

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 223 of 2021

Shahbaz Ismail @ Shahbaz @ Md. Jamal,

Versus

The State of West Bengal

For the appellant : Mr. Sabyasachi Mukherjee, Adv.
: Mr. Bibek Dey, Adv.
: Mr. Mukesh Khanna, Adv.
: Ms. Debarati Choudhury, Adv.
: Mr. Syed Neaz Ahmed, Adv.

For the State : Mr. Neaguive Ahmed, Id. APP
: Ms. Trina Mitra, Adv.

Hearing concluded on : January 06, 2023

Judgment on : February 01, 2023

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgment of conviction and order of sentence dated March 15, 2021 passed by learned Additional Sessions Judge, 1st Fast Track Court, Calcutta in Sessions Trial No. 02 (June) of 2010 arising out of Sessions Case No. 84 of 2009.
2. By the impugned judgment and order, the appellant were convicted and sentenced under Sections 120B/121/121A/ 122/123/419/467/468 of the Indian Penal Code, 1860, Section 14 A(b) of the Foreigners Act and Sections 4 & 5 of Explosive Substance Act.
3. The facts giving rise to the instant case, in a nutshell, are that the de-facto complainant, an Assistant Commissioner of Police, Special Task Force (STF), Kolkata, received a source information that one Pakistani national Shahbaz Ismail @ Shahbaz, a trained militant of terrorist outfit had entered Indian territory illegally through Bangladesh and was proceeding to Srinagar, Jammu & Kashmir for the purpose of terrorist activities. The de-facto

complainant had an input that the said person was likely to come to the railway reservation counter at Fairlie Place between 12.00 hrs. and 15.00 hrs. on 19.03.2009. The de-facto complainant conveyed the source information to the superiors, a team was formed and proceeded to Fairlie Place. They along with the source started maintaining watch. At about 14.00 hrs. the source pointed out and identified the suspected person. He was intercepted near the reservation queue in presence of witnesses. On query, the said person disclosed his identity as Md. Jamal R/o Jalangi, District-Murshidabad.

4. The de-facto complainant offered the suspect to search his person and after observing all legal formalities, in presence of two witnesses, a search was conducted on the person of suspect. On search, filled up reservation slip in the name of Md. Jamal for journey from Howrah to Jammu, computerized railway ticket dated 19.03.2009 from Berhampore Ct to Sealdah, Driving Licence and Voter's Identity Card in the name of Md. Jamal, one pocket diary containing names and addresses of different persons

in Pakistan, Bangladesh and India and writing in English appearing to be about the ingredients required to manufacture explosive devices and One black leather purse containing ₹3400/-were also recovered from the said person. The said person was not able to speak Bengali and was talking in Urdu. He also failed to give any answers to the queries regarding his residence. It was also suspected that the recovered Driving Licence and the EPIC Card were fake. Upon searching his bag, one LG Mobile phone with charger and one rectangular shaped container containing some semi solid yellowish white unknown material appearing to be explosive substance along with the personal belongings and wearing apparel were recovered. The said person failed to give any satisfactory answer for the possession of the substance appearing to be explosive. Upon further interrogation, the suspect disclosed his identity as Shahbaz Ismail S/o Golam Farooq R/o vill. Bumali Mahalla, P.O. & P.S. Touse, District. Dera Gazi Khan, Pakistan. He further disclosed that he was proceeding to Jammu Kashmir as a member of terrorist

organisation Al-Badar for the purpose of waging war against India and for terrorist activities under instructions of Lukman C/o Pakistan, in-charge of Al-Badr, J&K operations. Accordingly, the de-facto complainant seized the aforesaid articles recovered from the possession of the suspect under a seizure list after observing all legal formalities. The suspect was arrested and brought to and handed over to the Police Station with a complaint by the de-facto complainant.

