1
26.09.2025
Ct. No. 11
KCP

WPA (H) 50 of 2025
with
IA No. CAN 1 of 2025
(Bhodu Sekh Vs. Union of India & Ors.)

Mr. Raghunath Chakraborty
Mr. Supratick Syamal
Ms. Tanusree Das
Ms. Sabnam Sultana
..... For the petitioner

Mr. Ashok Kumar Chakraborty, Ld. ASG
Mr. Dhiraj Kumar Trivedi, Ld. DSGI
Mr. Kumar Jyoti Tiwari, Sr. Adv.
Mr. Shailendra Kr. Mishra
Ms. Anamika Pandey
Ms. Amrita Pandey
Mr. G. Pandey
..... For the Respondent Nos. 1 to 4

Mr. Dhiraj Kumar Trivedi, DSGI
Ms. Anamika Pandey
..... For the Respondent Nos. 5 & 6

Mr. Kishore Datta, Ld. AG
Mr. Amitabrata Roy, Ld. GP
Mr. Swapan Banerjee, Ld. AGP
Mr. Biswabrata Basu Mallick, Ld. AGP
Ms. Sumita Shaw
Mr. Soumen Chatterjee
..... For the State

Mr. Kalyan Kr. Bandopadhyay, Sr. Adv.
Mr. Arka Kr. Nag
Mr. Sandip Dasgupta
Mr. Saaqib Siddiqui
Mr. Rahul Kr. Singh
..... For the Police Authorities

1. The present writ petition has been preferred by one Bhodu Sekh (in short, Bhodu) primarily seeking a writ of *habeas corpus* to produce the petitioner's daughter, namely, Sunali Khatun (in short, Sunali), his son-in-law, namely, Danish Sekh (in short, Danish) and his grandson,

namely, Sabir Sekh (in short, Sabir), who have been illegally detained.

2. Mr. Chakraborty, learned ASG, assisted by Mr. Tiwari, learned senior advocate, appearing for the respondent nos. 1 to 4 contends that no part of the cause of action for invocation of the writ jurisdiction had arisen within the territorial limits of this Hon'ble Court. The orders of detention and deportation were passed in New Delhi, the situs of the authorities is also in New Delhi. The fact that a writ petition pertaining to the same subject had been preferred earlier before the Hon'ble High Court of Delhi was also suppressed in the present writ petition. It would also be explicit from the records that while withdrawing the writ petition filed before the Hon'ble High Court of Delhi, no leave was obtained to file any appropriate application afresh. The order of deportation dated 26.06.2025 had also not been challenged in the present writ petition. In the absence of such challenge, the present writ petition is not maintainable. By the time the present writ petition was preferred the order of deportation had already taken effect and that as such the *habeas corpus* petition has become infructuous.

3. He submits that it would be explicit from the prayer of the second writ petition filed before the Hon'ble High Court at Delhi that the order of deportation dated 26.06.2025 was under challenge. The said writ petition was

withdrawn without any leave to prefer any fresh writ petition on the self-same cause of action.

4. He further argues that there is no cause in preferring the writ petition since the order of deportation has already attained finality and the detainees had already been deported. The Foreigners Regional Registration Officer (hereinafter referred to as FRRO) was also not a party to the second writ petition before the Hon'ble Delhi High Court.

5. According to him, even in the event the Hon'ble High Court of Delhi at the time of withdrawal of the second writ petition had granted leave to file a fresh writ petition, such leave would have at best been prospective in nature but the order of deportation having taken effect in the midst thereof, the *habeas corpus* petition is not maintainable. In view of such suppression and conduct of the writ petitioner, Section 41 of the Specific Relief Act would operate as a bar. The petitioner had practiced fraud and had concealed material facts and in view thereof, the writ petition is liable to be dismissed at the threshold without considering the merits of this case. In support of the arguments advanced reliance has been placed upon the judgments delivered in the cases of *State of Goa –vs- Summit Online Trade Solutions Private Limited and Others,* reported in *(2023) 7 SCC 791, K.D. Sharma Vs. Steel Authority of India Limited and Ors.,* reported in *(2008) 12 SCC 481* and *Union of India and Ors. Vs. Ranbir Singh Rathaur and Ors.,* reported in *(2006) 11 SCC 696*.

