

Prasad Rajput

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1198 OF 2025

Sabnam Suleman Ansari	.. Applicant
Versus	
The State Of Maharashtra	.. Respondent

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- Mr. Shubham Upadhyay a/w Mr. Aryan Kotwal, Advocate for Applicant.
 - Mr. Rishikesh M. Pethe, APP for State.
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CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2025

P. C.:

1. Heard Mr. Upadhyay, learned Advocate for Applicant and Mr. Pethe, learned APP for State.
2. Applicant - accused has filed the present Application for regular bail in connection with Crime No.75 of 2025 registered with APMC Police Station for the offence under Sections 14(a) of the Foreigners Act, 1946 and Sections 3(a) and 6(a) of the Passport (Entry into India) Act, 1950.
3. Applicant in the present case is a woman who has been arrested by the prosecution on the basis of intelligence input received by the officer of the prosecution team through a secret informant in January, 2025. Information was to the effect that Applicant is a foreign national namely citizen of Bangladesh residing unauthorizedly in

India. In that view of the matter case of the prosecution as emanating from the charge-sheet and Affidavit-in-Reply filed by the prosecution is that while on patrolling duty on the identification by the secret informant Applicant was apprehended, questioned and arrested. At that time Applicant was having her 1 and ½ year old son alongwith her. They both were indicted and arrested on 20.01.2025 pursuant to which they have been lodged in prison.

4. Case of prosecution emanating from the Affidavit-in-Reply filed by Dhanraj Ravindra Prabhale, Asst. Police Inspector, APMC Police Station, Thane is *prima facie* on the basis of prosecution officers conducting oral inquiry with Applicant upon which she informed them that she came to Mumbai when she was small alongwith her father. According to prosecution case, Applicant informed them that she travelled to India through unauthorized route from Bangladesh without any valid travel documents. These are the charges and sum and substance of prosecution case against Applicant.

5. Mr. Upadhyay, learned Advocate for Applicant at the outset argued that allegations made in the prosecution case are solely based on the alleged purported confession of Applicant recorded before the police officer for indicting the Applicant. In support of Applicant's case he would draw my attention to documents relating to the Applicant namely her Aadhar Card, Pan Card, Election ID Card,

Gram Panchayat confirming her Indian residence, Ration Card, marriage certificate for having married and Indian citizen and living in India for the past several years.

5.1. That apart he would contend that there is *prima facie* transgression of the provisions of Section 58 of BNSS *pari materia* with Section 50 Cr.P.C. when admittedly according to prosecution case Applicant was arrested on 28.01.2025 at 12:30 pm and produced before the Magistrate on 29.01.2025 at 4:30 pm beyond 24 hours after her arrest which itself is a transgression and considering the imprimatur of Supreme court in the case of ***Vihaan Kumar Vs. State of Haryana & Anr.***¹ the Court should immediately step in.

5.2. He would draw my attention to paragraph No.9 of the Affidavit-in-Reply of the prosecution which would *prima facie* support his submission because it is stated therein that Applicant did not raise grievance at the time of her arrest that she was produced before the Magistrate beyond 24 hours of her arrest and most importantly neither she approached the High Court for writ of *Habeas Corpus* during that period. From the prosecution case emanating from the record itself *prima facie* it is seen that Applicant was taken into custody at 12:30 pm on 28.01.2025 whereas she was produced before the Magistrate at 4:30 pm on 29.01.2025.

¹ 2025 INSC 162

5.3. In the Affidavit-in-Reply there is no explanation given by the prosecution that Applicant was not produced before the Magistrate before 12:30 pm on 29.01.2025. The production of Applicant thus beyond the permissible limit of 24 hours is in clear violation of fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India. *Prima facie* this is an unexplained breach of the mandate of Article 21 and sub-clause 2 of Article 22 of the Constitution of India. Mr. Pethe has persuaded me to consider the judgement dated 21.04.2025 passed by the Division Bench of this Court in the case of ***Karan Ratan Rokade and Ors. The State of Maharashtra and Anr.***² holding that since the ground of non-production within 24 hours was not taken at the remand stage, it is not open to Applicant to agitate the same at the bail stage. I have perused the judgement. However to counter this Mr. Upadhyay would draw my attention to the decision of Supreme Court in the case of ***Directorate of Enforcement V. Subhash Sharma***³ wherein paragraph No.8 of the said judgment becomes relevant in the present case. For reference paragraph No.8 of said judgment is reproduced herein below:-

“Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court

² Criminal Writ Petition No.996 of 2025 decided on 21.04.2025

³ 2025 SCC OnLine SC 240

dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."

6. What is stated in the Supreme Court judgement is that "...it is the duty of the Court dealing with bail applications to release accused on bail if it finds that his fundamental rights have been violated while arresting him". What is considered by the Supreme Court is the "duty of the Court". This decision of the Supreme Court was placed before the Division Bench which the Division Bench considered but did not consider the aspect of "...duty of the Court" as held by the Supreme Court. That apart the Division Bench order proceeds on the facts of the case therein which are completely different and not akin to the facts in the present case. The case before the Division Bench was under the MCOC Act. The offence was serious therein and there were 9 other serious offences registered against Applicant therein and therefore the Division Bench dismissed the petition. However dismissal of petition was not on the ground of the contentions raised regarding arrest at the time of arrest of the Applicant therein. Neither the Division Bench has commented upon the ratio of the Supreme Court in the case of ***Subhash Sharma*** (3rd *supra*) as they have only referred to that case in passing. In that view of the matter I am not inclined to accept the submissions made by Mr. Pethe and in line with the decision of the Supreme Court in the case of

Subhash Sharma (*3rd supra*), i reject the submissions made by Mr. Pethe.

7. In view of the above *prima facie* transgression which is observed by the Court, it is the duty of the Bail Court to step in. It is unfortunate that prosecution officers are indifferent to these elementary but statutory requirements regarding detention beyond 24 hours not being permissible unless the accused person is produced before the Magistrate. This ground of breach of Section 50 of Cr.P.C. and violation of the fundamental rights of Applicant go to the root of the matter and deserve immediate consideration even in the bail application.

8. Learned Advocate for Applicant has placed on record 6 documents running into 10 pages in support of her case which are delineated hereinabove.

9. Needless to state that prosecution can prove its case in accordance with law at the time of trial according to allegations against Applicant.

10. In view of above *prima facie* observations, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing PR. Bond in the sum of Rs.5,000/- with one or

two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.5,000/- for her release immediately and file undertaking that she will provide one or two sureties in the like amount of Rs.5,000/- within a period of four weeks after her release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before her actual release from jail, Applicant shall furnish her address where she proposes to reside after her release from jail to the concerned Police Station and also to the trial Court;

(iv) After her release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m. to mark her presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if she does so, it will entitle the prosecution to apply for

cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking her attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

11. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

12. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]