- 5.** On the basis of such written complaint, Hare Street Police Station Case No. 206 dated 19.03.2009 under sections 120B/ 121/121A/122/123/467/468/471/419 of the Indian Penal Code and Section 14A of the Foreigners Act was started against the appellant.
- 6.** The police took up investigation and on completion thereof submitted charge sheet against the appellant.
- 7.** Offences, being exclusively triable by the court of Sessions, the case was committed to the court of sessions upon compliance of the provisions under Section 207 of the Code of Criminal Procedure.

8. Accordingly, on the basis of materials in the case diary, charges under Sections 120B/121/121A/ 122/123/ 419/ 467/ 468 of the Indian Penal Code, 1860, together with Section 14 A (b) of the Foreigners Act and Sections 4 & 5 of Explosive Substance Act. were framed and the appellant was put to trial.

9. In order to prove the charges, prosecution examined 16 oral witnesses. In addition, the prosecution also relied upon documentary and material evidences.

10. One Assistant Sub Inspector of Police of detective department deposed as PW1. He visited the place of incident i.e. 6, Fairlie Place, Calcutta, as per the directions of the officer-in-charge and prepared sketch map of thereof. He tendered and proved the rough sketch map, final map and the blueprint prepared by him, which were marked as Exhibit 1, 2 and 3 respectively.

11. The de-facto complainant was examined as PW2. He stated that on 19.03.2009 he received a source information about the entry one Shahbaz Ismail @ Shahbaz into Indian territory. He had inputs that the said person was a trained

militant and belonged to some terrorist outfit. The said person was likely to come to the railway reservation counter at Fairlie Place between 12.00 hrs. and 15.00 hrs. PW2 intimated the information to his superior and upon getting due permission, formed a team and proceeded to Fairlie Place to work out the information. At about 14.00 hrs. the source pointed out the suspect who entered into the railway reservation area with a Rexene bag. He was intercepted by the team after disclosing their identity when he was about to stand in the queue after filling up reservation slip. The detainee disclosed his identity as Md. Jamal of Jalangi, Distt. Murshidabad. PW2 offered himself and was searched by the detainee in presence of witnesses but nothing objectionable could be found. Thereafter, PW2 conducted search on the person of the detainee in presence of witnesses Binoy Sultania and Binod Shaw and seized documents and articles under a seizure list (Ext.4) which was signed by the witnesses as well as the detainee. The signatures of the witnesses Binoy Sultania and Binod Shaw thereon were marked as Exhibit 4/1 and 4/2 respectively.

Signatures of the detainee appearing on the seizure list were also identified by PW2 (Ext.4/3) collectively.

12. PW2 also deposed as to the details of the 12 numbers of documents and articles seized by him which included filled up reservation slip in the name of Md. Jamal, ball pen, computerized railway ticket for journey from Berhampore to Sealdah dated 19.03.2009, EPIC card and Driving Licence standing in the name of Md. Jamal, pocket diary, Rexene bag, mobile phone, plastic container containing semi solid yellowish white unknown material and the personal belongings of daily usage like toothpaste, brush, wearing apparel etc. PW2 also recorded the statements of the seizure list witnesses and interrogated the detainee but failed to get a satisfactory answer. PW2 identified the appellant in court as the person from whom the aforesaid articles and documents were recovered.

13. PW2 also stated that on close interrogation, the detainee disclosed his identity as Shahbaz Ismail S/o Gulam Farooque, R/o Sumali Mahalla, P.O & P.S.Tousa, Distt. Dera Gazi Khan, Pakistan. He also disclosed that he

was a member of militant organization Al-Badr and as per the instructions of Lukman in-charge of J&K operations was proceeding to Jammu & Kashmir for subversive activities. PW2 tendered the railway reservation form filled up by the detainee (Ext.5) and signatures of the witnesses and suspect thereon (Ext.5/1 to 5/4 respectively). He also identified the ball point pen, Driving Licence, EPIC Card, Pocket Diary, plastic container and the bag in the court (Mat. Ext. I to VI respectively). In court, PW2 further identified the other articles like towel, purse and other daily usage articles recovered from the possession of the suspect (Mat. Ext. VII to XVII respectively). He also identified his signatures and that of the witnesses and the suspect on the labels attached to such articles (Ext. 6 to Ext.18).