6. Placing reliance upon the judgment delivered in the case of *Union of India & Ors. Vs. Ghaus Mohammad,* reported in *AIR 1961 SC 1526*, Mr. Chakraborty argues whether the detainees were foreigners or citizens of India is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence and that a proceeding under Article 226 of the Constitution would not be appropriate for a decision on the question. Any judgment delivered being oblivious of such proposition of law would be a nullity. In the said conspectus of facts, the only remedy of the writ petitioner would be to prefer a writ petition challenging the order of deportation which can be heard by a single Bench having determination. This Court, accordingly, cannot go into the legality of the said order of deportation.

7. Drawing our attention to the pleadings of the writ petition, Mr. Chakraborty submits that no case has been made out that any legal right of the petitioner had been infringed. On the basis of such pleadings this Court would not be in a position to decide the legality of the order deportation upon extension of the purview and scope of the said writ petition moreso when there is even no prayer in the writ petition for setting aside the order of deportation.

8. Mr. Chakraborty argues that as the writ petition itself is not maintainable question of considering the merits of the same would be an ideal formality. However, on merits of the matter he submits that the answers as sought for by

this Court in its order dated 11.07.2025 have been stated in details in paragraph 3 of the additional affidavit-in-opposition filed on behalf of the respondent nos.1 to 4. Sunali as well as Danish admitted before the S.I that they were residents of Bangladesh and they failed to produce their Aadhar Cards, Ration Cards, Voter Identity Cards or any other document to establish that they are citizens of India. In the interrogation report they also admitted that their date of entry in India from Bangladesh was in the year 1998 and they entered through an unauthorized route. They also failed to disclose the address of their family members. The Assistant Commissioner of Police certified that he was personally satisfied that they were residents of village Molargang Chepur Paar, Post-Depusapa, Bagerhat, Bangladesh and that they are currently residing at Juggi No.285, Sector 26 Rohini Delhi and are foreigners and illegal migrants from Bangladesh.

9. He further submits that under the provisions of the Foreigners Act, 1946 (hereinafter referred to as the 1946 Act) it is incumbent upon the person concerned to prove that he/she is not a foreigner. Such provision prevails notwithstanding anything in the Indian Evidence Act, 1872. Section 9 of the said Act clearly provides that onus is on the alleged foreigners to prove that he/they is/are not foreigners.

10. He submits that by the order dated 24.06.2025 the movements of Sunali, Danish and their child were

restricted at community centre at Vijay Vihar, Rohini under section 3 (2) (e) of the 1946 Act read with order 11(2) of the Foreigners Order 1948 and such act cannot be challenged as without jurisdiction. Furthermore, on 26.06.2025 they were escorted by the official of Delhi Police via special flight to facilitate their repatriation to Bangladesh through Guwahati.

11. He contends that in the writ petition there is no statement to the effect that any complaint was lodged by the petitioner before the local police station on 06.07.2025 though the writ petition was affirmed on 08.07.2025. Such facts have been sought to be brought on record by filing a reply to the opposition. According to him, FRRO, Delhi being the civil authority had every jurisdiction to take steps towards repatriation and the detainees thus admittedly being foreigners had been appropriately dealt with on the rudiments of the provisions of the 1946 Act.

