

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1121 of 2026

**Sampa Sarkar
Vs.
The State of West Bengal and Anr.**

For the Petitioners : Mr. Rajdeep Mazumder Sr. Adv.
Mr. Sayan Mukherjee

For the state : Mr. Suman De,
Mr. Santanu Deb Roy

Heard on : 07.04.2026

Judgment on : 06.05.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have prayed for quashing of proceeding being Bongaon P.S. case no. 1187 of 2025 dated 29.12.2025 under section 21 of the Immigration and Foreigners Act, 2025 (in short Act of 2025) corresponding to GR Case no. 4106 of 2025 presently pending before learned ACJM, Bongaon.

2. Being aggrieved by the aforesaid proceeding, learned counsel for the petitioner, Mr. Mazumder argued that the investigating agency despite

possessing Foreigner's Regional Registration Officer's (in short FRRO) verification report dated 12.02.2026, which establishes the petitioner's entry into India on 07.12.2024, which is prior to the statutory cut-off date of 31.12.2024, has maliciously proceeded to file charge sheet against the petitioner, under section 21 of the Act of 2025. While initiating the instant proceeding, the investigating agency has shown complete disregard to the mandatory exemption.

3. The background of the case is that the petitioner, who is a 27 year old Hindu women from Khulna District, Bangladesh was arrested by the police and thereafter granted bail on 28.02.2026. The petitioner belongs to a minority Hindu community who was allegedly compelled to flee from her homeland due to religious persecution of minorities in Bangladesh and as such has sought shelter in India. On 07.12.2024 she entered India through the Ghozadanga Land Border, possessing a valid Bangladesh Passport, bearing no. A 01870282 and a valid VISA bearing no.VL6686067, which was issued on 07.07.2024 and was valid upto 06.01.2025. Therefore, her entry in India is well within the permissible period of her VISA and since then she remained in India.

4. In December, 2024 subsequent to her Entry into India she got married to one Bibek Mondal, a citizen of India, according to Hindu rites and customs. The petitioner after her marriage resided with her husband and his family members at her matrimonial home in Raipur, India.

5. However, it is alleged by petitioner that soon after the marriage she started facing several matrimonial discord, cruelty at the hands of her husband and her in laws and she was subjected to mental and physical

harassment. The petitioner being alone with no support, endured the said cruelty for several months with the hope of saving her marriage, but according to her allegation the harassment only escalated with time.

6. Her further case is in or around December, 25 being unable to bear the continuous cruelty any longer, she went to Bongaon P.S. to lodge a written complaint against her husband and in laws. However, instead of registering her complaint and providing her with the protection, they refused to accept her complaint. Thereafter the petitioner's husband Bibek Mondal allegedly in active collusion and conspiracy with the local police at Bongaon P.S. hatched a plan to make her silent and to prevent her from pursuing her complaint. Thereafter on 29.12.2025 the petitioner has been implicated with the instant case by the investigating officer acting at the behest of the petitioners husband and in abuse of his official position, alleging that the petitioner was found loitering aimlessly, who failed to produce valid travel document.

7. Mr. Mazumder in this context argued that on 01.09.2025, the ministry of Home Affairs, Government of India in exercise of powers conferred by section 33 of the Act of 2025 published Notification No. 3997 (E) in the official gazette. Order 3(1) (e) provides for a complete statutory exemption from the requirement of possessing valid passport and visa, in case of a person, who is victim of religious persecution.

8. The petitioner squarely falls within the four corners of the exemption as she entered India on 07.12.2024 with valid documents which subsequently expired on 06.01.2025. He further submits that on 22.01.2026, learned ACJM Bongaon, upon hearing the petitioner's counsel,

passed a judicial order thereby directing the investigating officer to verify the petitioner's passport and the date of entry with the concerned authority and to file a report. The concerned authority submitted a report which discloses that the petitioner has entered India on 07.12.2024 and that her VISA was genuine.

9. Therefore the instant case is bereft of the basic ingredients of an offence under section 21 of the Act of 2025. He argued that it is trite law that police agency is to investigate only the allegations which disclose a criminal act. Here the petitioner has been implicated falsely with an ulterior motive and therefore, the same is liable to be set aside.

