

**In the Court of the Additional District & Sessions Judge, 2nd Court,
Bongaon, Dist.- North 24 Parganas**

Before

Shri Pradip Kumar Adhikary, WBJs,
J O Code (UID No.) - WB916,
Additional District & Sessions Judge, 2nd Court,
Bongaon, Dist.- North 24 Parganas.

CNR No.- WBNP 0600 1174 2025
SC No.- 155 of 2025
arising out of
Petrapole PS Case No.- 19 of 2025 dated 07/03/2025

Charge-sheet submitted under

319(2)/336(3)/338/340(2)

of the Bharatiya Nyaya Sanhita (BNS), 2023

Similar sections 419/468/467/471

of the Indian Penal Code (IPC), 1860

and

section 14A(b) of the Foreigners Act, 1946

State

represented by Ld. PP-in-Charge Shri Basudeb Datta

v.

Shah Arman Maizi @ Shah Arman

represented by Ld. Advocate Shri Jaydeb Halder and Smt. Ranjana Ghosh

Order No.- 04

02/07/2025

Received the case record from the Ld. Additional District & Sessions Judge, Bongaon for disposal.

Today is fixed for production of the accused and appearance on behalf of the prosecution. The sole accused is produced from judicial custody and he is remanded to judicial custody till next date.

The accused has filed an application praying for bail on the ground that he is innocent, he has own home and hearth and there is no chance of his absconding.

Heard.

Re-iterating the grounds as advanced in the bail petition the Ld. Advocate Shri Jaydev Halder although he has not filed any vakalatnama has submitted that the accused is an Indian citizen and he has valid aadhaar card, driving licence, voter card etc. and the same are found to be genuine. On the contrary there is no verification report regarding his alleged passport and national ID card issued by Bangladesh. In the above circumstances the Ld. Advocate has prayed for bail of the accused on any condition.

Raising vehement objection against the bail application the Ld. PP-in-Charge has submitted that the accused is a Bangladeshi national having his passport and national ID card issued by Bangladesh. The accused has procured some Indian documents fraudulently. If the accused is enlarged on bail, he will flee to Bangladesh and he will never turn up. Hence, the Ld. PP-in-Charge has prayed for rejection of bail of the accused.

Considering the materials on record including the case diary.

It appears that on 07/03/2025 in handing over the accused to the Officer-in-Charge, Petrapole PS the Immigration Officer, Bureau of Immigration, ICP, Haridaspur lodged a written complaint to the effect that

This is to inform you that one SHAH ARMAN MIAZI @ SHAH ARMAN (DOB-23/10/1994) @01/01/1995, S/O NURUL HOUQUE MIAZI@ NURUL HOUQUE, Address - Yearpur, Chamir Munshir Hat-3821, Senbag, Noakhali, Bangladesh reported with a fraudulently obtained Indian Passport No. Y9036257 for immigration clearance from Bangladesh to India at ICP Haridaspur today on 07/03/2025 at about 0945 hrs.

During profiling, it surfaced that he is a Bangladeshi national and is in possession of the above mentioned fraudulently obtained Indian passport No. Y9036257. He revealed that he was born in Bangladesh to his Bangladeshi parents namely Nurul Hoque Miazi@ Nurul Houque (father) and Hosnara Miazi@ Hosnara Begum (mother), at Yearpur, Chamir Munshir Hat-3821, Senbag, Noakhali, Bangladesh.

He further disclosed that he infiltrated India in 2022 without valid travel documents through clandestinely and eventually reached Karnataka where he stayed at H No. 401/2, Sawarkar Road, Tilakwadi, Belagavi. During his stay he fraudulently procured Indian documents namely Aadhar Card, Pan Card, Driving License (Govt. of Karnataka) and Indian Passport (Y9036257) with the help of touts.

In view of the above, the Shah Arman Miazi is being handed over to you with request to register a case against him under appropriate sections of law.

On the basis of the said written complaint the instant case was started and after completion of investigation charge-sheet was submitted under the above mentioned sections.

Prior to transfer this case on 18/06/2025 the Ld. Additional District & Sessions Judge, Bongaon was pleased to reject the bail application of this accused. The said order is reproduced hereunder :

Today is fixed for production of the accused namely Shah Arman Miazi @ Shah Arman and commitment.

Bail petition filed on behalf of the accused person.

Ld. Advocate submitted some documents relating to the payment of tax by the present accused person who is an Indian Citizen. Ld. Advocate claimed that the present accused person is an Indian Citizen having all documents like Passport, Aadhar Card, Voter Card, Driving license and Pan Card etc. He prays for bail in any condition by mentioning his present address in the vokalatnama.

