

CRM (R) 1 of 2025

In re: An application for bail under Section 439 of the Code of Criminal Procedure/Section 483 of the BNSS in connection with **Phansidewa Police Station** Case No. **60 of 2025** dated **08.02.2025** under Section **14** of the Foreigners Act.

- A n d -

In the matter of : Ujjal Barman

.... Petitioner.

Mr. Subham Ghosh,
Mr. Mayank Roy,

... For the Petitioner.

Mr. Niloy Chakraborty,
Mr. Biswaroop Roy,

... For the State.

1. Learned Advocate for the petitioner and learned State Advocate are present. Heard Learned Counsel for the parties.

2. The case is instituted against the petitioner is under Section 14 of the Foreigners Act. The allegation against the petitioner is that the petitioner over stayed in India after the visa expired. Learned Advocate for the petitioner submits that his client came to India after obtaining visa in accordance with law as because there was trouble in Bangladesh for the purpose of safety he came and resided in the house of his relatives but did not make any application for extension of his visa after it expired.

3. Learned State Advocate submits that the petitioner is not able to show the grounds preventing him to make an application for extension of his visa nor the petitioner made any application for treating him as a refugee.

4. Upon perusing the petition and the materials on record, it is an admitted position that the initial entry of the petitioner is not

illegal but there is an allegation that he overstayed in India after expiry of his visa. Thus, it is upon the petitioner to show the ground of preventing him to make an application for extension of his visa.

5. Learned Advocate for the petitioner submits that the petitioner was arrested without showing the grounds which is violative of Article 22 of the Constitution of India. He relies upon a decision of the Hon'ble Apex Court in the case of **Vihaan Kumar vs.-The State of West Bengal & Anr.**, reported in **2025 SCC Line SC 269**. As it is an admitted position that the initial entry of the petitioner in India is not illegal but the petitioner overstayed here. It is to be decided as to whether the petitioner should be granted bail. In the Foreigners Act, there is no statutory bar that a person accused of an offence of this Act, cannot be granted bail. But, however, the court while considering the bail application should consider the nature of the offence, severity of the punishment if the accused is convicted, the materials appearing and the chance of abscondance or tampering with witnesses.

6. Learned Advocate for the petitioner has also relied upon a decision of this court in the case of **Camara Fofana Ussumane-vs.-The State of West Bengal** in **CRR 85 of 2025**. This court in the said decision of Ussumane (supra) was pleased to observe as follows:-

“14. A person enters into a country thousands of miles away from his own, for a period of six months, to be engaged in an avocation to earn some money which he must have been unable to accomplish at his own country. That has prompted him to cross the globe to search for the source of sustenance. He enters the country on employment visa to be employed in this country, of which, he is perhaps deprived in his own

country, in order to carry his earnings back to his family for sustenance of all. Hence, therefore there is not any apparent or probable reason for which the said person should intentionally undertake an illegal means which might put him into deep trouble, as it is in case of the present petitioner. A specific motive for the alleged violation of the visa conditions should have been forthcoming before the law enforcement authority to book him for the violation of the statutory provisions or else a more intensive and thorough homework was expected, from an authority, which is entrusted with such a serious kind of responsibility. So far as the petitioner is concerned, the prosecution has never been able to bring on record any ill motive or malafide of the petitioner, in intentionally overstaying in violation of the conditions of visa, as alleged. Therefore, not only the legal grounds as aforesaid but the humanitarian grounds also should motivate, not only this Court, but all concerned, to look into this case, beyond the usual parameters of mechanical office work.”

7. Upon considering the nature of the offence, the decisions relied upon and the fact that there is no statutory bar in granting bail and further that the petitioner has a relative in India and the petitioner is only 19 years of age, this Court is of the view that in the interest of justice the petitioner should be released on bail.

8. I, therefore, enlarge the petitioner on bail.

9. Accordingly, I direct that the petitioner, namely, **Ujjal Barman**, shall be released on bail upon furnishing a bond of Rs. 25,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Additional Chief Judicial Magistrate, Siliguri subject to condition that he shall appear before the trial court on every date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973/Section 355 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and shall not intimidate the witnesses and evidence in any manner whatsoever. The petitioner shall not leave the jurisdiction

of the Phansidewa Police Station and shall meet the O.C./I.C. of the concerned police station twice in a week and shall provide his current mobile number to the O.C./I.C. of the said police station until further orders.

10. In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.

11. The application for bail is, accordingly, allowed.

12. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Biswaroop Chowdhury, J.)