

DISTRICT: IMPHAL EAST
STATE: MANIPUR

CODE NO. 10193
OTHER HABEAS CORPUS PETITION

In the High Court of Manipur at Imphal

Writ Petition (C) No. of 2022

1. Mohammad Kamal, aged about 33 years, S/O Haroon Mohammad, a resident of Dushira Daung Village, P.O. & P.S. Mongdow Myonay, Myanmar and now languishing in the Manipur Central Jail, Sajiwa, P.O. Heingang, P.S. Lamlong, Imphal East District, Manipur, PIN-795010 and another.

-Petitioners-

-Versus-

1. The State of Manipur through the Chief Secretary (Finance/IT/Cabinet/DP/Home/AR), Government of Manipur, Manipur Secretariat, South Block, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN – 795001 and 2 others.

-Respondents-

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Dated/ Imphal
The 7th January 2022

Signature of the Counsel

SYNOPSIS AND LIST OF DATES

This is a petition under Article 226 of the Constitution of India for issuance of a Writ in the nature of Mandamus or any other appropriate writ(s) or order(s) directing the Respondents to release the Petitioners from the Manipur Central Jail, Imphal so as to enable them to go to Canada as refugees for resettlement there through the United Nations High Commission for Refugees, New Delhi and the High Commission of Canada, New Delhi.

The Petitioners have a well-founded fear of being persecuted in their own country and fled to Manipur in order to seek Asylum in India through the United Nations High Commissioner for Refugees, New Delhi. The Petitioners entered into the territory of Manipur through the Churachandpur District, which borders Myanmar. In the year 2012, the Petitioners were arrested by personnel of Assam Rifles while they were crossing the Indo-Myanmar border and they were handed over to the Singngat Police Station. On 30th July 2012, the learned Chief Judicial Magistrate, Churachandpur convicted and sentenced the Petitioners to undergo 6 months of simple imprisonment.

On 8th January 2020, UNHCR staff visited Manipur Central Jail, Sajiwa and conducted a personal interview with the Petitioners for completing their Refugee Status Determination (RSD) process. Thereafter, on 13th January 2020, UNHCR issued refugee identity cards recognizing them as refugees under its mandate. Thereafter, The Government of Canada has accepted the Petitioners for Resettlement to Canada. On 22nd December 2021, the High Commission of Canada, New Delhi has issued certificates to the effect that they have been accepted as Refugees for resettlement to Canada by the High

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Commission of Canada in New Delhi under the Canadian Immigration and Refugee Protection Act. In order to complete the processing of their application, a medical examination must be performed by a doctor from the Government of Canada's approved list of Panel Physicians and the same is to be completed on or before 20th January 2022. None of the Panel Physicians is located in Manipur and they will have to complete the medical examination in Delhi. Pursuant to the medical examination the Government of Canada will issue them a Travel document and necessary visa/ permissions to travel to Canada and leave India permanently.

The Petitioners have submitted a representation dated 30th December 2021 addressed to the Chief Secretary (Finance/ IT/ Cabinet/ DP/ Home/ AR), Government of Manipur thereby stating inter alia that they were granted refugee status by the United National High Commission for Refugees and that the Government of Canada agreed to take them to their country for resettlement permanently. Thus, they have urged the authority to release them from jail so that they could go to Canada for resettlement there. However, the said representation is not yet disposed of till date without assigning any valid reason.

LIST OF DATES AND EVENTS

02-02-2012	The Petitioners were arrested by the personnel of 39 Assam Rifles from near L Kanaan Village, Border Pillar No. 43 and thereafter they were handed over to the Singngat Police Station, Churachandpur District.
30-07-2012	Learned Chief Judicial Magistrate, Churachandpur convicted and sentenced all the Petitioners under Section 14 of the Foreigners Act for six months.

08-01-2020	UNHCR staff visited the Manipur Central Jail, Sajiwa for conducting a personal interview with the Petitioners for completing the Refugee Status Determination Process (RSD). Thereafter they were given Refugee Identity Cards.
22-12-2021	The High Commission of Canada, New Delhi has issued certificates to the effect that they have accepted the Petitioners as refugees for resettlement to Canada.
30-12-2021	The Petitioners submitted a representation addressed to the Chief Secretary, Government of Manipur for releasing them from jail to go to Canada for resettlement.

Dated/Imphal
The 7th January 2022

Presented by:-

Counsel for the Petitioners

DISTRICT: IMPHAL EAST
STATE: MANIPUR

CODE NO. 10193
OTHER HABEAS CORPUS PETITION

In the High Court of Manipur at Imphal

Writ Petition (C) No. of 2022

To,

The Hon'ble Mr. Justice **P.V. Sanjay Kumar**, B. Com.,
LL.B., Chief Justice of the High Court of Manipur and His
Lordship's companion Judges of the same High Court.