14. On completion of the process, PW2 apprehended the suspected and produced him before Hare Street Police Station with a letter of complaint lodged by him (Ext.19). On the basis of his complaint, Hare Street Police Station Case No. 206 dated 19.03.2009 was started. PW2 also signed on the formal First Information Report (Ext.20/1).

PW2 was extensively cross examined by the defence in reference to the purport and manner of the search and seizure conducted upon the accused. However, nothing favourable appears to have been elicited in such cross examination.

15. One of the witnesses to seizure list deposed as PW3. He stated that on 19.03.2009 at about 02.15 pm while he was moving near Fairlie Place, he noticed some chaos at the railway reservation counter at 6, Fairlie Place. There, some police personnel of STF had cordoned one person. On the request of the STF personnel, PW3 agreed to be a witness to the search and seizure. He has testified that the said person identified himself as Md. Jamal. PW3 also testified recovery of articles and documents from the possession of such person in his presence. In course of his deposition, he identified his signatures on the seizure list as well as labels attached to seized articles together with the articles recovered from the possession of the detained person shown to him in the court. He was also cross examined at length.

16. A witness to the Test Identification Parade deposed as **PW4**. He stated that on 19.03.2009 at noon, he had been to Fairlie Place for purchasing a railway ticket. There, he could see that one person standing ahead of him in the queue was apprehended by STF, Kolkata and it was disclosed that the apprehended person was a terrorist. He was examined by the police. He was served with a notice to attend TI Parade and identified the accused in such TI Parade.

17. A taxi driver was examined as **PW5**. He stated that on 19.03.2009 at 2.15 pm, he dropped a passenger and been to Fairlie Place. He heard some hue and cry inside the railway reservation centre. He could see one person was detained by police personnel, who was told to be a terrorist. PW5 recorded an statement to the effect that he could identify the detained person. PW5 identified the appellant in the court. He also identified the appellant in Presidency Jail when such person was put on TI Parade.

18. A Constable of Railway Protection Force deposed as PW6. He has stated that on 19.03.2009 he was on duty at

Railway Reservation Counters at Fairlie Place. At about 2.05/2.07 pm he noticed that one person was detained by 5/7 STF personnel. He was informed that the detained person was a terrorist belonging to terrorist outfit Al-Badr. He disclosed his identity as Md. Jamal. PW6 also stated that after such detention, certain articles like railway reservation slip, ball point pen, identity card, driving licence, mobile phone, bag etc. were recovered from his possession and were seized. Later, on interrogation the said person disclosed himself to be a Pakistani national. He identified the appellant in court as the person who was apprehended on the relevant date and time.

19. Another RPF constable deposed as **PW7**. He stated that on 19.03.2009 he was on duty at Fairlie Place between 2.00 pm and 10.00 pm. When he started duty some 4/5 persons in plain dress entered into the area and confined one person standing in the queue. On enquiry by PW7, the persons in plain dresses disclosed that they belonged to Special Task Force. The detained person identified himself as Md. Jamal of Jalangi, Murshidabad. He further stated

that the police personnel offered themselves to be searched, however, nothing except the identity cards, pen etc. was found in possession of the STF personnel. Thereafter, a search was conducted by the police officers on the person and belongings of the detained person. Upon search, railway reservation slip, ball point pen, a container with butter like material, mobile phone, Driving Licence, EPIC card, some cash and other articles of daily usage were recovered from the possession of the detained person. The said person also disclosed that he was a Pakistani national and was planning to proceed to Jammu & Kashmir.