Ld. PP opposes for bail and submitted that some documents in respect to the present accused person was seized during immigration wherein it shows that the accused was the possession of Passport of Bangladesh and an identity of Bangladesh those were seized. Police only inquired about this case and shows that the accused obtained the Indian documents. Police has submitted the CS along with the supplementary charge sheet. It is found from the record that there is no such evidence to show that the documents relating to the Bangladesh for the accused person along with any explanation on the part of the accused person. The present condition of the country is a threat by intruders and it relates to National Security. It is also found that the prosecution being satisfied about the nationality of the accused person as submitted in the charge sheet under Foreigners Act. Police never stated that he is an Indian citizen otherwise police would have discharged the accused person by filing supplementary charge sheet. Accordingly, considering all facts and circumstances, I am not inclined to release the accused on bail.

Hence, the prayer for bail is considered and rejected.

Let the instant case be transferred to Ld ADJ, 2nd Court, Bongaon for disposal.

Today relying on the verification report of PAN card and Epic card of the accused submitted along with supplementary charge the Ld. Advocate has claimed that the accused in an Indian nation. He has also highlighted that the accused has already submitted his income tax return.

The Indian Citizenship Act, 1955 provides for acquisition of Indian Citizenship by birth, descent, registration and naturalization.

According to a **press release** issued by the Press Information Bureau, Government of Indian (<https://pibindia.wordpress.com/2019/12/20/q-a-on-nrc-national-register-of-citizens/>)

Citizenship can be proved by submitting any documents related to date of birth and place of birth. However, a decision is yet to be taken on such acceptable documents. This is likely to include voter cards, passports, Aadhaar, licenses, insurance papers, birth certificates, school leaving certificates, documents relating to land or home or other similar documents issued by government officials. The list is likely to include more documents so that no Indian citizen has to suffer unnecessarily.

In **Sarbananda Sonowal v Union of India : Writ Petition (Civil) No.- 131 of 2000** (Date of judgment – 12/07/2005) the Hon'ble Apex Court has been pleased to observe that

4. *It is difficult to make a realistic estimate of the number of illegal immigrants from Bangladesh because they enter surreptitiously and are able to mingle easily with the local population due to ethnic and linguistic similarities. The demographic composition in the districts bordering Bangladesh has altered with the illegal immigration from Bangladesh. The districts of Assam and West Bengal bordering Bangladesh have recorded growth of population higher than the national average. The States of Meghalaya, Mizoram and Tripura have also recorded high rates of population growth. Illegal immigrants from Bangladesh have also been using West Bengal as a corridor to migrate to other parts of the country.*

5. *The large-scale influx of illegal Bangladesh immigrants has led to large tracts of sensitive international borders being occupied by foreigners. This has serious implications for internal security.*

6. *The types of illegal migrants are as follows: -*

- a) those who came with valid visa/documents and overstayed;*
- b) those who came with forged visa/documents; and*
- c) those who entered surreptitiously.*

16. *It needs to be emphasized that the general rule in the leading democracies of the world is that where a person claims to be a citizen of a particular country, the burden is upon him to prove that he is a citizen of that country.*

17. *There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grand parents may also be relevant like under Section 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

In **Razia Begum v State : W.P. (Crl.) No.- 677 of 2008** (Date of Decision : August 12, 2008) the Hon'ble Delhi High Court has been pleased to opine that

There is a continuing influx of Bangladeshi nationals into India on account of a variety of reasons including religious and economic. It is difficult to make a realistic estimate of the number of illegal migrants as they are able to mingle easily with the local population due to ethnic and linguistic similarities. The large scale influx of illegal migrants has led to large tracts of sensitive borders which has serious implication for internal security. The influx of Bangladeshi nationals who have illegally migrated poses a threat to the integrity and security of India.

Here in this case in order to establish his/her citizenship the accused has not filed any document showing **(i) his/her date of birth (ii) place of birth (iii) name of his/her parents (iv) their place of birth and citizenship.**

Documents such as driving license, PAN card, Aadhaar etc do not take into account the citizenship of a person. 'Residency' is the factor considered as relevant by the concerned authorities for issuing these documents.

For example, in case of driving license, an applicant is required to furnish proof of address in the concerned state and also proof of age.

Aadhaar, though intended as a national level unique identity marker, is not a proof of citizenship. Under the Aadhaar Act, a person's residency in India for 182 days prior to the date of application is the relevant factor for issuing Aadhaar number. Even recently also, the UIDAI issued a clarification regarding this.

Aadhaar is not a document of citizenship and UIDAI has been mandated under the Aadhaar Act to ascertain residency of a person in India for 182 days prior to applying for Aadhaar. 4/n — Aadhaar (@UIDAI) February 19, 2020

As regards PAN card, it is a document for payment of income tax in India. Even foreign citizens/entities, who are bound to pay income tax in India, can obtain PAN card.

As regards Voters ID card, while applying for it, a person has to file a declaration with the authority in Form 6 of the Registration of Electors Rule 1960 that he is citizen of India.

