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

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Reserved on: 18th November, 2025

Pronounced on: 10th March, 2026

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W.P. CRL. 146/2024

SAMUEL AKUJUOBI

S/o Mr. Anyiam

Permanent Address: H.No.-3, Oboro Street,
Umuahia Abil, Nigeria.

Presently Detained in

Sewa Sadan, Lampur Border,
Delhi

THROUGH HIS PAROKAR

Mr. Ifeanyi Michael

S/o Mr. Ugu

R/o Om Vihar Nawada, Phase-3,

After House Of Papaji, Delhi 110059

Also, At:

Enugu, Lagos, Nigeria.

.....Petitioner

Through: Mr. Anoop Kumar Gupta and
Mr. Rohan Gupta, Advs.

versus

1. **UNION OF INDIA**

Through Its Chief Secretary,
Ministry Of External Affairs,
Govt. Of India, Shastri Bhawan,
New Delhi.

2. **FOREIGNER REGIONAL REGISTRATION OFFICE**

East B Lock-VIII, Level-2, Sector-1,
R.K. Puram, New Delhi-110066.
Through Its F.R.R.O.

3. **THE INCHARGE,**

Seva Sadan, Lampur Border,



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Narela, Delhi
Through Its F.R.R.O.

.....Respondents
Through: Mr. Amol Sinha, ASC for State with
Mr. Kshitiz Garg, Mr. Ashvini
Kumar, Mr. Nitish Dhawan, Ms.
Chavi Lazarus and Mr. Manan
Wadhwa, Advocates.
Mr. Sandeep Kumar Mahapatra,
CGSC with Ms. Mrinmayee Sahu,
Mr. Sugam Kumar Jha, Mr. Sreedass
K. P., Mr. Tribhuvan, Mr. Raghav
Tandon and Mr. Amit Acharya,
Advocates with Inspector Satish
Kumar from FRRO.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Writ Petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "CrPC"*) on behalf of the **Petitioner/Samuel Akujuobi** for directing the Officials of the Respondents to release the Petitioner from the Detention Centre, Laampur Border, Narela, New Delhi.
2. The **brief facts of the case as per the Petition**, are that on 10.07.2020, Petitioner was arrested in FIR No.198/2020 under Section of the 14 Foreigners Act, P.S. Maidan Garhi, on 10.07.2020 on the allegations that the Petitioner with *co-accused Kanu Obina*, was residing in India *without valid passport and visa*.



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3. Thereafter, on 11.07.2020, the Petitioner was produced before the Ld. Magistrate and was remanded to Judicial Custody. Subsequently, the Petitioner was granted Bail by Ld. ASJ, South District, Saket Courts, New Delhi, *vide* Order dated 11.09.2020 and was released upon furnishing a surety.
4. Thereafter, the Petitioner was again arrested by the Haryana Police on the basis of the ***disclosure statement of co-accused Ajay***, who was arrested on 26.02.2021 with alleged recovery of 10.25 grams of heroin, in *FIR No. 141 dated 26.02.2021, registered under Sections 21B, 27A, 61 & 85 of the NDPS Act read with Sections 14/31 of the Foreigners Act, at Police Station Sadar, Hisar.*
5. Meanwhile, the Petitioner continued to appear regularly before the Ld. Trial Court at Saket Courts and, after framing of charges, recording of prosecution evidence, recording of Statement under Section 313 Cr.P.C. and conclusion of trial, ***the Petitioner was convicted under Section 14 of the Foreigners Act by the Ld. Trial Court, Saket, vide Judgment dated 28.09.2021.***
6. The Court of Ld. MM sentenced the Petitioner to imprisonment already undergone along with a fine of Rs. 500/-, for the offence under Section 14 of the Foreigners Act, and directed that the petitioner be sent back to Hisar Jail with further directions to the Jail Superintendent, Hisar, ***to transfer him to the Deportation Centre, Delhi, upon his release from custody in the Hissar case.*** It was further directed that the DCP, FRRO, make appropriate arrangements for deportation of the petitioner to his parent country, after transfer to the Deportation Centre. It was also clarified that the Petitioner shall remain in detention/deportation Centre till completion of



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trial pending at Hisar and shall be produced before the concerned court from the Deportation Centre itself.