20. Another seizure list witness was examined as **PW8**. He has stated that on 19.03.2009 at about 1.00 pm he had been to Fairlie Place to purchase railway ticket. At about 2.10/2.15 pm he noticed that some 7/8 persons confined one person and wanted to search that person. They were STF personnel. The officers first offered themselves to be searched by the detained person. On search, identity cards, pen and some papers were found with them. On the

request of Special Task Force officers, PW8 agreed to be a witness of search and seizure.

21. PW8 also stated that the detained person identified himself as Md. Jamal of Murshidabad and was not able to understand Bengali. Upon search, articles like pen, filled up reservation slip for the journey through Himgiri Express, note book, mobile phone & charger, Driving Licence, EPIC card, a plastic container containing some butter like material and other daily use articles and wearing apparels, purse containing Rs. 3500/- etc. were recovered from the possession of the detained person. On interrogation, the detainee disclosed his name as Shahbaz Ismail from Pakistan. PW8 also identified his signatures on the seizure list and labels attached to the seized articles in court. He further identified the seized articles as the articles seized from the possession of the detained person i.e. the appellant.

22. The learned Judicial Magistrate, who conducted TI Parade also deposed as PW8. He tendered the report of TI

Parade prepared by him and the envelope containing such report (Ext. 21 and 21/1).

23. The then Officer-in-charge of Hare Street police station was examined as **PW9**. He stated that on 19.03.2009 he received a written complaint along with some seized articles and one accused from Assistant Commissioner of Police, STF, Kolkata. He endorsed such receipt by lodging a GDE and his side note (Ext.22 and 22/1). He also proved the Formal First Information Report (Ext. 20). He was initially endorsed with the investigation of the case but later on it was handed over to STF.

24. The Director in-charge of Questioned Document Examination Bureau deposed as **PW10**. He identified the documents received by him for examination together with the handwriting of the appellant. On comparing of the handwritings on the questioned documents with specimen documents, he opined that the handwriting and signature on such documents matched and were written by the same person. PW10 prepared a report in this regard (Ext. 24).

25. The chemical examiner deposed as PW11. He stated that on examination of the contents of the plastic container i.e. yellowish semi solid material was found to be mixture of ammonium nitrate and petroleum hydrocarbons which was a highly Explosive substance. He further stated that the writings in the diary were all of different names of explosive substance/mixture. PW11 tendered the requisitions received by his office and his report (Exts. 25, 26 and 27 respectively).

26. **PW12** is the motor vehicle inspector. Upon receipt of a requisition with a Driving Licence from Deputy Commissioner of Police, STF, Kolkata he submitted a report to the effect that the driving licence appended to the requisition was fake. He tendered his report (Ext.28).

27. Officer from Homes Constitutional Department was examined as **PW13**. He has stated that upon requisition from Deputy Commissioner of Police, STF, Kolkata he verified and found the Voter's Identity Card recovered from the possession of appellant to be a fake document. He tendered and proved his report in this regard (Ext. 29).

28. The Investigating Officer deposed as **PW14**. He has deposed as to the manner and purport of investigation conducted by him. He visited the place of occurrence examined available witnesses and recorded their statements, arranged for putting the appellant on Test Identification Parade and sent the seized articles and documents for its examination. On completion of investigation, he submitted charge-sheet against the appellant. PW14 was extensively cross examined on behalf of the appellant.

29. PW 15 was an official of the Home Department, Government of West Bengal. He identified the sanction order issued from his office for prosecuting the appellant.

30. One Assistant Sub Inspector of Police of the Detective Department, Law section, Govt. Of WB was examined as PW16. She also identified the sanction order.

31. On completion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure. In his examination, the appellant denied anything seized from his possession.

He claimed innocent and not connected with the case. He however, declined to adduce any defence witness.

