

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.322 of 2024

Arising Out of PS. Case No.-44 Year-2022 Thana- MAHILA P.S. District- Kishanganj

Farida Malik @ Sana Akhtar daughter of late Sultan Malik Resident of
Village- 14419 Tracy Schar Ln, Centre Ville, Va 201212588

... .. Petitioner/s

Versus

1. The State of Bihar Through Its Home Secretary Patna Bihar
2. The Union of India Through The Secretary, Ministry Of External Affairs,
Bureau of Immigration, The Union of India Through The Secretary, Ministry
of External Affairs, Bureau of Immigration, Office of Assistant Foreigners
Regional Registration Officer,
3. The Director General of Police, Bihar, Patna Bihar
4. The Superintendent of Police, Kishanganj Bihar
5. The Officer-In- Charge Mahila Police Station, Kishanganj Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Shrishti Singh, Advocate Mr. Pranav Kumar, Advocate
For the Union of India	:	Mr. Subodh Kumar Jha, Advocate (Senior Panel CGC)

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAVJUDGMENT

Date : 29-04-2024

1. The petitioner is a foreign national, being a citizen of United States of America. She is in incarceration in connection with Mahila (Kishanganj) P. S. Case No. 44 of 2022, dated 2nd of November, 2022, registered under Sections 419 and 420 of the Indian Penal Code, 1860 and Sections 14/14(b) of the Foreigners Act, 1946.

2. It is relevant to mention, at the outset, that in connection with the aforesaid police case, charge-sheet has been



submitted before the jurisdictional Court of the learned Sub-divisional Judicial Magistrate, Kishanganj cognizance was taken; and the case is at the stage of trial.

3. At this stage, the petitioner has filed the instant writ petition with the following relief:

“i) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the First Information Report bearing Mahila (Kishanganj) P.S. Case No. 44/2022 dated 02.11.2022 registered under Sections 419 & 420 of the India Penal Code, 1860, Section 14/14(b) of the Foreigners Act, 1946, and consequential proceedings.

ii) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the Charge Sheet No. 53 of 2022 dated 28.12.2022 filed under Sections 419 & 420 of the India Penal Code, 1860, section 14/14(b) of the Foreigners Act, 1946.

iii) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the cognizance taking order dated 17.01.2023 by the Learned Court of SDJM, Kishanganj under Sections 419 & 420 of the India Penal Code, 1860, section 14/14(b) of the Foreigners Act, 1946.

iv) To issue an appropriate



writ/order/direction in the nature of certiorari for quashing the order framing charge dated 05.10.2023 under Sections 419 of the India Penal Code, 1860, Section 14, 14(B) of the Foreigners Act, 1946 by which charge has been framed by the Court of ADJ-1 cum-Special Judge, Kishanganj, in ST No. 119/2023.

v) To issue an appropriate writ/order/direction in the nature of mandamus for commanding the respondents to return the items mentioned in the seizure memo forming part of the FIR, including the passport bearing no. A01007049, seized from the petitioner on her arrest.

vi) To issue an appropriate writ/order/direction in the nature of mandamus for commanding the respondents to deport the petitioner to the United States of America in consonance with Section 5 of the Passport (Entry into India) Act, 1920.

vii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

4. One Deepak Sharma, Assistant Commandant of 41 Battalion, Sashastra Seema Bal (SSB) submitted a written report, duly forwarded to the SHO, Mahila Police Station Kishangan, alleging, *inter alia*, that on 1st of November, 2022 at



about 07.30 P.M., Border Interaction Team apprehended one woman, who was travelling from Bagdodara Airport in a Maruti Espresso, bearing Registration No. WB74-BE/8075 and was trying to cross India-Nepal border to go to Nepal. The Border Interaction Team detained her. The said woman disclosed her name as Sana Akhtar and produced an identity card issued by the Asian Academy of Film and Television, Noida. She was asked to produce some other identity proof and her boarding pass for the journey from Delhi to Bagdodara. While producing the same, other boarding pass in the name of Farida Malik, dated 30th of July, 2022 for DOH-KTM flight was found to be present in her bag along with two other boarding passes of Indigo Airlines from Pant Nagar to Delhi and from Delhi to Bagdodara in the name of Sana Akhtar. From her possession, another boarding pass from Delhi to EWR of Qatar Airways and also from Doha to Kathmandu in the name of Farida Malik were recovered. On being asked, she disclosed her name as Farida Malik. She also disclosed that she was originally a citizen of Pakistan and had renounced her citizenship of Pakistan and took the citizenship of United States of America. The said lady mentioned one American Passport where her name was recorded as Farida Malik, issued on 7th of June, 2022 and valid till 6th of



