

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)**

**Criminal Miscellaneous Case No. 58108 of 2022
IN THE MATTER OF:**

**Under Section 561A of the Code of Criminal
Procedure, 1898**

-AND-

IN THE MATTER OF:

Nabila Zaman Kotha, wife of Md. Aowal
Hossain, daughter of Nuruzzaman of Village
Goyeshpur, Police Station- Nagorkanda, District-
Faridpur at present- Balipara, Police Station-
Indorkani, District-Pirojpur.

.....Victim
Petitioner.

-Versus-

The State and another

.....Opposite Parties

Ms. Shimonti Ahmed, Advocate.

-----For the Victim-Petitioner

Mr. Md. Shameem Sarder with

Mr. Mustafa Hamid Siddique, Advocate.

-----For the Opposite Party No.2

Mr. Pratikar Chakma D.A.G

.....For the State

Judgment on 05.03.2023

Present:

Mr. Justice Md. Habibul Gani

And

Mr. Justice Mohammad Showkat Ali Chowdhury

Mohammad Showkat Ali Chowdhury, J: On an application
under section 561A of the Code of Criminal Procedure, 1898 (in
short the Code) at the instance of the petitioner Nabila Zaman Kotha
a Rule was issued calling upon the opposite parties to show cause as
to why the judgment and order dated 31.10.2022 passed by the
learned Additional Metropolitan Sessions Judge, 10th Court, Dhaka
in Metro Criminal Revision Case No.1515 of 2022 arising out of

Pallabi Police Station Case No.54 dated 15.08.2022 corresponding to G.R. Case No. 760 of 2022 under Sections 7/30 of the Nari-O-Shishu Nirjaton Daman Ain, 2000 (as amended in 2020), (in short the Ain, 2000) rejecting the revisional application for her own jimma and thereby affirming the order dated 07.09.2022 passed by the learned Chief Metropolitan Magistrate Court, Dhaka now pending before the learned Chief Metropolitan Magistrate, Dhaka should not be quashed and pass or/such other or further order or orders as to this court may deem fit and proper.

2. Facts in short relevant for the disposal of this Rule are that one Nuruzzaman, father of the victim petitioner Nabila Zaman Kotha (16) as an informant lodged an FIR with the Pallabi Police Station D.M.P, Dhaka being P.S Case No. 54 dated 15.08.2022 under Sections 7/30 of the Ain, 2000 (as amended in 2020) against the accused Aowal Hossain stating inter alia that the alleged victim petitioner Nabila Zaman Kotha (16) is his daughter and a student of class ten. The said accused for the last six months has been disturbing the victim petitioner by offering love. His daughter refused the said proposal and then the said accused threatened her that she will be abducted by the accused. After knowing the said matter, the informant forbade the accused not to disturb his daughter but the accused became more furious. On 10.08.2022 the victim petitioner went out from home for flexi load of her mother's mobile phone but the victim petitioner did not return to home. At one point

of searching the informant came to know that the accused on that day at 2.15 P.M forcibly kidnapped his daughter from the street with the help of unknown persons. Therefore, the accused Awoal Hossain committed offence under Sections 7/30 of the Ain, 2000.

3. Record of the instant case exposes that on 01.09.2022 the victim petitioner Nabila Zaman Kotha voluntarily surrendered with the help of her Advocate before the learned Chief Metropolitan Magistrate, Dhaka with a prayer for recording her statement under section 22 of the Ain, 2000 and after hearing the said prayer, the learned Metropolitan Magistrate rejected the petition on the ground that the victim has not been produced by the Investigating Officer.