32. At the time of advancing arguments, learned advocate for the appellant submitted that a pre-deliberated First Information Report was lodged against the appellant and he was falsely implicated without any seepage therein as such the trial and conviction on its basis is liable to be assailed. It was also contended that PW1, admittedly, left the premises of the police station without a corresponding endorsement in the GDE book as per rules. As such, his testimony cannot be relied upon. The appellant has also challenged the status of the PW 3, 4, 5, and 8 as independent, rather they have been blamed to be pocket witnesses and a conviction on the basis of such partisan witnesses cannot be said to be beyond all reasonable doubts. Learned advocate for the appellant has also assailed the impugned judgment for the discrepancies in the investigation. The investigating agency omitted to obtain the CDR of the seized mobile. Certain contradictions in the testimonies of the prosecution were also pointed out

by learned advocate. It is contended that the quantity of the articles for chemical examination was not mentioned for which report by the chemical examiner vitiated.

33. At the conclusion of trial, by the impugned judgment of conviction, the appellant was convicted for the offences punishable under sections 120B/121/121A/122/123/419/ 467/468 of the Indian Penal Code. He was further convicted for the offences punishable under Section 14A (b) of the Foreigners Act and Sections 4 and 5 of the Explosive Substance Act. In terms of the impugned order of sentence, the appellant was sentence to suffer rigorous imprisonment for life and a fine of Rs. 50,000/- for the offence punishable under section 121 of the Indian Penal code. He was further sentenced to rigorous imprisonment for life for the offence punishable under section 120B of the Code. He was also sentenced to undergo suffer rigorous imprisonment for life and a fine of Rs. 50,000/- for the offence punishable under Section 121A of the Indian Penal code. He was further sentenced to suffer rigorous imprisonment for life and a fine of Rs. 50,000/- for

the offence punishable under Section 122 of the Indian Penal code. The convict was also sentenced to suffer rigorous imprisonment for 7 (Seven) years and a fine of Rs. 10,000/- for the offence punishable under Section 123 of the Indian Penal code. In default of payment of fine, the appellant was ordered to suffer rigorous imprisonment for a further period of 6 (Six) months. The appellant was also sentenced to suffer rigorous imprisonment for 2 (Two) years for the commission of the offence punishable under Section 419 of the Penal Code, 1860. The appellant was further award a sentence to suffer rigorous imprisonment for life and a fine of Rs. 20,000/- for the offence punishable under Section **467** of the Indian Penal code. He was also sentenced to undergo rigorous imprisonment for 5 (Five) years and a fine of Rs. 20,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of 6 (Six) months for the offence punishable under section **468** of the Indian Penal code.

34. The appellant was also sentenced to undergo rigorous imprisonment for 5 (Five) years and a fine of Rs.

20,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of 6 (Six) months for the offence punishable under Section **14 A (b)** of the Foreigners Act. The appellant was also sentenced to suffer rigorous imprisonment for 10 (Ten) years and a fine of Rs. 20,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of 6 (Six) months for the offence punishable under Section **4** of the Explosive Substance Act. The appellant was also sentenced to suffer rigorous imprisonment for 10 (Ten) years and a fine of Rs. 20,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of 6 (Six) months for the offence punishable under Section **5** of the Explosive Substance Act.

35. All the substantive sentences were directed to run concurrently.

36. Learned advocate for the State argued that the appellant was apprehended trying to proceed to Jammu & Kashmir with objectionable articles and fake documents in his possession. He further contended that the appellant

failed to produce any valid document for his travel to Indian Territory. Learned advocate for the State submitted that the impugned judgment and order is based on unimpeachable evidence deserves to be upheld.

37. The appellant, as it transpires from the evidence on record, was nabbed on the basis of source information on the allegations of being a Pakistani National having entered into Indian Territory sans any valid travel documents.

38. The prosecution, in this regard, has banked upon the statement of the appellant himself that in course of interrogation, he disclosed himself to be a Pakistani who hailed from District Dera GaziKhan. Not only that the appellant at the time of his examination under Section 313 of the Code of Criminal Procedure himself disclosed his address in the district of D.G.Khan, Pakistan. No claim was ever made on behalf of the appellant at the trial that he was not a Pakistani or that he was an Indian. In that view of the facts, the appellant was rightly held to be a Pakistani National. At the same time, no documents, whatsoever, was

brought forth that the appellant entered into Indian Territory on valid travel documents.