In **Munindra Biswas v. Union of India and others : WP(C) No.- 7426 of 2019** the Hon'ble Gauhati High Court has reaffirmed that an electoral photo identity card is not a conclusive proof of citizenship. The Hon'ble Court concurred with this finding by observing

Regarding Electoral Photo Identity Card this court in the case of Md. Babul Islam Vs. State of Assam [WP(C) No. 3547 of 2016] has held that Electoral Photo Identity Card is not a proof of citizenship.

Following a previous judgment in **Jabeda Begum @ Jabeda Khatun v. Union of India : WP(C) No.- 7451 of 2019** the Hon'ble Gauhati High Court has re-iterated that PAN Card and Bank Documents do not prove citizenship. The Hon'ble Court has observed that

This Court in Md. Babul Islam Vs. Union of India [WP(C)/3547/2016], has already held that PAN Card and Bank documents are not proof of citizenship.

The Hon'ble Gauhati High Court has also observed that

Land Revenue Paying Receipts do not prove a citizenship of a person.

It has been also observed that

Certificates issued by a Village Gaon Bura can never be the proof of citizenship of a person. Such certificate can only be used by a married woman to prove that after her marriage, she had shifted to her matrimonial village [Rupjan Begum Vs. Union of India, reported in (2018) 1 SCC 579].

In **Khadija Begum v. State : CRM No.- 2717 of 2021** in an application under Section 439 of the Code of Criminal Procedure in connection with GR Case No.- 61 of 2021 arising out of Hemnagar Coastal Police Station Case No.- 02 of 2021 dated 05/01/2021 under Section 14/14C of the Foreigners Act, 1946 the Hon'ble Court has been pleased to observe that

It is needless to say that residential certificate may be obtained by any resident, he may be an Indian National or Foreign National, if he stays at a particular place. Residential certificate is not a proof of citizenship.

So the documents produced by the accused *per se* do not prove his/her Indian citizenship.

On the other hand a prima facie case has been made out against the accused. The possibility of fleeing from trial is more in this case since the accused is prima facie found to be a foreign national whereas the presence of the accused during trial is the requirement of law.

On the above premises the prayer for bail is refused at this stage.

On through scrutiny of the charge-sheet, supplementary charge-sheet, case diary and other materials on record that the IO has kept open to submit further supplementary charge-sheet on receipt of verification report from other authorities.

It appears that the IO seized the following documents ;

1. Indian passport in original, 2. Driving license in original, 3. PAN card in original, and 4. Aadhaar card in original in the name of accused.	1. Photocopy of Bangladeshi passport, and 2. Photocopy of Bangladeshi Identity Card in the name of accused
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On 28/03/2025 the IO sent prayer to the Superintendent of Police, DIB, Bongaon PD for verification of Indian passport in the name of the accused.

Subsequently, on 11/04/2025 he sent prayer to the Superintendent of Police, DIB, Bongaon PD for verification of Bangladeshi passport as well as Bangladeshi National Identity Card in the name of the accused.

On 21/04/2025 the IO sent reminder – I and then on 02/05/2025 sent reminder - 2 to the Superintendent of Police, DIB, Bongaon PD for the above mentioned verification report.

But the Superintendent of Police, DIB, Bongaon PD has not submitted any verification report as sought for. However, pending those verification report on 03/05/2025 the IO closed the investigation.

It is very astonishing that the Superintendent of Police, DIB, Bongaon himself has not submitted any verification report in spite of two reminders as sought for.

The IO is directed to collect the same from the concerned Superintendent of Police, Bongaon PD at once.

The Superintendent of Police, DIB, Bongaon PD is directed to submit all the verification reports as sought for by the IO at once.

The accused filed another application praying for transfer of the accused from Bongaon Sub-Correctional Home to Dum Dum Central Correctional Home since he has fallen ill.

No document is filed in support of illness of the accused.

The ground forwarded by the accused is not substantiated and as such the prayer is rejected.

The accused has also filed an application under section 227 CrPC/250 BNSS praying for discharge of the accused.

The accused is directed to serve the copy of the same to the Ld. PP-in-Charge.

The IO is directed to remain present on the next date for hearing of the said petition.

To 05/08/2025 for production of the accused, submitted verification report regarding Indian passport as well as Bangladeshi passport and Bangladeshi National Identity Card in the name of the accused by the IO after collection of the same from the Superintendent of Police, DIB, Bongaon PD, appearance of the IO and hearing of application under section 227 CrPC/250 BNSS praying for discharge of the accused and framing of charge.

Let a copy of this order be sent to the Superintendent of Police, DIB, Bongaon PD and Investigating Officer for compliance.

The case diary is returned.

The Bench Clerk is directed to do the needful at once.

Typed by me

Additional District & Sessions Judge,
2nd Court,
Bongaon, Dist.- North 24 Parganas.

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2nd Court,
Bongaon, Dist.- North 24 Parganas.