June, 2032. Besides the said passport, she had a photo of another US passport on her mobile where name was mentioned as Farida Malik with validity from 15th of March, 2018 to 14 of March, 2028. It was found that the said lady was in India without any valid Visa and was trying to cross India Nepal boarder to go to Nepal. She disclosed that some of her articles were at Town Hall, Noida and to procure the same, she went to India. It was also disclosed by her that previously she had travelled from Delhi to Bagdogara under the name of Sana Akhtar although her passport bears the name of Farida Malik.

5. On the basis of the said information, Mahila Police Station, Kishanganj registered a case against the petitioner under Sections 419 and 420 of the Indian Penal Code and Sections 14/14(b) of the Foreigners Act, 1946. On conclusion of investigation, Police submitted charge-sheet under the afore-mentioned penal provisions against the petitioner.

6. The petitioner filed an application praying for discharging her on the ground that the petitioner was having two passports – one in the name of Sana Akhtar and another in the name of Farida Malik.

7. It is submitted by Mr. Y. V. Giri, learned Sr. Counsel appearing on behalf of the petitioner that the



indispensable ingredients constituting an offence under Section 419 of the Indian Penal Code are cheating, which has been defined in Section 415 of the Indian Penal Code. The essential ingredients of offence under Section 415 of the Indian Penal Code are -

(i) Deception of one person ;

(ii) (a) fraudulently or dishonestly inducing that person to deliver any property to any person; or

(b) to consent that any person shall retain any property; or

(c) intentionally inducing that person to do or omit to do anything he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

8. It is also submitted by the learned Sr. Counsel that Section 416 refers to cheating by personation and the essential ingredients of the Section are: -

(I) pretension by a person to be some other person

(ii) knowingly substituting one person for or another



(iii) representation that he or any other person is a person other than he or such other person really is.

9. Referring to the above ingredients, it is submitted by the learned Sr. Counsel on behalf of the petitioner that the F.I.R. does not disclose any allegation of fraudulent or dishonest inducement by the petitioner of any other person to deliver any property or to consent that any person shall retain any property or intentionally inducing that person to do or omit to do something which he would not do or omit if he was not so deceived.

10. The learned Sr. Counsel on behalf of the petitioner submits that even assuming that the petitioner had two passports in the name of Farida Malik as well as Sana Akhtar, there is no allegation that she committed any offence of cheating by personation. In the present case, the petitioner only used her nick name of Sana Akhtar and obtained another passport from the competent authority of United States of America. There is no penal provision in India to raise any question as to why one person was issued two passports by some other sovereign country.

11. It is contended by the learned Sr. Counsel that the offence of cheating cannot be perpetrated in vacuum and



without any evidence or even bare reference of any person so cheated.

12. In the present case, there is no allegation against the petitioner regarding commission of cheating, punishable under Sections 419 and 420 of the Indian Penal Code.

13. The learned Sr. Counsel on behalf of the petitioner next submits that Section 14 (b) of the Foreigners Act, 1946 gets attracted when there is any violation of Visa conditions granted by the Indian Authority. It states -

“Whoever does any act in violation of conditions of valid Visa issued to him for his entry and stay in India or any part therein..... 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.”

14. From the materials on record, this Court finds that the petitioner was earlier convicted under Section 3 of the Passport Act read with Rules 3 and 5 of the Passport Rules and



under Section 14 of the Foreigners Act read with Rule 3 of the Foreigners Rule in Criminal Case No. 782 of 2019 by a judgement and order of conviction and sentence dated 5th of March, 2020, passed by the learned Chief Judicial Magistrate, Champawat, Uttarakhand. The petitioner preferred an appeal before the learned Sessions Judge, Champawat being Criminal Appeal No. 10 of 2020. The said appeal was also dismissed. The judgement passed by the Appellate Court, Champawat was assailed in Revision before the Uttarakhand High Court which was registered as Cr. Revision No. 57 of 2021. The High Court in Uttarakhand confirmed the order of conviction *vide* judgement dated 31st of March, 2021 but reduced the sentence of the petitioner to 11 months rigorous imprisonment instead of 4 years rigorous imprisonment.