4. It reveals from the certified copy dated 07.09.2022 filed by the victim petitioner that the Investigating Officer produced the victim petitioner of the instant case Nabila Zaman Kotha by forwarding before the learned Chief Metropolitan Magistrate with a prayer for recording her statements under section 22 of the Ain, 2000. The learned Chief Metropolitan Magistrate directed the Metropolitan Magistrate M/S Mohana Alamgir to record the statements as per law and on that day the learned Metropolitan Magistrate recorded victim petitioner's statement under section 22 of the Ain, 2000. The exact text of the statement of the victim petitioner under section 22 of the Ain, 2000 is not before us since no certified copies of that statement has been annexed with the instant petition. However, in para 6 of the petition under section 561A of the Code, the statements of the victim

petitioner made before the Metropolitan Magistrate under Section 22 of the Ain, 2000 is reproduced which runs as follows;

“আমি দশম শ্রেণীতে পড়ি। আউয়াল হোসেনের সাথে আমার প্রেমের সম্পর্ক ছিল। ১০/০৮/২২ তারিখে আমি স্বেচ্ছায় আউয়ালের সাথে চলে যাই। কাফরুল থানাধীন একটা কাজী অফিসে আমরা বিয়ে করি। বিয়ে করে আমি বাসায় জানাই। পরে আমার বাবা-মা আমাকে বাসায় নিয় যায়। আমার বাব-মা আমাকে অত্যাচার করত। পরে আবার পালাই যাই”

5. It further reveals from the record of the instant case that after recording the statements of the victim petitioner by Metropolitan Magistrate both the victim petitioner and the father of the victim petitioner prayed for jimma of the victim petitioner. On 07.09.2022 the Metropolitan Magistrate asked the victim petitioner about her stand and in reply she expressed her unwillingness to go with her father. In such situation, the Metropolitan Magistrate rejected both the prayers for the jimma of the victim petitioner on the ground that the victim petitioner is not willing to go with her father and she is a minor girl and ordered to send the victim to the Support Centre, Tejgaon, Dhaka for medical examination of the victim petitioner and then after medical examination ordered that the victim petitioner be sent to the Kishori Unnooyan Kendra, Konabari, Gazipur.

6. That being aggrieved by and dissatisfied with the order dated 07.09.2022 passed by learned Metropolitan Magistrate, Dhaka, the victim petitioner filed a Revisional Case being No. 1515 of 2022 before the learned Metropolitan Sessions Judge, Dhaka and the case

eventually was transferred to the learned Additional Metropolitan Sessions Judge-10thCourt for disposal, who after hearing both the parties, by his order dated 31.10.2022 dismissed the said Revisional Application and thereby affirmed the order dated 07.09.2022 passed by the learned Metropolitan Magistrate. In the impugned order the learned Additional Metropolitan Sessions Judge-10thCourt found that as per birth certificate, J.S.C registration No. J.S.C Examination, 2017 certificate and passport of the victim petitioner, the date of birth of the victim petitioner was on 08.01.2007. That is as of today (on the date of judgment dated 31.10.2022 she was aged 15 years 9 months 23 days. The Revisional Court found in the impugned order that the victim petitioner is not interested to go with her father. The learned Additional Sessions Judge-10thCourt, Dhaka opined that since the victim is minor and not willing to go with her father and in the above premises, the order of sending the victim to the Kishori Unnoyon Kendra, Konabari, Gazipur for her safe custody suffers from no illegality and does not call for interference by that court.

7. The victim petitioner Nabila Zaman Kotha being aggrieved by and dissatisfied with the impugned judgment and order dated 31.10.2022 passed by the learned Additional Metropolitan Sessions Judge, 10thCourt, Dhaka, moved the Division Bench of this Court under section 561A of the Code and obtained the present Rule.

8. Ms. Shimonti Ahmed, the learned Advocate appearing on behalf of the victim petitioner Nabila Zaman Kotha submits that the

victim petitioner at the time of passing the impugned order was about 16 years and by now she is above 16 years and for that reason she has become “sui-juris”. As per her submission, a person when becomes sui-juris enjoys the right to express valid opinion and gets right to decide about his/her own matter. She then submits that as per section 2(ta) of the Ain, 2000 a person below the age of sixteen years will be treated as a child/minor.

9. She further submits that a victim cannot be detained in custody and his/her right to move anywhere cannot be restrained or denied if he/she attains his/her age above 16 years. Moreover, the victim petitioner of the instant case in her statement under section 22 of the Ain, 2000 before the Metropolitan Magistrate expressed her unwillingness to go with her father and she is firmly determined not to go with her father. In the interest of the victim, she should be allowed go wherever she likes, the learned advocate has submitted with emphasis.