10. Learned Counsel appearing on behalf of the State opposed such prayer and contended that the purpose of the petitioner's entry in India is apparent from the VISA itself, which discloses that she came to India as Tourist. The case of religious persecution must be claimed promptly and ideally at the time of entry or when the threat becomes known, otherwise belated claim only after initiation of legal proceeding under the Act of 2025, should be viewed as an afterthought.

11. He further argued that the petitioner could not establish the basis of fear of religious persecution. The petitioner must show a well-founded fear of future persecution which includes both subjective genuine fear and an objective credible risk of future harm. Quoting of the line from a particular section or order will not give rise to exemption or immunity granted under the Act. The petitioner has to show the nature of fear of religious persecution. A vague claim to save herself from the rigour of punishment is not sustainable. Moreover, whether there was any fear of religious

persecution in the mind of the petitioner or not can only be adjudicated after trial. In such circumstances quashing of proceeding without trial is uncalled for and therefore the instant application is liable to be rejected.

Decision

12. The petitioner herein has been charge-sheeted under section 21 of the Act of 2025. Section 21 reads as follows:

“21. Penalty for entry without valid passport or other travel document.— Any foreigner who enters into any area in India without a valid passport or other travel document, including visa required for such entry in contravention of provisions of section 3 of this Act or of any rule or order made thereunder or any direction given in pursuance thereof, shall be punishable with an imprisonment for a term which may extend to five years or with fine which may extend to five lakh rupees or with both.”

13. In order to constitute offence under section 21 of the Act of 2025 essential ingredients are:-

- (i)** The person accused must be a “foreigner” i.e. not a citizen of India as defined in section 2(f) of the Act.
- (ii)** The foreigner must have entered into any area in India.
- (iii)** The entry was made without a valid passport, valid visa or other required travel documents.
- (iv)** The entry must be in contravention of section 3 of the Act or any rule, order or direction given in pursuance of the Act.

14. Section 3 of the Act of 2025 provides for the requirement of possession of a valid passport or other travel document by any person entering or attempting to enter into India and in case of a foreigner also a valid VISA, unless exempted under section 33 or through inter-governmental agreement.

15. Section 33 of the Act empowers the central government to declare by order that all or any of the provision of the Act or of any rule or order made thereunder shall not apply or shall apply only in such circumstances or such exceptions, conditions as may be specified in such order.

16. By dint of such power, Government of India, Ministry of Home Affairs issued SO 3997 (E) on 1st September, 2022 namely Immigration and Foreigners (Exemption) order 2025 (in short Exemption Order 2025). Order 3 deals with exemption clause which deals with the cases, where there is no requirement of valid passport, valid VISA or other valid travel document for entry into, stay in and exit from India. Order 3 (e) of the said Exemption Order 2025 runs as follows:-

“(e) a person belonging to a minority community in Afghanistan, Bangladesh and Pakistan, namely Hindu, Sikh, Buddhist, Jai, Parsi and Christian, who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2024

(i) Without valid documents including passport or other travel documents;
or

(ii) With valid documents including passport or other travel documents and the validity of such documents have expired.

17. In the instant case prosecution admitted in their letter dated 17.02.2026 in reply to the courts query that petitioner entered into India with valid VISA on 07.12.2024. The relevant portion of the verification report dated 16.02.2026 is as follows:-

“During investigation of the case prayer has been sent to SP, DIB Bongaon PD for verification in respect of four Visa vide (i) Visa No. VL 3620784, (ii) Visa No. VL4998890 (iii) Visa No. VL 662024 (iv) Visa No. VL 6686067 of Sampa Sarkar (27 Yrs) w/o Pintu Roy D/o Bimal Sarkar of Dakshin Bedkashi, PO-Chura Mukha, PS-Koyra, Dist-Khulna, Bangladesh.