IN THE MATTER OF :-

A Petition under Article 226 of the Constitution of India for issuance of a Writ in the nature of Mandamus or any other appropriate writ(s) or order(s) directing the Respondents to release the Petitioners from the Manipur Central Jail, Imphal so as to enable them to go to Canada as refugees for resettlement there through the United Nations High Commissioner for Refugees, New Delhi and the High Commission of Canada, New Delhi.

AND IN THE MATTER OF:-

For enforcement of the Right to life of the Petitioners, which is enshrined in Article 21 of the Constitution of India.

AND IN THE MATTER OF :-

1. Mohammad Kamal, aged about 33 years, S/O Haroon Mohammad, a resident of Dushira Daung

Village, P.O. & P.S. Mongdow Myonay, Myanmar and now languishing in the Manipur Central Jail, Sajiwa, P.O. Heingang, P.S. Lamlong, Imphal East District, Manipur, PIN-795010.

2. Abdul Rashid, aged about 36 years, S/O Miya Shuna, a resident of Dushira Daung Ruw, P.O. & P.S. Mongdow Myonay, District – Mongdow Myonay, Myanmar and now languishing in the Manipur Central Jail, Sajiwa, P.O. Heingang, P.S. Lamlong, Imphal East District, Manipur, PIN-795010.

-Petitioners-

-Versus-

1. The State of Manipur through the Chief Secretary (Finance/IT/Cabinet/DP/Home/AR), Government of Manipur, Manipur Secretariat, South Block, P.O. & P.S. Imphal, Imphal West District, Manipur.
2. The Union of India through the Secretary, Ministry of External Affairs, Government of India, Jaisalmer House, 26, Man Singh Road, New Delhi – 110001.
3. The Secretary, Ministry of Home Affairs, Government of India, North block, Central Secretariat, New Delhi – 110001.

-Respondents-

Humble petition of the petitioners above named.

Most Respectively Sheweth:

1. That the Petitioners are stateless persons from Myanmar belonging to the Rohingya community and they have been recognised as refugees due to their well-founded fear of being persecuted in their country of origin. They fled into Manipur to seek asylum in India through the United Nations High Commissioner for Refugees, New Delhi. Consequently, they entered into the territory of Manipur through Churachandpur District, which is bordering Myanmar. However, on 2nd February 2012, we were arrested along with other individuals by the personnel of 39 Assam Rifles from near L. Kanaan Village, Border Pillar No. 43 and thereafter they were handed over to the Officer-in-Charge, Singngat Police Station. In this regard, the Officer-in-Charge, Singngat Police Station registered a criminal case being FIR No. 6(2)2012 Singngat P.S. U/S 14 Foreigners Act, 1946. Thereafter, they along with other individuals were produced before the learned Chief Judicial Magistrate, Churachandpur and we were remanded into judicial custody.

2. That on 30th July 2012, the learned Chief Judicial Magistrate, Churachandpur convicted and sentenced the Petitioners along with other individuals to undergo 6 months of simple imprisonment and also to pay a fine of Rs. 1000/- (Rupees one thousand) each and in default of payment of fine, they shall undergo another fifteen days of simple

imprisonment. The period of detention already undergone by them was set off against the term of imprisonment imposed including the period of imprisonment imposed on us in default of payment of fine, which runs consecutively.

3. That they have completed their period of imprisonment in the Manipur Central Jail, Imphal. However, they were not released from jail by the jail authority by saying that they are waiting for orders from the competent authority to deport them to their country of origin. It is pertinent to mention here again that they had fled from their country due to well-founded fear of grave human rights violations and are therefore it is not safe for them to return there. In the meantime, they have approached the office of the United Nations High Commission for Refugees in New Delhi (UNHCR) for granting refugee status.

4. That on 7th December 2015, UNHCR, New Delhi wrote a letter addressed to the Joint Secretary (F), Ministry of Home Affairs, Government of India regarding access to Asylum Seekers from Myanmar in Manipur Central Jail, Imphal. In the said letter, UNHCR has stated that there are 15 asylum seekers, which includes the Petitioners' names, from Myanmar languishing in Manipur Central Jail, Imphal and they were charged under Section 14 of the Foreigners Act. The UNHCR appraised the authority that in order to reach a conclusion on their

asylum application, they would be grateful if the asylum seekers, who have completed their sentences, be released in order to approach UNHCR so that they can complete their Refugee Status Determination (RSD) process.

5. That on 8th January 2020, UNHCR staff visited Manipur Central Jail, Sajiwa and conducted a personal interview with the Petitioners for completing their Refugee Status Determination (RSD) process. Thereafter, on 13th January 2020, UNHCR issued refugee identity cards recognizing them as refugees under its mandate. As per the said cards as refugees, they should, in particular, be protected from arbitrary detention or forcible return to their country or to any other country where they would face threat to their lives or freedoms.

True copies of Petitioners' current Refugee Identity Cards issued by the UNHCR Representation in India, New Delhi are annexed hereto and marked as Annexure – A/1 and Annexure – A/2 respectively.

