

Sess. Case No.141 of 2017

Order No. 07

Dated: 13.09.17

Today is fixed for production of accused persons namely, Maksed. He is produced from J.C. Thereafter, the case record is taken up for consideration of charge.

Perused the case record. From the material lying on the record it appears that a strong prima facie case under section 14 A(b) of Foreigner's Act has been well established against accused person.

The accused person namely Maksed submitted before this court that he is in J.C since 28.04.2017 in connection with the instant case. And he intend to plead guilty in connection with the instant case. He has filed a guilty plea petition.

Thereafter, the plea of the accused person is taken up for the consideration. Perused the petition filed by the accused person.

On perusal of case record it appears that accused person is in J.C since 28.04.2017 in connection with the instant case.

Ld. Advocate for the accused person as well as ld A.P.P are present. Thereafter, the case record is taken up for consideration of the plea taken by the accused person. Perused all materials lying in the case diary and the record. Heard. Considered.

In my opinion there is ground to presume that the accused person has committed offence punishable u/s. 14 A(b) of Foreigners Act stating inter alia that on 27.04.2017 at about 20:35 while the complainant along with his mobile duty party arise at Sahapur Bazar they noticed that the accused was moving suspiciously and was trying to conceal himself in the Bazar area. Seeing him the complainant and his party apprehended the accused and on interrogation of his identity the accused failed to give satisfactory reply to the complainant and his party. The accused person entered into the Indian territory illegally and was staying there without any valid document. The accused being the citizens of Bangladesh was apprehended by the complainant and his party on duty. The accused failed to produce any document for entering India and thereby committed an offence u/s. 14 A(b) of Foreigners Act. Herein the gist of the offence as reproduced above accused person who pleaded guilty by saying "*ami doshi*" in Bengali. Charge in separate kept in the record. The plea of guilt of the accused person is accepted.

The accused person is held guilty of the offence punishable u/s. 14 A(b) of Foreigners Act.

Hence, it is,

ORDERED

that the above named accused person is held guilty in respect of the offence punishable u/s. 14 A(b) of Foreigners Act as per section 229 of Cr.P.C.

The convict is present before this court. Two hours time is accorded to him to contemplate about the sentence after explaining them the maximum sentence and fine that may be pronounced against him in respect of the offence punishable u/s. 14 A(b) of Foreigners Act.

He submitted that he is sole earning member of his household. He hails from a very poor family and got very little education. He has further contended that he has not been convicted in any other case earlier. No other criminal case is pending against him. He has no property. As regard to the other question regarding to his mental condition at the time of committing the crime. Reason for committing such crime and the circumstances of committing it the convict asserted that he mistakenly wandered into Indian territory.

Now, the question arise as to whether the convict is entitled to get benefit of Provision of Law as laid down in section 360 of Cr.P.C or the Provisions of Probation of Offenders Act. In view of the nature of offence, I am of considered opinion that the convict can not get benefit laid down in section 360 of Cr.P.C or Provisions of Probation of Offenders Act. Other wise considering aggravating and mitigating factors I am of opinion that accused person is not entitled to get benefit u/s. 360 of Cr.P.C or section 3 & 4 Provisions of Probation of Offenders Act. As such a course may same a wrong signal to the society specially when there is a significant rise in the offences. The offence that has been proved to have been committed by the convict is heinous in nature. Nothing has been revealed in the record to show that the offence was committed in an impulsive manner or there was some grave provocation. On the other hand this case is pending since long. The convict is all along facing the trial. There is no criminal antecedent. He is from a poor family and is struggling to made his both ends meet. However, there is nothing in the record to show that the convict is reluctant to return to the main stream of upright life. So, considering the circumstances, I am of opinion that the convict is liable to suffer simple imprisonment for 2 years

which shall be just, proper, reasonable and sufficient from the re-formative as well as deterrent point of view.

I am also of the opinion that the convict is liable to deposit fine amounting to Rs. 10,000/-, in default of which the convict shall be liable to suffer S/I for 15 days.

From the aforesaid discussion it is clear that there is no need to resort to section 325 of Cr.P.C.

Hence, it is,

ORDERED

that the above named convict is found guilty of the offence punishable under section 14 A(b) of Foreigner's Act and he is accordingly convicted as per section 229 of Cr.P.C.

The above accused person is sentenced to suffer simple imprisonment for 2 years. The convict is further sentenced to deposit fine of Rs. 10,000/-, in default he shall be liable to S/I for further 15 days.

The above accused person is sentenced to suffer simple imprisonment for 2 years.

The convict is in J.C since 28.04.2017. The period of detention already undergone by the convict shall be set off with the sentence as aforesaid as per section 428 Cr.P.C. After expiry of sentence period the Prison Authority is directed to arrange for repatriation of the convict immediately. Issue jail warrant accordingly.

Let a copy of this order be supplied to the convict free of cost.

Let copies of this order be sent to the S.D.O., Islampur, the S.D.P.O., Islampur, the Superintendent of Islampur Sub-Divisional Correctional Home for their information and necessary action, if any.

Office is directed to take note and comply the co-ordination with H.C.C., Criminal Copying Department, Islampur.

Dictated & corrected by,

Asst. Sessions Judge,
Islampur, Uttar Dinajpur.

Asst. Sessions Judge,
Islampur, Uttar Dinajpur.