After Verification the report of the said four Visa Vide (i) Visa No. VL 3620784, (ii) Visa No. VL 4998890 (iii) Visa No. VL6620424 (iv) Visa No. VL 6686067 of Sampa Sarkar (27 Yrs) w/o Pintu Roy D/O Bimal Sarkar of Dakshin Bedkashi, PO Chura Mukha, PS-Koyra, Dist-Khulna Bangladesh is collected from the authority concern and is learnt that accused Sampa Sarkar (27 yrs) w/o Pintu Roy D/O Bimal Sarkar of Dakshin Bedkashi, PO-Chura Mukha, PS-Koyra, Dist-khulna Bangladesh had entered into India on 07.12.2024.”

18. Therefore, on the date of lodging of the instant FIR i.e. on 29.12.2025, petitioner's VISA for staying in India expired and she is staying in India without lawful VISA since 07.01.2025. Now the petitioner in the instant Application has taken a specific defence in para 3 A as stated above, that she is a member of the minority Hindu community from Khulna District, Bangladesh and she was compelled to flee from their home-land due to well documented religious persecution of minorities in Bangladesh and therefore she has taken shelter in India on 07.12.2024 and that she entered India through the Ghoja Danga Land Border, possessing a valid Bangladesh Passport and a valid VISA which was issued on 07.07.2024 and was valid till 06.01.2025. Since she entered India well within the permissible period of her VISA and has since remained In India, she is entitled to get protection under order 3(e) of the Exemption Order 2025.

19. Mr. Mazumder on behalf of the petitioner strenuously argued that despite possessing the aforesaid incontrovertible evidence establishing the petitioner's absolute entitlement to statutory exemption, the investigating officer continued with the investigation and ultimately filed charge sheet mechanically on 26.02.2026 under section 21 of the Act of 2025, in complete disregard to the binding Exemption order and the exculpatory evidence on record. In fact the petitioner who is a Hindu woman eligible under the Citizenship (Amendment) Act 2019 (in short CAA) which grants citizenship to persecuted minorities from Bangladesh, Pakistan and Afghanistan. He further referred to section 6 (B) (3) of the CAA which provides that upon grant of a citizenship certificate, any criminal proceeding

against the persons concerned with respect to illegal migration or citizenship, shall stand abated and therefore according to Mr. Mazumder continuation of present proceeding under the Act of 2025, not only contradicts the humanitarian object of the CAA, but also prejudices the petitioner's statutory rights to seek refuge and/or citizenship.

20. During the course of hearing, learned counsel appearing on behalf of State pointed out that her visa type is for travelling purpose. Petitioner in para 3 (b) of the instant Revisional application has stated that in December, 2024 subsequent to her entry into India, she got married to one Bibek Mondal, an Indian citizen according to Hindu rites and customs and the petitioner after her marriage started residing with her husband and his family members. However soon after the marriage, the petitioner faced severe matrimonial discord and cruelty. Police allegedly refused to register FIR initially and thereafter in collusion with her husband had hatched a plan to silence the petitioner and to prevent her from pursuing her complaint and thereafter on 29.12.2025, the petitioner has been falsely implicated with the instant case. Accordingly, learned counsel for the State quoting the same, strenuously argued that petitioner did not claim her case of religious persecution anywhere and only after initiation of the instant criminal proceeding under the Act of 2025, she for the first time has taken such plea of religious persecution, which is clearly an afterthought and made for the purpose of such prayer for quashment.

21. Now ideally in order to establish '*fear of religious persecution*' under section 3 (e) of the Exemption Order 2025, the defence of which has been

taken by the petitioner herein, some demonstrations are required to be made, which include:-

- A.** Credible Testimony : A detailed personal declaration describe in the what, when, where and how of the persecution.
- B.** Documentary Evidence : police Report, Medical Records, threatening letters or photographs of injuries.
- C.** Forced concealment : Applicant has been compelled to hide his religious belief to avoid persecution.
- D.** Legal discrimination : Due to faith, beliefs or practises of a particular religion./Banning of certain faith.
- E.** Loss of employment : Loss of employment due to the religious identity that claimant hold.”

To substantiate the ‘fear of religious persecution’ credible testimony and evidence may require to establish during hearing.