6. That despite that they have completed their sentence in 6 months and 15 days they continue to languish in Jail for over 9 years. Given that they are unable to return back to Myanmar, UNHCR has submitted their case for third country resettlement to Canada. The Government of Canada has accepted the Petitioners for Resettlement to Canada. On

22nd December 2021, the High Commission of Canada, New Delhi has issued certificates to the effect that they have been accepted as Refugees for resettlement to Canada by the High Commission of Canada in New Delhi under the Canadian Immigration and Refugee Protection Act. In order to complete the processing of their application, a medical examination must be performed by a doctor from the Government of Canada's approved list of Panel Physicians and the same is to be completed on or before 20th January 2022. None of the Panel Physicians is located in Manipur and they will have to complete the medical examination in Delhi. Pursuant to the medical examination the Government of Canada will issue them a Travel document and necessary visa/ permissions to travel to Canada and leave India permanently.

True copies of the Acceptance Letters issued by the High Commission of Canada, New Delhi are annexed hereto and marked as Annexure – A/3 and Annexure – A/4 respectively.

7. That the Petitioners have submitted a representation dated 30th December 2021 addressed to the Chief Secretary (Finance/ IT/ Cabinet/ DP/ Home/ AR), Government of Manipur thereby stating inter alia that they were granted refugee status by the United National High Commission for Refugees and that the Government of Canada agreed

to take them to their country for resettlement permanently. Thus, they have urged the authority to release them from jail so that they could go to Canada for resettlement there. However, the said representation is not yet disposed of till date without assigning any valid reason.

True copy of the representation dated 30th December 2021 is annexed hereto and marked as Annexure – A/5.

8. That the other individuals, who were arrested along with the Petitioners and languishing in the Manipur Central Jail, have already been deported recently and as such, the Petitioners have a reasonable apprehension that they would be deported to their country of origin very soon. In the event of their deportation, the Myanmar Government would persecute them. Thus, an immediate appropriate interim protection/restraining order is highly called for.

9. That the Rohingya people are a Muslim minority group residing in the Rakhine state, formerly known as Arakan. The Rohingya people are considered "stateless entities", as the Myanmar government has been refusing to recognise them as one of the ethnic groups of the country. For this reason, the Rohingya people lack legal protection from the Government of Myanmar, and are regarded as mere refugees from Bangladesh, and face strong hostility in the country, often described as one of the most persecuted people on earth. To escape

the dire situation in Myanmar, the Rohingya people try to illegally enter Southeast Asian states, begging for humanitarian support from potential host countries. On the other hand, the Rohingya insurgency in Western Myanmar is an ongoing armed conflict between the Government of Myanmar and insurgents of the Rohingya ethnic minority in Rakhine State (formerly known as Arakan), Myanmar (Burma).

10. That the Petitioners herein are persons from the Rohingyas Muslim community who are a minority in Myanmar. The Petitioners fled from Myanmar at different times and entered India in a hostile condition. They were recognised and identified as refugees by UNHCR in India. Rohingyas Muslim community, who live mainly in the hilly west of the country near the Indian border, are one of the most persecuted minority groups in Myanmar.

11. That it is humbly submitted that in a number of similar situations, different High Courts and even Supreme Courts have passed orders for releasing the refugees from jails so as to enable them for resettlement in a third country. Reliance is placed on the orders passed by Hon'ble High Court of Calcutta in Ba Aung and another –Versus- Union of India and others, in which the court granted exit permission and released the refugees from jail to hand over them to the United

Nations High Commission for Refugees, New Delhi. Similarly, recently the Hon'ble High Court of Manipur in Nandita Haksar –Versus- State of Manipur & others [W.P. (Crl) No. 6 of 2021] the Hon'ble Court granted safe passage to the 7 Myanmar nationals so as to enable to go to New Delhi to avail protection from the UNHCR. Reliance is also placed on an order passed by the Gujarat High Court in Ktaer Abbas Habib Al Qutaifi vs Union of India [1999 Crl. LJ 919], in which the court has dealt in detail with the refugee laws and stayed the deportation of refugees of Iraq origin. Similar orders were also passed by Hon'ble Guwahati High Court in Zothansangpuli vs State of Manipur [Civil Rule 1981/1989], in Mr. Bogi vs Union of India [Civil Rule 1847/1989], and Shree Khy-Htoon and Others vs State of Manipur [Civil Rule 515/1990]. Hon'ble Madras High Court also passed a similar order in Raju vs State of Tamil Nadu [W.P. 24063/2005], and Hon'ble Bombay High Court in Anthony Omandi Osino vs FRRO [W.P. 2033/2005], directed the UNHCR to hear and dispose of the appeal filed by the petitioner within a period of one month and also stayed the deportation of the Petitioners therein.