15. The learned Sr. Counsel for the petitioner also submits that the petitioner was suffering from bipolar disorder. True copy of the medical reports of the petitioner have been annexed as Annexure- P-1 to the writ petition, where the petitioner was diagnosed with bipolar disorder and was prescribed mood stabilizing and anti-psychotic medications. This document has been apostilled on 30th of January, 2024 by the State of California, United States of America.



16. It is submitted that such a disorder causes manic reactions and impairs decision making ability, causes delusions and triggers paranoid thinking. In this regard, it is submitted by the learned Sr. Counsel on behalf of the petitioner that the petitioner previously came to India on number of occasions and she believes that she was actually born in some place in India in his previous life and she wants to find out her place of birth.

17. Be that as it may, the learned Sr. Counsel for the petitioner submits that in the case of *Fadi Fadel v. The State of Bihar & Ors.*, reported in **2018 (2) PLJR 400**, this Court *vide* judgement dated 17th of January, 2018 not only quashed the F.I.R. but also quashed the order of taking cognizance as well as framing of charge and the whole proceeding and pass an order for deportation of the petitioner after holding that the offences alleged in the F.I.R. were not attracted.

18. The learned Advocate on behalf of the Union of India, on the other hand, supports the prosecution case and submits that the petitioner had entered into the territory of India without any Visa which is required to be obtained by her from the Government and such illegal entry in the territory of India contravenes the provision of the Foreigners Act, 1946 and she is liable to be prosecuted under Section 14 of the Foreigners Act.



19. Having heard the learned counsels for the parties and on careful perusal of entire materials on record, this Court is of the view that in the facts and circumstances of the present case, it is ascertained that at best it is a case of unlawful entry into the territory of India by the petitioner and due to such reason, the petitioner should have been deported in terms of Section 5 of the Passport (Entry into India) Act, 1920 instead of facing trial under Sections 419 and 420 of the Indian Penal Code and Section 14(b) of the Foreigners Act, 1946.

20. I have already discussed that the provision of Section 14 of the Foreigners Act gets attracted only when there is an allegation of violation of the conditions of a valid visa issued to a person for his / her entry and stay in India or any part thereunder. On the fact of it, this provision is not attracted and none of the ingredients of Section 14 would be satisfied for the purpose of framing charge.

21. The Passport (Entry into India) Act, 1920 was enacted with the object and reason to retain the power to continue with the Rules requiring passports for egress from and ingress into India. The word “entry” stands defined under Section 2 of the said Act, which means entry by water, land or air. Section 3 is the rule making power wherein, the Central



Government may make rules requiring that persons entering into India to be in possession of passports and all matters ancillary or incidental to that purpose. The Central Government has got power to frame rules and such rules may prescribed the entry to India from any part thereof by any person who is not in his possession a passport issued to him.

22. Rule 13 of the Passport (Entry into India) Rules, 1950 says that save as provided in Rule 4, no person proceeding from any place outside India shall enter or attempt to enter India by water, land or air, unless he is in possession of a valid passport confirming to the conditions prescribed in Rule 5. Rule 5 prescribes the conditions of a valid passport. Under Section 5 of the Act of 1920, the Central Government has power to direct by general or special order for removal of any person from India who, in contravention of any rule, made under Section 3, prohibiting entry into India, without passport, has entered therein and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.

23. Thus, the petitioner is not liable for committing any offence under Section 14(b) of the Foreigners Act, 1946.

24. Under the Passport (Entry Into India) Act, 1920,



the petitioner could have entered into India and if she is found to have entered into India, she would have been deported immediately.

25. For the reasons, stated above, this Court finds that there is no reason to lodge F.I.R. against the petitioner, to take cognizance on the basis of charge-sheet by the learned Magistrate, to frame charge against the petitioner and to compel her to face trial.

26. The entire proceeding in connection with Mahila (Kishanganj) P. S. Case No. 44 of 2022, dated 2nd of November, 2022 is liable to be quashed and accordingly this Court invokes writ in the nature of Certiorari and directs to quash the F.I.R., bearing Mahila (Kishanganj) P. S. Case No. 44 of 2022, dated 2nd of November, 2022; order of taking cognizance on the basis of Charge-sheet No. 53 of 2022; order of framing charge by the learned SDJM, Kishanganj; and all other subsequent proceedings against the petitioner.

27. The Respondent Nos. 2 and 3 are directed to take immediate steps in consultation with the USA Embassy in India to repatriate the petitioner at once.

28. Till the date of her repatriation, the petitioner be handed over to the custody of the Officer of the Embassy of the



United States of America in New Delhi, duly authorised by the
High Commissioner of United States of America in India.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
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