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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.588 OF 2025

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Mitue Anarul Sardar &
Anarul Sardar

... Applicants

V/s.

The State of Maharashtra

... Respondent

Mr. Karim Pathan with Shane Illahi Turkey for the
applicants.

Mrs. Megha S. Bajoria, APP for the respondent-State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 1, 2025

P.C.:

1. The present application for bail has been filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), seeking their release in connection with Crime Register No.78 of 2024, registered with Turbhe MIDC Police Station, Navi Mumbai. The applicants are charged for commission of offences punishable under Rule 3(a) and Rule 6(a) of the Passport (Entry into India) Rules, 1950 and Section 14A of the Foreigners Act, 1946.

2. As per the case of the prosecution, Mrs. Deepali Mahadev Fadtare, Police Constable attached to Turbhe MIDC Police Station, was part of a special combing operation initiated for identifying and apprehending Bangladeshi infiltrators residing illegally in Navi

Mumbai. The said operation was undertaken on the instructions of senior police officers, and the team was directed to focus on the locality of Bengali Pada, Bharat Nagar, situated near SNRV Bus Stop, Turbhe MIDC, Navi Mumbai.

3. On 16th March 2024, acting on reliable information, the police team along with two independent panchas, proceeded to the said location. At around 11:35 p.m., they came across a man and a woman who were residing in the area. Upon inquiry, the said persons introduced themselves in Hindi and Bengali with the assistance of a translator, namely Rauf Mohammad Ali Shaikh.

4. During the course of the inquiry, it was revealed that the said persons, i.e., the present applicants, were nationals of Bangladesh and had entered into Indian territory without any valid travel documents such as passport or visa. When questioned further regarding their Indian citizenship or any documents supporting lawful residence in India, both the applicants clearly admitted that they were Bangladeshi citizens and did not possess any valid identity proof or permission for entry or residence within the territory of India.

5. Upon further verification, two mobile phones were found in possession of the applicants. Upon checking the call logs and communication data from these devices, it was allegedly revealed that the applicants were in touch with other Bangladeshi nationals. Consequently, the mobile phones were seized by the police team on the spot for further investigation.

6. Based on the above allegations, the applicants were formally arrested on 17th March 2024 for the aforementioned offences under the provisions of the Foreigners Act and Passport Rules.

7. Learned Advocate appearing for the applicants submitted that both applicants are permanent residents of Mumbai and have been residing at their present address for more than a decade. It is further submitted that applicant No.1 was pregnant at the time of her arrest. Subsequently, she has delivered a child while in custody and is presently undergoing immense physical and emotional hardship owing to the inhuman conditions of incarceration, especially considering the tender age of the newborn. It is submitted that the applicants came to be arrested on 17th March 2024 and that the charge-sheet has already been filed. Therefore, according to the learned Advocate, the further detention of the applicants is not warranted, as no fruitful purpose would be served by their continued incarceration. It is contended that the applicants are ready and willing to abide by such conditions as may be imposed by this Court and undertake not to misuse the liberty, if granted.

8. Per contra, the learned APP has strongly opposed the present application. It is submitted that the applicants are illegal infiltrators who have unlawfully entered into the territory of India and are not in possession of any valid documents to establish their citizenship. On the contrary, it is alleged that the applicants have procured forged and fabricated documents such as Aadhaar Card, PAN Card, and Voter Identity Card, and have thereby attempted to assume a false identity to claim residence in India. The learned

APP further contended that applicant No.1, in her statement before the Trial Court, has categorically admitted that she is a Bangladeshi national and has illegally infiltrated into India. It is submitted that in the event of release, the applicants are likely to abscond and continue to remain in India by again obtaining bogus identity documents, thereby frustrating the process of law.

9. It is further contended by the learned APP that such acts of infiltration pose a serious threat to the internal security and sovereignty of the nation. The presence of illegal immigrants without proper verification and documentation raises serious concerns about national security, law and order, and demographic imbalance. In such circumstances, the learned APP prays for rejection of the present bail application, contending that the applicants do not deserve indulgence of this Court in view of the gravity and implications of the offence.

10. I have carefully considered the rival submissions advanced on behalf of the applicants and the learned Additional Public Prosecutor for the State. I have also perused the material placed on record, including the copy of the charge-sheet .

11. At the outset, it is to be noted that the applicants were arrested on 17th March 2024. The charge-sheet has already been filed, and therefore, the investigation, insofar as the applicants are concerned, is complete. The prosecution has not brought on record any material to indicate that further custodial interrogation of the applicants is necessary. The object of pre-trial detention being primarily to ensure the availability of the accused for investigation

and trial, once the investigation is complete, the need for continued incarceration must be examined on the touchstone of broader considerations of liberty, societal interest, and risk of absconding.

12. It is also not in dispute that applicant No.1 was pregnant at the time of her arrest and has delivered a child while in judicial custody. It is a matter of humanitarian concern that the newborn child, who is entirely dependent on applicant No.1, is presently residing with her in jail.

13. That being said, the apprehension raised by the prosecution regarding the applicants being foreign nationals who have unlawfully entered the territory of India cannot be brushed aside lightly. The allegation made by the Investigating Agency is that both applicants are citizens of Bangladesh and have crossed the international border without any valid passport or travel documents. It is further alleged that after entering India, they procured forged identity documents such as Aadhaar card, PAN card, and Voter ID card, with the intention of posing as Indian citizens and regularising their stay in the country.