GROUNDS

12. That this petition is being filed by the Petitioners herein on the facts and circumstances of the case, inter alia, on following grounds:

- (a) That the Petitioners herein have been identified and recognised as mandate refugees by the UNHCR and as such,

they are not economic migrants in India. The Petitioners have legitimate reasons of being persecuted in their home country on account of their minority ethnic community status;

- (b) That the Petitioners are not threat to national security and there are no adverse report that indicate that the Petitioners pose security implications;
- (c) That the Petitioners undertake to abide by any of the conditions laid down by this Hon'ble Court or by any other authority to remain in India;
- (d) That it is also important to mention here that if the Petitioners are deported to Myanmar, they, in all probability, will be executed by the government in their Country;
- (e) Thus, article 14, 20 and 21 are available to the petitioners, much the same as they are available to the citizens of India. As per the latest figure about 15,370 Burmese refugees have been granted asylum in India. Act of respondents to deprive the petitioners of the same is in violation of Article 14.
- (f) If it is the reasoning of the respondents that the Petitioners are being deported due to their conviction, then it is submitted that the 'deportation' or withdrawal of asylum is not a punishment for any offence under any law in India. Further, the act of deportation would amount to further punishment of the petitioners, which would amount to

violation of the principal of double jeopardy under article 20 of the constitution.

- (g) This opinion, and generally known circumstances prevailing in Myanmar are not disputed. This lead to the direct conclusion that may Your Lordships decide not to intervene, respondents will be ending them to death, where their right under article 21 extinguishes.

Violation of the Principal of Non-refoulement

- (h) The principal of non-refoulment is a principle of both customary international law and law of nations and has achieved widespread international recognition. It has also been expressly stated in a number of international statutes. The Black's Law Dictionary 9th Edition at p. 1157 defines it as—
"A refugee's right not to be expelled from one state to another, especially to one where his or her life or liberty would be threatened."
- (i) The principle of non-refoulement arises out of an international collective memory of the failure of nations during World War II to provide a safe haven to refugees fleeing certain genocide at the hands of the Nazi regime. Today, the principle of non-refoulement ostensibly protects persons from being expelled from countries that are signatories to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Convention Relating to the Status of Refugees, or the 1984 Convention Against Torture.

- (j) Article 14 of the Universal Declaration of Human Rights, 1948, to which India is an instituting signatory, states that:
"Article 14: 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution; 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."
- (k) The Convention Relating to the Status of Refugees, 1951, at Article 33 (1), states that:
"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
- (l) The EU Resolution on Minimum Guarantees for Asylum Procedures, 1955 states that:
"Paragraph 1: In particular, the procedures will comply fully with Article 1 of the 1951 Convention concerning the definition of a refugee, Article 33 relating to the principle of 'non-refoulement' and Article 35 concerning cooperation with the Office of the United Nations High Commissioner for Refugees, including the facilitation of its duty of supervising the application of the Convention.
Paragraph 2: In order to ensure effectively the principle of 'non-refoulement', no expulsion measure will be carried out as long as no decision has been taken on the asylum application."

- (m) The International Covenant on Civil and Political Rights, 1966, which stands ratified by India, states at Article 13 that:

"An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

- (n) The UN Declaration on Territorial Asylum unanimously adopted by the General Assembly in 1967 [res. 2312 (XXII)] at Article 3 (1) states that:

"No person referred to in Article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution."

- (o) That In the Resolution on Asylum to Persons in Danger of Persecution, adopted by the Committee of Ministers of the Council of Europe on 29 June 1967, it is recommended that member governments should be guided by the following principles:

"1. They should act in a particularly liberal and humanitarian spirit in relation to persons who seek

asylum on their territory; 2. They should, in the same spirit, ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion."

- (p) That Finally, Article III (3) of the Principles concerning the Treatment of Refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session in Bangkok in 1966, states that:

"No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory."

- (q) The Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment, 1984, to which India is a signatory states at Article 3 that:

"1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being

subjected to torture; 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

- (r) Article 51 of the Constitution of India asserts that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another. Article 51 is a directive principle of State policy, indicating the spirit in which India approaches her international relations and obligations.
- (s) In *Gramophone Company of India Limited vs Birendra Pandey* (1984 (SC) AIR 677), the Supreme Court held:

“There can be no question that nations must march with the international community and the municipal law must respect rules of international law just as nations respect international conventions. The comity of nations requires that the rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament.”
- (t) In *Apparel Export Promotion Council vs A.K. Chopra* (1999 (1) SCC 756), the Supreme Court also reiterated the same principle and held that in cases involving violations of human rights, the Courts must forever remain aware of the

international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.

- (u) The same proposition was also advanced by Chief Justice Lord Latham in *Politics vs The Commonwealth*, wherein held that the domestic statutes must be interpreted, as far as the language permits, so that they are inconsistent with international law. This was stated in almost identical language by the Hon'ble Supreme Court of India in *Tractoro Export vs Tarapore and Co.* (1970 (3) SCR 53).
- (v) In *Maganbhai Ishwarbhai Patel vs Union of India* (1970 (3) SCC 400), it was held that:
"Making of law ... is necessary when (international) treaty or agreement operates to restrict the rights of the citizens or others or modifies the laws of the State. If the rights of the citizens or others which are justifiable are not affected, no legislative measures are needed to give effect to the agreement or treaty."
- (w) Thus, if the use of executive power restricts or infringes the rights of citizens or others, or modifies any laws, that exercise of power must be supported by legislation. Where there is no such restriction or infringement of rights or modification of laws, the executive is competent to exercise power and international commitments are automatically enforceable in the state's courts.

