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IN THE COURT OF THE XLIX ADDL. CITY CIVIL & SESSIONS JUDGE [SPECIAL COURT FOR THE TRIAL OF THE NIA CASES], (CCH-50) BENGALURU

Dated this 25th day of March, 2025

PRESENT:

Sri Gangadhara C.M.,
B.Com., LL.B.,
XLIX Additional City Civil & Sessions Judge,
[Special Judge for the trial of NIA Cases],
(CCH-50) Bengaluru.

SPL.C. NO. 187/2024

Complainant	:	The National Investigation Agency, Bengaluru.

(By: Learned Spl. Public Prosecutor)

Vs.

Accused	:	Mr. Firdoush @ MD Ferdous Bapari @ Firdous Mohammed Moksed and Others
Accused No.6	:	Mr. Suman Shaikh Zakir @ Zakir @ Saudi Zakir, Aged about 46 years, S/o Ishuf Ali, R/o #435, 34th Cross, Kariyammana Agrahara, Bellandur, Bengaluru - 560 103.

(By : Sri R. Kothwal, Advocate)

ORDERS

Accused No. 6, Mr. Suman Shaikh Zakir @ Zakir @ Saudi Zakir, has filed an application under Section 227 of the Cr.P.C. seeking his discharge from the charges leveled against him.

2. Accused No. 6 has briefly outlined the facts of the case and explicitly pleaded his innocence, asserting that he has been engaged in the scrap business for a considerable period. There is no material evidence to validate any direct participation or commission of the alleged offence by him. The prosecution has failed to present any documentation demonstrating that he is involved in the forgery of Indian identity documents, such as voter ID card, PAN card, or any other documents. Furthermore, no substantiating evidence has been produced to establish his supposed Bangladeshi citizenship. There is no proof indicating that he manufactured fraudulent identity cards.

3. Accused No. 6 has established a longstanding residency in Bengaluru City, maintaining a credible presence within the community. The prosecution's case primarily relies on the testimonies of LW.29, LW.34, LW.38, and LW.40. However, it is crucial to highlight that these statements are highly dubious and lack credibility. They have been fabricated by the NIA without any substantive basis, seemingly influenced by personal motives rather than objective truth.

4. Additionally, the accused contends that the prosecution has attributed these fabricated statements arbitrarily, driven solely by their own whims and with the intention of unjustly incriminating him. None of the witnesses have produced rental agreements to substantiate their claims. Specifically, LW.34 asserts that he leased 10 guntas of land to the accused for a monthly rent of Rs. 7,500/- with an advance payment of Rs. 10,000/-. This rental agreement appears unusually low and, notably, lacks supporting documentation. Furthermore, these witnesses have admitted to being unaware of the accused's alleged Bangladeshi nationality until his arrest, casting doubt on the veracity of their testimonies, which were likely influenced by the false allegations presented by the prosecution.

5. The prosecution has concocted these statements without any factual basis, intending solely to falsely incriminate the accused. Moreover, the prosecution seized 24 items from his residence, most of which are documents belonging to him, such as his Aadhar card, PAN card, 16 bank account passbooks, voter ID card, cheque book, GST registration, and other documents. The presence of these documents strongly indicates that he is a citizen of India. The prosecution has failed to produce any substantial evidence to establish a prima facie case against him concerning his alleged Bangladeshi nationality. The documents recovered from his residence undeniably point to his Indian citizenship by birth.

6. The accused also contends that mere suspicion or conjecture, regardless of its intensity, cannot be considered legal proof. Suspicion does not replace the requirement for tangible, credible evidence. The grounds put forth against the accused are entirely baseless, based solely on arbitrary and unfounded interpretations by the Investigating Authority. The Investigating Authority has not presented any incriminating evidence, and the prosecution has failed to establish sufficient grounds to proceed with the trial. If the trial were to proceed, it would be a futile exercise, wasting valuable time and resources. Therefore, in light of the absence of any substantial evidence, accused No. 6 prays that the application be allowed.

7. The learned Special Public Prosecutor has opposed the application by filing his objections. He has briefly outlined the facts of the case and specifically contended that, after the registration of the case, the NIA conducted searches at 11 locations, during which various identity documents, including Aadhar cards and copies of Aadhar cards, were seized. The NIA also conducted a search and seizure at the residence of accused No. 6. During the search, the NIA seized one Grameenphone SIM card, the original marriage certificate of accused No. 6, one visiting card belonging to Bangladeshi Dr. Sallauddin Howladar, one visiting card of Alauddin Market, Benapole Check Post, Bangladesh, and one donation receipt book from Mollabori Baitun Najat Jame Masjid, Morelgang, Bagerhed, Bangladesh, all in the presence of independent witnesses. The NIA also seized two mobile phones from the possession of accused No. 6. Additionally, the NIA recorded the statements of witnesses and collected other documents during the investigation.