12. Drawing our attention to the documents at pages 60 and 61 of the application being CAN 1 of 2025, Mr. Chakraborty argues that Karishma in the Voter Identity Card had stated to be daughter of 'Bholu Shekh' and the said name does not tally with the name of the petitioner. In the document at page 61, Sunali had stated her date of birth to be 01.01.2000 and in the address column she had stated c/o Danish Shekh. However, in her PAN Card being the annexure at page 97 of the additional affidavit-in-opposition she has described herself to be the daughter of

Danish. In view of such contradictory statements, the identity of Sunali is doubtful. The date of birth of the child of Danish and Sunali was stated be 14th March, 2017 in the Aadhar Card but they had failed to produce the birth certificate of their child. It is only the birth certificate on the basis of which a finding may be arrived at as regards citizenship.

13. Mr. Trivedi, DSGI appearing for the respondent nos.5 and 6 adopts the submissions of the learned ASG and submits that the present writ petition is not maintainable since at the time of withdrawal of the writ petition before the Hon'ble High Court of Delhi, no leave was obtained to prefer any fresh writ petition before any other forum. Sunali and Danish had miserably failed to establish that they are Indian citizens and accordingly, they had been rightly deported.

14. Mr. Raghunath Chakraborty, learned advocate, assisted by Mr. Supratick Syamal, learned advocate, appearing for the petitioner submits that the petitioner is a permanent resident of West Bengal and his daughter and son-in-law are Indian citizens by birth and they originate from a family permanently residing in West Bengal. For lawful employment, they had migrated to New Delhi. The petitioner came to learn that on or about 24.06.2025 during a purported *'identity verification drive'* they were picked up, detained and thereafter illegally deported to Bangladesh on 26.06.2025. The petitioner as the father of

Sunali has a demonstrable interest and relationship with the involved persons, personally.

15. He argues that the principle of non-refoulement is a part of the right guaranteed under Article 21 of the Constitution and that the rights guaranteed under Articles 14 and 21 are available even to non-citizens. It is not the case that there is any threat to internal security of the country inasmuch as in the memo dated 23.06.2025, the Addl. Dy. Commissioner of Police-I, Rohini district observed that the presence of the detainees is not required in any criminal case in India.

16. On the issue of maintainability and on merits reliance has been placed upon the judgments delivered in the cases of *Sarguja Transport Service vs State Transport Appellate Tribunal M.P., Gwalior and Others*, reported in *(1987)1 SCC 5*, *Arunima Baruah vs Union of India and Others,* reported in *(2007) 6 SCC 120* and *Md. Rahim Ali alias Abdur Rahim vs State of Assam and Others,* reported in 2024 SCC OnLine SC 1695.

17. He contends that the respondents have vociferously urged the issue of maintainability. On the first date (11.07.2025) upon hearing the parties the Court recorded its *prima facie* satisfaction as regards maintainability of the writ petition. The said order was not appealed against. However, instead of filing affidavit on merits, they filed affidavits again urging that the point of maintainability should again be considered and decided

first before entering on merits. Such prayer was refused on 11.09.2025 observing that in the facts and circumstances of the case the issue of territorial jurisdiction cannot be prioritized. However, again on 19.09.2025 an application was affirmed with a prayer to decide the issue of maintainability of the writ petition. It appears that the respondents do not want this Court to consider the merits of the matter or to ascertain whether the State had acted fairly and in consonance with their own executive instructions contained in the memo dated 02.05.2025. The respondents have filed the application being CAN 1 of 2025 after filing two sets of affidavits.

18. He argues that in essence, while the legislative framework appears to strengthen the executive's hand in managing immigration and effecting deportations, this power is not unfettered. It is limited by constitutional safeguards and a body of judicial precedent that insists on procedural fairness, non-arbitrariness, and respect for human dignity. The ongoing challenge lies in ensuring that administrative practices and the implementation of laws, rigorously adhere to these judicially reinforced standards. In the case of *Mohammad Salimullah & Anr.Versus Union of India & Ors*, reported in *AIR 2021 1789*, the Hon'ble Supreme Court observed that one shall not be deported unless the procedure prescribed for such deportation is followed.