- (x) Lord Bridge in *Brind v. Secretary of State for the Home Department* (1991) 1 All ER 720, observed that it was well settled that, in construing any provision in domestic legislation which was ambiguous in the sense that it, was capable of a meaning which either conforms to or conflicts with the International Convention, the Courts would presume that Parliament intended to legislate in conformity with the Convention and not in conflict with it.
- (y) In *A. C. Mohammed Siddique vs Government of India and others* (Writ Petition Nos. 6708 & 7916 of 1992) the Madras High Court expressed its unwillingness to let any Sri Lankan refugees be forced to return to their country against their will.
- (z) In *Khudiram Chakma vs. State of Arunachal Pradesh* (1994 Supp (1) SCC 615), Hon'ble Supreme Court approvingly quoted commentary on the UDHR in the context of refugees, stating:

"Article 14 of the Universal Declaration of Human Rights, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument as a whole; and must be taken to mean something. It implies that although an asylum-seeker has no right to be granted admission to a foreign State, equally a State which has granted him asylum must not later return him to the country whence he came. Moreover, the Article carries considerable moral authority and embodies the legal prerequisite of regional declarations and instruments."

- (aa) Dr Malvika Karlekar vs Union of India (Criminal Writ Petition No. 583/1992, an unreported judgment of Supreme Court dated 25.09.1992 directed the authorities to check whether the defendants' refugee status determination were pending and further stopped their deportation. The Court observed as under:

“...The authorities may check whether these statements are true and if they find that the said statements are true and that the refugee status claimed by them is pending determination and a prima facie case is made out for the grant of refugee status and further that these individuals pose no danger or threat to the security of the country, they may not be deported till question of their status can be determined.”

- (bb) In Mr. Syed Ata Mohammadi vs Union of India (Criminal Writ Petition No. 7504 of 1994), it was held that:

“there is no question of deporting the Iranian refugee to Iran, since he has been recognised as a refugee by the UNHCR.”

- (cc) Lord Diplock in *Salomon v. Commissioners of Customs and Excise* (1996) 3 All ER 871 said that there is a, prima facie, presumption that Parliament does not intend to act in breach of international law including specific treaty obligations.

- (dd) While inaugurating a seminar on 'Refugees in the SAARC: Building a Legal Framework', held on 02.05.1997, the former Chief Justice of the Supreme Court of India, Justice J. S.

Verma, acknowledged the plight of refugees in India and encouraged legislation on the subject, stating:

"Refugees being deprived of the support and protection of their home country are required to be given the needed protection by the International Community. This is a necessary commitment of civilisation."

(ee) In *People's Union for Civil Liberties vs Union of India* (1997 (3) SCC 433), the Supreme Court held:

"The provisions of the Covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution can certainly be relied upon by the courts as facets of those fundamental rights and hence enforceable as such."

(ff) In the case of *Vishaka vs State of Rajasthan*, 1997, Hon'ble Supreme Court affirmed that:

"In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (g), and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with fundamental

rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and contents thereof, to promote the object of the Constitutional guarantee."

- (gg) Referring to CEDAW, the Supreme Court further held that international convention and norms are to be read into fundamental rights in the absence of an enacted domestic law when there is no inconsistency between them. The court also approvingly referred to the decisions of the High Court of Australia in Minister for Immigration and Ethnic Affairs vs Teoh ((128) Aus LR 353). The High Court recognised the concept of legitimate expectation in the context of observance of international law, in the absence of a contrary legislative provision and even in the absence of a Bill of Rights in the Australian Constitution.
- (hh) Catena of the judgements and juristic opinions above stated converge into single non-negotiable principle of non-refoulement that – a refugee cannot be deported forcibly especially to a country whence he faces persecution.
- (ii) In the instant case both the petitioners are 'Mandate Refugee' as per the UNHCR, Delhi which means that the UN agency has conducted proper evaluation of available evidence to ascertain the truthfulness of claim of the internee that he has a well-founded fear of persecution in his home country. As above judgement elucidate, the courts have placed repeated and full faith in the findings of UNHCR, holding it to be a fair and impartial body. Also, there is no

dispute raised to this contention of the internee by the respondents. However, notwithstanding the factual circumstances the respondents have taken an unreasoned decision to deport the internee. For it being unreasoned it is also against the principles of natural justice.

(jj) Flowing from the facts and law above stated, the said deportation flays in the face of Law – natural, customary, international, constitutional.

13. That the cause of action for filing this petition arises within the jurisdiction of this Hon'ble Court and the same is continuing.