39. Evidence also goes to show that several articles were recovered and seized from the possession of the appellant when he was apprehended. Mention may be made of the filled in railway reservation slip for his journey from Howrah to Jammu & Kashmir and a rectangular plastic container containing some butter like semi solid material recovered from inside the bag carried by the appellant.

40. The appellant, in his examination under Section 313 of the Code of Criminal Procedure, has denied the recovery of any of the aforesaid articles from his possession. He has altogether denied having been apprehended at the place from where he was shown to have been arrested and his connection in any way with the instant case.

41. However, it is the prosecution's case that the appellant was apprehended from 6, Fairlie Place while he was standing in the queue for purchasing a railway ticket. Filled in reservation slip was recovered from his possession.

The presence of the appellant at such place was duly testified by PW2, the officer who arrested the appellant, coupled with the signature of the appellant on the seizure list, arrest memo and other documents. At least four public/independent witnesses and two police officers, besides PW2 have also testified such arrest. There appears no explanation forthcoming on the part of appellant as to how his signatures were obtained on such documents in view of his claim that nothing was recovered from his possession or he was in no way connected with the instant case. PW 4 and PW5 were very much present during the search and seizure conducted upon the appellant. They are in no way connected with the police or any authority to justify the blame of being partisan witnesses. They not only witnessed such search and seizure at the spot but also identified the appellant in court as well as in the TI Parade. The defence could not extract anything to shake the credibility of such witnesses in their cross examination. PW6 and PW7 were RPF constables and were on duty at the relevant date and time in the premises from where the

appellant was apprehended. The cross examination of these witnesses depicts no deviation in the account of the happenings given by them. They were there and had valid reasons to be there. The account search, seizure and arrest of the appellant given by these two witnesses are quite consistent with the account given by PW2, 5, 6 and 7. There appears absolutely no inconsistency in the deposition of these witnesses vis-a-vis that of the seizure list witnesses, PW3 and PW8 on one hand and the prosecution case on the other. PW 3 and PW8 have not only identified the appellant as the person from whose possession articles and documents were seized, in the court but they have also identified the seized articles as well. They signed on the seizure list as well as the labels attached to such articles which were also identified by these witnesses.

42. The seized articles were sent for examination under proper requisition and markings. The markings were identified by PW 10, PW11, PW12 and PW13. The oral testimony of the said witnesses discloses that the seized articles were sent back by the concerned examining

authorities with their report and marking which were identified by the aforesaid witnesses at the trial in court in so as to completely rule out any possibility of outside intervention.

43. We have already come to a conclusion that the appellant entered into and stayed in India without the valid documents required for such entry or for such stay. As such, we find nothing in the conviction of the appellant for the offence punishable under Section 14A (b) of the Foreigners Act, warranting an interference.

44. We have also found from the evidence on record that the appellant while being apprehended, was found in possession of a plastic container containing yellowish white butter like semi solid material. PW11, the chemical examiner has testified that the aforesaid material, on chemical examination was found to be mixture of ammonium nitrate and petroleum hydrocarbon which was an established high explosive substance. Not only that, the pocket diary/notebook recovered from the possession of the appellant was also found to contain different names of

explosive substance/mixtures. No explanation has been put forward by the appellant for the possession of highly explosive substance which is also not permitted. Such possession was, obviously, to endanger human life and property in the Indian Territory and that too, in a suspicious manner being carried in a bag. Therefore, we do not find any illegality or irregularity, whatsoever, in the conviction of the appellant for the offences punishable under Sections 4 and 5 of the Explosive Substance Act, 1908.

