

*Shabnoor*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1510 OF 2025

Babu Abdul Ruf Sardar	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Jyotiram S. Yadav for the applicant.

Mrs. Megha S. Bajoria, APP for the respondent-State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 12, 2025

P.C.:

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), by the applicant seeking his release on regular bail in connection with Crime Register No.1276 of 2024, registered with Wagle Estate Police Station. The applicant is facing prosecution for offences punishable under Sections 335, 336(3), and 340 read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 ("BNS" for short), along with offences under Sections 3(a) and 6(a) of the Passport (Entry into India) Act, 1950 and Sections 3(1), 3(2), and 14 of the Foreigners Order, 1948.

2. As per the case of the prosecution, the applicant is alleged to have entered the territory of India without valid passport or travel documents, and to have deliberately suppressed his foreign nationality by creating and using forged Indian identity

documents, such as Aadhaar Card and PAN Card. It is alleged that by falsely showing himself as a citizen of India, he not only misrepresented his status before the authorities but also obtained the Aadhaar Card by submitting fabricated documents.

3. The record further shows that at the time of his apprehension, the applicant was found in possession of a mobile phone which, upon forensic examination, contained digital copies of birth certificates of the applicant and his mother, allegedly issued by authorities in Bangladesh. The contents of these documents raise a strong prima facie suspicion that the applicant is a Bangladeshi national, who entered India in violation of immigration laws.

4. The prosecution has also submitted that official verification regarding the genuineness of the Aadhaar card is awaited from the Unique Identification Authority of India (UIDAI), but such verification is presently held up as it requires prior approval or direction from the High Court for disclosure of such sensitive data.

5. It is further pointed out that during the course of investigation, the authorities have recovered material showing that the applicant had been in frequent contact with multiple mobile numbers linked to Bangladesh. The Internet Protocol Detail Records (IPDR) and Call Detail Records (CDRs) also indicate continued and extensive cross-border digital communication, which adds to the seriousness of the offence and supports the allegation of the applicant's foreign origin and his illegal stay in India.

6. Learned Advocate appearing for the applicant has submitted that the applicant is a bona fide citizen of India and there is no conclusive or reliable evidence brought on record by the prosecution to prove that he is a national of Bangladesh. It is argued that the applicant has not committed any of the alleged offences, and that the so-called forged documents referred to by the investigating agency have already been seized during the course of investigation. Therefore, nothing further remains to be recovered from the applicant, and his continued custody serves no useful purpose.

7. The learned Advocate further submits that the birth certificate allegedly retrieved from the applicant's mobile phone, which is relied upon by the prosecution to show Bangladeshi origin, is unverified, and does not even mention the applicant's name. It is pointed out that this certificate was received via a WhatsApp message from an unidentified number, which has neither been traced nor verified by the investigating agency. Hence, according to the applicant, mere possession of such an unverified document cannot be treated as conclusive proof of foreign nationality.

8. The learned Advocate also states that the applicant is suffering from certain health issues and requires proper medical attention. He emphasizes that the applicant holds multiple valid documents issued by competent Indian authorities, such as Aadhaar Card, Voter ID, PAN Card, and Passport. These documents, he contends, are duly linked with the applicant's income tax records, bank accounts, gas connection, electricity bills,

and business registration. The applicant is stated to be a civil contractor by profession, operating under the name "Babu Construction," having a valid Udyog Aadhaar Card and a Ghumasta License. He has been residing in a rented premises in Thane since 2013. It is therefore urged that the applicant is a law-abiding citizen with deep roots in the local community, and in view of the above submissions, he may be granted regular bail.

9. On the other hand, the learned Additional Public Prosecutor has strongly opposed the grant of bail. She submits that the applicant has entered the country without valid permission and is residing illegally by using forged identity documents. It is contended that the applicant is in possession of a mobile phone from which digital copies of birth certificates, purportedly of the applicant and his mother, have been recovered, both suggesting Bangladeshi origin. It is further argued that the applicant has close ties with persons residing in Bangladesh, and the IPDR analysis reveals frequent contact with foreign phone numbers, raising serious suspicions about his cross-border links.

10. The learned APP also submits that verification from UIDAI with respect to the authenticity of the Aadhaar card is pending, and the investigation is still ongoing under Section 193(8) of the Bharatiya Nagarik Suraksha Sanhita, 2023. She expresses grave apprehension that if the applicant is released at this stage, he may abscond, misuse the liberty, or possibly obtain another false identity, making it extremely difficult for the authorities to trace him. She also warns of the possibility that the applicant may be part of a larger organized network involving illegal immigration

and identity fraud, and therefore, releasing him on bail would likely hamper the ongoing investigation and may have implications for national security. On these grounds, she prays for rejection of the bail application.

