

28.
27-10-2025
(ct. no.446)
debajyoti
(allowed)

CRM (M) 1662 of 2025

In re: An application for bail under Section 439 of the Code of Criminal Procedure/483 of the Bhartiya Nagarik Suraksha Sanhita in connection with Swarupnagar Police Station Case No.419 of 2024 dated 06-08-2024 under Section 14A of the Foreigners Act read with Section 12 of the Passports Act.

- A n d -

In the matter of : Md. Forkan Gazi

.... Petitioner.

Mr. Sabyasachi Mukherjee,
Ms. Debjani Chakraborty,
Ms. Swastika Saha,
Mr. Ranabeer Halder

... For the Petitioner.

Mr. Bitasok Banerjee,
Ms. Sanjida Sultana

... For the State.

1. It is submitted on behalf of the petitioner that he is in custody for 1 year 6 months and charge sheet has been submitted. Charge has not been framed by the learned trial Court and date is fixed for framing of charge.

2. Learned prosecution, on the other hand, raises objection to grant of bail.

3. Heard submissions of learned advocates for the parties and considering the facts and circumstances of the case, it is not in dispute that the petitioner is a Bangladeshi national who entered into India with valid Passport and Visa and is overstaying in India after expiry of the said documents. Furthermore, charge sheet has been submitted and six witnesses have been examined.

4. Learned coordinate Bench had rejected the prayer of the petitioner for bail on 19th June, 2025 with a view that possibility of the petitioner fleeing from justice, if granted bail, cannot be overlooked. However, direction was given to the learned trial Court to expedite the trial without granting any unnecessary adjournment to either of the parties. No further development is there since then so far the trial is concerned.

5. Learned advocate for the petitioner relied on a judgment in the case of Farida Praveen alias Shikka Gaur (2025:PHHC:109559) where the period of detention was for six months fourteen days as per Custody Certificate and on relying on several judicial pronouncements, the prayer was considered. Section 479 of BNSS provides for bail and in terms of the said provision, excepting the offences where the offence is punishable for death or life, and the period of detention is undergone, extending upto one-half of the maximum period of imprisonment as specified for that offence under that law, he shall be released on bail. In this case, such period of detention has not been covered.

6. Be that as it may, in view of the facts and circumstances of the case and the nature of offence of overstaying after expiry of the Passport and Visa, this Court is of the view that the prayer of the petitioner for bail is considered since the protection of life and personal liberty of a person as enshrined in Article 21 of the Constitution of India is equally applicable to foreigners also.

7. Accordingly, the petitioner, namely, **Md. Forkan Gazi**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of like amount each, to the satisfaction of learned Additional Chief Judicial Magistrate, Basirhat. The petitioner shall appear before the learned trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and shall not

commit any cognizable offence in any manner whatsoever. The petitioner shall appear before the Officer-in-Charge/Inspector-in-Charge of the local police station once in a week, until further orders. The petitioner shall inform his current local address where he shall be residing while on bail, to the learned trial Court and the local police station. The petitioner will not leave India or the jurisdiction of the local police station without permission of the learned Special Court and shall appear on each and every day before the learned trial Court. Such person shall not directly or indirectly induce any threat to any person acquainted with the facts of the case to dissuade him from disclosing any fact to the court or police officer.

8. At this stage, judgment of the Hon'ble Supreme Court in the case of Frank Vitus Vs. Narcotics Control Bureau, 2025-INSC-30, is considered where it was observed by the Hon'ble Supreme Court while granting bail to a foreigner that the concerned court shall issue direction to the State or prosecuting agency, as the case may be, to immediately communicate the order granting bail to the concerned Registration Officer appointed under Rule 3 of the Rules, who, in turn, shall communicate the order to all concerned authorities including the Civil Authorities. In view of that, such direction is also given to the State Prosecuting Agency of this case to comply with this direction as passed by the Hon'ble Supreme Court, as discussed above.

9. In the event the petitioner fails to comply with any of the conditions stipulated above, the trial Court shall be at liberty to cancel the bail in accordance with law without further reference to this Court.

10. The application for bail is, thus, **allowed**.

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

12. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]