

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JANUARY 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.279 OF 2020

BETWEEN:

Smt.ARCHONA PURNIMA PRAMANIK
D/o.ANIL CHANDRA PRAMANIK,
AGED ABOUT 37 YEARS,
R/A: No.22, 1ST CROSS,
YALLAMMA TEMPLE ROAD,
RT NAGAR, BENGALURU CITY,
KARNATAKA - 560032. .. PETITIONER

(By Smt.AYANTIKA MONDAL, ADVOCATE)

AND:

STATE OF KARNATAKA BY
R.T. NAGAR POLICE STATION,
BENGALURU CITY
REP. BY LEARNED SPP,
HIGH COURT OF KARNATAKA,
BENGALURU - 560001. .. RESPONDENT

(By Sri.THEJESH P., HCGP)

THIS CRIMINAL PETITION IS FILED U/S.439 CR.P.C., PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.235/2019 OF RT NAGAR PS., BENGALURU FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 5, 12, 14 OF FOREIGNERS ACT, SECTION 3(1)(c) OF CITIZENSHIP ACT & SECTIONS 465,468,471 OF IPC.

THIS CRIMINAL PETITION COMING ON FOR DICTATING ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

This petition is filed under section 439 of Cr.P.C. for grant of regular bail in Crime No.235/2019 registered under sections 465, 471, 468 of IPC, sections 5, 12 and 14 of Foreigners Act, 1946 and section 3(1)(c) of the Citizenship of Indian Act, 1955.

Heard learned counsel for petitioner. Learned HCGP has not filed any statement of objections, but has orally opposed the petition.

2. The material allegations against the petitioner is that petitioner is a Bangladeshi National and an illegal migrant. She obtained Indian documents like PAN Card, Aadhar Card in her name and on the strength of these documents, she fraudulently obtained an Indian Passport No.T4527612 dated 28.03.2019 vide passport application No.BN3061965327319.

3. The complaint was lodged by the Assistant Passport Officer, Bengaluru. Petitioner herein was arrested on 07.11.2019. The application filed by her seeking release on bail

has been dismissed by the LIX Addl. City Civil & Sessions Judge, Bangalore city, by order dated 04.12.2019, on the ground that there is *prima facie* material to show manipulation of records by the petitioner and that the matter is under investigation and in the event she is released on bail, she may destroy the records or manipulate the records and may flee from justice.

4. Learned counsel for the petitioner submits that the petitioner is a Christian by birth and born on 23.03.1983 and her parents took her to a place called Tanore, Rajshahi, Bangladesh. She was baptized on 16.07.1994 at Bangladesh Adventist Seminary and College Church and since she was facing severe harassment from her neighbourhood youth and there were lots of threat of her kidnap, she approached the jurisdictional police at Bangladesh and she was advised to keep low profile and that being the case, after discussing her will and wishes, her parents decided to admit her to India for pursuing a career in Nursing and accordingly, she came to India and took admission in Seventh day Adventist Hospital, Ranchi in 2003 and completed her Diploma in General Nursing and Midwifery in 2006. After

completion of the course, she joined job in reputed hospitals like Wockhardt Hospital and Kidney Institute (Fortis Hospital), Manipal Hospital, Vikram Hospital, Cloud Nine Hospital. In the year 2007-08, she met one Mr.Rajasekaran Krishnamurthy, an Indian citizen and entered into a registered marriage with him in Ranchi on 12.04.2010. After marriage, she moved to Bengaluru in 2010. During her stay in the matrimonial home, she obtained Voters ID Card on 21.07.2012, PAN Card, Aadhar Card and also Indian Passport by providing valid and genuine documents. The authorities issued the above documents after due verification. In April 2019, she applied for Bangladesh Visa for her and her son and during her journey on 20.05.2019, the Immigration Officer at Kolkata illegally detained her and her son at Airport and later she was released from custody. The Regional Passport Office issued a notice for revocation of the passport and that being the case, on 07.11.2019 at 7.30 a.m., all of a sudden, RT Nagar Police arrested her and produced her before the learned Magistrate and she was remanded to police custody till 11.11.2019 and since then, she is in judicial custody.

