

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Ajay Kumar Gupta

WPA(H)/58/2026

**SUMAN MOLLA
VS
THE STATE OF WEST BENGAL AND ORS.**

For the Petitioner : Mr. Mokaram Hossain, Advocate
Mr. Razzak Hossain, Advocate
Mr. Karnab Biswas, Advocate

For the State : Mr. Dibasish Basu, AGP
Ms. Sneha Dutta, Advocate
Mr. Purnendu Das, Advocate

For the UOI : Mr. Souvik Nandy, Senior Advocate
Mr. Arijit Majumder, advocate
Ms. Shreyashi Sarkar, advocate

Heard on: July 9, 2026, July 15, 2026 & July 20, 2026

Judgment on: July 20, 2026

Debangsu Basak, J.

1. Petitioner claims that he is the uncle of the detainee. Petitioner made a complaint to the police with regard to the detention of his

nephew on June 18, 2026. Petitioner claims that his nephew is an Indian citizen and wrongfully detained.

2. Learned advocate appearing for the petitioner submits that in the Special Intensive Review (SIR), 2026 the detainee was initially classified as 'under adjudication'. Name of the detainee was struck off from the Voters' list in the SIR of 2026. Appeal directed against such decision is pending.
3. Learned advocate for the petitioner submits that, the detainee was not given an opportunity of hearing, by the Tribunal under the SIR process of 2026. Without the disposal of the appeal the citizenship of the detainee cannot be decided.
4. Learned advocate appearing for the petitioner refers to the documents annexed with the writ petition as also the supplementary affidavit filed pursuant to the order dated July 15, 2026. He submits that, great grandfather of the detainee was recorded in the CS Record of Rights in respect of an immovable property. The detainee possess Voter Identification Card as also a Bank Account. He refers to the various documents with regard to the paternal Aunty of the detainee to claim the citizenship of the petitioner.
5. Learned advocate appearing for the petitioner relies upon **2026 INSC 694 [Sabitri Dey @ Swasthi Dey & Ors. vs. Union of India & Ors.]** in support of his contention that, the detainee was required to be heard prior to the detention and the eventual push back to the foreign country.
6. Learned advocate appearing for the State submits a report which be taken on record. Referring to such report, he submits that, the detainee is a foreign national. The detainee admitted himself to be a foreign national. He places the video recording of the detainee

admitting himself to be a foreign national in Court to hearing of the learned advocate for the parties including that of the petitioner. He submits that, the detention of the detainee was made in terms of the Ministry of Home Affairs Circular dated May 2, 2025. Under such Circular, a time period of 60 days is given to a detainee to establish Indian citizenship. As on date, the detainee is yet to submit any document to establish his citizenship.

7. Learned advocate appearing for the Union of India, refers to the Ministry of Home Affairs Circular dated May 2, 2025. He submits that, all States in the India are required to follow such Circular.
8. The detainee is not before Court. Detainee is an adult. Detainee claims himself to be 46 years of age. Detainee was taken under detained on June 18, 2026 in terms of the Ministry of Home Affairs Circular dated May 2, 2025, and presently housed at a detention centre.
9. A detention order dated June 18, 2026 was issued to the detainee. Detention order speaks of inquiry, interrogation and verification with regard to citizenship of the detainee. Detention order states that such inquiry, interrogation and verification reveal the detainee to be a Bangladeshi National. Detention order, therefore, proceeded to exercise powers conferred under the Immigration and Foreigners Act, 2025 read with paragraph 8 and 12 of the Immigration and Foreigners Order, 2025.
10. Ministry of Home Affairs issued a Circular for laying down the procedure for deportation of foreign nationals dated May 2, 2025. The Circular dated May 2, 2025 of Ministry of Home Affairs delineate the procedure for dealing with illegally staying Bangladeshi/ Rohingya (Mayanmer) national apprehended in the country.