22. It is undoubtedly true that persecuted migrants from Afghanistan Bangladesh and Pakistan belonging to six minority communities, including Hindu who entered India on or before December, 31st, 2024, without a valid passport, travel document or where the validity of their passport or document has since been expired, will be exempted under the Act of 2025 and this provision forms part of the Immigration and Foreigners (Exemption) Order 2025, notified by Ministry of Home Affairs as above. While section 21 deals with punishment for any foreigner entering India without valid passport or VISA, Section 23 penalises overstaying foreigners.

23. However though this Act of 2025 repealed the earlier Foreigners Act of 1946 but it retains the “burden of proof” clause, resembling section 9 of

the 1946 Act, where the burden of proof lies on the individual to establish that they are not a foreigner, if questioned by authorities. Section 16 of the Act of 2025 may be stated herein for better understanding:-

“16. Burden of proof.—If in any case, not falling under section 15, any question arise with reference to this Act or any rule or order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023), lie upon such person.”

24. From the said provision it is clear that law dictates that ‘notwithstanding anything contained in the BSA, 2023’ makes this onus an absolute requirement for the individual. This provision is a corner-stone of the Act of 2025, designed to strengthen National Security, Streamline Immigration and enables authorities to take action, such as deportation, if the individual fails to establish their no foreign status. Therefore, the onus to provide documentation, confirming citizenship or right to stay/overstay in India lies upon the questioned person/petitioner, shifting the burden away from the state. The words ‘any question arises with reference to this act or any rule or order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description’ is significant in the said provision and will have to be viewed from legislative object.

25. A Statute has to be read from legislative intent by treating it as the will of the sovereign, where judges look to find the true purpose, object and spirit of the law. The preamble of a statute is the key to open the mind of the legislature. The preamble of the Act of 2025 reads as follows:-

26. “An Act to confer upon the Central Government certain powers to provide for requirement of passports or other travel documents in respect of persons entering into and exiting from India and for regulating matters related to foreigners including requirement of visa and registration and for matters connected therewith or incidental thereto.”

Therefore one of the object of reframing the statute is to regulate matters related to foreigners including requirement of VISA.

27. Now coming back to the present scenario, it is the petitioner who under the law is required to prove that she is an exempted person and entitled to get protection under order 3 (e) of the Immigration and Foreigner (Exemption) Order, 2025, in view of the challenges made specifically by the State that the petitioner's plea of '*fear of religious persecution*' is an afterthought and has been cooked up when the present proceeding has been initiated against her for not having any valid visa and/or on the ground of illegal over-stay, since according to the State she has nowhere stated prior to initiation of the present criminal proceeding that though she entered into India by means of a tourist visa and thereafter got married with an Indian, she was actually forced to enter India due to "fear of religious persecution".

28. In ***Som Mittal Vs. Government of Karnataka*** reported in **AIR 2008 SUPREME COURT 1026**, while deprecating the exercise of the extraordinary or inherent power of High Court according to his whim and caprice, the Supreme Court observed that the power under section 482 must be exercised sparingly with circumspection and in rarest of rare cases. Exercise of inherent power under section 482 is not the rule but it is an exception and such exception can be applied only when it is brought to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to court that the trial is likely to be ended in acquittal. In others words such

power can be invoked by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice.

29. In view of the aforesaid background of the case and considering reverse onus clause as written in section 16 of the statute, I do not find that grave miscarriage of justice would be committed, if the hearing is allowed to continue in the instant case. I also find none of the categories of cases given by way of illustration in the case of ***State of Haryana and Ors. Vs. Bhajanlal and Ors.*** reported in **(1992) supp 1 SCC 335**, attract in the present factual matrix of the case. Therefore, I do not find that it is a fit case where the proceeding can be quashed invoking court's jurisdiction under section 482 Cr.P.C.

30. In view of above **CRR 1121 of 2026** which pertains to the prayer for quashment of the impugned proceeding is hereby dismissed.

31. However, I make it clear that I have not expressed any opinion on the merit of the case. The Trial Court shall decide the matter expeditiously, uninfluenced by any observation made by this Court.

32. The order passed by this court on 23.03.2026 in connection with relaxation on conditions of bail shall continue, till the court below proceeds for cancellation of bail granted to the petitioner on 28.02.2026.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)