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via Video-conferencing

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

+ W.P.(CRL.) 926/2020 & CRL. M.A. No. 7745/2020 (for interim relief)

FAHRUL NAIM BIN MOHD NOORPetitioner

Through : Mr. S. Hari Haran, Advocate.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through : Mr. Rahul Mehra, SSC (Criminal) for GNCTD/R1 & 2 along with Mr. Chaitanya Gosain, Advocate along with IO/Inspector Satish Kumar, PS : Crime Branch.

Mr. Chetan Sharma, ASG with Mr. Amit Mahajan, CGSC and Mr. Dhruv Pande, Advocate for R4 to 6.

Ms. Kamna Vohra, ASC for State along with Mr.Karan Jeet Rai Sharma, Advocate.

+ W.P.(CRL.) 940/2020

AL HARBI SAAD NASAR M & ORS.Petitioners

Through : Mr. Ajay Garg, Advocate.

versus

STATE OF NCT OF DELHI Respondent

Through : Mr. Rahul Mehra, SSC (Criminal) for GNCTD/R1 & 2 along with Mr. Chaitanya Gosain, Advocate along with IO/Inspector Satish Kumar, PS : Crime Branch.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **01.07.2020**

Mr. Chetan Sharma, learned Additional Solicitor General (ASG) alongwith Mr. Amit Mahajan, learned Central Government Standing Counsel (CGSC) have entered appearance on behalf of Ministry of Home Affairs, Ministry of External Affairs as also for Foreigner Regional Registration Office (FRRO).

2. At the outset, Mr. Sharma very fairly states that if and once the criminal proceedings initiated against the petitioners are concluded before the competent court in accordance with law, the Union of India would have no objection to the petitioners exiting the country; and for that purpose the Union of India would issue requisite travel documents, as per applicable rules and regulations.

3. While W.P. (Crl.) No. 926/2020 relates to a batch of 121 Malaysian nationals; another writ petition bearing W.P.(C) No. 940/2020, which pertains to 11 Saudi Arabian nationals seeking substantially the same relief as in the other writ petition, has also been received by transfer from a Co-ordinate Bench of this court and is accordingly being taken-up together with W.P.(Crl.) No. 926/2020.

4. Inspector Satish Kumar, the Investigating Officer has informed the court that there are a total of 956 foreign nationals from 36 countries; in respect of whom 48 charge-sheets and 11 supplementary charge-sheets have been filed.

5. In the writ petitions, the following position emerges :
- a. that both petitions arise from the same FIR No. 63/2020 dated 31.03.2020 registered under sections 3 of the Epidemic Disease Act 1897 read with sections 51/58 of the Disaster Management Act 2005 and sections 188/259/270/120-B/271 IPC registered at PS : Crime Branch, Delhi ;
 - b. that arising from the same FIR, multiple chargesheets have been filed in the matter as recorded above. Charge-sheets and supplementary chargesheets bearing Challan Nos. 34, 35 and 36 have been filed in the cases pertaining to Malaysian nationals ; and Challan No. 11 has been filed in relation to Saudi Arabian nationals;
 - c. that while in the FIR, the only sections mentioned are those under the Epidemic Diseases Act, the Disaster Management Act and the IPC as referred to above, however it is stated, that during investigation, the police had also examined possible offences under section 14(b) of the Foreigners Act and sections 366/304/308 IPC, but these sections have not been included in the chargesheets/ supplementary chargesheets filed. Yet, by way of clarification, the Chief Metropolitan Magistrate (CMM) has sought confirmation from the Investigating Officer if any of those offences are also made-out against any of the accused persons ;

