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WRIT PETITION (CRL.) NO(s). 310 OF 2005
WITH W.P. (CRL.) NO. 82 of 2010

3

UPON hearing counsel the Court made the following

O R D E R

At the outset, Prof. Bhim Singh, petitioner-in-person, handed over to us a copy of additional affidavit filed by Suram Chand, Office Secretary of State Legal Aid Committee, J & K. He referred to the list of 16 Pakistani civil prisoners who have completed their sentence and whose national status has been confirmed by the Government of Pakistan as on April 30, 2012. The said list is said to have been received from the High Commission of the Islamic Republic of Pakistan.

Mr. P.P. Malhotra, learned Additional Solicitor General, handed over to us a written note indicating the

status of these 16 Pakistani prisoners.

Of these 16 Pakistani prisoners, Muhammad Essa Khan (serial No. 4) has already been deported and Muhammad Salim Junaid (serial No. 5) is to be deported on May 8, 2012. No order needs to be passed concerning them.

As regards the remaining 14, two have filed writ petition before the Jammu & Kashmir High Court claiming Indian citizenship. They are Munawar Hussain Shah (serial No. 7) and Syed Tufail Hussain (serial No. 14). Mr. P.P. Malhotra, learned Additional Solicitor General, submits that these two Pakistani prisoners have not been deported due to pendency of the writ petition filed by these two persons. In the circumstances, Union of India cannot be faulted for not deporting these two Pakistani prisoners. We, however, request the Jammu & Kashmir High Court to hear and decide the writ petition filed by these two persons being Writ Petition No. 48 of 2011 as expeditiously as may be possible and preferably within four months of the production of the order of this Court.

WRIT PETITION (CRL.) NO(s). 310 OF 2005
WITH W.P. (CRL.) NO. 82 of 2010

4

Of the remaining 12, Abdul Khaliq (serial No. 1) and Asif Khan (serial No. 3) have each one case pending against them. These two persons, therefore, cannot be deported until the conclusion of pending cases against them.

As regards Akhtar-ul-Islam Malik Teeli (serial No. 2) and Muhammad Yaseen Jat (serial No. 6), Mr. P.P. Malhotra, learned Additional Solicitor General, has informed us that Jammu & Kashmir State Government is taking steps for filing appeal against their acquittal before the Jammu & Kashmir High Court. Obviously, therefore, these two prisoners cannot be deported immediately.

In respect of Nainu (serial No. 8) and Naro (serial No. 9), who are husband and wife, we have been informed

that some clerical mistake has crept in as regards
WRIT PETITION (CRL.) NO(s). 310 OF 2005
WITH W.P. (CRL.) NO. 82 of 2010

5

completion of their sentence. As a matter of fact, these two prisoners have not completed their sentence and their sentence will be over on March 29, 2013. Similarly, Zeeshan Alam (serial No. 16) again a mistake has crept in about the completion of his sentence as he would be completing sentence only on November 21, 2012. The question of deportation of these three prisoners does not arise as they have not completed their sentence.

Now five from the list remains.

Insofar as Samiullah (serial No. 10) is concerned, we are informed by Ms. Astha Sharma, learned counsel for the State of Jammu & Kashmir, that sanction to file appeal against his acquittal having been rejected, steps are now being taken for his deportation. We direct that necessary steps be taken by all concerned and ensure that deportation of Samiullah takes place within one month from today.

As regards remaining four prisoners, namely, Squib Aziz Malik (serial No. 11), Sohail Anwar Malik (serial No. 12), Syed Moin Ullah Shah (serial No. 13 and Waseem Ahmed (serial No. 15), appeals against acquittal have been filed by the State of Jammu and Kashmir. In respect of Squib Aziz Malik and Syed Moin Ullah Shah, the appeals are pending before the Jammu & Kashmir High Court, while appeal

in respect of Sohail Anwar Malik and Waseem Ahmed is
WRIT PETITION (CRL.) NO(s). 310 OF 2005
WITH W.P. (CRL.) NO. 82 of 2010

6

pending before the Delhi High Court. We request the Jammu & Kashmir High Court to hear and dispose of Criminal Appeal No. 9 of 2011 in respect of Squib Aziz Malik and Criminal Appeal No. 13 of 2012 in respect of Syed Moin Ullah Shah as

expeditiously as may be possible and preferably by the end of 2012. We also request the Delhi High Court to hear and decide Criminal Appeal No. 153 of 2012 in respect of Sohail Anwar Malik and Waseem Ahmed as expeditiously as may be possible and preferably by the end of 2012.

In the course of arguments, Prof. Bhim Singh invited our attention to the additional affidavit filed by Payingattery Venkiteswaran Sivaraman, Director (Foreigners) in the Ministry of Home Affairs, Government of India, pursuant to the order of this Court dated January 24, 2012. He particularly referred to the three persons in the comprehensive list (Annexure D), namely, Sikander Azam (serial No. 291), Jameel Ahmad Awan (serial No. 316) and Abdul Majid Ariya (serial No. 317).

As regards Sikander Azam, he submitted that in the column, 'whether he has completed sentence or indicating sentence', it has been wrongly stated that he would complete his sentence

on November 28, 2013. Prof. Bhim Singh referred to the Final Form Report which indicates that Sikander Azam was arrested on July 11, 2008 and the order dated June 29, 2010 passed

by the Chief Judicial Masistrate, Jammu. The order dated
WRIT PETITION (CRL.) NO(s). 310 OF 2005
WITH W.P. (CRL.) NO. 82 of 2010

7

June 29, 2010 shows that Sikander Azam has been convicted for the offence punishable under Section 14 of the Foreigners Act and he has been sentenced to suffer rigorous imprisonment for three years and payment of fine of Rs. 3,000/- and, in case of default of payment of fine, to suffer further rigorous imprisonment for six months.

Prof. Bhim Singh states that fine of Rs. 3,000/- has been deposited. In any case, he has served out the sentence,

including the default sentence for the offence under Section 14 of the Foreigners Act.

Ms. Astha Sharma, learned counsel for the State of Jammu & Kashmir, submits that Sikander Azam has also been detained under Public Safety Act by the order of the Government, Home Department, Jammu & Kashmir dated March 9, 2011. The learned counsel for the State of Jammu & Kashmir is directed to seek instructions as to how long Sikander Azam is required to be detained under the Public Safety Act and also show cause why he should not be deported. The State of Jammu & Kashmir shall file an affidavit in this regard within four weeks.

WRIT PETITION (CRL.) NO(s). 310 OF 2005
WITH W.P. (CRL.) NO. 82 of 2010

8

Jameel Ahmad Awan and Abdul Majid Ariya (serial Nos. 316 and 317) were arrested on April 11, 2007 and March 10, 2007 respectively. What pains us is that for years together the investigation into offences under which they were arrested has not been completed. The delay in completion of investigation for long five years is hardly acceptable. Speedy investigation into a crime is the requirement of law and, if not properly explained, such lapse may render the continuous custody of an accused illegal and unjustified. The State of Jammu & Kashmir through a responsible officer must explain the long delay in completion of investigation into the crimes under which Jameel Ahmad Awan and Abdul Majid Ariya have been arrested.

The affidavit shall also be filed by the State of Jammu & Kashmir in this regard within four weeks from today.

Union of India is directed to file a fresh status report as on July 1, 2012 before next date.

List the matters for further consideration on August 8, 2012.

(Rajesh Dham)
Court Master

(Renu Diwan)
Court Master