THE HIGH COURT OF ORISSA : CUTTACK

No.XI-03/2025/..3037(30)../ Dated..05-02-2025.....

From

Asanta Kumar Das,
Registrar General

To

The District & Sessions Judge,..... (All)

Sub:- Order dated 6th January, 2025 passed in Criminal Appeal No.2814-2815/2024 (Frank Vitus Vrs Narcotics Control Bureau & Ors.) by the Hon'ble Supreme Court of India.

Sir,

With reference to the subject cited above, I am directed to forward herewith a copy of the order dated 6th January, 2025 passed in Criminal Appeal No.2814-2815/2024 (Frank Vitus Vrs Narcotics Control Bureau & Ors.) for your information and to request you to circulate the same amongst all the Judicial Officers working in your judgeship for their information and guidance.

Yours faithfully,

05.02.2025

REGISTRAR GENERAL

Encl:- As above.

2025 INSC 30

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2814-2815 OF 2024

FRANK VITUS ...APPELLANT

Versus

NARCOTICS CONTROL BUREAU
AND ORS. ...RESPONDENTS

ORDER

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. By judgment and order dated 08th July, 2024, two main issues concerning bail conditions were decided. Now, the issue that remains to be answered is whether it is necessary to implead a Foreign Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 (for short 'the Rules') in the bail application filed by a foreigner within the meaning of the Foreigners Act, 1946 (for short 'the Act'). Under Section 2(a) of the Act, a foreigner means a person who is not a citizen of India.

Signature Not Verified
Digitally signed by ASHISH KOHLE
Date: 2025.01.06 16:43:27 IST
Reason:

2. Under Section 3 of the Act, there is a power vested in the Central Government to issue an order making provisions either generally or concerning any particular foreigner or class of foreigners of prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence. Under clause (g) of Section 3(2), a power has been conferred on the Central Government to issue an order directing that a foreigner shall be arrested or detained or confined.

3. In the exercise of the power conferred under Section 3 of the Act, the Foreigners Order, 1948 (for short, 'the Order') has been issued. Clause 2(2) of the Order provides for appointing a Civil Authority by the Central Government. Clause 5 of the Order deals with the power to grant permission to depart from India. Clause 5 of the Order reads thus:

> "**5. Power to grant permission to depart from India**.
>
> (1) No foreigner shall leave India:-
>
> (a) otherwise than at such port or other recognised place of departure on the borders of India as a Registration Officer having jurisdiction at that port or place may appoint in this behalf, either for foreigners generally or for any specified class or description of foreigners; or
>
> **(b) without the leave of the civil authority having jurisdiction at such port or place.**
>
> **(2) Leave shall be refused if the civil authority is satisfied that**

(a) the foreigner has failed to comply with the formalities of departure prescribed under the Registration of Foreigners Rules, 1939;

(b) the foreigners presence is required in India to answer a criminal charge;

(c) the foreigners departure will prejudice the relations of the Central Government with a foreign power;

(d) the departure of the foreigner has been prohibited under an order issued by a competent authority.

(3) (a) Notwithstanding anything contained in the above sub-paragraphs, a civil authority may prohibit the departure of a foreigner where it is satisfied that such departure would not be conducive to the public interest.

(b) Whenever a civil authority issues an order under clause (a), it shall report the matter forthwith to the Central Government which may cancel or modify the order in such manner as it thinks fit."

(emphasis added)

Under sub-clause (2) of clause 5, leave must be refused by the Civil Authority if it is satisfied that the foreigner's presence is required in India to answer a criminal charge.

4. Shri Vinay Navare, learned senior counsel appointed as Amicus Curiae, has suggested that considering the powers vested in Civil Authorities under the Order, it will be appropriate to direct that while considering the prayer for granting bail in case of a foreign national who is accused of serious offences, a notice should be issued to the Civil

Authority so that the said authority can be heard on the prayer for grant of bail and on bail conditions, in the event the court is inclined to grant bail. Shri. Vikramjeet Banerjee, learned Additional Solicitor General of India has also submitted that it is always advisable to give notice of the bail application to the authorities under the Act and the Rules.

5. Under clause (b) of Section 3(2) of the Act, there is a power vested in the Central Government to issue an order generally or with respect to any particular foreigner or class of foreigners that they shall not depart from India or shall depart subject to observance of such conditions on departure as may be prescribed. The Rules do not impose any such restriction on departure from India. However, as noted earlier, according to clause 5(1)(b) of the Order, no foreigner shall leave India without the leave of the Civil Authority having jurisdiction. When a foreigner's presence is required in India to answer a criminal charge, permission to leave India must be refused. Under the Order, the Civil Authority can impose restrictions on the movements of a foreigner. Therefore, once a foreigner is released on bail, he cannot leave India without the permission of the Civil Authority, as provided in clause 5 of the Order. Under clause 11 and other clauses of the Order, various restrictions can be imposed on a foreigner while he is in India. The said power is wholly independent of the power to grant bail. As of today, there is no order passed by the Central Government for giving effect to clause (g) of Section 3(2) of the Act. In any event, even if such an order is issued, the power to arrest or detain a foreigner under the Act is independent of the power of the criminal court to grant bail. Notwithstanding the bail granted by a criminal court, the power to arrest and detain

a foreigner can be exercised, provided the Central Government makes an order in terms of clause (g) of Section 3(2) of the Act.

6. Therefore, we do not see any propriety in issuing a direction that either the Civil Authority or the Registration Officer should be made a party to a bail application filed by a foreigner or a notice of the bail application be issued to the said authorities. The reason is that the authorities under the Act and the Order have no locus to oppose bail application filed by a foreigner unless bail is sought where the allegation is of the offence punishable under Section 14 of the Act. The impleadment of the Civil Authority or Registration Officer in all bail applications filed by foreigners may result in unnecessary delay in deciding the bail applications.

7. All that can be done is that while releasing a foreigner on bail, the Court should direct the investigating agency or the State, as the case may be, to immediately inform the concerned Registration Officer appointed under Rule 3 of the Rules about the grant of bail so that the Registration Officer can bring the fact of the grant of bail to the notice of concerned Civil Authority.

8. In addition to what we held by judgment and order dated 08th July, 2024, we issue the following directions:

(i) While granting bail to a foreigner within the meaning of the Act, the concerned court shall issue direction to the State or prosecuting agency, as the case may be, to immediately communicate the order granting bail to the concerned Registration Officer appointed under Rule 3 of the Rules who, in turn, shall communicate the order to all concerned authorities including the Civil Authorities. If such information is furnished, it

will enable the authorities under the Act, the Rules and the Order to take appropriate steps in accordance with the law; and

(ii) A copy of this order shall be forwarded to Registrar Generals of all the High Courts, who in turn will forward the copies of the order to all the criminal courts in the respective States.

9. The Criminal Appeals shall be treated as disposed of in terms of the judgment and order dated 08th July, 2024 and this order.

10. We appreciate the valuable assistance rendered by Shri Vinay Navare, learned senior counsel appointed as Amicus Curiae and Shri Vikramjeet Banerjee, learned Additional Solicitor General of India.

.....J
[ABHAY S. OKA]

.....J
[UJJAL BHUYAN]

NEW DELHI,
JANUARY 06, 2025