11. I have considered the submissions made on behalf of the applicant and the State, and have perused the material placed on record. The allegations against the applicant are not limited to a mere technical violation of immigration norms, but indicate a case of deliberate concealment of identity and creation of forged documents for obtaining Indian citizenship benefits.

12. When the Constitution of India was being drafted, the country had just gone through a historic transformation. From being under colonial rule, India had become a free and sovereign republic. Along with this, the Partition had caused a massive movement of people across borders, creating an urgent need to decide who would be accepted as citizens of the new nation. Keeping both these realities in mind, the framers of the Constitution decided to make an immediate but temporary arrangement for deciding citizenship at the time the Constitution came into force. This arrangement was included in Part II of the Constitution (Articles 5 to 11).

13. The rules in Part II decided the citizenship status of people as on 26 January 1950, but also gave Parliament the power, under Article 11, to make new citizenship laws in the future. This ensured that there was no gap in the law at the start of the Republic, and at the same time allowed the elected Parliament to

later create a detailed and permanent system. Article 5 says that a person who had a domicile in India when the Constitution started, and who met certain conditions of birth in India or residence in India, would be a citizen. Article 6 gives citizenship to certain people who migrated from Pakistan to India, if they met conditions such as having family roots in undivided India and, in some cases, getting registered as citizens. Article 7 refuses citizenship to those who moved from India to Pakistan after 1 March 1947, unless they came back to India with a valid permit for permanent settlement or resettlement. Article 8 allows persons of Indian origin living abroad to get citizenship if they are registered by Indian diplomatic or consular officers. Article 9 takes away citizenship from anyone who voluntarily becomes a citizen of another country. Article 10 continues the citizenship of those recognized under the earlier Articles, unless Parliament makes a different law. Article 11 makes it clear that Parliament has complete power to make laws about getting, losing, or managing citizenship in any other way.

14. From a legal point of view, this system served two main purposes: First, it gave immediate clarity on who would be considered a citizen at the very beginning of the Republic. Second, it recognized that citizenship is not fixed forever; it can change depending on the will of Parliament and the needs of the country. So, Part II was never meant to be a full and final code on citizenship, it was a temporary arrangement, expecting that more detailed and updated rules would be made later. This is why, not long after, Parliament passed the Citizenship Act, 1955, to create a permanent and complete system for acquiring citizenship, losing it,

and dealing with all other related matters.

15. Using the power given by Article 11 of the Constitution, Parliament passed the Citizenship Act, 1955 to create a permanent, detailed, and flexible system for citizenship in India. While Part II of the Constitution decided who was a citizen on 26 January 1950, the Citizenship Act explains how a person can become a citizen after that date and in what situations citizenship can be lost.

16. The Act lists five main ways of getting Indian citizenship:

(i) By Birth (Section 3)–If a person was born in India between 26 January 1950 and 1 July 1987, they are a citizen by birth. If born between 1 July 1987 and 3 December 2004, at least one parent must have been a citizen of India at the time of birth. If born on or after 3 December 2004, both parents must be Indian citizens, or one must be a citizen and the other not be an illegal migrant. These changes were made to tighten citizenship rules and prevent misuse.

(ii) By Descent (Section 4) – A person born outside India can be a citizen if one parent was an Indian citizen at the time of birth. If the Indian parent was a citizen by descent only, the child's birth must be registered at an Indian consulate within one year (or later with Government permission). After the 2003 amendment, registration became compulsory, along with a declaration that the person does not hold a foreign passport.

(iii) By Registration (Section 5) – Certain people, such as persons of Indian origin living in India or abroad, spouses of Indian citizens, and minor children of Indian citizens, can be registered as citizens. They must not be illegal migrants and must meet the required residence conditions.

(iv) By Naturalisation (Section 6) – A foreign national can get citizenship if they have lived in India for a certain

number of years and meet conditions related to age, character, knowledge of an Indian language, and giving up their old citizenship. In special cases where a person has made a distinguished contribution to the country or society, the Government may relax these rules.

(v) By Incorporation of Territory (Section 7) –If a new territory becomes part of India, the Government can decide which of its residents will be given Indian citizenship.

17. The Act also has rules for losing citizenship:

(i) Renunciation (Section 8) – when someone voluntarily gives up Indian citizenship.

(ii) Termination (Section 9) – when someone becomes a citizen of another country.

(iii) Deprivation (Section 10) – when citizenship is taken away because it was obtained by fraud, disloyalty, or other legal reasons.

18. In my opinion, the Citizenship Act, 1955 is the main and controlling law for deciding questions about nationality in India today. This is the statute that lays down who can be a citizen, how citizenship can be acquired, and in what situations it can be lost. Merely having documents such as an Aadhaar Card, PAN Card, or Voter ID does not, by itself, make someone a citizen of India. These documents are meant for identification or availing services, but they do not override the basic legal requirements of citizenship as prescribed in the Act.

