

IT E M NO.1

COURT NO.9

SEC T I O N X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

W R I T P E T I T I O N (CRL.) NO(s). 12 9 OF 20 0 5

SURA M CHAND

Petitioner(s)

VE R S U S

UNION OF INDI A & ORS.

Respondent(s)

(With appln(s) for permission to implead States as respondents and c/delay and extension of time and and office report))

WI T H W. P(C R L .) NO. 13 3 of 20 0 5

(With appln(s) for permission to implead States as respondents and office report))

W. P(C R L .) NO. 17 5 of 20 0 5

(With appln(s) for permission to implead States as respondents and office report))

Date: 05/ 1 2 / 2 0 0 7

These Petitions were called on for hearing today.

CORAM :

HON' B L E MR. JUS T I C E A.K. MATHU R

HON' B L E MR. JUS T I C E MAR K A N D E Y KA T J U

For Petitioner(s) Prof. Bhi m Singh, Adv.

Mr. B.S. Billowria, Adv.

Mr. Manzoor Ali Kha n, Adv.

Mr. P. V. Yogeswar a n, Adv.

For Respondent(s)

Mr. S.R. Singh, Sr. Adv.

For State of J& K

Mrs. Sha m a m a Anis, Adv.

in all the W. P s . Mr. S. Mehdi Ima m, Adv.

Mr. Anis Suhrawa rdy, Adv.

For UOI

Ms. Binu Tamta, Adv.

Ms. Sush m a Suri, Adv.

Ms. Savitri P andey, Adv.

Mr. Shirish Ku m a r Mishra, Adv.

Mr. Ravi Pr a k a s h Mehrotra, Adv.

Mr. Anuvrat Shar m a, Adv.

Mr. Anil K. Jha, Adv. (NP)

Mr. Irshad Ahmad, Adv. (NP)

...2/-

Mrs. J ayshree Anand, AAG

Mr. K. K. Mahalik, Adv.

Mr. Kuldip Singh, Adv.

Mr. Bi m al Roy J ad, Adv. (NP)

Mr. Pr aveen Swarup, Adv. (NP)

Mr. Ratan Ku m a r Choudhuri, Adv. (NP)

UPON hearing counsel the Court made the following

O R D E R

W P(Crl.) 129 / 2005 , W P(Crl.) 133 / 2005 & W P(Crl.) 175 / 2005

Heard learned counsel for the parties in all the writ petitions.

In pursuance of the direction by this Court on 03.10.2007 ,

an affidavit sworn by K. P . Koshy, Under Secretary (K- I), Ministry of Home Affairs, Govt. of India has been filed. In this affidavit it has been pointed out that so far as the cases of Mohd. Umar and Alam Khan are concerned, they have already been deported on 14th August, 2007 . So far as Zamir Ahmed Khan and Zafar Ali are concerned, it is pointed out that they have to be exchanged as per protocol entered into between India and P a k i s t a n in November, 1982 . But, we have been informed by counsel for the petitioners that travel documents for both these persons have been received and we see no reason why they should be detained, unless they have been detained under some statutory law.

Learned counsel for the Union of India has not been able to point out to us under which domestic statutory law Zamir Ahmed Khan and Zafar Ali are being detained. If the travel documents of both these persons have been received then they should have been deported. The protocol between the two countries does not authorize the authorities to detain any person unless it is in accordance with law (vide Article 21 of the Constitution). In our opinion the word 'law' in Article 21 means statutory law, i.e., an Act made by the legislature, and not a mere protocol. Learned counsel for the Union of India should explain why Zamir Ahmed Khan and Zafar Ali should not be released and deported forthwith. Union of India shall file an affidavit in this regard within two weeks.

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It is submitted that so far as Abdul Qadeer is concerned, he is a Tajiki stan national and his case has been recommended by the Union Government and the Union Government has already written a letter on 31.10.2007 to the Tajiki stan Emb a s s y. Mr. Bhi m Singh, learned counsel appearing for the petitioners states that he will also take up the case of Abdul Qadeer with the Consulate of Tajiki stan.

So far as Nazir Kha n @ Mohd. Nazir @ Saifulla S/o Hazi Lal Khan and Abdul Rahi m S/o Abdul Majid Khan are concerned, it is pointed out that both of them have been convicted and are presently undergoing the sentence of life imprisonment.

Learned counsel for the Union of India shall obtain a copy of the judgment by which Nazir Khan and Abdul Rahi m have been convicted and file it in Court, and supply the same to counsel for the petitioners within two weeks. They shall also inform this Court whether any appeal has been filed against the said judgment and whether any interim order has been passed in it.

P a r t i e s may file affidavits within two weeks and exchange the same among themselves.

Put up on 16th J a n u a r y, 2008 .

(Ajay Kr. Jai n)
Court Master

(Vijay Dhawan)
Court Master