

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.A. (DB) 403 of 2024

Rabiul Islam

vs.

National Investigation Agency

For the Appellant : Mr. Giasul Islam, Advocate

For the N.I.A : Mr. Arun Kumar Maiti (Mohanty), Advocate
Mr. Bhaskar Prosad Banerjee, Advocate
Mr. Debasis Tandon, Advocate

Heard on : 21.05.2025

Judgment on : 21.05.2025

DEBANGSU BASAK, J.:-

1. Appellant assails the judgment of conviction dated November 13, 2024 and the order of sentence dated November 14, 2024 passed by the learned Trial Judge in Special NIA Case No.07 of 2021.
2. Trial Court records are available. Appeal is admitted and taken up for final hearing by consent of the appearing parties.
3. Learned advocate appearing for the appellant submits that, the conviction of the appellant was incorrect. Appellant pleaded guilty only

in respect of Section 14A(b) of the Foreigners Act, 1946 in the petition dated September 7, 2024 and oral submission dated November 13, 2024 not to Sections 468/471/120B of the Indian Penal Code.

4. Learned advocate appearing for the appellant submits that, there is no material evidence or witness testimony supporting the forgery and conspiracy charges under Sections 468/471/120B of the Indian Penal Code. According to him, learned Trial Court mechanically added such charges with judicial application of mind violating the due process.
5. Learned advocate appearing for the appellant submits that, sentence pronounced is excessive. He also points out that, there are procedural irregularities in vitiating the ultimate judgment of conviction and order of sentence. He submits that, learned Trial Judge failed to ensure the guilty plea was clear, unambiguous and informed as required under Criminal Procedure Code. He points out that, learned Trial Court did not record judicial satisfaction that, the appellant understood the consequences of his plea under the Indian Penal Code charges.
6. Although, the written notes submitted in Court contains various citations, learned advocate for the appellant did not draw our attention to such citations. Consequently, we need not take notice of the same.
7. Learned advocate appearing for the appellant submits that, there are mitigating circumstances relating to the offences that were allegedly

committed. He highlighted the COVID-19 lockdown and there being no nexus between the appellant and the coaccused.

8. NIA is represented.
9. Charges as against the appellant were submitted *inter alia*, under Section 14A(b) of the Foreigners Act read with Section 120B of the Indian Penal Code by NIA.
10. Learned Trial Judge, framed charge on December 11, 2023 as against all the accused. As against the appellant, charges under Section 14A(b) of the Foreigners Act, read with Sections 468/471/120B of the Indian Penal Code were framed. As against the appellant the charges framed on December 11, 2023 are as follows :-

“Firstly :- That on or before 10th day of July, 2021 you all have entered into a criminal conspiracy and thereby forged certain documents to wit Aadhar Card etc. with the intention that it shall be used for the purpose of cheating and that thereby you had committed an offence punishable u/s 468/120B of IPC and within the cognizance of this court.

Secondly :- That on or before 10th day of July, 2021 at some unknown place you all have entered into a criminal conspiracy and thereby fraudulently and dishonestly used certain documents to wit Aadhar Card and Passport which you knew at that time you used it to be forged documents and that thereby you had committed an offence punishable u/s 471/120B of IPC and within the cognizance of this court.”

11. During the continuance of the trial, an application was made on behalf of the appellant pleading guilty. Such application was fixed for hearing on October 7, 2024 by the learned Trial Judge.
12. Order dated October 7, 2024 records that, the appellant confirmed that he wrote the petition by himself after understanding everything. Appellant was informed by the learned Trial Judge that, in the event his plea of guilty is accepted he will be sentenced to suffer imprisonment and also be sentenced to pay fine as per law. Learned Trial Judge recorded that, appellant replied that, he was aware about the fact that he may be sentenced as per law and even with the apprehension he was willing and ready to plead guilty. Learned Trial Judge proceeded to fix further date of hearing of such petition.
13. On the next date, being November 11, 2024, hearing of the petition of the appellant pleading guilty was taken up for consideration apart from the trial of the case. Appellant was produced from Jail custody when, the appellant was again cautioned by the learned Trial Judge on the possibility of him being convicted in case of his pleading guilty. He was even explained the consequences in Bengali, the language which the appellant understood. The learned Trial Judge fixed November 13, 2024 for further hearing.
14. On November 13, 2024, appellant was produced from Jail Custody. Learned Trial Judge noted that, record reveals that, on September 9,

2024, petition of the appellant tendering the plea of guilty was received by the Court as prisoner's petition from the appellant through the Superintendent, Presidency Correctional Home. Learned Trial Judge also recorded that, on October 7, 2024 and November 11, 2024 due caution was given to the appellant about the possibility of him being sentenced to suffer imprisonment which may extend upto 8 years and fine. In the same manner, learned Trial Judge gave caution to the appellant as that of the two previous dates and explained to the appellant in Bengali which is the mother tongue of the appellant as to the consequences. Learned Trial Judge recorded that, after giving caution, the appellant submitted that, he understood everything as well as the possibility of him being convicted to suffer imprisonment and payment of fine. Appellant expressed that he is still eager and willing to plead guilty.