45. The appellant has also been convicted for the offences punishable under Sections 121/121A/122/123/419/467/468 of the Indian Penal Code, 1860. Although, no specific act has been attributed to the appellant to wage war or attempt to wage war against the Government of India. However, he being a Pakistani national was found in possession of highly explosive substance. Besides, he was also found in possession of certain objectionable writings in his note book containing the details of high explosive substances/mixtures. The

aforesaid articles are not permitted to be retained by anyone.

46. It is well settled proposition that intention cannot be proved as material evidence. It can be inferred from the attending circumstances particular to the available facts and circumstances of each case. A person of foreign origin entered Indian Territory without valid travel documents and carrying highly explosive substance and objectionable literature and proceeding to a substantially terror prone zone of the country is surely not expected to be moving for charity. The circumstances of the case do suggest an inference that his action was within the ambit of an attempt and his involvement in a conspiracy to wage war upon the Government of India. Not only that, the appellant was moving in the garb of common Indian citizen having possession of objectionable materials and thereby otherwise preparing for waging war against Government of India. The circumstances points that the appellant was also guilty of concealing the design to wage war upon Indian Government. We do not find anything warranting

interference in the conviction of appellant for the offences punishable under Sections 121/121A/122/123 of the Indian Penal Code.

47. The case of the prosecution as well as the evidence adduced by the prosecution goes to exhibit that the appellant, when he was first apprehended at 6, Fairlie Place railway reservation counter, disclosed his name as Md. Jamal R/o Jalangi within the District of Murshidabad. He filled his travel document for his journey from Howrah to Jammu & Kashmir in such name. The appellant in his later interrogation identified himself as Sahahbaz Ismail a resident of District Dera Gazi Khan in Pakistan. He has reiterated such identity at the time of his examination under Section 313 of the Code of Criminal Procedure. At the trial, the appellant never make out a case that he was not a Pakistani National or that he actually was an Indian and was identified as Md. Jamal of Jalangi, under the District of Murshidabad. The appellant was found in possession of his identity documents like driving licence and EPIC card in the name of Md. Jamal a resident of

Jalangi, under the District of Murshidabad. Such evidence goes to prove that the appellant personified himself as Md. Jamal of Jalangi, under the District of Murshidabad which he was not. He actually identified himself as Sahbaz Ismail @ Shahbaz a Pakistani national and filled up railway reservation slip in the name of Md. Jamal. In that view of the facts, the appellant was rightly convicted for the offence of cheating by personification as contemplated under Section 419 of the Indian Penal Code.

48. Furthermore, as evident, the appellant was found in possession of documents viz. Driving licence and Voter's Identity Card in the name of Md. Jamal of a resident of Jalangi, under the District of Murshidabad. The aforesaid documents were sent for verification to the concerned authorities. PW 12 and PW 13 on the basis of their reports Exhibits 28 and 29 have categorically established that the aforesaid documents i.e. the driving licence and the voter's Identity card were fake having no foundational basis behind its issuance. In fact, the same were never issued by the concerned departments in reference to the specific name

and numbers. No valid and plausible explanation was advanced on behalf of the appellant in possession of such documents which were proved to be fake and forged at the trial. Therefore, there appears nothing illegal in the conviction of the appellant for the offences punishable under Sections 468/469/471 of the Indian Penal Code, 1860.

49. In the light of aforegone discussions, we are of considered opinion that the impugned judgment of conviction and order of sentence are well founded on the basis of unshaken testimony of ocular as well as documentary evidence and deserve no interference. As such, the impugned judgment of conviction and order of sentence dated March 15, 2021, passed by Learned Additional Sessions Judge, 1st Fast Track Court, Calcutta in connection with Sessions Trial No. 02 (June) of 2010 is hereby affirmed.

50. Accordingly, the instant appeal being Criminal Appeal No. 223 of 2021 stands dismissed.

51. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

52. Connected applications, if any, shall stand disposed of.

53. Copy of the judgment along with Trial Court Records be sent down to the appropriate court at once for necessary compliance.

54. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

55. I agree.

[DEBANGSU BASAK, J.]