11. The Circular dated May 2, 2025 is not under challenge in the present writ petition. There is no allegation in the writ petition that, the mandate of the Circular dated May 2, 2025 was not followed so far as the detention is concerned.
12. When Indian authorities alleged that, a person detained is a foreign national, the onus is on the detainee to establish his or her nationality. This is so by reason of Section 16 of the Immigration and Foreigners Act, 1946.
13. Immigration and Foreigners Act, 2025 came into force on February 4, 2025. It repealed the Foreigners Act, 1946 amongst other statutes.
14. **Sabitri Dey @ Swasthi Dey (supra)** noticed the provisions of Section 9 of the Foreigners Act, 1946 as also the Foreigners (Tribunal) Order, 1964. Proceeding taken under the Act of 1946 read with the Foreigner Tribunal Order, 1964 in respect of various persons in the State of Assam fell for consideration in **Sabitri Dey @ Swasthi Dey (supra)**.
15. In the factual matrix obtaining therein as well as the law applicable in respect of the detainee in the State of Assam, **Sabitri Dey @ Swasthi Dey (supra)** noted Section 9 of the Act of 1946 as also paragraph 13 of the 1964 Order. It read Section 9 of the Act of 1946 to mean that the burden is upon the proceedee to prove that he or she is not a foreigner. It also noticed the provisions of the Indian Evidence Act, 1872. It noted that, Section 9 of the Act of 1946 is premised upon the burden of proof being placed under the Indian Evidence Act, 1872 on the procedure to establish a fact relating to the personal knowledge of the person concerned. It noted that fact relating to the birth, parent, age, residence, family, immigration, if any, and document supporting nationality are

ordinarily matters within the special knowledge and custody of the person proceeded against.

16. In the factual scenario obtaining in **Sabitri Dey @ Swasthi Dey(supra)** Supreme Court observed that, notwithstanding such burden of proof being on the proceedee, the Tribunal is not relieved from its obligation to conduct a lawful adjudication.
17. In the facts of the present case, the detainee is being proceeded against in terms of the Ministry of Home Affairs Circular dated May 2, 2025. As noted above, the Circular dated May 2, 2025 is not under challenge. Again, as noted above, there is no allegation that, the detention of the detainee was not made in accordance with or in terms of such Circular.
18. Report submitted in Court on behalf of the State including the order of detention dated June 18, 2026 in respect of the detainee establish that, inquiry, interrogation and verification were conducted and that the State was satisfied that, the detainee was a Bangladeshi national.
19. There is an acknowledgement on the part of the detainee that he is a Bangladeshi national. However, such acknowledgement was made when the detainee was in the detention centre.
20. There is no criminal proceedings initiated as against the detainee as on date. Without entering into the debate as to whether or not an admission of civil liability made while in detention will be visited with the same consequences as that of an admission made to the police while in custody in respect of the criminal proceeding, we propose to examine the documents and materials put forward by the detainee and the writ petitioner in support of the claim of Indian Citizenship of the detainee. Even if we are to apply the principle that, an admission made in the custody of the police

should be discarded, none the less, the onus of establishing citizenship remains with the detainee.

21. Article 5 to 11 of the Constitution of India regulates the arena of citizenship in India. These Articles address the issue of Indian Citizenship at the commencement of the Constitution.
22. The Citizenship Act, 1955 provides for and regulates the acquisition and determination of Indian citizenship. Section 3 of the Act of 1955 provides for citizenship by birth, Section 4 provides for citizenship by descent while Section 5 deals with citizenship by registration.
23. Neither the writ petitioner nor the detainee despite repeated opportunities being granted to them addressed the Court on the core issue of citizenship of the detainee. Queries of the Court as to under which provision of the Act of 1955 is the detainee a citizen of India is met with either stoic silence or thunderous utterances completely removed from the issue at hand, by the learned Advocate for the petitioner.
24. Writ petition does not disclose the birth certificate of the detainee. Adequate material to establish place of birth or date of birth is absent in the writ petition and the supplementary affidavit. Citizenship by birth is not established.
25. So far as citizenship by descent is concurred there are cavernous disconnections. Name of the father of the detainee varies from document to document. Maternal aunty and the detainee cannot be connected by the documents places on record. Indian citizenship of the persons through whom the detainee seeks to connect as descent is also not established. Citizenship of the detainee by descent is not established.

26. Neither the writ petitioner nor the detainee claims citizenship in terms of Section 5 of the Act of 1955.
27. The complaint to the police of the writ petitioner herein records that, the writ petitioner is the cousin brother of the detainee. In the writ petition, in paragraphs 1 and 2, the writ petitioner claims himself to be the uncle of the detainee and describes the detainee as his nephew.
28. The affidavit verifying the writ petition states that the writ petitioner is 38 years of age. The detainee claims himself to be 46 years of age. The claim in the writ petition that, the writ petitioner is the uncle of the detainee and that the detainee is his nephew, is not established by the age difference as noted above.
29. We heard this writ petition on July 9, 2026 and July 15, 2026 previously. On those two dates including today, we inquired of the learned advocate appearing for the writ petitioner as to the whereabouts of the parents of the detainee. On July 9, 2026 and July 15, 2026, the answer was that, since the detainee was under detention, and could not be contacted, the learned advocate for the writ petitioner was not in a position to inform the Court as to the whereabouts of the parents of the detainee.
30. Today, prior to recess, we repeated our question and finding the same answer, we permitted the learned advocate on record of the writ petitioner to speak with the detainee over phone. State facilitated such conversation over phone. In such conversation, detainee claimed that his parents expired in India. However, he is not in a position to identify the places where his parents were laid to rest.
31. We enquired of the parents of the detainee in order to direct DNA testing if the writ petitioner agrees, with the mortal remains of the