14. That the Petitioners have not filed any other similar petition in any other High Court or in the Supreme Court of India. The present petition is being filed in bonafide and in the interest of justice.

15. That there is no other officious alternative remedy except to approach this Hon'ble Court by way of Writ Petition and the remedy sought for is complete and adequate.

PRAYERS

In view of the premises stated above, it is therefore, prayed that Your Lordships may graciously be pleased:-

(a) to admit this Writ Petition and issue Rule Nisi;

- (b) to issue a writ in the nature of Mandamus or any other writ or order or direction directing the Respondents to release the Petitioners from the Manipur Central Jail, Imphal so as to enable them to go to Canada as refugees for resettlement there through the United Nations High Commissioner for Refugees, New Delhi and the High Commission of Canada, New Delhi;
- (c) in the interim to issue a writ in the nature of Mandamus or any other writ or order or direction directing the Respondent No.1 to consider and dispose of the representation dated 30th December 2021 at the earliest with a speaking order within a specified period of time;
- (d) to issue any other appropriate Writ, order or directions, which the Hon'ble High Court deem fit and proper in the facts and circumstances of the case;

And for this act of kindness your humble petitioners as in duty bound shall ever pray.

Dated/Imphal
The 7th January 2022

Signature of the Petitioners

VERIFICATION

I, Abdul Rashid, aged about 36 years, S/O Md. Shuna mia, a resident of Dushira Daung Ruw, P.O. & P.S. Mongdow Myonay, District – Mongdow Myonay, Myanmar and now languishing in the Manipur Central Jail, Sajiwa, P.O. Heingang, P.S. Lamlong, Imphal East District, Manipur, the above named Petitioner No. 2 presently detaining in the Manipur Central Jail, Imphal, who do not have a reasonable opportunity for swearing an affidavit in support of the statements made in the above petition, do hereby verify as authorized by other Petitioners that the statements made in paragraph No. 1 to 10 and 14 are all true to the best of my knowledge. And the statements made in paragraph No. 11, 12 (grounds), 13 and 15 are my submissions, grounds and law points based on the information received from my counsel, which I verily believe to be true and correct to the best of my knowledge, and the rest are my humble prayer before the Hon'ble High court. Verified and signed on this 7th day of January 2022 at the Manipur Central Jail, Imphal, Imphal.

Signature of the Petitioner No. 2



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Representation in India

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India

Tel : + 91 11 4353 0424
Fax : + 91 11 4353 0460
Email : indne@unhcr.org

UNHCR Refugee Card Receipt

Printed On: 29 Dec 2021

Ref 305-15C02384 | 305-00103838

Issuing Location: OCM Delhi, INDIA

I hereby acknowledge receipt of UNHCR Card,

Signature of Bearer / Guardian

Date:

Issuing UNHCR Officer / SLIC

Date:

	UNHCR No.: 305-15C02384	
	Name: Mohammad KAMAL	
	Alias: BAKU	
	Father's Name: HAROON Mohammad	
	Date of Birth: 01-Jan-1989	Sex: Male
	Country of Origin: Myanmar	
	Date of Issue: 29-Dec-2021	Date of Expiry: 28-Dec-2023
<p>The bearer of this card is a refugee under the mandate of the United Nations High Commissioner for Refugees. As a refugee, she/he should, in particular, be protected from arbitrary detention or forcible return to her/his country or to any other country where she/he would face threats to her/his life or freedom. During her/his stay in India, the bearer is subject to and has the obligation to respect national laws.</p>		
<p>इस कार्ड का धारक संयुक्त राष्ट्र उच्च आयोग के अधीन के अधीन एक शरणार्थी है। एक शरणार्थी को उचित है, वह विशेष रूप से, अल्पसंख्यक वर्ग से हिंसा या अप्रत्याशित रूप से या किसी अन्य देश में, जहां उनकी/उनकी जीवन या स्वतंत्रता को दिए कारों का खतरा काया होगा, उनका वापसी से रक्षा की जानी चाहिए भारत में अपने प्रवास के दौरान, धारक को राष्ट्रीय कानून का सम्मान करने का दायित्व है।</p>		
Issued by: UNHCR India		
B-2/16, Vasant Vihar New Delhi - 110057	Toll free : 1800 103 5635	Email: indne@unhcr.org Web: www.unhcr.org.in

NOTE: If this card is lost or stolen you can file a police report. A replacement card will not be issued.





