

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

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Before

Shri Pradip Kumar Adhikary, WBJs,  
J O Code (UID No.) - WB916,  
Additional District & Sessions Judge, 2<sup>nd</sup> 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 framed 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.- 05  
05/08/2025

Today is fixed for production of the accused, submission of 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.

The 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 his 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.

Relying on the verification report of PAN card and Epic card of the accused submitted along with supplementary charge-sheet 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 India (<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.

Moreover, today the Superintendent of Police, Bongaon PD submitted a compliance report vide Memo No.- 55/Legal Cell dated 05/08/2025 stating that

Respected Sir,

In compliance to your kind order dt. 02.07.2025 it is pertinent to mention here with,

That, on 01.04.2025 a letter has been sent to the **Regional Passport Office, Bengaluru, Karnataka- 560095** with request for verification of **Indian Passport bearing No. Y9036257**. On 21.06.2025 received a reply of above request letter from Regional

Passport Office, Bengaluru that “It is confirmed the said Passport no. Y9036257 was issued to Mr. Shah Arman Miazi from this office. The above said passport has been impounded based on your email dated 01.04.2025 which stated that the applicant is a Bangladeshi citizen.”

That on 12.04.2025 a letter has been sent to the **Senior Special Secretary Foreigners Branch, Home & Hill Affairs Department Writers Buildings, Kolkata - 70001**, requesting for verification of Bangladesh National ID card No. 8253357993 and **Bangladesh Passport No. A02645741**. On 08.07.2025 received a reply of above Bangladeshi National ID card and Bangladeshi Passport verification report through mail which is as follows :

It is hereby confirming citizenship of the following individual :

Sl. No.	NAME	Father's Name	Address
01.	Shah Arman	Nurul Hoque	Vill.- Yearpur (East), Ward No.- 2, PO- Chamir Munshirhat -3821, PS- Sengab, Dist.- Noakhali.

That the IO of the case has also already collected the Passport verification report from SP DIB.

This is for your kind information and perusal.

**Enclosure:-**

1. Report of Bangladesh Deputy High Commission.
2. Report of RPO Bengaluru.

So, there is prima facie material showing that the accused is a Bangladeshi National being resident of Vill.- Yearpur (East), Ward No.- 2, PO- Chamir Munshirhat -3821, PS- Sengab, Dist.- Noakhali, Bangladesh.

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

The case record is taken up for hearing of the application under section 227 CrPC/250 BNSS filed by the accused on 02/07/2025.

In the said application the accused has stated that the sections under which the IO submitted charge-sheet are not applicable against the accused.

Heard both sides.

Relying upon **CRR No.- 3180 of 2007** the Ld. Advocate Shri Jaydeb Halder has submitted that since this district does not fall under the reserved area as notified under the Foreigners (Restricted Areas) Order, 1963, section 14A(b) of the Foreigners Act is not application against this accused. However, the Ld. Advocate has submitted that section 14 of the Foreigners Act will be applicable against the accused.

Raising strong objection the Ld. PP-in-Charge has submitted that charge-sheet has been submitted under appropriate sections of Foreigners Act as well as IPC. There is no ground of discharge of the accused; it is a fit case for custody trial since the accused is a foreign national who not only entered into India without any valid document but also procured various documents by fraudulent means.

Considered the materials on record.

On **21/08/2024** in **Samirul Mondal @ Suman vs. State of West Bengal : C.R.R. 725 of 2014** the Hon'ble Court has been pleased to lay down that

*Section 14A of the Foreigners Act reads as follows:*

*“14A. Penalty for entry in restricted areas, etc.*

*Whoever -*

*(a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or*

*(b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this*

*Act or any direction given in pursuance thereof,*

*shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid by him”*

*A perusal of the aforesaid provision shows that it has two limbs – (I) unauthorised entry into any area in India, which is restricted under any order made under this Act or direction given in pursuance thereof or stay in such area beyond the permitted period and (II) entry or stay in any area in India without valid documents required for such entry or such stay under the provisions of any order made under this Act or any direction given in pursuance thereof. It is nobody’s case that the petitioner entered in any restricted area notified under the relevant order passed by the Government in exercise of the provisions of the Foreigners Act. Section 14 of the Act reads as follows:*

*“14. Penalty for contravention of provisions of the Act, etc.  
Whoever –*

*(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;*

*(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;*

*(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,*

*shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section*

*(2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.”*

*The said provision makes the following acts punishable in law:-*

*(a) staying in India beyond the period for which visa is granted;*

*(b) committing any act in violation to the conditions of visa granted to him;*

*(c) contravention of any provision of the Act or any order or any direction issued under the provisions of the Act or order for which no punishment is prescribed.*

*While entry or stay into India with valid visa/passport/travel document as prescribed is punishable under Section 14A(b) of the Act, overstaying in India after entering the country on a valid travel document or acting in violation of the conditions laid down in such travel document is punishable as a lesser offence under Section 14 of the Act.*

*It is the case of the prosecution that the petitioner who is a foreigner had entered and remained in India without valid documents. In my opinion, offence under Section 14A(b) of the Foreigners Act is committed if a foreigner enters or stays in any area in India (even if it is not a restricted area) without valid documents. Hence, I am of the opinion that the prosecution case against the petitioner prima face discloses ingredients of the offence punishable under Section 14A(b) of the Foreigners Act. In **Tarikul Islam Sardar** (supra) charge sheet had been filed under Section 14 of the Foreigners Act and not under Section 14A of the said Act. The allegation against the petitioner in the cited case was that he was found at a place in India, which was not a restricted place and had failed to produce valid passport or visa. In this factual backdrop, the Court was called upon to decide as to whether petitioner who was booked under Section 14 of the Foreigners Act (and not under Section 14A of the Foreigners Act) could be tried by the learned magistrate. It is pertinent to note while Section 14 of the Foreigners Act is a Magistrate triable offence, offence under Section 14A of the Act is a sessions triable offence. In the aforesaid decision it was argued as the*