7. In the meantime, *the Petitioner moved an Application dated 24.09.2021 seeking Bail under Section 439 Cr.P.C. in FIR No. 141/2021, which was allowed on 30.09.2021* by Ld. ASJ, Hisar, Haryana, after furnishing the required personal bond and sureties, and has not violated any of the Bail conditions in FIR No. 141/2021 under Sections 21B/27A NDPS Act read with Section 14 of the Foreigners Act.

8. Despite grant of Bail, the Petitioner was detained by the Respondents and shifted to the Deportation Camp, Sewa Sadan, Lampur Border, Narela, Delhi, by officials of FRRO, New Delhi, for the purpose of deportation.

9. Since then, the Petitioner has been in illegal detention at the said Deportation Camp.

10. It is submitted that under *Section 3 of the Foreigners Act*, the Central Government enacted the Foreigners Order, 1948, and as per Section 5(2)(b) thereof, a foreigner cannot be deported, if his presence is required in India to answer a criminal charge.

11. In the present case, FIR No. 141/2021 is still pending before the Ld. Special Judge, NDPS, Hisar, and the Petitioner is bound by Court Orders to remain present to face trial. The Petitioner has also been granted Bail with a specific condition to appear as and when required.

12. *The continued detention of the Petitioner at the Deportation Camp, Sewa Sadan, Lampur Border, Narela, Delhi, is illegal, arbitrary, and contrary to the Orders passed by the Ld. Court at Hisar, Haryana, and is therefore, liable to be set aside.*



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13. The **grounds taken by the Petitioner** are that the Petitioner was illegally detained by the Respondents and shifted to the Deportation Camp, Sewa Sadan, Lampur Border, Narela, Delhi, with the intent to deport him to his native country. The Respondents failed to appreciate that the Petitioner was enlarged on Bail by the competent Court, upon executing a personal bond and two surety bonds in the sum of Rs. 50,000/- and that he has not violated any condition of Bail. The Petitioner has undertaken to face trial in FIR No. 141/2021, P.S. Hisar, Haryana, pending before the Ld. Special Judge, NDPS, Hisar.

14. In the exercise of powers under Section 3 of the Foreigners Act, 1946, the Central Government enacted the Foreigners Order, 1948, superseding the Foreigners Order, 1939 and its amendments. Section 5 of the Foreigners Order, 1948 governs deportation, and as per Section 5(2)(b), a foreigner cannot be deported if his presence is required in India to answer a criminal charge.

15. FIR No. 141 dated 26.02.2021 under Sections 21B, 27A, 61 & 85 of the NDPS Act read with Sections 14/31 of the Foreigners Act, is still pending against the Petitioner before the Ld. Special Judge, NDPS, Hisar, Haryana, and the Petitioner is bound to appear before the said court to face trial.

16. It is submitted that the continued captivity and detention of the Petitioner at the Detention Home is a gross violation of the fundamental rights available to a foreign national under the Constitution of India.

17. It is submitted that the Petitioner faced trial in FIR No. 198/2020 under Section 14 Foreigners Act at Saket Courts, where the Ld. MM directed his transfer to the Detention Centre, Narela, Delhi, pursuant to



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which the FRRO passed an Order of detention at Sewa Sadan Deportation Camp, Lampur Border, Narela, Delhi. The Petitioner remains in the custody of the Respondents solely due to the illegal and negligent acts of the investigating officer, in the aforesaid case.

18. Reliance has been placed on *Efrance Namatende vs. State*, Bail Application No. 2214/2022, decided on 09.01.2023, wherein it was held that for violation of Section 14 of the Foreigners Act, there is no requirement to confine the Applicant to an observation home.

19. Reliance has also been placed on *Frank Boadu vs. State (NCT of Delhi)*, Bail Application No. 1897/2022, decided on 03.03.2023; *Bathlomew Ikechukwu @ Charles vs. Union of India & Ors.*, W.P.(CRL) 2146/2019; *Chika Benneth Ifenatuora vs. State (NCT of Delhi)*, CRL.M.C. No. 2607/2023, decided on 31.07.2023; *Bailly Gui Landry vs. State of Telangana*, Criminal Petition Nos. 4396 & 4400 of 2021, decided on 22.06.2021.

20. It is submitted that the Co-ordinate Bench of this Court in *Emechere Maduabuchukwu vs. State (NCT of Delhi) & Anr.*, W.P. (CRL) 550/2022, decided on 26.05.2023, held that once a foreign national is released on Bail, he cannot be kept in a Detention Centre, and observed *inter alia* that Detention Centres are not meant for judicial custody and that detention can only be by Executive Order under the Foreigners Act, subject to due process of law.