19. He submits that Sunali is at an advanced stage of pregnancy and the detainees were produced before the Sub-Inspector, P.S.: K.N. Katju Marg. They were interrogated by the said Sub-Inspector and records were forwarded by a memo dated 23.06.2025 to the FRRO by the respondent no. 5 and by a memo dated 24.06.2025, the FRRO sent the detainees to the community centre and two days thereafter, the FRRO passed the order of deportation on 26.06.2025. At the time of filing the writ petition, the petitioner was not aware of the deportation order and as such, the non-impleadment of FRRO is not fatal. What is required to be taken into consideration is the substance of the writ petition and not merely its form. The fact of preference of earlier writ petition by the petitioner's daughter before the Hon'ble High Court at Delhi was not within the knowledge of the petitioner at the time of filing of the *habeas corpus* petition.

20. He contends that procedure to be adopted for such deportation has been detailed in the memo dated 02.05.2025. It has also been admitted in paragraph 9 of the application being CAN 1 of 2025 that *'FRRO, Delhi being the Civil Authority has been repatriating illegal migrants of Bangladesh as per instruction dated 02.05.2025 issued by the Ministry of Home Affairs'*. However, no enquiry was conducted in terms of the said memo and the detainees were deported in hot haste within a period of two days.

21. Mr. Banerjee, learned advocate appearing for the State respondents submits that on the basis of the complaint lodged by the petitioner, an enquiry was conducted upon diarizing the complaint as Paikar Police Station, GDE No. 356, dated 06.07.2025. The concerned officer of Paikar Police Station collected all relevant residential proof documents from the relatives of the missing persons including Aadhar Card, PAN Card, Voter Identity Card, title deeds and upon such verification on 10th July, 2025, he communicated with the SHO, K.N Katuj Marg Police Station, Rohini, New Delhi through e-mail, enclosing the said residential documents and requesting information regarding their detention/deportation, however, K.N. Katuj Marg Police Station, Rohini, New Delhi, has not conducted any verification with Paikar Police Station and the e-mail was also not responded to. Such fact was communicated to the Addl. Director General & Inspector General of Police (Law & Order), West Bengal by the Superintendent of Police, DIB, Birbhum *vide* memo dated 15.09.2025.

22. We have heard the learned advocates appearing for the respective parties at length and we have given my anxious consideration to the facts and circumstances of the case.

23. In the writ petition it has been averred *inter alia* that Sunali, Danish and Sabir are Indian citizens by birth and are permanent residents of West Bengal. For lawful

employment, the detainees had migrated to Delhi to earn a source of livelihood and for maintenance of their family members including the petitioner. On 24.06.2025 during the *'identification verification drive'* in Delhi, the detainees were picked up along with several other Bengali speaking residents by local police and enforcement agencies without any prior notice. The continued detention of Sunali, Danish and Sabir is a direct attack on their right to life and liberty and Sunali and Danish are the only earnings in their family and the petitioner and her wife survive on the maintenance provided by them. Their sudden and illegal detention destroyed the financial condition. The detainees have valid identity documents and the petitioner also owns land in the district of Birbhum. The petitioner came to learn, as reported in the press, that the detainees were first held in a detention centre in Delhi and were medically examined and moved across districts. They were allegedly taken to Indo-Bangladesh border and pushed across the border in an unprecedented, alarming manner. The detainees were subjected to threats and pressure and were made to sign documents without knowing the contents of the same. Such steps taken are contrary to the *'procedure established by law'*. The detainees were detained without notice and exploited without adjudication. While some other detainees were released, Sunali, Danish and their minor son had remained missing. No official communication had also been

made to the family. The representation submitted by the petitioner was also not responded to.