10. She next submits that the age of the majority of the victim of any offence under the Ain, 2000 must be determined by the Ain, 2000 and neither by the Children Ain, 2013 nor by the Majority Act, 1875. She very tenaciously and extensively argued that on the question of entitlement of the jimma of the eloped girl by the father the age of majority of eloped daughter be determined absolutely by the definition of child given in (ta) of section 2 of the Ain, 2000. She further has proceeded by submission that if the age of the victim of

an offence under section 7 of the Ain, 2000 exceeds 16 years then he/she cannot be treated as a child. For that reason, in the instant case, the victim petitioner is not child and that is why she has every right to form a rational opinion and can safely decide where and with whom she would go.

11. She then submits that the victim petitioner does not feel safe to go with her father and considering the welfare of the petitioner the impugned order is liable to be set aside. She has submitted with the sympathy that the victim petitioner is neither an accused nor a witness in the instant case, so her custody in the Kishori Unnoyon Kendra is detrimental to the welfare of the victim petitioner which must be remedied by releasing her from the said Kendra and allowing the victim wherever she likes to go.

12. On query by this court with regard to the meaning of “sui-juris” the learned Advocate for the victim petitioner without any basis in submission clarified that if a person understands the difference between right and wrong and have the capacity to determine his/her welfare then the person is said to be a “sui-juris.” It appears to us that she has interpreted the term, “sui juris” from factual platform. She goes further by submitting that in many case laws, it has been held that a person who happened to be victim under Ain, 2000 or under section 363 of the Penal Code, 1860 and the age of the victim exceeds 16 years, then she/he is designated as a “sui-juris.” She has concluded her submission by contending that as per

law and precedents from our jurisdiction and from the Indian Jurisdiction, a person who happened to be the victim of an offence under any law, in such aspects if the age of the victim exceeds 16 years then she has been allowed to go wherever he/she likes to go and the detention of such victim in safe custody in the name of safety of the victim is nothing but wrongful confinement and since the victim petitioner by now, is above the age of 16 years and firmly expressed her unwillingness to go with her father, so, refusal her application to go at her own jimma as well as her custody in Kishore Unnoyon Kendra ex-facie illegal which can be remedied by invoking inherent jurisdiction of this court under section 561A of the Code in order to secure the ends of justice.

13. To substantiate her submissions, M/S. Shimonti Ahmed, learned Advocate for the victim petitioner referred a good number of decisions of the Division Bench of this Court, Apex Court from our jurisdiction and also decision from the Indian jurisdiction. Those decisions laid down in the cases of Habib Khan Vs. State reported in 64 DLR, 462, Fatema Begum @ Urmila Rani Vs. Gageswar Nath and The State, reported in 1989 BLD 469, Anonda Mohan Banarjee Vs. The State, reported in 35 DLR, 315, Fazlul Haque Vs. Nurul Islam and others, reported in 1 BLT, 16, Kokkula Suresh Vs. State of Andhra Pradesh and others, reported in AIR 2009, A.P.52, Abdul Jalil and Others Vs. Sharon Laily Begum, reported in 50 DLR(AD)1998, P-55, Anika Ali Vs. Rezwanul Ahsan, reported in 17

BLC (AD) P-77, Abu Bakar Siddique-Vs. SMA Bakar, reported in 38 DLR(AD)106, Criminal Appeal No.2618 of 2021 (Most. Khadiza Khatun Vs. State and another) unreported judgment delivered on 16.02.2022, Criminal Misc. Case No. 11993 of 2021, (Case of Most. Jannatul Ferdous@ Puja Rani Vs. The State) unreported judgment on 07.09.2021, Criminal Petition for Leave to Appeal No. 65 of 2022 dated 30.01.2022 arising out from the judgment and order dated 07.09.2021 passed by the High Court Division in Criminal Misc. Case No. 11993/2021.