21. A ***Status Report has been filed on behalf of the Foreigners Regional Registration Office (FRRO), Delhi***, which is a civil authority for the NCT of Delhi functioning under the Bureau of Immigration, Intelligence Bureau. In exercise of the aforesaid delegated powers, FRRO Delhi undertakes



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deportation proceedings under Section 3(2)(c) of the Foreigners Act, 1946 read with Section 11(2) of the Foreigners Order, 1948.

22. It is stated that on 16.01.2023, a Nigerian national, Samuel, was restricted at *Sewa Sadan, Lampur, Delhi* upon intimation from Superintendent, Hisar Jail, where he was in Judicial Custody in FIR No. 141/2021 under the NDPS Act and the Foreigners Act. Though Bail was granted by the Ld. Judicial Magistrate, Hisar, it was informed that he had already been convicted on 28.09.2021 under Section 14 Foreigners Act by the Ld. MM, Saket Courts, Delhi, who had directed that he be transferred to the Deportation Centre, upon release.

23. The Petitioner has failed to produce any valid passport, travel document or Indian visa. No record of visa extension exists with this office. In the absence of such documents, his lawful entry into India cannot be established, and it appears that he may have entered India using different particulars. He has also failed to provide arrival details, despite opportunity. Thus, the Petitioner is an “*illegal migrant*” within the meaning of Section 2(1)(b) of the Citizenship Act, 1955. Illegal migrants are lawfully kept in restriction Centres under orders of the Central Government, to restrict their movement till completion of deportation proceedings.

24. The issues relating to entry, stay and exit of foreign nationals are governed by the Passport (Entry into India) Act, 1920; the Foreigners Act, 1946; the Registration of Foreigners Act, 1939; and the Citizenship Act, 1955. Entry into India is permitted only on valid travel documents and visa issued by Indian Missions.

25. It is further stated that *Section 9 of the Foreigners Act, 1946* places the burden of proof upon the foreigner, to establish that he is not an illegal



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migrant. The Central Government has sovereign powers under *Section 3* to regulate or restrict the presence and movement of foreigners in India, including directing their detention and deportation.

26. As per MHA Office Memorandum dated 24.04.2014, deportation powers vest in the Central Government under *Sections 3(2)(c) and 3(2)(e) of the Foreigners Act, 1946*, which stand delegated to State Governments/UT Administrations and immigration authorities. Where a foreigner lacks travel documents, the process for issuance of travel documents through the concerned Embassy, is required to be initiated prior to completion of sentence.

27. Reliance is placed on *Bablu Khan vs. State of Karnataka*, CRL (P). No. 6578/2019 decided on 19.05.2020 by the Kerala High Court, wherein it was held that grant of bail does not legalize illegal stay, and foreign nationals without valid passport/visa, can be detained in Detention Centres even after grant of bail or upon acquittal/conviction, pending deportation.

28. Reliance is also placed on the order of the Delhi High Court in *Pascal vs. Union of India*, WP (Crl.) No. 2276/2021, wherein it was observed that *the learned ASJ failed to notice that the petitioner does not have a valid visa to stay in this country and as long as there is no valid visa, he is required to be deported for which purpose his movement are required to be restricted by keeping him in the detention centre.*

29. The Supreme Court in *Louis De Raedt vs. Union of India* and *Hans Muller vs. Superintendent, Presidency Jail* has upheld that while Article 21 applies to foreigners, the right to reside in India is not available to them, and the power to expel a foreigner is absolute and sovereign.



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30. It is stated that in a similar issue, co-ordinate bench of this Court in Emechere Maduabuchkwu, (supra) dated 26.05.2023, had directed release of under trial foreign national from the restriction Centre without having a valid visa. In this regard, an *SLP (Crl.) No. 7285-7286/2024* has already been filed before the Apex Court, which is pending.

31. The Petitioner's continued illegal stay poses a security concern. Release from the Restriction Centre without valid documents, would be in violation of the Foreigners Act and may enable him to abscond or indulge in unlawful activities.

32. *Thus, the present Petition is devoid of merit and is liable to be dismissed.*

Submissions heard and record perused.