8. The materials collected and statements recorded during the investigation indicate that accused No. 6 entered India illegally without valid travel documents and thereafter obtained Indian identity cards through fraudulent means. Accused No. 6 conspired with other co-accused persons and trafficked 22 Bangladeshi nationals into India under the false promise of providing jobs. After trafficking the victims, he subjected them to forced labor for meager wages and confined them to garbage segregation godowns and sheds. The accused persons threatened the victims with arrest by the local police.

9. The prosecution has further contended that data retrieved from the mobile phones of accused No. 6 indicates that there were 3,731 phone calls made to Bangladeshi phone numbers and 5,983 chats with Bangladeshi contacts from the Vivo Y100 mobile phone used by accused No. 6. Additionally, 12,990 phone calls were made to Bangladeshi phone numbers and 7,421 chats were exchanged with Bangladeshi contacts from the Vivo 1920 mobile phone used by accused No. 6. The aforementioned Grameenphone SIM card is issued exclusively in Bangladesh and is not available in India.

10. Accused No. 6 had previously sought bail by filing an application, which was rejected by this Court on 04.04.2024. The said order was challenged before the Hon'ble High Court of Karnataka in Criminal Appeal No. 1055/2024, but the Hon'ble High Court of Karnataka rejected the appeal on 26.09.2024. Having failed to make out sufficient grounds before both this Court and the Hon'ble High Court of Karnataka for bail, accused No. 6 has now filed the present application seeking discharge.

11. The evidence presented by the prosecution clearly establishes a prima facie case regarding the involvement of accused No. 6, and the prosecution has established grounds for proceeding with the trial against him. Therefore, the learned Special Public Prosecutor prays that the application be rejected.

12. The points that arise for the Court's consideration are as follows:

1) **Whether the prosecution has made out sufficient grounds to proceed against accused No. 6 and frame charges against him?**
2) **What order?**

13. The findings of this Court to the above points are as follows:

Point No.1 : In the affirmative;

Point No.2 : As per final order, for the following;

R E A S O N S

14. **Point No. 1**: Accused No. 6 has requested for discharge from the charges against him in this case. Before discussing the facts, it is helpful to refer to Section 227 of the Cr.P.C. to understand the court's authority to discharge the accused and to better evaluate the facts. Section 227 of the Cr.P.C. states:

> 227. Discharge: If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

15. A careful reading of Section 227 shows that the court, after considering the available materials and hearing both parties, may discharge the accused if it finds there are insufficient grounds to proceed. The section requires the court to provide reasons for this decision. However, the section does not specify what constitutes sufficient grounds for proceeding against the accused or which materials the court should consider. To address this, it is helpful to refer to the law established by the Hon'ble Apex Court to determine the materials necessary for proceeding with charges against the accused. In this regard, the decision in **Union of India vs. Prafulla Kumar Samal and Anr., AIR 1979 SC 366**, is significant. In paragraph 10, the Hon’ble Apex Court laid down the following principles:

> “10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:
>
> > (1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:
> >
> > (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.
> >
> > (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
> >
> > (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however

does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

16. The decision in **Sajjan Kumar Vs. CBI, (2010) 9 SCC 115,** is also significant. In paragraph 21, the Hon'ble Apex Court laid down the following principles:

"21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) <u>If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence</u>.

v) <u>At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material</u>

placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

(emphasis supplied)

17. This court has also relied on **the State of Rajasthan vs. Ashok Kumar Kashyap, (2021) 2 Crimes (SC) 101**, which further emphasizes that at the stage of Section 227, the court must sift through evidence to determine if sufficient grounds exist for proceeding. The court must assess whether the materials placed before it suggest suspicious circumstances, but cannot conduct a detailed inquiry or balance the evidence as in a trial.

18. In summary, the Hon'ble Apex Court has consistently held that while considering a discharge application under Section 227, the court has the authority to sift and weigh evidence to determine whether a prima facie case exists. The court must evaluate whether the evidence raises grave suspicion against the accused and should not merely follow the prosecution's lead. The court should not conduct a full trial at this stage but should evaluate if the materials could suggest the accused may have committed the offence. With these principles in mind, this court will now examine the facts of the case to determine whether there are sufficient grounds to proceed.

12. It is specifically alleged against accused No. 6 that he is a Bangladeshi national who illegally entered India without valid documents approximately 15 years ago. He initially worked as a garbage segregator and later established his own waste collection godown in the Bellanduru area of Bengaluru. He fraudulently obtained Indian identity documents, including a PAN card, voter ID card, Aadhar card, and others. Furthermore, when Bangladeshi nationals approached him for employment in India, he collected money from them and, with the assistance of agents/touts at the Indo-Bangladesh border near Benapole, trafficked them into India under the false promise of providing jobs in India with valid Indian documents. Once trafficked into India, these trafficked Bangladeshi nationals were confined in godowns/sheds and subjected to hard labour in his waste segregation godown for meager wages by threatening them of arrest by Indian Police. To support these allegations, the Investigating Officer has recorded witness statements and gathered documents during searches.

