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IMMIGRATION LAW

Delhi High Court Clarifies the Legal Position on Foreign Nationals Overstaying Their Visas after Bail

In Court on its Own Motion v. State, the Delhi High Court held that foreign nationals accused of visa overstay cannot be denied bail for their nationality, but bail does not legalise their stay, and detention-centre confinement cannot be a bail condition.

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Court on its Own Motion v. State, Criminal Reference No. 2/2021, decided on 18 November 2026.

Introduction

The distinction between the right to personal liberty and the State's power to regulate the entry and continued stay of foreign nationals in India has been examined by the Delhi High Court in *Court on its Own Motion v. State*, decided on 18 November 2026. The Court clarified that while foreign nationals are entitled to constitutional protection under Article 21 and cannot be denied bail merely on the ground of their nationality, the grant of bail does not confer any right to continue residing in India without a valid visa.

The judgment also addresses an important question concerning the legality of requiring foreign nationals to remain in detention centres as a condition of bail, distinguishing the powers of criminal courts from the independent statutory powers of immigration authorities.

Background of the Case

The matter originated from a criminal reference made by the Metropolitan Magistrate-04, South District, Saket Courts, New Delhi, under Section 395(2) read with Section 482 of the Code of Criminal Procedure, 1973. The reference arose during the consideration of a bail application filed by a Nigerian national who was facing prosecution under Section 14 of the Foreigners Act, 1946, for overstaying in India after the expiry of his tourist visa.

The Magistrate referred three questions to the High Court concerning whether granting unconditional bail to a foreign national accused of visa overstay would effectively legalise their continued stay in India; whether such cases should be treated differently from other criminal cases; and whether detention-centre confinement could be imposed as a condition of bail.

During the pendency of the reference, significant legislative and administrative developments took place, requiring the Court to examine the legal position under the Immigration and Foreigners Act, 2025, which repealed the Foreigners Act, 1946.

Legislative Developments and the Applicable Framework

The Court considered Section 23 of the Immigration and Foreigners Act, 2025, which prescribes penalties for, inter alia, foreign nationals who remain in India beyond the period permitted under their visa or violate the conditions of their visa. Section 25 of the 2025 Act also provides for the compounding of certain offences, including offences under Section 23, subject to the prescribed conditions.

The Court further examined the Immigration and Foreigners Order, 2025, particularly Paragraph 8, which provides for the establishment of holding centres or camps for restricting the movement of foreign nationals pending deportation.

Another relevant development was the Ministry of Home Affairs' Standard Operating Procedure (SOP) dated 10 December 2025, dealing with visa applications of foreign nationals involved in criminal proceedings whose presence is required in India during investigation or trial. The SOP provides for the grant of an X-Misc. Visa in specified circumstances, subject to prescribed conditions and approval requirements.

However, the FRRO clarified before the Court that foreign nationals specifically prosecuted for offences relating to visa overstay under Section 14 of the 1946 Act or Section 23 of the 2025 Act would not be eligible for an X-Misc. Visa under the said SOP. The FRRO also brought to the Court's attention the availability of compounding under Section 25 of the 2025 Act.

Key Findings of the Delhi High Court

The High Court answered the three questions referred to it and laid down the following important principles:

1. Grant of Bail Does Not Legalise Continued Stay in India

The Court held that granting bail to a foreign national accused of overstaying their visa does not legalise their continued presence in India or operate as a substitute for a valid visa.

The Court clarified that criminal proceedings concern the alleged violation committed in the past, whereas the regulation of a foreign national's continued presence in India is a matter falling within the independent powers of the Central Government under the applicable immigration framework.

Accordingly, the grant of bail cannot be construed as conferring an entitlement to remain in India without valid immigration authorisation.

2. Foreign Nationals Cannot Be Denied Bail Merely on the Ground of Nationality

The Court reiterated that foreign nationals are entitled to protection under Article 21 of the Constitution, which guarantees the right to life and personal liberty. Their applications for bail cannot be rejected solely because they are foreign nationals or because they have overstayed their visas.

The Court answered the second question in the negative, holding that cases involving foreign nationals accused of visa overstay should not be treated differently from other criminal cases merely on account of their nationality.

Nevertheless, courts may impose appropriate and reasonable bail conditions, taking into consideration the circumstances of the case and the possibility of the accused evading trial.

3. Detention-Centre Confinement Cannot Be Imposed as a Condition of Bail

The Court held that although bail may be granted subject to reasonable conditions concerning the accused's place of residence, restrictions on movement and periodic reporting to authorities, requiring a foreign national to remain confined in a detention centre as a condition of bail would defeat the very purpose of granting bail.

The Court clarified that the power to regulate, restrict or detain foreign nationals under the applicable immigration framework is independent of the criminal court's power to grant bail. Such measures must be undertaken by the competent executive authorities in accordance with law and cannot be imposed by a criminal court merely as a condition of bail.

Practical Implications and Conclusion

The judgment provides important clarity on the relationship between criminal proceedings and immigration regulation in India. It reinforces that the constitutional protection of personal liberty extends to foreign nationals, while simultaneously recognising the sovereign authority of the State to regulate their entry, movement and continued presence within the country.

The Delhi High Court has emphasised that the grant of bail and the right to remain in India are legally distinct questions. While foreign nationals cannot be deprived of their liberty merely because of their nationality, their continued stay in India remains subject to the applicable immigration laws and the independent powers of the competent authorities.