- d. In this backdrop, the CMM is stated to have posted the matter next for consideration on 06.07.2020, for obtaining such clarification.
6. Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) appearing for the State, upon instructions from Mr. Joy Tirkey, DCP (Crime), states that since in all there are 956 foreign nationals who are accused in the matter ; and multiple charge sheets have been filed, the future course of the criminal trial would depend upon various factors including whether the accused persons or some of them, plead guilty or enter plea-bargains or claim trial ; and that accordingly, the competent court seized of the matter would take a view in the matter.
7. As of date, Mr. Mehra states that the court of the CMM, South-East, Saket Courts, New Delhi is the court dealing with all the cases; and the Delhi Police is willing, if the need so arises, to request the District & Sessions Judge (South), Saket Courts, New Delhi to mark the matters in batches to different Metropolitan Magistrates (MMs) for expeditious disposal of the same, at the appropriate stage.
8. Mr. Mehra further clarifies that whether all cases remain before the CMM or are marked in batches to different MMs will also depend on whether the accused or some of them, claim trial or otherwise.
9. As things stand at present, it appears the CMM has posted all the matters before her on 06.07.2020, for considering the clarifications sought; whereafter the CMM will deal with the various charge-sheets filed in the matter in accordance with law.

10. The essential prayer in both writ petitions is for earmarking a designated court to try and adjudicate the cases arising from FIR No. 63/2020; and for directing expeditious disposal of the same considering the peculiar nature of the matter, the involvement of hundreds of foreign nationals, and also considering the extra-ordinary times of the prevalent pandemic.

11. It has been stressed before this court that while many of the accused persons would be willing to plead guilty or enter a plea-bargain in order to seek early closure of the cases, so that they may return to their respective countries, if left unguided, the process may take a very long time. Counsel also state that at this time, the petitioners are being housed in hotels, schools and other institutions, which was initially at the expense of the State; and subsequently, on request made by the petitioners, the expense is now being borne by the respective Embassy/High Commission.

12. Based on the submissions made at the bar by the learned ASG and CGSC for the Union of India, the Senior Standing Counsel (Criminal) for the Delhi Police, as also by learned counsel appearing for the petitioners, at this stage, this court deems it appropriate only to make the following suggestions :

- a. Considering the peculiarities of the case, *viz.* the large number of chargesheets/supplementary chargesheets involved, the large number of accused who are all foreign nationals; also considering that the accused are in India perhaps *only* to face proceedings in these cases; and that, as stated at the bar, many accused would be willing to plead guilty or enter plea-bargains,

it is suggested that the CMM may *firstly*, post all 48 charge-sheets and 11 supplementary chargesheets, stated to have been filed, on the same date, for a case management hearing. At this hearing, the CMM may divide the cases into batches and sub-batches according to the nationality of the accused persons and/or offences alleged or on some other rational and useful basis ;

- b. *Secondly*, after cognizance is taken, at the appropriate stage, the CMM may segregate matters after eliciting responses from the accused persons as to whether they propose (i) to plead guilty; (ii) to enter plea-bargain ; or (iii) to claim trial;
- c. *Thirdly*, cases where accused are pleading guilt or entering plea-bargains, may be disposed of first;
- d. *Fourthly*, for each of these stages, the CMM may designate a specific date and time when exclusively these matters would be taken-up, which could even be a non-working day, so that adequate time and resources could be devoted to facilitate expeditious disposal ;
- e. *Lastly*, the Embassy/High Commission concerned may be requested to arrange for the appearance of the accused persons *via* video-conferencing and also for identifying the accused persons as per official records/documents.

13. It is made clear that the foregoing are only suggestions to plan-out the logistics for further proceedings, to better manage the cases; and the CMM shall be free to devise her own methods to deal with the cases efficiently and expeditiously, without detracting from

procedural necessities of the law.

14. Counsel appearing for the State of Delhi and the Delhi Police as well as counsel appearing for the petitioners assure that they shall render all assistance and cooperation to the CMM for the above purpose.

15. The present petitions are kept pending in case any further directions or guidance is required to bring these matters to a conclusion at the earliest possible.

16. List on 22.07.2020.

ANUP JAIRAM BHAMBHANI, J.

JULY 01, 2020/j