

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5573 OF 2025

Sameer Mamodmia ...Petitioner
Versus
State of Maharashtra ...Respondent

Mr. Kamar Ali Shaikh, for the Petitioner.
Mrs. Rashmi Tendulkar, APP for the State.

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CORAM: N. J. JAMADAR, J.
DATED: 6th NOVEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 22nd September, 2025 passed by the learned Magistrate, whereby the cognizance of the offences punishable under Sections 336(2), 336(3), 318(4) and 340(2) of the Bhartiya Nyaya Sanhita, 2023 and Section 12 of the Passport Act, 1967, has been taken.
3. The learned Counsel for the petitioner submitted that the impugned order is passed by the learned Magistrate without application of mind. Attention of the Court is invited to a judgment of the Supreme Court in the case of *Pawan Kumar Sharma vs. State of Uttaranchal*¹, wherein the Supreme Court

1 2007 SCC OnLine SC 1599.

has emphasised that there is a distinction between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind.

4. The learned Counsel for the petitioner invited the attention of the Court to the *roznama* of the proceedings dated 22nd September, 2025, which indicates that the learned Magistrate has referred to the factum of filing of the charge-sheet, took cognizance of the offences punishable under Sections 336(2), 336(3), 318(4) and 340(2) BNS and Section 12 of the Passport Act, 1967 and directed the issue of summons to the accused. It was submitted that the impugned orders suffer from the vice of non-application of mind.

5. Undoubtedly, the practice of taking cognizance by making use of “rubber stamp” deserves to be deprecated. In the case at hand, the learned Magistrate has taken cognizance of the offences and issued summons against the accused upon perusal of the report filed by the Investigating Officer under Section 193 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (“BNSS”).

6. I have perused the report under Section 193 of the BNSS and the documents annexed with it. The gravamen of indictment against the petitioner is that the petitioner had obtained a British Passport by impersonating as Sameer

Mamodmia though the real name of the petitioner was Shamir Hanif Lakhani and the petitioner had initially obtained Indian Passport in the said name. Subsequently, by making false statement and submitting false documents the petitioner claimed that he was the son of Ussenbai Mamodmia, a Portuguese citizen and got another Indian Passport issued in the said name. On the strength of the latter passport, the petitioner obtained a Portuguese Passport and, on that basis, the British Passport. The documents annexed to the final report *prima facie* indicate the nature of the alleged fraudulent acts.

7. As the learned Magistrate has taken cognizance of the offences upon perusal of the report under Section 193 of the BNSS and the documents annexed with it, which are *prima facie* incriminating, this Court, in exercise of writ jurisdiction, does not find any justifiable reason to interfere with the impugned order.

8. Petition stands dismissed.

[N. J. JAMADAR, J.]