IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

CRM (DB) 174 of 2025

Md. Alomgir Hossain

VERSUS

The State of West Bengal

For the petitioner:	Mr. Sudip Guha, Adv. Ms. Ankita Nag, Adv.
For the State :	Mr. Nilay Chakraborty, Ld.P.P. ,Adv Mr. Biswarup Roy, Adv

Last Heard On: April 11, 2025

Judgment on: April 22, 2025

<u>Biswaroop Chowdhury,J:</u>

This is an application under Section 439 of the Code of Criminal Procedure read with Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 filed by the petitioner who is in custody in connection with Kharibari Police station case Number 87 of 2024 dated 26.03.2024 under Section 14A/14(c) of the Foreigners Act and corresponding to Sessions Case No. 85 of 2024 now pending before the Learned Additional Sessions Judge Fast Track Court Siliguri.

It is the contention of the petitioner that the petitioner is the resident of the address mentioned against his cause title which falls within Bangladesh. It is further contended that the petitioner is falsely implicated in the instant case and the allegations are not maintainable. It is also contended that the petitioner is in custody for 347 days and the prayer for bail made by the petitioner be considered.

Heard Learned Advocate for the petitioner and Learned Advocate for opposite party state of West Bengal. Perused the materials in the case diary.

Learned Advocate for the petitioner submits that the petitioner is in custody for a considerable period and his prayer for bail be considered Learned Advocate appearing for the State of West Bengal objects to the grant of bail and draws attention to different materials in the case diary.

Upon hearing the Learned Advocates and considering the materials in the case diary it is an admitted position that the petitioner is a Bangladeshi National and have entered Indian without visa. Upon further perusal of the case diary it appears that the petitioner being a Bangladeshi National upon obtaining passport from the Government of Bangladesh and visa from Nepal Government visited Nepal with the plan of going to Croatia, and documents (Bangladeshi Passport) was submitted at the Croation Embassy and he was informed to wait for 90 days. During this period the petitioner desired to visit

India. In order to fulfill the desire, the petitioner attempted to come to India by taking help of co-accused who is Nepali citizen.

During course of investigation requisition was sent to the special secretary Govt, of West Bengal and Interpol's for verification of passport No-A02494730 and Visa No-T240089069, of the petitioner through concerned authority. Accordingly a letter was received from the Embassy of Nepal, New Delhi through District Intelligence Branch Darjeeling vide Note No. 080/81/31-1268 wherein the Embassy of Nepal verified the genuineness of the Visa No-T240089069 issued to Md. Alamgir by the department of immigration of Nepal. The investigating authority on completion of investigation did not find any evidence showing involvement of the petitioner in any illegal activity and from the seizure of the articles it could not be established that the petitioner entered India for some illegal purpose. Thus it is clear that the petitioner after staying in Nepal for some days for the purpose of obtaining Visa to visit Croatia decided to visit India.

Section 14-A of the Foreigners Act 1946 provides as follows:

S. 14A-penalty for entry in restricted areas, etc.

Whoever

a) enters into any area in India which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof without obtaining a permit from the authority notified by the Central Government in the official Gazette for this purpose or remains in such area beyond the period specified in such permit for his stay

or,

b) enters into or stays in any area in India, without the valid documents required for such entry or for such stay as the case may be, under the provisions of any order made under this Act, or any direction given in pursuance thereof,

Shall be punished with an imprisonment for a term which shall not be less than two years but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees, 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.

Hence when a person has entered India illegally without valid documents is liable for punishment under Section 14A of the Foreigners Act;

The case of the prosecution is that the petitioner along with co-accused was trying to enter India from Nepal Side via Mechi River. So far the co-accused Anup Tamang is concerned he is a Nepali citizen where passport or Visa is not required to enter the Indian territory. The petitioner was with the co-accused while trying to enter India. The language of the section 14A of Foreigners Act provides 'enters India' or stays in India and not attempted to enter India. Moreover there is no provision of punishment for attempted act of entry under the Foreigners Act. When the checking team found two persons trying to enter India they stopped the said persons from entering India. With regard to co-accused Anup Tamang being citizen of Nepal whose entry into India does not require visa and the accused/petitioner Md. Alamgir Hossain could have been warned and sent back to Nepal instead of instituting case.

