

DISTRICT-DHAKA

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)
CRIMINAL MISCELLANEOUS CASE NO.26989 OF 2018**

IN THE MATTER OF:

An application for bail under section 498 of the Code of Criminal Procedure.

IN THE MATTER OF:

Begum Khaleda Zia

---- Accused-petitioner
(In Jail)

-VURSUS-

The State

----- Opposite-Party
Mr. Khandker Mahbub Hossain, Advocate with
Mr. A.J. Mohammad Ali, Advocate
Mr. M. Masud Rana, Advocate and
Mr. Kayser Kamal, Advocate

--For the Petitioner
Mr. Mahbubey Alam, Attorney General with
Mr. Farhad Ahmed, DAG
Mr. A. Aminuddin, DAG
Mr. Md. Nurul Islam Matubber, AAG
Mr. Md. Yousuf Mahmud Morshed, AAG and
Ms. Sabina Perven, AAG

----- For the State

Present:

MR. JUSTICE M. ENAYETUR RAHIM
AND
MR. JUSTICE SHAHIDUL KARIM

The 31st May, 2018.

By preferring an application under section 498 of the Code of Criminal Procedure the accused petitioner has sought bail in C.R. Case No.1096 of 2016 under sections

198/469 of the Penal Code, now pending in the court of Chief Metropolitan Magistrate, Dhaka.

At the instance of one Gazi Zahirul Islam, a journalist leader, the above mentioned case has been started against the accused petitioner.

In the petition of complaint (as quoted in paragraph No.2 of the application) it is alleged that according to matriculation mark sheet the date of birth of the accused is 5th September, 1946. While the accused became the Prime Minister of the country in 1991 her official biography was published in 'Dainik Bangla', a national news paper, wherein her date of birth was mentioned as 19th August, 1945 whereas in her Kabin Nama the date of Birth was shown as 9th August, 1944 and in her MRP passport issued in 2011 the date of birth was mentioned as 15th August, 1946. The accused has deliberately and with an ill motive mentioned her date of birth in the MRP passport as 15th August, 1946. 15th August is being observed as National Mourning day as on that day in 1975 the father of the Nation Bangabandhu Sheikh Mujibur Rahman was brutally killed along with his other family members by the anti-liberation forces. The accused having created forged documents with regard to her date of birth has been celebrating 15th August as birthday in a festive

manner just to demean the National Mourning day as well as the father of the nation. Thus the accused has committed offence under sections 198/469 of the Penal Code.

The learned Metropolitan Magistrate after examining the complainant under section 200 of the Code of Criminal Procedure by his order dated 30.08.2016 took cognizance of the offences against the accused petitioner and issued summons. Since the accused has failed to appear before the court despite service of summons, the learned Magistrate on 17.11.2016 issued warrant of arrest (WA) against her.

While the said warrant of arrest awaits execution, the accused has been convicted in another case and now she is in jail for serving her sentence.

On 25.03.2018 on behalf of the accused petitioner an application was filed before the learned Metropolitan Magistrate with a prayer for issuance of production warrant (PW) along with a prayer for bail and the learned Magistrate fixed 25.04.2018 for hearing. On 25.04.2018 the learned Magistrate heard the respective parties and again fixed 17.05.2018 for order.

By order dated 17.05.2018 the learned Magistrate filed the applications submitted by the accused petitioner holding that she has no legal right to prefer such applications as warrant of arrest is pending against her and further that as per law it is the prosecution/complainant who would take necessary steps to show her to be arrested in the case if she remains behind the bar in connection with any other case.

Thereafter, the accused petitioner with the leave straightway moved this application before this court as the court below did not supply the certified copy of the above order and necessary documents though the accused applied for the same.