33. The Petitioner, a Nigerian national, was arrested on 10.07.2020 in *FIR No. 198/2020 under Section 14 of the Foreigners Act* and was granted Bail during trial. Upon conclusion thereof, *he was convicted on 28.09.2021 and sentenced to imprisonment already undergone with a direction that he be transferred to a Deportation Centre after release and produced before the competent court from the Detention Centre in any pending proceedings.*

34. Meanwhile, while the Petitioner was facing the trial in *FIR No. 198/2020*, he was also arrested in **FIR No. 141/2021 dated 26.02.2021 under the NDPS Act read with the Foreigners Act at P.S. Sadar, Hisar**, and was subsequently granted Bail on 30.09.2021 by the Ld. ASJ.

35. Notwithstanding the grant of Bail and the pendency of the NDPS trial requiring his presence in India, the Petitioner was shifted to and continues to remain confined at the Deportation/Restriction Centre, Sewa Sadan, Lampur



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Border, Narela, Delhi, by the FRRO on the ground that he lacks valid travel documents and is an illegal migrant.

36. The core question for consideration now is *whether the continued detention of a foreign national in a detention/deportation centre, despite grant of Bail by a competent court and pendency of a criminal trial requiring his presence in India, is lawful under the Foreigners Act, 1946 and the Foreigners Order, 1948?*

37. To put the controversy in the right perspective, it may be noted that a person who commits an offence in India, is liable for prosecution according to the Indian Laws and is subject to the Orders of learned Trial Court in regard to arrest and release on Bail, till conclusion of the trial, which may end in conviction or acquittal. However, regulation of the foreigners entering into India with or without requisite documents, falls within the exclusive domain to the *Foreigners Act, 1946*.

38. *Section 3 of the Foreigners Act* empowers the Central Government to make any provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

39. Therefore, it is evident that a person, who is facing trial in criminal case, may be directed to be detained or released on Bail by the Court of competent jurisdiction. However, it is not within the domain of the Court to direct detention or release from the detention centers. In terms of Section 3 of the Foreigners Act, 1946, it is an executive function, which vests exclusively with the Central Government.



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40. Section 3(2) of the Foreigners Act, 1946 reads as under:

(1).....

(2) *In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner-*

(a) shall not enter India, or shall enter India only at such times and by such route and at such port or place and subject to the observation of such conditions on arrival as may be prescribed;

(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India or in any prescribed area therein;

(cc) shall, if he has been required by order under this action not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified-

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;



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(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

[* * *] and make provision for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(g) shall be arrested and detained or confined.”

41. Section 3 Foreigners Act therefore, provides that where continued presence of a Foreigner is necessary for completion of trial, the Competent Authority may exercise any of the options provided under Section 3(2) of the Foreigners Act, *inter alia*, (i) to remain in such place, as may be prescribed; (ii) to reside in a particular place; (iii) impose restrictions on the movement; and (iv) or entering into a bond with or without sureties for the observance of such prescribed conditions as in Section 3(2)(f). *These options are aside from the simplicitor option of detention of a person in the Detention Centers, in terms of Section 3(2)(g).*

42. It is also evident from perusal of Section 3 of the Foreigners Act, that the Central Government is authorized to deal with specific cases of an individual or a category of persons and need not make General Rules in respect of all the foreigners. *Therefore, when confronted with a situation as*



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in present case, the Central Government can pass appropriate Orders by exercising any of the option detailed, herein above.

43. In this context, it is also pertinent to observe that such Orders, even though Executive, need to comply with the *fundamental Principles of Natural Justice*, meaning thereby that they not only have to be reasoned, but an opportunity of hearing must be given to the person detained, to explain his circumstances and his credibility to be able stay in India. Mere assertion that being a foreigner without requisite documents, is a security concern, would not be in consonance with the provisions of the Foreigners Act, 1946, which envisages release of the foreigner in the given circumstances, on such terms, as detailed above.

44. It cannot be overlooked that merely because a special Permit or stay document is issued in favour of such foreign national, would not legitimize his earlier offence or his over stay in India, in violation of the Foreigners Act, 1946, but would only ensure that they are not unnecessarily detained in the Detestation Centers at the State expense; they are permitted to be in the situation where they can meet the requirement of facing the trial, subject to furnishing of the bonds / sureties and to ensure the compliance of the conditions imposed therein. This would ensure judicious balance between the liberty of human right of a foreigner with the interest of the State to ensure the presence of the foreign national for the purpose of facing trial.