24. The user of the adjective *'integral'* before *'part of cause of action'* tends to suggest that even if a part of cause of action may have arisen within a High Court's territorial limits, the same would not suffice unless a nexus or relevance with the *lis* of the case is established and the High Court has to be sure that an integral part of the cause of action had arisen empowering it to receive the writ petition and to try it. The proposition of law that can be culled out pertaining to maintainability of the writ petition is that on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial, it has to be explicit that a part of cause of action has arisen within the jurisdiction of the Court. For giving rise to cause of action for filing writ petition what is material is whether or not within the territorial limits of this Court, there has been any proximate or direct effect upon the petitioner. In the present case, although the decision to detain was taken in New Delhi, the chain of events could not have been completed without an enquiry as mandated in the memo dated 02.05.2025. There cannot be any doubt that the contents of the memo itself bear a vital link in the entire chain of events commencing from detention to deportation. If such enquiry is an event of substance i.e. an event which is a material, essential or integral part of the *lis* connected with the action that is impugned in a writ petition, there is

no plausible reason as to why the same should not be construed as constituting a material, essential or integral part of the cause of action. The facts required to form the basis of presumption of law would emanate only upon an enquiry to be conducted, routed through the detainees' place of residence in the State of West Bengal. The plea of affectation is based on a substantial fact forming a part of the bundle of facts constituting the cause of action, would indeed be relevant for determination of the question as to whether the writ petition ought to be entertained or not. Here, the father of the detainee is a permanent resident of West Bengal having landed property in the district of Birbhum in West Bengal. He did lodge a complaint in the local police station and upon preliminary enquiry, the local police verifying the documents had observed that the detainees have been residing in the district of Birbhum for a long time since their birth. These facts constitute an integral, essential and material part of the *lis* constituting the cause of action to approach the Court and conferring jurisdiction on this Court to entertain the writ petition.

25. There has been no intentional relinquishment of any part of the claim or splitting of claims. The underlying objective is to prevent parties from harassing others through multiple, repetitive lawsuits for the same grievance. The fact that the sister of the detainee before the Delhi High Court withdrew the writ petition to approach the appropriate High Court is absolutely irrelevant and

immaterial for a decision on the preliminary objection to the maintainability of this writ petition. The issue of Order 2, Rule 2 of the Code of Civil Procedure (hereinafter referred to as CPC) does not appear to be a relevant consideration in the present case, as the earlier writ petition was withdrawn without any orders being passed therein. The question of suppression of material facts is not germane, as the earlier writ petition had been withdrawn without there being any orders, and the non-disclosure of the same would not in any manner affect the case made out in the instant petition.

26. As regards the allegation of suppression, the law is equally settled that mere omission of a statement in the application cannot disentitle the petitioner from getting proper remedy if such omission is immaterial for the purpose of determination of the dispute involved therein. In the present case, all that is pointed out by the respondents is that in the writ petition, the petitioner had suppressed about preference of the first writ petition by Karishma. In our view, for the purpose of adjudication of the point involved herein viz. whether the respondents could have deported the detainees without enquiry is violative of Articles 14 or 16, such omission is immaterial. Such omission cannot stand in the way of this Court in deciding the pure question of law raised by the petitioner. The preliminary objection, thus, stands overruled.

27. The power of the High Court vested in it under Article 226 of the Constitution of India cannot be abrogated or limited by any statute. The constitutional power, which has been vested in this Court, stands on a different footing than the power vested in any Court trying civil or criminal matters. In fact, Section 141 of CPC explains that the expression 'proceedings' includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution moreso when there is no provision to prefer any appeal against the order of deportation.

28. It is true that under Section 9 of the 1946 Act, the burden is upon the person he/she is not a foreigner. However, such provision does not empower the executive to pick up a person at random, knock at his/her door and tell him that he is a foreigner. First it is for the authorities concerned to have in their knowledge or possession some material basis or information to suspect that a person is a foreigner and not an Indian. The procedure to be adopted for such deportation has been detailed in the memo dated 02.05.2025. Clause 9 of the same provides for the following protocols:

'(iii) In respect of Bangladesh/Myanmar nationals identified to be staying unauthorizedly in any particular State/UT, an inquiry shall be conducted by the State Government/UT concerned.

