

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

**CRIMINAL REVISION APPLICATION NO.204 OF 2021**

|                           |               |
|---------------------------|---------------|
| Mubarak Rajjaba Sultanova | ...Applicant  |
| Versus                    |               |
| The State of Maharashtra  | ...Respondent |

Mr. Dilip Mishra, i/b Mr. Ayaz Khan, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent - State.

Mr. Dinkar Kadam, Bandra Police Station, Mumbai, is present.

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 9<sup>th</sup> MARCH 2022**

***P.C. :***

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Learned APP waives service on behalf of respondent- State.
3. By this application, the applicant has impugned the judgment and order dated 10<sup>th</sup> December 2020, passed by the learned Metropolitan Magistrate, 12<sup>th</sup> Court, Bandra, Mumbai, in C.C. No.469/PW/2020 as well as the Judgment and Order dated 20<sup>th</sup> October 2021 passed by the learned

Additional Sessions Judge, City Civil and Sessions Court, Mumbai in Criminal Appeal No.342 of 2020.

4. Learned Counsel for the applicant submits that the applicant an Uzbekistani National had voluntarily pleaded guilty to the charge under Section 14(a)(b) of the Foreigners Act, 1946 (hereinafter referred to as 'the said Act'), however, the learned trial Court sentenced the applicant to suffer simple imprisonment for 2 years, by observing that this is the minimum punishment provided under Section 14(a)(b) of the said Act. He submits that the said observation of the learned Judge was completely erroneous, inasmuch as, the punishment prescribed under the said Section is imprisonment for a term, which may extend to 5 years and fine. He submits that inadvertently the trial Court has taken into consideration Section 14A(a)(b) of the said Act, whilst observing that the minimum punishment is 2 years, when infact that is not even the charge/prosecution case. Learned Counsel submits that even the Appellate Court mechanically upheld the conviction and sentence of the applicant, by re-iterating the same i.e. the minimum sentence was 2 years under Section 14(a)(b) of the said Act

5. Learned APP fairly states that the conviction was under Section 14(a)(b) of the said Act and that the same does not prescribe any minimum punishment of imprisonment. She also does not dispute that the applicant was charged under Section 14(a)(b) of the said Act.

6. Perused the papers. The applicant is an Uzbekistani National. An FIR being C.R. No.209 of 2019 was registered as against the applicant with the Bandra Police Station, Mumbai, on 25<sup>th</sup> December 2019, alleging offences punishable under Section 14(a)(b) of the said Act. It appears that the said complaint was lodged when API – Hemant Phad of Bandra Police Station received information that one foreigner lady was admitted to the Holy Family Hospital, for urgent medical treatment i.e. slipped disc. On perusing the xerox copies of the applicant's passport and visa, API – Hemant Phad of Bandra Police Station found that the applicant's visa had expired. Since the applicant's visa had expired on 8<sup>th</sup> June 2014, the applicant's passport was seized and the aforesaid C.R. was registered, as against her.

7. After investigation, charge-sheet was filed. It appears that as the applicant had no source of income and no permanent place of residence

and as she wanted to return home to her country, she filed an application in the form of plea bargaining and pleaded guilty to the said charges. Her medical certificate was also produced alongwith the application pleading guilty. Thereafter, charge was framed as against the applicant for the offence punishable under Section 14(a)(b) of the said Act on 10<sup>th</sup> December 2020. The trial Court observed that the applicant had pleaded guilty voluntarily to the said charge and as such held her guilty for the offence under Section 14(a)(b) of the said Act. In para 2 of the impugned Judgment and Order, the learned Judge observed that after going through Section 14(a)(b) of the said Act, a minimum punishment is provided and as such proceeded to sentence the applicant to suffer simple imprisonment for 2 years and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for 2 months.

8. Being aggrieved by the said judgment and order, the applicant preferred an appeal, being Criminal Appeal No.342 of 2020 alongwith an application for bail. The applicant was released on bail pending appeal on 4<sup>th</sup> January 2021. Thereafter, the learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai, vide Judgment and Order dated 20<sup>th</sup>

October 2021, rejected the applicant's appeal and as such confirmed the Judgment and Order passed by the trial Court. Against the said Judgment and Order passed by the trial Court and the Appellate Court, the applicant preferred the aforesaid Revision Application. This Court vide order dated 29<sup>th</sup> October 2021 granted bail to the applicant and suspended her sentence.

9. Section 14 of the Foreigners Act, 1946, reads as under:-

“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) .....  
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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.”

10. A perusal of the said section shows that there is no minimum sentence which is prescribed under the said provision and as such the term

of imprisonment could be from 1 day upto 5 years. It appears that the trial Court has misdirected itself in law, by not considering the same. It further appears that both, the trial Court as well as Appellate Court have considered Section 14A(a)(b) of the said Act, which prescribes punishment with imprisonment, which shall not be less than 2 years and which may extend to 8 years, whilst convicting the applicant. Not only the trial Court but even the learned Sessions Judge observed that the minimum sentence under Section 14(a)(b) of the said Act, was 2 years, which is not correct. The applicant was facing a charge under Section 14(a)(b) of the said Act and not under Section 14A. It appears that both the trial Court and the Appellate Court have misdirected themselves in law, by observing that the minimum sentence was 2 years under Section 14(a)(b) of the said Act, when infact, the punishment that can be awarded for the said offence is imprisonment which may extend upto 5 years. It appears that both the trial Court and the Appellate Court have taken into consideration Section 14A instead of Section 14(a)(b) of the said Act. It is informed that the applicant was incarcerated for about 55 days.

11. Considering the aforesaid, the conviction under Section 14(a) (b) of the said Act is maintained, however, the sentence is reduced to the period already undergone by the applicant. It is not in dispute that the fine amount has already been deposited by the applicant. It is informed that the police authorities have already handed over the applicant her passport.

12. Accordingly, the applicant be deported to Uzbekistan, at the earliest and in any event within two weeks from today, after completing all necessary formalities.

13. Learned APP through the concerned officer, to forthwith communicate the aforesaid order to the FRRO, Mumbai. The officer thereafter, to communicate the said order to the Embassy of Uzbekistan at Mumbai as well as Delhi, either by fax/e-mail or through a Special Messenger.

14. Revision Application is allowed. Rule is made absolute in the aforesaid terms.

15. A copy of the order be sent by fax/e-mail to learned Metropolitan Magistrate, 12<sup>th</sup> Court, Bandra, Mumbai (Jaydeo Y. Ghule), and learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai (Smt. C. R. Hankare), who passed by the impugned Judgment and Orders dated 10<sup>th</sup> December 2020 and 20<sup>th</sup> October 2021 respectively.

16. All concerned to act on the authenticated copy of this order.

***REVATI MOHITE DERE, J.***