

16.05.2025

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jdt.

Allowed

C.R.M. (DB) 1131 of 2025

In Re : An Application under Section 439 of the Code of Criminal Procedure/under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed in connection with Bhadreswar Police Station Case No. 462 of 2024 dated 23.11.2024 under Sections 318(4)/336(2)/336(3)/340(2)/61(2) of the Bharatiya Nyaya Sanhita and Section 12(1)(b) of the Passport Act and under Sections 34/35/52 of the Aadhar Act and under Section 23 of the Registration of Birth and Death Act subsequently added Section 316(5) of Bharatiya Nyaya Sanhita.

And

In Re : Biswajit Ghosh Petitioner

Mr. Sabir Ahmed

Mr. Suman Chakraborty

... For the Petitioner.

Mr. Antarikshya Basu

Mrs. Manasi Roy

... For the State.

The petitioner is in custody for 117 days and prays for bail.

At the outset learned counsel for the petitioner submits that the initial allegation against the petitioner was under Sections 318(4)/336(2)/336(3)/340(2)/61(2) of the BNS. The petitioner sought statutory bail before the learned Magistrate by an application filed on 11th March, 2025. On the same date the prosecution filed an application for addition of Section 316(5) of the BNS and the petitioner's bail prayer was turned down on such ground. Learned counsel submits that the graver section was added by prosecution only to curtail the benefit accrued by the petitioner and to extend his custody.

On merits, learned counsel submits that the petitioner is a peon of the post office and his duty was to deliver articles/parcels allotted to him. He was not aware of the contents of the said

articles/parcels. No money trail could be linked to the petitioner in course of investigation and he has no nexus with the alleged offence. The petitioner prays for bail.

Opposing the prayer, learned counsel for the State submits that the prayer for bail of the petitioner as well as the prayer of the prosecution for addition of Section 316(5) of the BNS were made on the same date and taken into consideration by the learned Magistrate on that date. Learned Magistrate allowed the prayer of the prosecution and rejected the bail prayer of the petitioner by the order passed on 11th March, 2025. The petitioner is a part of a racket which has issued as many as 29 passports on the basis of 10 Aadhar Cards. The gang obtained fake passports in lieu of huge amount of money and several lakhs of rupees have been transferred to the members of the gang during the last five years.

I have considered the material on record.

The petitioner was undoubtedly entitled to statutory bail on the basis of the initial allegations made against him. On 11th March, 2025, two applications, one filed by the petitioner seeking statutory bail and the other filed by the prosecution for addition of 316(5) of the BNS were filed and taken into consideration by the learned Magistrate. By the same order learned Magistrate allowed the prayer of the prosecution and turned down the bail prayer of the petitioner on the ground of addition of Section 316(5) of the BNS. Since the said section was allowed to be added on the same date, the petitioner was no longer entitled to statutory bail in view of the punishment laid in the said section.

On merits, it appears that the petitioner is a peon of the post office. The statement of the postmaster recorded under Section 161 of the Code of Criminal Procedure suggests that articles/parcels are allotted for delivery and the employees are not

aware of the contents of the same. The only allegation against the petitioner is that he has delivered 29 passports to co-accused Mohan Shaw @ Mohan Shaw in violation of the office memorandum dated 11th April, 2012 which mandates that passports should be delivered to the addressee only and not redirected. If not delivered it should be sent to the sender. The petitioner appears to have delivered the passports to the co-accused despite there being no authorisation in favour of the co-accused by the passport applicants. Such lapse on the part of the petitioner can at best be termed as dereliction of duty. No money trail has *prima facie* been detected connecting the petitioner to the alleged crime. The petitioner does not appear to be similarly circumstanced with the co-accused whose bail was turned down by this Court recently. Charges have been framed.

Upon consideration of the material on record as well as extent of complicity of the petitioner in the alleged crime, this Court is of the view further detention of the petitioner is not required and he may be released on bail.

Accordingly, the prayer for bail is allowed.

The petitioner namely Biswajit Ghosh shall be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Chandannagar, Hooghly subject to condition that he shall appear before the learned trial Court on every date of hearing fixed by the learned trial Court and shall not tamper with evidence or intimidate witnesses in any manner whatsoever.

In the event the petitioner fails to appear before the learned trial Court on any date fixed for hearing without any justifiable

cause, the learned trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

The application for bail is disposed of.

Case diary be returned.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)