19. The law also draws a clear line between lawful citizens and illegal migrants. Persons falling into the category of illegal migrants are barred from obtaining citizenship through most of the legal routes mentioned in the Act. This distinction is important,

because it protects the sovereignty of the country and ensures that benefits and rights meant for citizens are not wrongfully taken by those who have no legal status to stay in India.

20. When there is an allegation that a person's identity is forged or that the person is of foreign origin, the Court cannot decide the matter based only on the possession of certain identity cards. The claim of citizenship must be examined strictly under the rules of the Citizenship Act, 1955, including whether the person meets the conditions under Sections 3 to 6, or any special provisions applicable to their case.

21. Furthermore, under Section 9 of the Foreigners Act, 1946, if the Government places credible evidence before the Court raising a reasonable suspicion that the person is not an Indian citizen, the burden of proof shifts to that person. This means it becomes their legal duty to produce satisfactory and lawful evidence to prove that they are indeed a citizen of India. Unless this burden is discharged, the presumption under the law will work against them.

22. In the present case, these principles require careful consideration because the allegations involve forged identity documents and possible foreign origin, which go to the root of the applicant's legal status in the country. At the bail stage, the Court must be satisfied that there is at least a prima facie basis for the claim of citizenship before granting relief.

23. During the investigation, the applicant's mobile phone was taken by the police as per law and sent for forensic examination.

From the data recovered from the phone, copies of two birth certificates were found, one said to be of the applicant himself and the other of a woman claimed to be his mother. Both these documents show the place of birth as being in Bangladesh.

24. The applicant says that these certificates were sent to him on WhatsApp by an unknown person and that they are unverified and have nothing to do with him. However, at this early stage, such an explanation cannot be accepted without proper investigation. The real source of these documents, whether they are genuine or fake, and whether they actually relate to the applicant, can only be found out after proper verification by the concerned authorities. In cases involving false identity and claims of citizenship, the process of verification is often detailed and takes time, as it may require the involvement of agencies like UIDAI, passport authorities, and sometimes even foreign government departments. This case also needs such careful verification, which is still going on.

25. The Court is not deciding at this stage whether the documents are true or false, that will be decided at the trial. But the fact that such documents have been found on the applicant's own phone is important and cannot be ignored. If they turn out to be genuine, they could directly affect the question of whether the applicant is an Indian citizen or a foreign national staying in India without permission.

26. At this stage, the Court cannot ignore the fact that official confirmation regarding the genuineness of the Aadhaar card and other documents is still awaited from UIDAI and other authorities.

The investigation under Section 193(8) of the Bharatiya Nagarik Suraksha Sanhita, 2023, is also stated to be ongoing in respect of crucial aspects relating to the applicant's identity and possible links with other individuals or entities involved in such activities. There is, thus, a live and continuing investigation.

27. The concern raised by the learned Additional Public Prosecutor about the possibility of the applicant running away if released on bail is serious and cannot be ignored. The allegations in this case are not small. It is not just about staying in India without permission or overstaying a visa. It is about making and using fake and forged identity documents like Aadhaar Card, PAN Card, and Voter ID, with the aim of pretending to be an Indian citizen.

28. It is also claimed that the applicant has taken advantage of government systems to get benefits meant only for Indian citizens, even though he is actually a foreign national. Digital evidence found with him includes documents suggesting he is of Bangladeshi origin, which creates strong doubt about his real identity. The fact that he was allegedly able to get official documents through fraud shows that he has the ability to misuse the system and create a false identity again if given the chance. In these circumstances, if the applicant is given bail now, there is a real risk that he may hide, get another false identity using forged documents, or leave the area under the Court's control altogether. There is also a real chance that he may destroy evidence or put pressure on witnesses, especially since the verification of the documents in question is still not complete. This Court believes

that the fear expressed by the prosecution is not an empty or imaginary fear. It is supported by the applicant's alleged past actions and the serious nature of the accusations. The danger of the applicant running away from the law or interfering with the investigation is real, and for this reason also, this is not a case where bail should be granted at this stage.

29. The applicant has failed to produce any document duly verified or authenticated by the concerned government authorities that could conclusively establish his Indian citizenship. Merely relying on the existence of certain identity documents such as Aadhaar, PAN, or Voter ID, without verification of the process through which these were obtained, cannot be treated as sufficient proof of lawful citizenship at this stage, particularly when the very authenticity of such documents is under investigation.

30. In such circumstances, where the investigation is at a crucial stage, and where serious allegations involving national security, illegal entry, and use of forged government documents are involved, the Court finds it neither proper nor prudent to enlarge the applicant on bail at this juncture.

31. The application for regular bail stands rejected at this stage.

32. However, it shall be open for the applicant to revive his request for bail if the trial is not concluded within a period of one year from today.

(AMIT BORKAR, J.)