15. On November 13, 2024, learned Trial Judge recorded the submission of the learned Special Public Prosecutor. According to the learned Special Public Prosecutor, the appellant expressed his willingness to plead guilty after understanding consequences of being convicted to suffer sentence. According to the learned Special Public Prosecutor, such action of the appellant was completely voluntary and outcome of his personal understanding. Therefore, learned Special Public Prosecutor pointed out that plea of guilty should be accepted.

16. Learned Trial Judge, thereafter, proceeded to record that, charges as against the appellant were framed for the offences punishable under Section 14A(b) of the Foreigners Act and for the offences punishable under Sections 468/471/120B of the Indian Penal Code.
17. Learned Trial Judge again considered the action of the appellant in pleading guilty of all offences for which the charges were framed. Learned Trial Judge recorded his satisfaction that the plea of guilty of the appellant appears to be voluntary and thereafter proceeded to accept the plea of guilty of the appellant.
18. As a consequence of such acceptance, learned Trial Judge by the order dated November 13, 2024, held the appellant guilty of offences punishable under Section 14A(b) of the Foreigners Act and for offences punishable under Sections 468/471/120B of the Indian Penal Code. Appellant was accordingly convicted under Section 329 of the Criminal Procedure Code.
19. Appellant was remanded to Jail custody till November 14, 2024 for production and hearing on the point of sentence.
20. By the impugned order of sentence dated November 14, 2024, learned Trial Judge took into account the circumstances of the case. Learned Trial Judge noted that, the appellant came to India in 2021. Educational qualification of the appellant was noted. Contention of the appellant that, he was a national of Bangladesh was also noted. Learned Trial

Judge took into consideration a decision of the High Court and proceeded to award the sentence. Learned Trial Judge recorded that, he gave anxious consideration over the submissions made on behalf of the prosecution as also the appellant including the statements of the appellant. Learned Trial Judge noted that, given the nature and gravity of the offence provision of Section 360 of the Criminal Procedure Code or Probation of Offenders' Act were not applicable. However, learned Trial Judge took into account that, the appellant voluntarily pleaded guilty. Therefore, considering such facts and circumstances, learned Trial Judge was of the view that imposing highest punishment would be harsh for the appellant.

21. Consequently, learned Trial Court proceeded to convict the appellant to sentence rigorous imprisonment for 5 years and the for the sentence to pay fine of Rs.5,000/- in default, to suffer further rigorous imprisonment for one month for the offence punishable under Sections 468/120B of the Indian Penal Code. Appellant was sentenced to suffer rigorous imprisonment for five years and further sentenced to pay fine of Rs.5,000/- and in default to suffer further rigorous imprisonment for one month for the offence punishable under Sections 471/120B of the Indian Penal Code. Appellant was sentenced to suffer rigorous imprisonment for five years and further sentenced to fine of Rs.10,000/- in default to suffer further rigorous imprisonment for 2 months for the

offence punishable under Section 14A(b) of the Foreigners Act, 1946.

Sentence of imprisonment was directed to run concurrently.

22. Learned Trial Judge noted that, appellant was a Bangladeshi national and directed repatriation of the appellant after his sentence was over. Learned Trial Judge also directed that, the period of detention of the appellant already undergone shall be set off under Section 428 of the Criminal Procedure Code against the substantial period of sentence of imprisonment as imposed above.
23. Subsequent to the pronouncement of the sentence, the appellant was made aware of his legal right as to preferring an appeal. Appellant replied that, he will decide as to whether or not he will prefer an appeal.
24. Trial Court Records are available before us. Trial is in progress as against the other accused. Learned Trial Court sent a memo to the High Court for the Trial Court Records to be remitted since trial is not progressing in absence of the Trial Court Records.
25. Considering the materials available in Trial Court Records, we find that, the appellant pleaded guilty in respect of all charges framed as against him. Appellant did so after being apprised of the consequences of his written application as also after being apprised of the consequences at least thrice by the learned Trial Court, in Court, when he was produced before the learned Trial Judge. On all of such occasions, appellant

stated before the learned Trial Judge that, he was aware of the consequences of his plea of guilty.

26. Contention that excessive sentence under the Foreigners Act was imposed, cannot be accepted. Learned Trial Judge, considering all aspects of the matter, proceeded to award sentence as recorded in the impugned order dated November 14, 2024. Learned Trial Court kept himself well within the ambit of the period of sentence available to learned Trial Court for imposing punishment of offences under which, the appellant was convicted. In fact, learned Trial Court did not award the maximum period of sentence as noted by the impugned order of sentence.
27. In view of the discussions above, we are not in a position to accept the plea that, there are procedural irregularities in the conviction and the sentence of the appellant. We are also not in a position to accept the contentions of the period of the sentencing policy or that learned Trial Judge failed to take into account mitigating circumstances. In fact, learned Trial Judge noted the conduct of the appellant and his action of voluntarily accepting the plea of guilty and proceeded to impose a lesser punishment after recording that imposing maximum punishment would be harsh.

28. In view of the discussions above, we find no merit in CRA (DB) 403 of 2024. The impugned judgment of conviction and the order of sentence is affirmed.

29. **CRA (DB) 403 of 2024** is **dismissed**.

30. Trial Court Records be transmitted to the jurisdictional Court forthwith.

(Debangsu Basak, J.)

31. I Agree.

(Md. Shabbar Rashidi, J.)