

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

21.08.2025.
Sl. No. 2
Ct.No. 4.
sdas
(Allowed)

C.R.M.(R) 48 of 2025

In Re:- An application for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 439 of the Code of Criminal Procedure, 1973 in connection with Mekhliganj Police Station Case No. 167 of 2025 dated 06.06.2025 under Sections 318(4)/336(2)/336(3)/340(2)/3(5) of the BNS, 2023 read with Sections 14A/14C of the Foreigners Act.

In the matter of : Hosnara Parvin
.... petitioner.

Mr. Prajnadeepta Roy (V.C.)
Mr. Sabir Ali
Mr. Debojyoti Goswami
Mr. Jaimallya Bhattacharya
...for the petitioner.

Mr. Aditi Shankar Chakraborty, learned PP-in-Charge
Mr. Nilay Chakraborty, learned APP
Mr. Biswarup Ray
....for the State.

This application for bail has been preferred under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short BNSS) corresponding to Section 439 of the Code of Criminal Procedure, 1973 in connection with Mekhliganj Police Station Case No. 167 of 2025 dated 06.06.2025 under Sections 318(4)/336(2)/336(3)/340(2)/3(5) of the BNS, 2023 read with Sections 14A/14C of the Foreigners Act.

Mr. Roy, learned Advocate appearing for the petitioner, submits that a charge-sheet has already been filed in the present case. He points out that the petitioner is a woman and, although a Bangladeshi national, she is legally married to a citizen of this country and has been peacefully residing with him in her matrimonial home. It is further submitted that the petitioner has since given birth to a child.

Mr. Roy submits that the petitioner had initially entered India on a valid passport and visa; however, after the expiry of her visa, she continued to reside in this country. He contends that there is no legal bar to granting bail to a foreign national and, in support of such submission, relies on the decision reported in (2025) 3 SCC 1 [*Frank Vitus vs. Narcotics Control Bureau & Ors.*].

Mr. Chakraborty, learned Additional Public Prosecutor, produces the case diary and vehemently opposes the petitioner's prayer for bail. He submits that the petitioner is admittedly a foreign national, and raises the question as to whether a foreigner, if released on bail, can be permitted to move freely within the territory of this country.

In response to my query, he submits that no detention camp has been arranged by the State to keep such foreigners until disposal of the trial. However, ultimately, he left the matter to the discretion of the Court.

Heard the learned Advocates appearing for the respective parties and perused the materials on record, including the Case Diary.

Undoubtedly the petitioner is a foreigner and although she entered within the territory of this country with valid passport and visa but her visa subsequently expired. Despite that, she stayed back in this country.

It goes without saying that if an accused, a foreign national who is not a citizen of India, violated not only the provisions under Foreigners Act, but also any of the penal laws of the country, shall be treated at par with other accused. So far as the procedural aspects are concerned, the same procedure requires to be adopted by the authorities with reference to Registration, investigation, inquiry and trial before the competent courts of law. Therefore, whether the status of the petitioner be foreigner or illegal

immigrant, admittedly the provisions relating to bail is applicable to the present petitioner also. There is no complete ban on the Court to grant bail to the foreigners.

Typically, the foreigners who have violated the provisions of the said Act, they are not supposed to wonder around the country freely as if they are the citizens of the country, even if bail is granted to such persons.

However, as stated by the representative of the State that till the date no arrangement has been made for detention of such foreigners who are bound to answer to the criminal charge levelled against them.

In the judgment of Frank Vitus (*supra*), the Hon'ble Supreme Court issued the following direction :

9. All that can be done is that while releasing a foreigner on bail, the Court should direct the investigating agency or the State, as the case may be, to immediately inform the Registration Officer concerned appointed under Rule 3 of the Rules about the grant of bail so that the Registration Officer can bring the fact of the grant of bail to the notice of civil authority concerned”

Taking note of the proposition laid down in *Frank Vitus* (*supra*), and considering the fact that the present petitioner has been in custody for a considerable period of time, and that the charge-sheet has already been submitted, I am inclined to accept the petitioner's prayer for bail; however, subject to certain conditions.

In view of the above, the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/-, with two sureties of Rs. 5,000/- each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Mekhliganj, subject to the conditions that she shall appear before the trial court on every date of hearing until

further orders, shall not intimidate witnesses or tamper with evidence in any manner whatsoever, and on further conditions that she shall not leave the jurisdiction of Mekhliganj Police Station without permission of the Additional Chief Judicial Magistrate, Mekhliganj.

The petitioner shall provide the address where she shall reside to the investigating agency as well as the jurisdictional Court and the Officer-in-charge of the concerned police station within whose jurisdiction she shall reside.

Concerned investigating officer shall communicate this order to the Registration Officer who shall bring this fact of grant of bail to the notice of the Civil Authority concerned.

In the event the petitioner violates any of the conditions mentioned in the preceding paragraph without any justifiable cause, the learned Trial Court shall be at liberty to cancel her bail in accordance with law, without any further reference to this Court.

This application for bail is, thus, disposed of.

(Partha Sarathi Chatterjee, J.)