When an attempt to commit an offence is foiled the person can be punished for attempt to commit the said offence if punishment is provided. Checking point at the border is that point where entry of foreigners is checked. It is also a place where illegal entry of foreigners is prevented and if not permissible under law foreigners are made to return. The petitioner at the entry point was stopped and asked to produce documents and the petitioner produced the copy of Pakistani passport which he had. There is no allegation that the petitioner tried to mislead the checking team to enter India or that he attempted to flee away inside Indian Territory. Thus the petitioner could have been directed to return Nepal upon issuance of caution. However as the charge-sheet is submitted and trial has commenced it would not be proper to make further observation with regard to the merits of the case but it is necessary to decide as to whether petitioner should be granted bail.

In order to decide whether accused should be granted bail in Foreigners Act it is necessary to consider some judicial pronouncements.

In the case of Swapna Akter @ Swapna Aktar VS State of West Bengal reported in 2014 SCC Online Cal-15876 a Learned Judge of this Hon'ble Court observed as follows:

'After giving anxious consideration to the conduct of the petitioner and to the charge against her under Section 14 of the Foreigners Act, this Court finds that the petitioner was admittedly in knowledge of the fact that her Visa in support of her stay in India expired in 2013. She was illegally staying in the country for nearly six months before being detained on 20th January, 2014. It is further noticed by this Court that, according to the Investigating Officer's report the petitioner failed to give correct particulars initially regarding her identity on the date of her detention, i.e. 20th of January, 2014. This Court also could not be enlightened by the State on the status of the child of the petitioner reportedly on treatment in India in spite of strenuous assertions on that count by the Ld. Counsel for the petitioner.

It is co-incidental that the petitioner came to be detained in connection with another case being Uttarpara P.S. Case no.472 of 2013 failing which she would have continued her stay without authority of law in the country.

On the other hand, the only charge against the petitioner is u/s 14 of the Foreigners Act. From the materials on record it has been brought to the notice of this Court that the petitioner is not accused of committing any other illegal act/acts.

It is also a matter of record that charge sheet in respect of the offence u/s 14 of the Foreigners Act has been filed and the detention of the petitioner for the purpose of investigation is not a necessity.

The only requirement in law now is the presence of petitioner during trial.

The other difficulty pertains to the petitioner remaining on bail without a valid Visa. However, her passport admittedly is valid till the year 2017.

This Court respectfully notices the ratio of the decision in Nagendra Vs. King Emperor reported in AIR 1924 (CALCUTTA) pg.476 to the effect that bail is not to be withheld as a punishment and the object of bail is to secure the attendance of the accused at the trial.

This Court also notices the observations of the Hon'ble High Court of Delhi in the matter of Lambert Kroger Vs. State (supra) that although the possibility of fleeing from trial may be more in the case of a foreign national it cannot be said that an accused cannot be granted bail merely because he is a foreign national. The Hon'ble High Court of Delhi further observed that there is no law which authorizes or permits discrimination between a foreign national and Indian national in the matter of granting bail and, the Court can impose different conditions to ensure that the accused will be available for facing trial.

In the case of Chuks Collins Vs State of Himachal Pradesh reported, 2020 SCC Online HP 4476 the Hon'ble Court while releasing a foreign national an bail was pleased to observe as follows:

4. While dealing with the bail applications of foreign nationals, the most significant challenge the Courts face is to secure their presence. Code of Criminal Procedure, 1973, (CrPC), has classified two types of offenses, bailable and non-bailable. Section 2(a) of the CrPC defines bailable as the offenses shown as 'bailable' in the First Schedule of CrPC or any other law. All the left-out crimes are deemed to be Non-bailable. In bailable offenses, a Police officer is under an obligation to release the accused on bail, subject to her furnishing bail bonds. It means that a foreign national cannot be denied bail in a bailable offense. Therefore, the question of securing her presence is not an absolute condition. However, in heinous and bone-chilling crimes, all which certainly are non-bailable, the presence of the accused must be ensured by the Courts, before granting the bail. Thus, while dealing with bail petitions of accused who are not the citizens of India, the most important parameter to keep in mind is the gravity of the offense. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule, and S. 2 (xxiii-a), defines a small quantity as the quantity lesser than the quantity specified in the schedule of NDPS Act. The remaining quantity falls in an undefined category, which is now generally called as intermediate quantity. All Sections in the NDPS Act, which specify an offense, also mention that minimum and maximum sentence, depending upon the quantity of the