14. Per Contra, Mr. Pratikar Chakma, learned Deputy Attorney General appearing on behalf of the State in order to controvert the submissions of the learned Advocate of the victim petitioner has advanced arguments that at the time of the passing of the impugned order the victim petitioner was below the age of 16 years and by now, she is above sixteen years but still the petitioner is a minor girl and unless and until she attains at the age 18 years as per the Children Act, 2013, she could not be said to be major. He vehemently has submitted that the age of majority of the victim petitioner be determined by the Children Act, 2013 but not by the Ain, 2000. In support of his contentions, he has not referred any case law.

15. He has further contended that the case laws referred by the learned Advocate for the victim petitioner are distinguishable from the instant case because those cases were initiated under section 363

of the Penal Code, 1860 but the instant case has been initiated under section 7 of the Ain, 2000 and that is why those cases are not applicable in the instant case. He next submits that under section 7 of the Ain, 2000 if the age of the child exceeds 16 years in that case offence of abduction/kidnapping will not come within the mischief of section 7 of the Ain, 2000 but for that reason, it does not necessarily and legally mean that the said child be treated as major. He also contends that the age of 16 years of child mentioned in section 2(ta) of the Ain, 2000 is only for the purpose of commission of the offence of kidnapping under section 7 of the Ain, 2000 and not for the purpose of deciding whether the girl is sui juris or not. In support of his contention, he has not referred any decision of any division of this court and our Honorable Apex court.

16. On the date of final hearing Mr. Mostofa Hamid Siddique, the learned Advocate entered appearance by filling Vokatnama on behalf of the opposite no. 2 but did not submit any affidavit in opposition, He by advancing arguments tried to controvert the submissions made by the learned Advocate for the victim petitioner and in his submission endorsed the submission of the learned Deputy Attorney General. In support of his contention, he has also not referred any case law but draws our attention to the children Act, 2013. He submits that section 4 of the Children Act defines the child which goes as under;

“ ধারা-৪: শিশু- বিদ্যমান অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের উদ্দেশ্য পূরণকল্পে অনূর্ধ্ব ১৮ (আঠার) বৎসর বয়স পর্যন্ত সকল ব্যক্তি শিশু হিসাবে গন্য হইবে।

17. He has referred a decision of our Apex court in the case of Jharna Rani Saha Vs. Khandaker Zaydul reported in 52 DLR (AD) 66 which is related to giving the victim in the hand of parents. Finally, he has prayed for giving jimma of the victim in the hand of the father though the father of the victim has not moved this court for jimma of his daughter i.e the victim petitioner. He has neither submitted any petition for jimma of his daughter nor even submitted any affidavit in opposition. So, by now, we do not understand whether the father is really willing to take jimma of his daughter.

18. From the submissions of the learned Advocate for the victim petitioner and counter submissions of the learned D.A.G and learned Advocate for the opposite party No.2, it appears to us six issues sharply are surfaced up for our consideration and decisions. Those are;

(1) Who is said to be a sui juris person?

(2) Which statute will hold the field in deciding the age of the majority of the victim of any offence under Ain, 2000.

(3) If the victim minor girl expresses opinion/ desire, in that case, should the opinion/desire of the minor girl be given priority in allowing her own jimma?

(4) Whether the victim of an offence under Ain, 2000 who is neither an accused nor a witness can be detained in safe custody for indefinite period or till her attainment of majority?

(5) Who is lawful person for the custody of the eloped minor girl who happened to be victim of the offence under the Ain, 2000 and who can serve the best interest of the victim minor girl?

(6) In case of victim's determined refusal to go with her father, then what course be left with the court?

19. In the above premises, we are of the view that if the above issues/questions are answered in true perspectives and in line with the statutory provisions as well as the decisions of the Apex Court then legal decision can be marshaled in the case in our hand.

20. In order to address the issues raised before us, we shall advert to some of the decisions mentioned above as and when deemed necessary.

21. It appears from the above issues that the first and second issues are interrelated to each other and for the convenience of discussion, let us now to decide the first issue i.e., who is said to be a "sui juris" person and the second issue i.e., which statute will hold the field in deciding the age of the majority of the victim of any offence under Ain, 2000?

