IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Jay Sengupta

CRA (SB) 140 of 2025

IA No: CRAN 1 of 2026

(via video conference)

Oishe Biswas

Vs.

The State of West Bengal

For the appellant : Mr. Jayanta Narayan Chatterjee, Sr. Adv.
Mrs. Moumita Pandit
Ms. Jayashree Patra
Ms. Alivia Dutt
Mr. Suprava Dey
Mr. Siddharta Roy
.....Advocates

For the UOI : Mr. Dhiraj Kumar Trivedi, Ld. ASGI
Mr. Tapadip Gupta
Ms. Divyanshi Shaw
.....Advocates

For the State : Mr. RajdeepMajumdar, ld. AAG
Mr. Gouranga Kumar Das, ld. APP
Mr. Bankim Pal
Mr. Sayan Mukherjee
Mr. Soumya Raha
Mr. Yuvraj Chatterjee
.....Advocates

Heard lastly on : 14.10.2026

Judgment on : 15.10.2026

Jay Sengupta, J:

1. This appeal is directed against the judgement and order dated 04.01.2025 passed by the Learned ACJM, Bongaon, North 24 Parganas GR Case No. 3941 of 2024 renumbered as GR Case No. 81 of 2025 arising out of Gaighata Police Station Case No. 948 dated 21.10.2024 under Sections 14 and 14(c) of the Foreigners Act, among other things holding the appellant guilty under Section 14 of the Foreigners Act and sentence her for two years and pay fine of Rs. 10,000/- in default, it has to be simple imprisonment for six months.

2. The appeal was admitted by a Co-ordinate Bench of this Court on 24.10.2025. By an order dated 02.02.2026, the said Co-ordinate Bench of this Court rejected the prayer for suspension of sentence of the appellant in CRAN No.1 of 2025. Thereafter an application for suspension of sentence being CRAN No.2 of 2026 has come up for hearing before this Bench.

3. Although the matter was heard on few occasions, none of the counsels appearing for the different parties including the learned counsel appearing on behalf of the appellant ever pointed out before this Court that in this case the judgement was passed by the learned ACJM, Bongaon and consequently an appeal against such conviction and order would lie before the Sessions Court and not the High Court.

4. Learned senior counsel representing the appellant submits that she had entered into India in fear of religious persecution in Bangladesh in the year 2011. Thereafter, she got married here and started living a

peaceful life. She is covered by the provisions of the Citizenship (Amendment) Act, 2019 read with the Citizenship Act 1955. The appellant has also relied upon the Immigration and Foreigners (Exemption)Order, 2025 issued by the Ministry of Home Affairs, Government of India. It is also submitted on her behalf that she would complete her sentence of imprisonment and would be liable to be released on the 21st of this month. Her application for Indian citizenship under the CAA is still pending.

5. Learned senior counsel appearing on behalf of the State submits as follows. The appellant is apparently covered by the Citizenship (Amendment) Act and the Migration and Foreigners (Exemption)Order of 2025.Although it is true that the petitioner had pleaded guilty under some instructions, she shall otherwise be entitled to the benefit of the Order. In any event, she would be completing her sentence of imprisonment on the 21st of this month.Even if this Court wants to grant bail pending hearing of the appeal, the same can be done in terms of the judgement passed by the Hon'ble Apex Court inFrank Vitus vs Narcotics Control Bureau, reported at (2025) 3 SCC 1.

6. Learned senior counsel appearing on behalf of the Union of India submits that the Amendment Act and the Order of 2025 may enure to benefit to the appellant.However, if particulars of the present case, as regards appellant's application for citizenship is to be obtained, he has to take further instructions. He relies on an unreported decision of a Co-ordinate Bench of this Court in Mohammed Edris @ Md. Idrish vs

The Union of India & Ors. InWPA 5012 of 2026. He submits that in the event a person is to be deported to another country pending the completion of the procedure, he/she can be put up at the holding center set up for this purpose under the guidelines of the Ministry of Home Affairs. A reference may be made to a memo dated 23.05.2026 issued by the Government of West Bengal in this regard.

7. It is unfortunate that it was never pointed out, especially on behalf of the appellant that as the order had been passed by the learned ACJM, Bongaon, the appeal would lie before the Sessions Court and not before this Court. Even the initial Departmental Note is silent about this inherent defect.

8. However, there is a stark fact that stares at the face, which is that the petitioner is to a serve out the sentence by the 21st of this month i.e., 21.10.2026. In fact, if remissions are to be considered, she may be entitled to release even earlier.

9. Although the appeal is not maintainable before this Court, as the matter had remained pending before this Court for a considerable time,this Court is constrained to exercise its inherent powers to pass certain directions.

10. As the impugned order was passed by the ACJM, Bongaon, North 24 Parganas, the present appeal being CRA (SB) 140 of 2025 is not maintainable before this Court.As such, the same is dismissed as not maintainable.

11. The appellant shall,however, be at liberty to file a proper appeal before the Appellate Court i.e., before the concerned Sessions Court.

12. However, in view of the fact that the appellant is to serve out the sentence and is entitled to be released by 21.10.2026 or earlier, if remissions are considered and thereafter, ought to be pushed back to her country Bangladesh, in the interest of justice, this Court directs as follows:

(i) After serving out of the sentence of imprisonment on 21.10.2026 or earlier, the present appellant shall be released from the Correctional Home, if not already released and shall be put up at a proper holding center as referred to above and be provided with all necessary amenities for a decent living till she remains there.

(ii) However, the appellant shall not be deported to her country Bangladesh till her application for Indian citizenship is disposed of.

(iii) The appellant, as discussed earlier, shall be at liberty to file a proper appeal before the concerned Sessions Court. In such event, the learned Sessions Court shall decide the appeal in accordance with law and as expeditiously as possible and without being swayed by any observation made herein. However, even in the

event such appeal is filed, the appellant shall not be deported to her country Bangladesh till her application for Indian citizenship made under the Citizenship (Amendment) Act is decided.

13. With these directions and observations, the appeal being CRA (SB) 140 of 2025 is disposed of.

14. The application for suspension of sentence shall also stands disposed of accordingly.

15. Let a copy of the judgement be forthwith sent to the Trial Court.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(Jay Sengupta, J.)