(iii) If the suspected Bangladesh/Myanmar national claims Indian Citizenship and residence of a place in any other Indian State/UT, the concerned State Government/UT would send to the Home Secretary of the State/UT and District Collector/District Magistrate of the District from where the suspected persons claims to hail, the details including name, percentage, residential address, details of near relatives etc. The State Government/UT/Collector/District Magistrate concerned in turn will ensure that appropriate report is sent to the deporting State Government/UT after proper verification within a period of 30 day. All the States/UTs shall issue appropriate instructions to the District Collectors/District Magistrates for ensuring verification of claim of such suspected persons well in time. During the period of 30 days, the suspected persons shall be kept in the Holding Center to ensure physical availability at the time of deportation/send-back. If no report is received within the period of 30 days, the Foreigners Registration Officer may take necessary, action to deport/ send-back the suspected Bangladesh / Myanmar national.

(vi) After completion of the enquiry and capturing of biometric and demographic details as above the illegal immigrants from Bangladesh/Myanmar detected in States/UTs other than the border States with Bangladesh/Myanmar shall be taken by the concerned State/UT Police under proper escort, in groups as far as possible, and handed over to the designated Boarder

Guarding Forces/Coast Guards at the places designated by the Central Government. The State/UT Police who is escorting the illegal immigrants from Bangladesh/Myanmar should carry the appropriate order issued by the competent authority of the State Government/UT Administration under section 3(2)(c) of the Foreigners Act, 1946 after proper enquiry. Thereafter, the designated Border Guarding Forces Coast Guards shall facilitate their exist from India to Bangladesh or Myanmar, as the case may be. Such illegal immigrants from Bangladesh/Myanmar shall also be Blacklisted.'

29. A police officer is clearly a person in authority. Insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to. Frequent threats of prosecution, if there is failure to answer may take on the complexion of undue pressure violating Article 20(3). Legal penalty may by itself not amount to duress but the manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion.

30. The law presumes that a statement to a police officer may have been obtained through pressure or force and is therefore not voluntary. A confessional statement made before a police officer and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the

Constitution of India. A close perusal of the interrogation forms as annexed would reveal that after noting the educational qualification, the name of the institute has been omitted. In the column *'details of family members and where they are residing',* the names of family members have been mentioned without mentioning the place where they are residing. Suspicion, howsoever high, cannot be a substitute of actual proof. There is no appellate authority. In the affidavit filed by the respondent nos. 1 to 4, it is stated that no enquiry was required but in the memo date 23.06.2025 it was stated that an enquiry was conducted. There is also no *'adverse security report'* against the detainees.

31. The detainees have their relations residing in the State of West Bengal. There is no allegation that they are indulging in activities prejudicial to the State and as such, the kind of overenthusiasm in deporting the detainees, as visible herein, is susceptible to misunderstanding and disturbs the judicial climate in the country. That the proceeding for deportation was conducted in hot haste is furthered by the fact that in the interrogation report, it was stated that Sunali had crossed over and illegally entered into India sometime in the year 1998. Sunali's Aadhaar card and PAN card reflect her date of birth as 26 years, indicating she was born in the year 2000. Hence, Sunali could not have entered into India in 1998.

32. Danish and Sunali were produced before the Sub-Inspector, K.N. Katju Marg Police Station, on 21.06.2025. Thereafter, the FRRO by a memo dated 24.06.2025 directed that the said persons shall be kept in the community Centre, near Lal Quarter, Vijay Vihar Phase-2, P.S Vijay Vihar, Rohini District, Delhi. Thereafter, the deportation order was passed on 26.06.2025. From such sequence of facts it is explicit that the respondents admittedly did not follow the provisions of the memo dated 02.05.2025 inasmuch as the details of the said persons were not forwarded to the State of West Bengal of which they are the residents. It is only after such documents are forwarded, the concerned State Government has to ensure that appropriate report is sent to the deporting State Government/UT after proper verification within a period of 30 days. Admittedly no such enquiry was conducted and the Delhi Administration did not even wait for a week before issuance the order of deportation. The memo dated 02.05.2025 also provides that in any emergent situation and after enquiry is completed step towards deportation may be taken. No statement is forthcoming that there was any such emergent situation. The respondents have thus acted in hot haste and have not adhered to the said memo and such act cripples the constitutional grant of fairness and reasonableness. The non-impleadment of the FRRO is also not fatal for maintainability of the writ petition inasmuch as the order is inextricably bound with the chain

