

06.05.2022

Sl. No. 02

Srimanta

Ct.No.42

CRM (SB)/62/2022

(Via Video Conference)

In Re : An application under Section **439** of the Code of Criminal Procedure, 1973 in connection with Swarupnagar Police Station Case No. **241/2022** dated **17.03.2022** under Section **14/14C** of the Foreigners Act, 1946.

In the matter of : **Nargis Akter & Anr.**

...Petitioners.

Mr. Ali Ahsan Alamgir, Adv.,

Mr. A. Haque Molla, Adv.,

Ms. Riya Das, Adv,

Ms. Rabia Khatoon, Adv.

...for the petitioners.

Md. Anwar Hossain, Adv.,

Ms. Sreyashee Biswas, Adv.

...for the State.

The Learned Advocate for the State/opposite party has filed a report of the Investigating Officer as per order dated 4th May, 2022 and the same be kept with the record.

It is found from the report that the Aadhar Card and PAN Card of the petitioners were verified through the official portals and the said documents were found to be genuine. However, the Learned Public Prosecutor-in-Charge has raised objection against the prayer for bail of the petitioners on the ground that from the report submitted by the local Councillor as well as Panchayat Pradhan it appears that the petitioners never resided in the address given in the Voters Identity Card and the Aadhar Card. Moreover, it has not been explained by the petitioners as to why two different addresses were given in the aforesaid two documents. The local Councillor and the local Panchayat Pradhan clearly stated in their report that the petitioners do not reside in the addresses given in their Voter Card

and/or Aadhar Card. It is also submitted by the Learned Public Prosecutor-in-Charge that the Investigating Officer conducted a spot enquiry but nobody was found in the given address of the petitioners to ascertain as to whether they used to reside in the said address or not.

Having heard the Learned Advocates for the parties this Court is of the view that the questions as regards of the citizenship of this Country cannot be raised on the ground of the petitioners' residence. The petitioners may not reside in the given address in Voters Identification Card or Aadhar Card. There may not be any family member of the petitioners residing in the said address. But *prima facie* absence from the residential address does not prove that they are not the citizens of India. Needless to say that the Indian citizenship is governed by the provisions contained in the Constitution of India as to the citizenship and the Citizenship Amendment Act, 2019. No Tribunal has been set up in this country for ascertaining citizenship of a particular person. The enquiry as to whether a person is a citizen of this Country or not is under halt due to political differences and different stand taken by the political executives over this matter.

The judiciary cannot help it but to act upon the documents which are generally issued to the citizens of this Country to ascertain as to whether a person is a citizen of this Country or not. Considering such documents, viz., Epic Card, Aadhar Card, PAN Card etc. the Court, *prima facie*, finds that the petitioners have been able to prove their citizenship and accordingly they are entitled to bail. The petitioner may find bail of Rs.10,000/- (Rupees Ten Thousand) with one surety each to the satisfaction of the Learned Additional Chief Judicial Magistrate, Basirhat with further condition that if on bail they shall attend the Officer-in-Charge of Swarupnagar Police Station once in a month till the date of submission of charge-sheet.

It is made clear that the observation made by this Court with regard to the citizenship of the petitioners is absolutely tentative and for the purpose of consideration of their application for bail. The Learned Trial Judge shall not be influenced or swayed over any of the findings in this regard made by this Court at the time of trial.

Personal appearance of the Investigating Officer be waived.

(Bibek Chaudhuri, J.)