45. The recognition of the power to regulate the stay / entry of foreigners in India, with or without requisite travel papers, was recognized in the case of Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India, (1994) 6 SCC 731 where it was directed, in respect of foreigner undertrialers, that “*the Special Judge shall, besides impounding*



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their passports, insist on a certificate of assurance from the Embassy / High Commission of the country to which the foreigner / accused belongs, that he shall not leave the country and shall appear before the Special Court, as and when required.” Such conditions can be imposed to ensure that foreigner may be released on Bail, subject to the condition of impounding of his Passport and the Certificate of Assurance.

46. *In Christian Chidieere Chukwu vs. The State of Karnataka by K.R. Puram Police Station, Bangalore*, 2016 SCC OnLine Kar 439, vide Judgment dated 18.02.2016, while considering Petition for Bail of a foreign national, who had overstayed and had been accused of a crime under Sections 376/506 IPC, noted that a person, who has violated the Provisions of the Foreigners Act, cannot stay in India even for a day without valid passport and visa, therefore, and an undertrial has to await the result of the trial, in respect of the criminal case registered against him and after the conclusion of the criminal case, steps have to be taken to deport such foreign national for staying beyond the expiry of the visa or else, it would be as good as allowing such foreign national to be in India even after the expiry of the visa period.

47. Likewise, in *Rajesh Datta @ Raj vs. The State*, W.P.(C)1565/2023 Order dated 07.02.2023 wherein while granting Bail to the Applicant during trial, directions were issued to the Applicant to apply for requisite permission / Visa to be considered by FRRO, in accordance with law.

48. In all these cases, the Court, while granting Bail, did not assume upon itself, the executive jurisdiction of regulating the stay of foreigners in India without documents.



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49. Similarly, in the case of Izuchukwu Joseph vs. Foreigners Regional Registration Officer, Delhi, W.P.(C) 2106/2023, vide Order dated 15.03.2023, the Court observed that **there was concept of entry visa (X-Misc. category)**, wherein in order to facilitate the accused foreign national to face criminal charge/trial proceedings before the learned Trial Court or appear before the Investigating Agency pending investigation. Such a visa is usually co-terminus with the date of hearing in the case or as per directions, which may be issued by the Courts.

50. In Bailly Gui Landry vs. State of Telangana, CRL. P. Nos.4396 & 4400/2021, the High Court of the State of Telangana at Hyderabad, observed that Magistrate after conducting a full-fledged trial, acquitting the petitioner, **does not have the power to order deportation of any foreign citizen even in case of violation of the provisions of the Act.**

51. Similarly, in James Pascal vs. Narcotic Control Bureau, CRL.A. 548/2020, vide Order dated 21.09.2022, Co-ordinate Bench of this Court, while suspending the sentence of a foreign national in an NDPS case, had directed as part of the condition that the Petitioner could apply for visa within a week from the date of his release and his Application would be considered, in accordance with law.

52. Similarly, in Ana Parveen vs. Union of India, W.P.(CRL) No.43/2022, where a Pakistani national who came to India, married an Indian citizen in 1989 and had five children from their marriage, Hon'ble Supreme Court directed that a representation for grant of long-term Visa may be made by the Petitioner and the Foreigner's Division of the Union Ministry of Home Affairs shall take a decision having regard to all facts and circumstances of the case. It was further directed that since there was no



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security threat or adverse impact on national security, he be released on furnishing a personal bond of Rs.5,000/- with two sureties of Indian citizens in the like amount. He would also furnish the place address of permanent residence, where he proposed to reside and would report to the local Police Station on the seventh day of each month.

53. In Efrance Namatende, (supra), this Court held *there is no statutory requirement that the accused must be confined to an observation home or Detention Centre, once bail has been granted*. Similarly, in Frank Boadu, (supra), this Court reiterated that *there is no requirement under Section 14 of the Foreigners Act for keeping the offender in observation home, in case he is staying in India beyond the visa period*.

54. In the light of aforesaid Judgment, Co-ordinate Bench of this Court in Emechere Maduabuchkwu vs. State NCT of Delhi and Another; and Emechere Maduabuchkwu vs. FRRO Delhi, 2023 SCC OnLine Del 3323, while referring to aforesaid Judgments, directed that Petitioner may be released on furnishing personal and surety bond to the learned Duty MM and that Petitioner shall furnish a permanent residence address that he proposes to reside at and would report to the local police station every Saturday at 04:00 PM. He would surrender his passport with the learned Trial Court and would not leave the NCT of Delhi during the said period.