14. These allegations are not merely procedural in nature but go to the root of the sovereignty and security concerns of the nation. The existence of forged documents in the hands of foreign nationals, if proved, can have wider implications, including misuse of government benefits, illegal employment, unlawful financial activities, and potential threat to internal law and order.

15. The charge-sheet placed on record reveals that applicant

No.1 has admitted that she is a Bangladeshi national who entered India through an unauthorised route. Though the evidentiary value of such a statement shall be tested during trial, the fact that such an admission has been made at the pre-trial stage adds some prima facie weight to the version of the prosecution.

16. This Court cannot, at this stage, ignore the settled legal position that illegal entry into India by foreign nationals without valid documents constitutes an offence under the Foreigners Act, 1946 and the Passport (Entry into India) Rules, 1950. The Hon'ble Supreme Court in *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665, has specifically held that illegal migration from Bangladesh into India is not only an infringement on the rights of Indian citizens but also poses a serious threat to national security and public order.

17. Therefore, while the right to liberty under Article 21 must be respected, the Court must also be conscious of the larger public interest and the risk of such persons absconding or continuing to live illegally in the country by creating more forged documents. These are weighty considerations which cannot be overlooked while considering the prayer for bail.

18. Even so, the Court is also duty-bound to strike a careful balance between the competing considerations of individual liberty on one hand, and national interest and public security on the other. It is a well-settled principle of criminal jurisprudence that every person, irrespective of nationality, is entitled to fair procedure and protection of life and liberty as guaranteed under

Article 21 of the Constitution of India. The presumption of innocence, until proven guilty, remains a cornerstone of our criminal justice system.

19. At the same time, the concerns raised by the prosecution cannot be treated as abstract or unfounded. Infiltration by foreign nationals, coupled with fabrication of official identity documents, raises genuine threats, not only from the perspective of national security, but also from the point of view of administrative governance, population control, and protection of limited public resources. These apprehensions have been judicially recognized by the Supreme Court in a catena of decisions including *Sarbananda Sonowal* (supra), wherein it has been observed that uncontrolled illegal migration can alter the demographic composition of regions and disturb the social fabric.

20. Thus, while dealing with bail in such cases, the Court cannot adopt a mechanical or purely sympathetic approach. Each case has to be assessed on its own peculiar facts. The fact that applicant No.1 is now a mother of a newborn child and has been in custody since March 2024 is certainly a relevant humanitarian consideration. The fact that the charge-sheet is already filed, and that the applicants have remained in custody for a substantial period, also weighs in favour of grant of temporary liberty, particularly since there is no further need for custodial interrogation.

21. However, the potential risk of the applicants absconding, or misusing the liberty by again preparing forged documents and

remaining undetected within the country, cannot be ruled out. Therefore, any grant of bail must be strictly conditional and time-bound, to ensure both, humanitarian relief and protection of the legal process.

22. In the present case, since the charge-sheet is already filed, and the applicants have a fixed address of residence (though its veracity is disputed), and more importantly, applicant No.1 has a newborn infant who requires maternal care, this Court is inclined to take a lenient view for the purpose of considering bail, subject to strict conditions.

23. It must be clarified that the grant of bail does not confer any right on the applicants to claim regularisation of their stay in India or recognition of any alleged Indian citizenship. These issues shall be determined independently by the competent authorities in appropriate proceedings, including deportation or prosecution for forgery, if so warranted.

24. In such circumstances, the Court is of the considered opinion that a relief, subject to stringent conditions, would adequately subserve the interests of justice. This would also enable applicant No.1 to take care of her infant child, without compromising the integrity of trial proceedings.

25. In view of the foregoing discussion, this Court is inclined to adopt a balanced approach. While the allegations against the applicants are serious and carry implications for the national interest, the stage of the proceedings, the filing of the charge-sheet, the long duration of custody, and the birth of a child during

incarceration weigh in favour of granting a relief. The Court is of the view that justice would be served by granting the applicants bail coupled with strict conditions to ensure their availability before the Trial Court and to prevent any misuse of liberty. This would also enable applicant No.1 to attend to the basic health and welfare needs of her infant child, while safeguarding the interests of the prosecution.

26. Hence, the following order is passed:

- (i) The applicants shall be released on bail, on furnishing personal bond in the sum of ₹25,000/- each with one or more local sureties in the like amount, to the satisfaction of the Trial Court.
- (ii) During the period of bail, the applicants shall reside at the address mentioned in the bail application. Any change in address shall be immediately informed in writing to the Investigating Officer and to the concerned Trial Court
- (iii) The applicants shall mark their presence before the concerned police station once in a month, on first Monday of each month, between 10:00 a.m. and 12:00 noon, during the bail period.
- (iv) The applicants shall not tamper with the prosecution witnesses or attempt to influence the investigation or the trial in any manner.
- (v) The applicants shall not indulge in any offence during the bail period and shall not leave the jurisdiction of Mumbai

City without prior permission of the Trial Court.

(vi) The grant of bail shall not be construed as an expression on the merits of the case, and all issues including the citizenship status, legality of residence, and allegations of forgery are kept open to be decided in appropriate proceedings.

27. With the above directions, the present bail application stands allowed.

(AMIT BORKAR, J.)