parents in order to establish that the parents of the detainee were in India.

32. Although the writ petitioner vacillates between a claim of being the uncle of the detainee and his cousin, nonetheless in either of the two relationships, the writ petitioner would be in a position to identify the places where the parents of the detainee were put to rest, writ petitioner despite repeated requests stontly refuses to divulge such information.
33. Since, the detainee and the writ petitioner refuse to identify the places where the mortal remains of the parents of the detainee are lying, we draw an adverse inference as against the detainee with regard to his parents being Indian citizens.
34. This leaves us with the documents which the writ petitioner claims establishes the Indian citizenship of the detainee. We permitted the writ petitioner to file further documents on July 15, 2026 in order to establish the citizenship of the detainee.
35. Supplementary affidavit of the writ petitioner affirmed pursuant to our order dated July 15, 2026 filed in Court be taken on record.
36. In the writ petition the first document which the writ petitioner relies upon is an acknowledgement of the appeal filed by the detainee in the SIR, 2026 process. We are not to pronounce on the legality and validity of the order passed in the SIR, 2006 process since, the same is governed by an order of the Hon'ble Supreme Court.
37. Next documents are which the detainee filed in the SIR, 2026 process. The detainee was placed under adjudication in the SIR, 2026 process. Name of the detainee was deleted in the SIR, 2026 process from the Voter List. None of those documents, therefore, conclusively establish the Indian citizenship of the detainee.

38. There is a Voter Identity Card of the detainee appearing at page 27 of the writ petition, AADHAAR Card at page 28, PAN Card issued by the Income Tax Department at page 29, a Pass book of United Bank of India from pages 30 to 35 of the writ petition.
39. Voter Identity Card is not a conclusive proof with regard to Indian Citizenship. It is evidence of enrolment of the detainee in the electoral roll. Name of the detainee stands deleted from the electoral roll in the SIR, 2026 process.
40. AADHAAR Card, cannot by itself be a conclusive proof of Indian citizen. So also a Permanent Account Number issued by the Income Tax Department. Opening of a Bank Account, by itself, again is not a proof of Indian citizenship.
41. Record of Rights of the great grand-father and the grand-father of the detainee are annexed to the writ petition. Again, those do not establish conclusively the Indian citizenship of the detainee.
42. In the supplementary affidavit, the judgment of **Sabitri Dey @ Swasthi Dey (supra)** is relied upon alongwith C.S. Record of Rights and passport issued in favour of the paternal aunty of the detainee. Those again, on their own do not establish the Indian citizenship of the detainee conclusively.
43. Writ petitioner did not come with clean hands to the Court. In the written complaint to the police, writ petitioner claims that he is a cousin of the detainee, while in the writ petition he claims that the detainee is his nephew.
44. The claim in the writ petition is that, on the death of the father of the detainee, in 1980, the writ petitioner looked after and brought up the detainee. As noted above, the writ petitioner is of 38 years of age while the detainee is of 46 years. Question therefore of the

writ petitioner bringing up detainee as the uncle of the detainee as claimed in the writ petition is disbelieved.

45. Going by the statements made in the writ petition itself and taking them to be true and correct, the writ petitioner knows the whereabouts of the deceased parents of the detainee. Writ petitioner despite repeated requests did not disclose the place where the mortal remains of the parents of the detainee are lying. This is another aspect on which we draw adverse inference as against the writ petitioner and the detainee.
46. Writ petitioner and the detainee fail to prove the Indian citizenship of the detainee. Writ petitioner and the detainee are unable to discharge the burden of proof as mandated by the Immigration and Foreigners Act, 2025.
47. In view of the discussions above, we are not minded to interfere with the decision taken by the authorities.
48. WPA(H)/58/2026 is dismissed without any order as to costs.

(Debangsu Basak, J.)

49. I agree

(Ajay Kumar Gupta, J.)