55. An SLP was filed against said Judgment. The Apex Court in FRRO vs. Emechere Maduabuchkwu, SLP (Crl.) No.7285-7286/2024, vide Order dated 08.10.2025, upheld the Order considering it was passed in 2023 and the Respondent had been complying with all the conditions so far, and it was believed that it would be too much to permit the Petitioner/FRRO to take him back and keep in the Detention Centre. Furthermore, the



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Prosecutions may take long. *However, in the end it was noted that the order shall not be treated as a precedent.*

56. Co-ordinate Bench of this Court in the case of *Bathlomew Lkechukwu @ Charles vs. Union of India*, W.P. (CRL) 2146/2019, vide Judgment dated 30.01.2021, in dealing with a foreign national, who was facing an Appeal, after being acquitted of offence under NDPS Act, by the learned Trial Court, noted that if the person's presence is required in India on account of Appeal filed by NCB, an appropriate Visa was required to be issued to him. Directions were, therefore, issued to either deport the Petitioner or release him after providing proper Visa within a period of three months.

57. This issue has also been well-settled in the case of *Ubabueze Chijioke Emmaunle vs. State (NCT of Delhi)*, 2024 SCC OnLine Del 9665 (decided on 26.11.2024), wherein it was held as under:

“28. This Court is not going into the issue as to whether the Appellant must be kept in detention centre or not and it is for the FRRO to take a decision in this regard in accordance with law. It is always open for the Appellant to challenge any decision taken by the FRRO by relying on the Judgment passed by the co-ordinate Bench of this Court in Prince Ben Nnaka v. State (NCT of Delhi), 2024 SCC OnLine Del 534, wherein this Court has observed as under:

“15. Following the aforementioned judgments as well as another judgment of this Court in Bathlomew Lkechukwu @ Charles v. Union of India, W.P. (Crl.) 2146/2019, decided on 30.01.2020, another Coordinate Bench of this Court in Charles Kingsley Okakso (supra), held that once the Applicant was released from prison after having undergone his sentence, he could not be kept in a detention centre indefinitely. ...”



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58. Likewise, Co-ordinate Bench of this Court in the case of Efrance Namatende vs. State, BAIL APPLN. 2214/2022, vide Judgment dated 09.01.2023, noted that for violation of Section 14 of the Foreigners Act, there was no requirement that the person is to be confined in an observation home. The Bail condition that he would remain in an observation home till he is granted a Visa was deleted. Similar directions were given in Frank Boadu vs. State of Govt. of NCT of Delhi, BAIL APPLN. 1897/2022 Order dated 03.03.2023”

59. *It may thus, be concluded that Detention Centre is not a place for judicial custody, but a place where foreign national is detained pursuant to an Executive order and this is the prerogative of the Competent Authority under the Foreigners Act.* Once the Petitioner was enlarged on bail, he cannot be detained without cause and due process of law. Pendency of trial in case FIR No. 481/2016 cannot be a reason enough to detain the Petitioner, as he is yet to be proved guilty post-trial.

60. Therefore, Ld. counsel for the Petitioner is right in contending that the detention of the Petitioner in the Deportation Centre, not only contravenes Section 5(2)(b) of the Foreigners Order, 1948, wherein it is stated that *leave shall be refused if the civil authority is satisfied that the foreigner's presence is required in India to answer a criminal charge.*

61. *In view of the aforementioned facts and the judgments,* it is directed that the Petitioner shall be released forthwith from the Deportation/Restriction Centre, subject to the Petitioner furnishing his permanent address and mobile number(s) to FRRO. The Petitioner shall also



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move the appropriate Application for permission to stay in India till the conclusion of the trial. The mobile phone shall be kept operational and active at all times. Petitioner will continue to report to the local Police Station every Saturday at 10:00 AM.

62. It is clarified that this order shall not preclude the Respondents from taking appropriate steps under the Foreigners Act and allied statutes for deportation of the Petitioner upon conclusion of the pending criminal proceedings, in accordance with law.

63. The Petition is accordingly, **allowed** in the aforesaid terms. The pending Application(s), if any, are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

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