UNHCR Representation in India

B - 2/16, Vasant Vihar
New Delhi - 110 057
India

Tel : + 91 11 4353 0424
Fax : + 91 11 4353 0460
Email : indne@unhcr.org

UNHCR Refugee Card Receipt

Printed On: 29 Dec 2021

Ref 305-15C02402 | 305-00103888

Issuing Location: OCM Delhi, INDIA









I hereby acknowledge receipt of UNHCR Card,

Signature of Bearer / Guardian

Date:

Issuing UNHCR Officer / SLIC

Date:

	UNHCR No.:	305-15C02402	
	Name:	Abdul RASHID	
	Alias:		
	Father's Name:	MIYA Shuna	
	Date of Birth:	01-Jan-1986	
	Country of Origin:	Myanmar	
	Date of Issue:	29-Dec-2021	
	Date of Expiry:	28-Dec-2023	
305-00103888			
 UNHCR The UN Refugee Agency			
<p>The bearer of this card is a refugee under the mandate of the United Nations High Commissioner for Refugees. As a refugee, she/he should, in particular, be protected from arbitrary detention or forcible return to her/his country or to any other country where she/he would face threats to her/his life or freedom. During her/his stay in India, the bearer is subject to and has the obligation to respect national laws</p>			
			
<p>इस कार्ड का धारक अनुपम भट्ट अन्धग्राही अल्पसंख्यक को अन्धग्राही के पदान का अन्धग्राही है। यह अन्धग्राही को स्पष्ट है, यह विशेष रूप से, अन्धग्राही के पदान को निवारण या अन्धग्राही के या किसी अन्य देश में, जहां अन्धग्राही/अन्धग्राही जीवन या स्वास्थ्य के लिए खतरों का सामना करना होगा, अन्धग्राही को देश की अन्धग्राही या अन्धग्राही अन्धग्राही को देश, धारक को राष्ट्रीय कानून का अनुपालन करने का दायित्व है।</p>			
<p>Issued by: UNHCR India</p>			
<p>8-2/16, Vasant Vihar New Delhi - 110057</p>		<p>Toll free : 1800 103 5635 Email: indne@unhcr.org Web: www.unhcr.org.in</p>	

NOTE: If this card is lost or stolen you can file a police report. A replacement card will not be issued.



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ANNEXURE-13



Government of Canada
High Commission of Canada

Gouvernement du Canada
Haut-commissariat du Canada

Our File No: G000337840

Date: December 22, 2021

To Whomsoever It May Concern

RE: Kamal, Mohammad (dob: 1989/01/01)

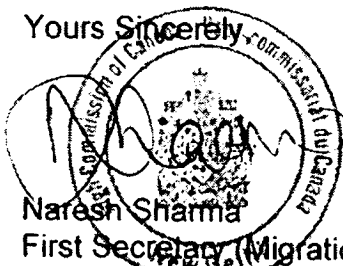
This is to certify that the above named individual has been recognized/accepted as a Refugee for resettlement to Canada by the High Commission of Canada in New Delhi under the Immigration and Refugee Protection Act.

In order to complete the processing of her application, a medical examination must be performed by a doctor from the Government of Canada approved list of Panel Physicians found at this link: <http://www.cic.gc.ca/pp-md/pp-list.aspx>

We would appreciate any necessary assistance to the above named individual regarding his release from detention in order to undergo the medical examination and any other related administrative requirements.

Queries regarding the information contained in this document may be directed to the undersigned or to Delhiimmigration@international.gc.ca

Yours Sincerely



Naresh Sharma

First Secretary (Migration)

naresh.sharma@international.gc.ca

Telephone | Téléphone +91 (11) 4178-2000

7/8 Shantipath, Chanakyapuri, New Delhi 110 021

High Commission of Canada | Haut-commissariat du Canada



Government of Canada
High Commission of Canada

Gouvernement du Canada
Haut-commissariat du Canada

Our File No: G000337818

Date: December 22, 2021

To Whomsoever It May Concern

RE: Rashid, Abdul (dob: 1986/01/01)

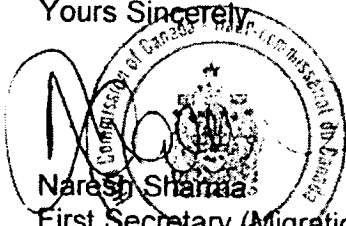
This is to certify that the above named individual has been recognized/accepted as a Refugee for resettlement to Canada by the High Commission of Canada in New Delhi under the Immigration and Refugee Protection Act.

In order to complete the processing of her application, a medical examination must be performed by a doctor from the Government of Canada approved list of Panel Physicians found at this link: <http://www.cic.gc.ca/pp-md/pp-list.aspx>

We would appreciate any necessary assistance to the above named individual regarding his release from detention in order to undergo the medical examination and any other related administrative requirements.

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Telephone | Téléphone +91 (11) 4178-2000

7/8 Shantipath, Chanakyapuri, New Delhi 110 021

High Commission of Canada | Haut-commissariat du Canada

599
30/12/21Imphal, 30th December 2021

To,

✓ The Chief Secretary (Finance/IT/Cabinet/DP /Home/AR),
Government of Manipur,
Manipur Secretariat, Imphal.

Subject:- Request for releasing the undersigned two Myanmar nationals/Rohingya Refugees so as to enable them to go to Canada as refugees for resettlement there through United Nation High Commission for Refugee, New Delhi and High Commission of Canada, New Delhi.