22. In many cases we find various versions as to the age of the victims of the Ain, 2000 or the victims of under sections 363 or 366

of the Penal Code, 1860, the age of the same victim varies from different reports, for example, from F.I.R victim's age is 13/14 years, as per medical board report victim is 17/18 years of age, as per radiologist report victim's age is 19/20 years, as per birth certificate, the victim's age is 15/16 years and as per statement of the victim, her age is 20 years etc. In such situation, our Apex court decided which version should be taken for determining the prima facie age of the victim and it is also decided that final determination of the age of the victim be determined by the trial court after recording evidence.

23. In the instant case, there is only one version as to the age of the victim petitioner Nabila Zaman Kotha. As per birth Certificate, J.S.C Certificate and Passport she was born on 08.01.2007 and her age stands as of today i.e., 05.03.2023 A. D, sixteen years, one month and twenty-seven days. There is no other version from any side as to the present age of the victim petitioner. So, the question of examination of the victim by the Medical Board or by other means in order to determine the age of the victim petitioner does not arise at all since the age of the victim petitioner not having been challenged and the **principle of admission by non-traverse** will apply in the matter of the present age of the victim petitioner of the instant case.

24. The first issue, the meaning of the term, "sui-juris" is interpreted by Ms. Shimonti Ahmed, the learned Advocate on behalf of the victim petitioner appears to us to be incorrect. We know, the

term, “sui-juris” is a Latin word. It means, “having full legal capacity to act on one’s own behalf, not subject to the authority of another” and since in definition of the term, “sui juris” before the term “capacity” “legal” as prefix has been added, that is why, the factual interpretation of the term “sui juris” as given by the learned lawyer for the victim petitioner finds no legal support. So, in order to address a person to be a “sui-juris” we need to point out which law he shall be adhered be pointed out.

25. In the premises as stated above, we need to mention some case laws as referred by the learned Advocate for the victim petitioner. Before discussing some relevant case law, we should keep out from our consideration some case laws, like the cases of Abdul Jalil and others Vs. Sharon Laily Begum, reported in 50 DLR (AD), 55, Anika Ali Vs Rezwanul Ahsan, reported in 17 BLC (AD) 77, Case of Abu Bakar Siddique Vs. S.M.A Bakar & Others, reported in 38 DLR (AD) 106, which are related to the dispute between the husband and the wife for the custody of their infant child. Those cases have got no application in the instant case.

26. Let us now see the other cases referred by the learned Advocate on behalf of the victim petitioner for finding out who is “sui-juris” and which statute will hold the field in deciding the age of the majority of the victim of any offence under Ain, 2000?

27. In the case of Habib Khan Vs. State, reported in 64 DLR, 462, their lordships observed in paragraph 17 of the judgment, “since

the age of the victim is above 16 years and she is sui-juris, so keeping her under judicial custody is illegal.” Their Lordships made reliance on the decision in the case of Arun Karmakar Vs. State reported in 8 MLR (AD) 162 = 7 BLC (AD) 61. But the decisions of our Apex Court reported in 8 MLR (AD), 162 and 7 BLC (AD) 61, with regard to the age of majority of the girl is on attaining 18 years of age and in that case the victim girl was found below the age of majority and that is why it was ordered to hand over the victim girl to the custody of legal parents. So, with regard to the age majority of girl is above 16 years decided in Habib Khan’s case reported in 64 DLR 462 is quite reverse to the decisions made by our Apex court in the case of Arun Karmakar, reported in 7 BLC, 61 = 8 MLR, 162. In view of the decision of our Honorable Apex in the case of Arun Karmakar, we cannot accept the decision made in the case of Habib Khan.

28. Since the case of Anonda Mohan Benarjee Vs. State and others, reported in 35 DLR page 315, the Case of Faizal Haque -Vs- Nurul Islam & others reported in 01 BLT page 16 were not initiated under the provision of the Ain, 2000 and those decisions have got no application in the instant case.