13. In this regard, LW.29, Sri Mohammed Razak, LW.34, Sri Mahinder, LW.35, Sri Md. Milan, LW.36, Sri Naseer, LW.37, Sri Elldo, LW.38, Sri Md. Umar Farooz @ Muhammed Umar Farooz, and LW.40, Sri Mijjan have stated before the police that they are Bangladeshi nationals. They were brought to India under the false promise of receiving jobs with valid Indian documents and were forced to work in the waste segregation godown of accused No. 6, where they were paid a meager amount of Rs. 7,000 to Rs. 9,000 per month. When they requested better employment, such as security guard positions or hospital work, accused No. 6 threatened them with arrest by Bengaluru Police.

14. Additionally, the Investigating Officer seized several items from the residence of accused No. 6, including a Grameenphone SIM card, the original marriage certificate of accused No. 6, Axis Bank cheque leaves, his PAN card, voter ID, Aadhar card, a visiting card from Bangladeshi Dr. Sallauddin Howladar, another visiting card from Alauddin Market, Benapole Check Post, Bangladesh, a receipt book for donations in the name of Mollabori Baitun Najat Jame Masjid, Morelganj, Bagerhed, Bangladesh (containing 100 leaves), mobile phones, and other documents.

15. Furthermore, the mobile phones were sent to the FSL for data retrieval, which revealed significant findings. The data analysis uncovered 3,731 phone calls made to Bangladeshi phone numbers and 5,983 chats with Bangladeshi contacts from a Vivo Y100 mobile phone. From another Vivo 1920 mobile phone, 12,990 phone calls and 7,421 chats were made to Bangladeshi numbers and contacts. Notably, the Grameenphone SIM card, exclusive to Bangladesh, is unavailable in India. Moreover, accused No. 6 fabricated his birth certificate to obtain a passport, using this document to acquire Indian identity cards.

16. The witness statements, documents seized from the house of accused No. 6, data retrieved from his mobile phones, and other collected evidence collectively establish a prima facie case against accused No. 6. These indicate that he is a Bangladeshi national who trafficked other Bangladeshi nationals into India with false promises of jobs and subjected them to forced labor in his waste segregation godown, while threatening them with arrest by Bengaluru Police.

17. The defense counsel for accused No. 6 argues that he is an Indian national, and the documents submitted with the charge sheet support this claim. Accused No. 6 has been employed at BBMP for fifteen years, and the witnesses stated that they only learned of his Bangladeshi nationality after his arrest. However, the prosecution has failed to produce sufficient evidence to prove that accused No. 6 is a Bangladeshi national. Therefore, the counsel contends that there is insufficient evidence to frame charges against him.

18. As discussed earlier, the evidence presented, namely the documents seized from accused No. 6's residence, data from his mobile phones, and statements recorded by the Investigating Officer, prima facie confirms that accused No. 6 is a Bangladeshi national. The prosecution has substantiated the claim that he trafficked Bangladeshi nationals into India under the false promise of employment, and those trafficked were subjected to forced labor in his waste segregation godown. Therefore, this court finds no merit in the arguments advanced by the defense counsel for accused No. 6.

19. The defense counsel further argues that if accused No. 6 were indeed a Bangladeshi national, he would not have threatened the witnesses with disclosure of their identities to the police, as it would also expose him. However, the prosecution contends that accused No. 6 had already fabricated Indian identity documents and used these to threaten the Bangladeshi nationals.

20. To support this, the prosecution has presented two fabricated birth certificates of accused No. 6, issued by different States. The ease of obtaining such identity documents after fabricating a birth certificate underscores the likelihood that accused No. 6 had also fabricated other Indian identity documents. Furthermore, he could have produced documents like his parents' election identity cards, ration cards, or other official records to confirm his Indian nationality. Given this, the court finds no merit in the defense’s argument.

21. Based on the evidence collected, the prosecution has established a prima facie case to frame charges against accused No. 6 for offences under Sections 120B, 370(3) of the IPC, Sections 14, 14A(b), and 14C of the Foreigners Act, and Section 3 of the Passport (Entry into India) Act, 1920, read with Rule 6 of the Passport (Entry into India) Rules, 1950. The evidence presented strongly indicates accused No. 6’s involvement in the alleged crimes, thus justifying a trial. **Accordingly, this Court answers Point No. 1 in the affirmative.**

22. **Point No.2** :- In view of the discussions made supra, this court proceeds to pass the following:

<u>O R D E R</u>

The application filed by accused No. 6, Mr. Suman Shaikh Zakir @ Zakir @ Saudi Zakir, under Section 227 of the Cr.P.C., is hereby rejected.

(Partly dictated to the Senior Sheristedar, transcription thereof computerized by him, partly typed by me in my laptop, corrected, and then pronounced by me in open Court on this **25th day of March, 2025**)

(GANGADHARA C.M.),
XLIX Addl. City Civil & Sessions Judge,
(Special Judge for trial of NIA Cases),
(CCH-50) Bengaluru.

**HRN/-*