It has been contended on behalf of the accused petitioner that the alleged offence is a bailable one and the learned Magistrate most arbitrarily filed the application for bail without disposing it and that even certified copies of the order as well other relevant documents have not been supplied to the accused and, that the accused is an aged woman who has been suffering from various old age maladies and thus the accused has no other option but to move this court for bail straightway. The learned Advocates for the accused petitioner relied on the cases of the State Vs. Md. Nurul Islam Babul, reported in 24

BLD(AD)168 and Mia Nuruddin Apu Vs. State and others, reported in 68 DLR(AD)290 respectively.

Mr. Mahbubey Alam, the learned Attorney General opposes the prayer for bail and submits that the present application is not entertainable as it is the long standing practice and custom that an accused should move first before the Court of Sessions though the High Court Division and Sessions Judge have got concurrent jurisdiction under section 498 of the Code of Criminal Procedure.

Heard the learned Advocates for the respective parties, perused the orders of different dates passed by the learned Metropolitan Magistrate which have been annexed to the application by way of affidavit shown in by the one of the learned Advocates of the accused petitioner.

While the application for bail as well as the application for issuance of production warrant is filed on 17.05.2018 the learned Magistrate passed the following order:

“অদ্য আদেশের জন্য দিন ধার্য আছে। বাদী হাজির। আসামী পক্ষে দাখিলী দরখাস্ত বিষয়ে শুনলাম। আসামী পক্ষের দাখিলী দরখাস্তে উক্ত পক্ষ PW সহ জামিনের আবেদন করেন। নথি পর্যালোচনায় দেখা যায়, অত্র মামলাটিতে আসামী বেগম খালেদা

জিয়ার বিরুদ্ধে গত ১৭/১০/২০১৬ তারিখে W/A ইস্যু করা হয়।
 তৎপরিপ্রেক্ষিতে প্রসিকিউশন পক্ষ উক্ত W/A মূলে আসামীর
 বিরুদ্ধে কোন পদক্ষেপ গ্রহণ করেনি যাহা উক্ত পক্ষের উপর
 আরোপিত দায়িত্ব। Cr. PC অনুযায়ী অন্য মামলায় জেল হাজতে
 থাকলে আসামী শ্রেণ্ডার দেখানোর দায়িত্ব প্রসিকিউশনের বা
 বাদীপক্ষের। আসামী পক্ষের এ পর্যায়ে এধরনের দরখাস্ত দেওয়ার
 আইনগত কোন সুযোগ না থাকায় এ পর্যায়ে উক্ত পক্ষ কর্তৃক
 দাখিলী দরখাস্ত নথিজাত করা হইল। পঃ তাং-০৫/০৭/২০১৮
 W/A তামিলের জন্য।”

Upon a plain reading of the above order we have no hesitation to hold that the learned Magistrate proceeded with the matter in a wrong way. In a complain case where the accused herself has filed an application for issuance of production warrant along with a prayer for bail informing the court that she is already in custody in connection with another case, there is no necessity to wait for the report of the execution of warrant of arrest issued against her and as such the learned Magistrate committed serious error having filed the application for issuance of production warrant along with the prayer for bail and fixing the next date on 05/07/2018 for report of execution of warrant of arrest.

In the prevailing facts and circumstance of the present case it is patent that in the name of receiving the

execution report of warrant of arrest the Magistrate concerned has unnecessarily prolonged the disposal of the prayer for bail of the accused which tantamount to abuse of the process of the court.

Having considered the facts and circumstances of the present case as well as the legal proposition we are of the view that justice will be best served if we dispose of the application with the following observations and directions.

The learned Chief Metropolitan Magistrate, Dhaka/concerned Metropolitan Magistrate is directed to dispose of the application for issuance of production warrant filed by the accused petitioner as well as the prayer for bail which was kept with the record, expeditiously.

The concerned Magistrate should bear in mind that in a complaint case like the instant one there is no necessity for the court to wait for the execution report of the warrant of arrest where the accused has informed that she has already been incarcerated in connection with another case.

Accordingly, the application is disposed of.

Communicate the order at once.