*accused had not entered any restricted area in India and had been charged only under Section 14 of the Act he ought to be tried by the Magistrate. A learned Single Judge of this Court decided such proposition in the affirmative. No argument had been advanced before the Court in the cited decision that since the accused had entered any area in India without travel documents he ought to be tried under Section 14A(b) of the Act. A judgment is not an authority for the proposition which is neither raised nor argued [see **Rajpur Ruda Meha & Ors. Vs. State of Gujarat, AIR 1980 SC 1707 (para 6) and Mittal Engineering Works (P) Ltd. vs. Collector of Central Excise, Meerut, 1997 (1) SCC 203 (para 8)**]. Hence the aforesaid judgment is not an authority for the proposition as to applicability of Section 14A(b) of the Act in a case where the foreigner enters any part of India without travel documents – a proposition neither raised nor argued in the said report. A judgment is an authority for the proposition if decides and not what logically follows therefrom. Unlike the reported decision where charge sheet was filed under Section 14 of the Act, charge sheet has been filed under Section 14A(b) of the Act for entering and staying in India without travel documents in the instant case. Such being the situation, framing of charge against the petitioner under Section 14A(b) of the Act by the learned Judge cannot be said to be contrary to law. Similar view has also been taken by another learned Single Judge of this Court in C.R.R. 4076 of 2012 (supra).*

Relying upon the above authority there is no doubt that the prosecution case prima facie discloses ingredients of the offence punishable under section 14(A)(b) of the Foreigners Act.

Moreover, in the sub-division of Basirhat under the same district of North 24 Parganas this kind of offence where a foreigner had entered and remained in India without valid document is being tried under section 14(A)(b) of the Foreigners Act. Reference may be given as **CRA (SB) No.- 83 of 2024** and **CRA (DB) No.- 83 of 2024** and there are many other references in this regard.

How can the same kind offence be booked under different section in the same district ?

In **Belayet @ Belal Hossain vs. State of West Bengal** (08/04/2019) also a conviction under section 14A(b) of the Foreigners Act in respect of an offence which was committed in non-notified area or place which is not restricted area was affirmed by the Hon'ble Court.

In the above circumstances the prayer for discharge of the accused under section 227 CrPC/250 BNSS filed on 02/07/2025 is considered and rejected.

It appears that the copies of police report, first information report recorded under section 154 CrPC, statement recorded under section 161 CrPC of all persons whom the prosecution proposes to examine as its witnesses, confessions and statements, if any, recorded under section 164 CrPC and all other documents or relevant extract thereof forwarded by the police officer under section 173 of the CrPC were already furnished to the accused, free of cost, in accordance with the provisions of section 207 read with section 209 of the Cr.P.C.

The case record is taken up for framing of charge against the accused.

Considered the record of the case and the documents submitted therewith.

Heard both sides.

The PP-in-Charge opens his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Heard the submissions of the accused on the record of the case and documents as filed by the prosecution.

The Ld. Defense Counsel submits that there is no sufficient ground for proceeding against the accused.

The accused has neither produced any materials and documents nor explained grave suspicion against him emerging from the charge-sheet along with the accompanying materials and documents.

Upon such consideration and hearing the Court is of opinion that there is ground for presuming that the accused has committed offence which are exclusively triable by the Court of Session and accordingly, charge punishable under **sections 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** is framed in writing against the accused in a separate charge form which is kept with the record.

The said charge is then read over and explained to the accused in Bengali and asked whether he has pleaded guilty of the offence charged or claimed to be tried to which the

accused has refused to plead guilty by saying “**Ami nirdoshi**” and claimed to be tried.

The accused has not filed any application under section 231(2) CrPC.

To 27/11/2025 for evidence of CSW Nos.- 01 & 02;

To 28/11/2025 for evidence of CSW Nos.- 03 & 04; and

To 29/11/2025 for evidence of rest CSWs in terms of section 231, Cr.P.C.

The accused is directed to remain present on the next date.

In compliance with the mandates of the Hon’ble Apex Court as well as our Hon’ble Court the Investigating Officer is directed to remain present during trial.

The Investigating Officer is also directed to keep the witnesses present in Court.

The Officer-in-Charge of the concerned Police Station is directed to ensure the presence of the Investigating Officer on the date(s) fixed along with witness(es).

If due to some unavoidable circumstances it is not possible for the Investigating Officer to remain present before the Court, the Officer-in-Charge shall depute any other competent police officer who shall ensure the presence of witnesses before the Court on the date of recording of evidence.

It is the duty of the Investigating Officer to protect the witnesses and ensure their presence before the Trial Court, for taking to its logical conclusion. It will help both the victim and the accused person, to have speedy justice which pertains to their right to life as well.

The prosecution is directed to issue process for compelling the attendance of the witnesses and / or the production of the document or thing, if any and to inform the Investigating Officer.

Let a copy of this order be sent to the Officer-in-Charge of the concerned Police Station for compliance.

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

Typed by me

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

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2<sup>nd</sup> Court,  
Bongaon, Dist.- North 24 Parganas.