5. Learned counsel appearing for the petitioner has produced copy of the unreported decision passed by this Court in the case of *QUAMILDEEN vs. STATE OF KARNATAKA* in Criminal Petition No.6167/2019 and placing reliance on section 2 of the Citizenship Act, 1955 as amended by the Citizenship (Amendment) Act, 2019, contends that, as per the above provision, the petitioner cannot be treated as an illegal migrant and all the proceedings initiated against her shall stand abated on conferment of the Citizenship Act and hence, if the petitioner need to apply for citizenship as per the above provisions, her presence is very much required. Further she contends that, in view of the allegations leveled against the petitioner, the nationality of the petitioner is required to be determined under section 8 of the Foreigners Act. The provisions quoted in the FIR are not applicable to the petitioner. The documents seized by the police are not forged or fabricated rather the said documents were issued by the concerned authorities after going through legal formalities and after due verification, as such, no *prima facie* case has been made out under sections 465, 468, 471 of

IPC. Petitioner has not caused any loss to anyone and has not cheated anyone and as such, provisions of section 420 IPC are also not attracted. Further the offence under section 14 of the Foreigners Act, 1946 is punishable to an extent of five years and there is no restrictive provision under the statute that bail should not be granted. The respondent Police have failed to produce charge sheet within the stipulated time as per Code of Criminal Procedure and the petitioner is in judicial custody since 07.11.2019 and she is also entitled for statutory bail under section 167(2)(a)(ii) of Cr.P.C.

6. The records produced by learned HCGP indicate that investigation is still in progress. He does not dispute the fact that the petitioner is entitled to the benefit of amended section 2 of Citizenship Act, 1955.

7. I have bestowed my careful consideration to the submissions made at the Bar and have perused the FIR and the documents produced including the judgments relied on by the learned counsel for the petitioner.

8. In Criminal Petition No.4558/2019 and Criminal Petition No.3313/2019 this Court has released the accused facing accusations therein under sections 12(1A), 12(A) and 12(B) of Passports Act, 1967, section 7(2) of Foreigners Order Act, 1948, section 14 of Foreigners Act, 1946 and sections 420, 465, 471 of IPC.

9. Amended section 2 of the Citizenship Act, 1955 as amended by the Citizenship (Amendment) Act, 2019 provides that, *any person Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act.*

10. The allegations in the instant case are that the petitioner has fabricated and manipulated the documents

relating to her identity namely Aadhar Card, PAN card and Passport and on the strength of these documents, she has been claiming to be a citizen of India. These allegations require to be established during trial. Petitioner has taken up a plea that all these documents are lawfully obtained by her after following due procedure and under the said circumstances, in view of the Amendment to the Citizenship Act and there being *prima facie* material to show that the petitioner has been residing in India since 2002 with her husband and child, until the allegations made against the petitioner are established in a full-dressed trial, the petitioner is entitled to be enlarged on bail. In the light of the above facts and circumstances, even the applicability of the provisions of the Foreigners Act, 1946 may have to be decided before proceeding against the petitioner. In that view of the matter, the petitioner requires to be admitted to bail subject to conditions. Hence, the following:-

ORDER

Petition is **allowed**.

- a) Petitioner is directed to be released on bail on obtaining a bond in a sum of Rs.2,00,000/-

(Rupees Two Lakhs only) with two sureties for the likesum to the satisfaction of the Investigating Officer.

- b) She shall not indulge in tampering the prosecution witnesses.
- c) She shall co-operate in the investigation and shall appear before the Investigating Officer as and when called for.
- d) She shall not leave the jurisdiction of the concerned Trial Court without prior permission, till the charge sheet is filed or for a period of three months whichever is earlier.
- e) She shall mark her attendance on the 1st and 15th of every calendar month between 10.00 a.m. and 5.00 p.m. before the Investigating Officer for a period of two months or till the submission of the final report, whichever is earlier.

**Sd/-
JUDGE**