substance. Commercial quantity mandates minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of NDPS Act.

JUDICIAL PRECEDENTS:

5. In *Lachhman Dass v. Resham Chand Kaler*, (2018) 3 SCC 187, Supreme Court holds,

"10. ...The law under section 439 Cr.P.C is very clear and in the eye of the law every accused is the same irrespective of their nationality."

6. In *Gurbaksh Singh Sibbia and others v. State of Punjab,* 1980 (2) SCC 565, A Constitutional bench of Supreme Court holds, .

"30. ...It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail"

7. In *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, a three-member bench of Supreme Court holds,

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorized by law. But even persons accused of non-bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so."

9. In *Gudikanti Narasimhulu v. Public Prosecutor,* High Court of Andhra Pradesh, AIR 1978 SC 429, Supreme Court holds:

"Bail or jail ?" - at the pre-trial or post-conviction stage - belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. The Code is cryptic on this topic and the court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. As Chamber Judge in this summit court I have to deal with this uncanalised case- flow, *ad hoc* response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of 'procedure established by law'. The last four words of Article 21 are the life of that human right.

2. The doctrine of Police power, constitutionally validates punitive processes for the maintenance of public order, security of the State, national integrity and the interest of the public generally. Even so, having regard to the solemn issue involved, deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objectives of society, specified in the Constitution.

In the case of Dataram Singh VS State of Uttar Pradesh reported in (2018)3 SCC P-22 the Hon'ble Supreme Court observed as follows:

"… A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case."

In the instant matter the petitioner is having passport and the statute Foreigners Act 1946 does not distinguish between persons whose visa has expired and those who have entered India without Visa. However caution should be exercised while granting bail so that there is no reasonable apprehension to abscond.

Upon considering the judicial decisions and the nature of allegation against the petitioner from the case diary the period of detention which is more than one year and the fact that from investigation no report has come that the petitioner is involved in any illegal activity either in India or outside this Court is of the view that as there is no reasonable apprehension abscond if stringent conditions are imposed petitioner should be released on bail. Thus I allow the prayer for bail made by the petitioner.

Hence the petitioner be released on bail with 2 sureties of Rs. 10,000/- each one of which must be local subject to the satisfaction of Learned Trial Court. The petitioner upon released shall comply the following conditions.

1. The petitioner shall not leave the jurisdiction of Siliguri Court without permission from the Learned Court.
2. The petitioner shall intimate his address where he has decided to reside before Learned Trial Court and officer in charge Kharibari police station, and shall not change the residence without permission of the Learned Trial Court.
3. The petitioner shall give the mobile number to Kharibari Police Station and shall not change the said number without leave of the Trial court.
4. The petitioner shall meet officer in charge of the police station of the area where he will be residing twice a week.

5. The petitioner shall apply for Visa before the competent authority.
6. The petitioner shall attend Court on all dates fixed.
7. The copy of the passport of the petitioner shall be furnished to the Foreigners Regional Registration Officer along with the particulars of the case number instituted against the petitioner. One copy of the endorsement shall be filed by Kharibari Police Station in Court and the other shall be given to the petitioner. Such endorsement shall be obtained after an interval of two months, by concerned Police Station. On completion of trial intimation shall be given to Foreigners Regional Registration Officer. Copy of the particulars of the case and the order of bail shall be send to the Government of Nepal.

In the event there is violation of bail condition Learned Trial Court will be empowered to cancel bail.

Urgent certified copy shall be issued.

(Biswaroop Chowdhury,J:)