

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2240 OF 2016

Rehan Abdul Khalik Momin. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. M.K. Kocharekar, advocate for Applicant.

Ms. J.S. Lohakare, APP for State.

Mr. B.S. Pawar, PI, Bhiwandi Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 16, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP. Perused papers.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 28/7/2016 in Crime No. 114 of 2016 registered at Bhiwandi City Police Station. Investigation is completed and charge-sheet is filed against the

applicant under section 3(a) read with 6(a) of the passport Act and section 14 of the Foreigners Act.

3 It is the case of the prosecution that on 27/7/2016 Vinod Tejale, officiating as PI Crime Branch had received several complaints that there are people from Bangladesh and other countries, who are residing in India, more particularly, in Bombay, without having genuine passport. The police had visited Bhiwandi town and had initiated enquiry with the residents of the said locality. They had followed the procedure. That the present applicant was found without any passport. Upon enquiry, the applicant has disclosed that he is the original resident of Bangladesh. He is residing with his family. The applicant did not have any genuine documents at that time. He was taken into custody.

4 In the course of investigation as well as at the time of filing bail application, the applicant had filed the documents, which had clearly indicated that he was born on 10/10/1984 in Bhiwandi. His birth

was recorded in Bhiwandi Nizampur Municipal Corporation. On the basis of the birth certificate, he was also having Adhar Card and Pan Card. He had also filed a copy of marriage certificate alongwith affidavit of his mother-in-law and his wife.

5 It is vehemently submitted that the applicant is neither foreigner nor from Bangladesh. He is born in India and has sufficient records to substantiate the same. All the documents are on record. It is not the case of prosecution that those are not genuine documents.

6 That section 14 of the Foreigners Act is as follows :

“14. Penalty for contravention of provisions of the Act, etc.

—Whoever [\(a\)](#) remains in any area in India for a period exceeding the period for which the visa was issued to him;

[\(b\)](#) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

[\(c\)](#) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or

such order for which no specific punishment is provided under this Act,

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

Explanation.—For the purposes of this section, the expression “visa” shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920).]

7 That it is not the case of the prosecution that the applicant issued a visa and has violated any condition mentioned while granting VISA. It shows that section 14 would not be applicable in the present case. There are documents on record which would clearly indicate that the applicant was born in India and his name is entered into birth register of Bhiwandi Nizampur Municipal Corporation and therefore, section 14 prima facie would not be applicable to the present case.

The offence under section 14 of the Foreigners Act is punishable up to 5 years.

8 As far as the allegations under the Passport Act is concerned, it is clear that the applicant was not a holder of Indian Passport and has not committed breach of any conditions as there was no question of expiry of passport period. It is in these circumstances, that further incarceration of the applicant would not be imperative.

9 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- and one or more local solvent sureties in the like amount.

(iii) The applicant shall report to Bhiwandi City Police Station on 1st Sunday of each month till framing of charge.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)