Sir,

We, the undersigned detainees, have the honour to state the following few lines before you for your kind consideration and prompt and positive action:-

1. That we are stateless persons from Myanmar belonging to the Rohingya community and we have been recognised as refugees due to our well-founded fear of being persecuted in our country of origin. We fled into Manipur to seek asylum in India through the United Nations High Commissioner for Refugee, New Delhi. Consequently, we entered into the territory of Manipur through Churachandpur District, which is bordering Myanmar. However, on 2nd February 2012, we were arrested along with other individuals by the personnel of 39 Assam Rifles from near L. Kanaan village, Border Pillar No. 43 and thereafter we were handed over to the Officer-in-Charge, Singngat Police Station. In this regard, the Officer-in-Charge, Singngat Police Station registered a criminal case being FIR No. 6(2)2012 Singngat P.S. U/S 14 Foreigners Act, 1946. Thereafter, we along with other individuals were produced before the learned Chief Judicial Magistrate, Churachandpur and we were remanded into judicial custody.



2. That on 30th July 2012, the learned Chief Judicial Magistrate, Churachandpur convicted and sentenced us along with other individuals to undergo 6 months of simple imprisonment and also to pay a fine of Rs. 1000/- (Rupees one thousand) each and in default of payment of fine, we shall undergo another fifteen days of simple imprisonment. The period of detention already undergone by us were set off against the term of imprisonment imposed including the period of imprisonment imposed on us in default of payment of fine, which runs consecutively.

3. That we have completed our period of imprisonment in the Manipur Central Jail, Imphal. However, we were not released from the jail by the jail authority by saying that they are waiting for orders from the competent authority to deport us to our own country. It is pertinent to mention here again that we had fled from our country due to well-founded fear of grave human rights violations and are therefore it is not safe for us to return there. In the meantime, we have approached the office of the United Nation High Commission for Refugees in New Delhi (UNHCR) for granting refugee status.

4. That on 7th December 2015, UNHCR, New Delhi wrote a letter addressed to the Joint Secretary (F), Ministry of Home Affairs, Government of India regarding access to Asylum Seekers from Myanmar in Manipur Central Jail, Imphal. In the said letter, UNHCR has stated that there are 15 asylum seekers, which includes our names, from Myanmar languishing in Manipur Central Jail, Imphal and we were charged under Section 14 of the Foreigners Act. The UNHCR appraised the authority that in order to reach a conclusion on our asylum application, they would be grateful if the asylum seekers, who have completed their sentences, be released in order to approach UNHCR so that they can complete their Refugee Status Determination (RSD) process.

5. That on 8th January 2020, UNHCR staff visited Manipur Central Jail, Sajiwa and conducted a personal interview with us for completing our Refugee Status Determination (RSD) process. Thereafter, on 13th January 2020, UNHCR issued refugee identity cards recognizing us as refugees under its mandate. As per the said cards as refugees we should, in particular, be protected from arbitrary detention or forcible return to our country or to any other country where we would face threat to our lives or freedoms.

True copies of our current Refugee Identity Cards issued by the UNHCR Representation in India, New Delhi are annexed hereto and marked as Annexure – A/1 and Annexure – A/2 respectively.

6. That despite that we have completed our sentence in 6 months and 15 days we continue to languish in the Jail for over 9 years. Given that we are unable to return back to Myanmar, UNHCR has submitted our case for third country resettlement to Canada. The Government of Canada has accepted us for Resettlement to Canada. On 22nd December 2021, the High Commission of Canada, New Delhi has issued certificates to the effect that we have been accepted as a Refugees for resettlement to Canada by the High Commission of Canada in New Delhi under the Canadian Immigration and Refugee Protection Act. In order to complete the processing of our application, a medical examination must be performed by a doctor from the Government of Canada's approved list of Panel Physicians and the same is to be completed on or before 20th January 2022. None of the Panel Physicians are located in Manipur and we will have to complete the medical examination in Delhi. Pursuant to the medical examination the Government of Canada will issue us a Travel

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document and necessary visa/ permissions to travel to Canada and leave India permanently.

True copies of the Acceptance Letters issued by the High Commission of Canada, New Delhi are annexed hereto and marked as Annexure - A/3 and Annexure - A/4 respectively.

It is, therefore, requested you to consider our case sympathetically and issue necessary orders/directions for releasing us from the Manipur Central Jail, Sajiwa at the earliest and allow us to go to the Office of the United nation High Commission for Refugee at New Delhi for completing necessary formalities for resettlement to Canada in the interest of justice.

Yours faithfully,

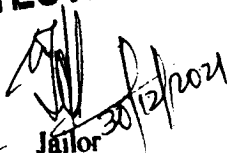
MD. KAMAL

(Mohammad Kamal)
UNHCR No. 305-15C02384

Abdul Rashid

(Abdul Rashid)
UNHCR No. 305-15C02402

ATTESTED


- Jailor 30/12/2024
Manipur Central Jail
Sajiwa

Copy to:-

The Superintendent,
Manipur Central Jail, Sajiwa,

for kind information and taking
necessary action.