has tendered a schedule of proposed amendments in the petition as well as interim application for converting the Writ Petition into a Criminal Writ Petition on the Criminal Appellate Jurisdiction of this Court.

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2. The schedule of amendments is taken on record. The petitioners are permitted to carry out necessary amendments. Amendments to be carried out within four weeks. After the amendments are carried out, office is directed to convert the petition and the interim application into a Criminal Writ Petition and Criminal Application/Interim Application.

3. This application is urgently circulated, as according to the applicants, applicant no. 1/petitioner no. 1 is illegally detained in Byculla Police Station since 16<sup>th</sup> May 2025. Learned counsel for the applicants relies upon the order dated 21<sup>st</sup> December 2023 passed in Criminal Writ Petition No. 3927 of 2023. He submits that in more or less similar facts, this Court had permitted releasing of the petitioner in that petition who was detained in the police station on the ground that the petitioner had over stayed in India without any valid permission. Learned counsel for the applicants submits that this Court had therefore, granted interim protection by directing the release of the petitioner by imposing certain conditions. He, therefore, pray that in the present application, similar order be passed.

4. Learned counsel for the applicants submits that the applicants are UNHCR registered refugees from Yemen who are one family, and whose visa expired some time in September 2015. He submits that the

petition is filed to challenge the various orders passed against the petitioners under The Foreigners Act, 1946. The present application is filed seeking his release.

5. Learned counsel for the applicants submits that United Nations High Commissioner for Refugees (UNHCR) registration particulars are annexed to the main petition at Exhibit 'L' on page 136 of the main Petition. Learned counsel for the applicants submits that irrespective of the various orders passed under The Foreigners Act, the respondents would not be entitled to detain applicant no. 1 in the police station. He submits that there are no criminal antecedents and except for the allegation of over stay in India, there are no other allegations against the applicants. He, thus, submits that similar orders as passed in Criminal Writ Petition No. 3927 of 2023 be passed in this application for release of applicant no. 1.

6. Learned counsel appearing for the respondents vehemently opposes grant of any relief as prayed in the application. She submits that in a petition involving similar facts, the Hon'ble Apex Court has refused to grant any relief of releasing the persons (Rohingya refugees in jail) who were detained under The Foreigners Act. She has tendered a copy of order dated 8<sup>th</sup> April 2021 concerning passing of an order of

interim relief in Interlocutory Application No. 38048 of 2021 in Writ Petition (Civil) 793 of 2017. Learned counsel for the applicants submits that the main petition is still pending in the Hon'ble Apex Court.

7. Learned counsel for the respondents relies upon Section 3 of the Foreigners Act to support her submissions that the respondents are entitled to impose conditions by invoking powers under clause (e) of Sub-Section (2) of Section 3 of The Foreigners Act. She, thus, submits that the applicants would not be entitled to any relief as prayed in the present application. She, further submits that she would want to file a detailed affidavit-in-reply in the main petition as well as in the interim application. She submits that affidavit-in-reply to the main petition and the interim application shall be filed within two weeks from today, with an advance copy to the learned advocate for the petitioners. Rejoinder, if any, shall be filed within a week thereafter.

8. We have therefore considered rival submissions only restricted at this stage, to the prayer for releasing applicant no. 1. There is no dispute that applicant no. 1 had entered India on a valid permission on a diplomatic passport and was working in India. The particulars of UNHCR registration and the refugee status are placed on record in the main petition. It is not the respondents' contention that there are any

criminal antecedents so far as the applicants are concerned. Prima facie we do not find that provision of clause (e) of Sub-Section (2) of Section 3 of The Foreigners Act relied upon by the respondents would be of any help to detain him in the police station. Even otherwise, the clauses as prescribed under Section 3 are not yet invoked by passing any orders under the said provision.

9. Learned counsel for the respondents also relied upon The Foreigners Order, 1948. A perusal of paragraph 11 of the Foreigners Order indicates power to impose restrictions on movements and with reference to “place of residence”. Hence, prima facie we do not find any supporting provision which would enable the respondents to detain applicant no. 1 in a police station. Admittedly, there are no detention centres made available by the Government as submitted by the learned counsel for the respondents.

10. We find it appropriate to refer to observations made by the Hon’ble Apex Court in paragraph 13 of the order relied upon by the learned counsel for respondents. Paragraph 13 reads as under:

*“13. It is also true that the rights guaranteed under Articles 14 and 21 are available to all persons who may*

*or may not be citizens. But the right not to be deported, is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e).”*

11. In view of the aforesaid, we do not find any reason that applicant no. 1 should continue to remain in Byculla Police Station. So far as other prayers in the application are concerned, we are not dealing with the same at this stage as the respondents want to file a reply in the application as well as the petition. We are therefore, restricting our order to prayer clause 23(a) of the application.

12. Learned counsel for the applicants submits that there is apprehension that in the meantime, action of deportation of the applicants/petitioners might be undertaken rendering the petition infructuous.

13. Since the respondents are inclined to file a reply to oppose the prayers in the petition as well as in the interim application, we find it appropriate to protect the applicants in the meantime.

14. Learned counsel for the respondents submits that passport of applicant no. 1 is with Byculla Police Station and the same is placed

on record before this Court. We do not find any reason that any of the respondents, without following any procedure, can seize the passport of petitioner no. 1.

15. Learned counsel for the respondents, therefore, handed over, in Court, the original diplomatic passport of applicant no. 1/petitioner no. 1 to the learned advocate who appears for the petitioners. Petitioners are at liberty to file appropriate additional affidavit or any application for seeking further reliefs. If any such application or affidavit is filed, same shall be served upon learned advocate for the respondents.

16. Hence, we find it appropriate to pass orders to release applicant no. 1 by imposing necessary conditions. The applicant no. 1/petitioner no. 1 is therefore released forthwith from the custody of the respondents. However, applicant no. 1/petitioner no. 1 shall not leave the jurisdiction of the Greater Mumbai without seeking leave of this Court.

17. List the petition on 16<sup>th</sup> June 2025 before the Regular Court.

18. Petitioners are at liberty to get this petition listed alongwith Criminal Writ Petition No. 3927 of 2023.

**[SOMASEKHAR SUNDARESAN, J.]**

**[GAURI GODSE, J.]**