of events starting from the production of the persons before the Inspector of the police station at Rohini, Delhi. Moreover, the storied jurisprudence on the anvil of protection of constitutional rights in this country, has repeatedly held that when substantial justice is pitted against technical considerations, the cause of the former demands preference over the other especially when the writ court can visualise that deference to such technical considerations would have the consequence of throwing out an otherwise meritorious claim right at the threshold.

33. The question of citizenship should be considered based on further documents and evidence before an appropriate Court. In the limited scope of the writ petition, though the Aadhaar Card, PAN Card and Voter ID Card were part of the writ petition, however, as none of these aforementioned documents are proof of citizenship and proof of identity, it may not be sufficient to decide the issue of citizenship finally. Having said this it cannot be denied that the memo of 02.05.2025 applies only to Bangladeshi and Rohingya Muslims from Myanmar; thus, if we take the worst-case scenario of the detainees, that they were not Indian citizens, the steps and procedures laid down in the memo ought to have been followed by the concerned authorities. Not following such procedure and acting in hot haste to deport them is a clear violation which renders the deportation order bad in law and liable to be set aside. The process and procedure adopted in the deportation raise a

suspicion that the concerned authorities, while acting in hot haste, have clearly violated the provisions of the memo dated 02.05.2025.

34. In the case of *Sarguja Transport Service (supra)* it has been observed *inter alia* that the principle regarding bar to fresh petition under article 226 would not be applicable to a writ petition involving personal liberty and in a *habeas corpus* petition seeking enforcement of fundamental right guaranteed under article 21. In the case of *Anurima Baruah (supra)* it was held that a suit having been withdrawn, suppression of its file was no longer a material fact moreso when no decision had been arrived at in the earlier proceeding. It is not a case that the petitioner had approached the Court with unclean hands. The judgments upon which reliance has been placed by the respondents are distinguishable on facts.

35. The life style of the people shapes the profile of the law and not vice versa. Law cannot be disjuncted from context. The fundamental rights cannot be read as dull lifeless words. If an uncontrolled or unguided power is conferred without any reasonable and proper standards or limits being laid down in the enactment for guidance and control of exercise of such power, the act cannot by the furthest of imagination be construed to be a '*procedure established by law*'. The executive cannot be vested with any non-fettered discretion. If officials exercise their public authority in an arbitral whimsical manner, the same would

bring such act within the scope of prohibition of the equity clause. The Court cannot doggedly hold fast to principles which tend to compel a litigant to retreat from a path of pursuing writ remedies, especially when social realities of the current generation mandates that the law must be rid of these principles and bring itself in accord '*with the felt necessities of the times*'.

36. For and on the strength of the totality of reasons afore-indicated, the order of detention dated 24.06.2025 and the order of deportation dated 26.06.2025, so far as Sunali, Danish and Sabir are concerned, are set aside and the respondent nos. 1 to 6, are mandatorily directed to take all steps to bring back Sunali, Danish and Sabir to India within a period of 4 weeks from the date of communication of the order. The said respondents, for such purpose, shall make necessary correspondence and interact with the authorities at High Commission of India, Dhaka, Bangladesh.

37. With the above observations and directions the writ petition being, W.P.A (H) 50 of 2025 and the connected application are disposed of.

38. There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)

Later

Mr. Tiwari, learned senior advocate appearing for the respondent nos.1 to 4 prays for stay of operation of the order.

Such prayer is considered and rejected.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)