29. In the Case of Kokkula Suresh Vs. the State of Andhra Pradesh, AIR 2009 52 A.P wherein it has been held, “Coming to the provisions of the Hindu Minority and Guardianship Act, 1956, it is true that a person who has not completed the age of eighteen years is

minor and as per section 6(a) of the said Act, the father is a natural guardian of a Hindu minor unmarried girl. However, as per section 6(c) of the said Act, in the case of a Hindu minor married girl, the husband is the natural guardian in respect of minor's persons as well as in respect of the minor's property." From the above decision, it appears to us that the making of reference of the above case by the learned Advocate for the victim petitioner of the instant case is not helpful for the victim petitioner because according to the above decision if a person who has not completed the age of eighteen years is a minor, moreover, the provision of Hindu law is not applicable in our country and Muslim community.

30. In Criminal Appeal No. 2618 of 2021(unreported) their lordships found as per medical board report dated 29.4.2019, the age of victim Most. Khadija Khatoon was 16-17 years, the same institution on examination found the age of the victim on 13.10.2020 was 18-19 years as of today (16.2. 2022) and on 13.10.2020, the age of the victim stood 20 years 4 months and as per J.S.C certificate, the age of the victim was 16 years 3 months and as per F.I.R, the age of the victim was 15 years. However, it appears that their lordships from virtual platform talked with the Superintendent of the "Safe Home" and the victim Khadija Khatoon and the victim expressed her firm determination that she would like to stay with her husband and their lordships found that the victim is sound, healthy and major and she is interested to go with her own jimma. On the date of judgment

of that case i.e on 16.2. 2022, the age of the victim Khadija Khatoon stood 20 years 04 months, so their lordships opined that the victim is major and from the judgment, it clearly appears that 16 years of age of the victim has not been determined the age of majority of the victim girl. So, why this case law has been referred by the learned Advocate of the petitioner is not clear to us.

31. In Criminal Miscellaneous Case No.11993 of 2021 (unreported), the informant alleged that his minor daughter Most. Jannatul Ferdaous @ Puja Rani was abducted by the accused. Thereafter, the victim was recovered and the victim under section 22 of the Ain, 2000 made statement to the effect that she had love affairs with the accused no.1 and she eloped with the accused and got herself married with him. Their lordships observed that as per opinion of the doctor, the age of the victim was 17/18 years in the year 2019, So, by now (Judgment date 07.9.2021) she has attained the age of majority. Moreover, their lordships talked with the victim and asked the victim on production and found her of sound mind and her strong decision not go with her father, she is also eager to continue her life as per Islamic religion. In such situation, their lordships viewed that the victim should be released on her own jimma. In that case, the ratio of the age of the majority of the victim laid down 18 years.

32. In Criminal Petition for leave to appeal No.65 of 2022 arising out from the judgment and order dated 07.9. 2021 passed by

the High Court Division in Criminal Miscellaneous Case No. 11993 of 2021(the case is mentioned in para 32), our Honorable Apex Court on 30. 01. 2022 passed the order, “Heard the learned Advocates of both the parties and perused the impugned judgment and order of the High Court Division and other materials on record. Considering the facts and circumstances of the case, we find no legal infirmity in the impugned judgment and order factually and legally calling for interference by this court. Accordingly, we find no merit in this petition and the same is dismissed” It appears from the above, our Honorable Apex Court has affirmed the ratio laid down with regard to the age of the majority of the victim girl is 18 years determined by the High Court Division in Criminal Misc. Case No. 11993 of 2021.

On perusal, of the above decisions, it appears to us that on misconception the learned Advocate for the victim petitioner referred the decisions made in Criminal Misc. case 11993 of 2021 and Criminal Petition for Leave to Appeal 65 of 2022 which are against the victim petitioner with regard to the age of majority of victim.

33. From the above discussion, we understand that learned Advocate for the petitioner has failed appreciate the ratio of the age of majority of the victim girl made in the judgments stated in paragraph nos. 30, 31, 32 and 33 in the instant judgment.

34. We are now in quest of the other decisions of Division Benches of this Court and the decision of our Honorable Apex Court to address the above two issues.

35. In the case of Krishna Pada Dutta Vs. Bangladesh, reported in 42 DLR, 297 wherein their lordships relied upon the case of Muthu Ibrahim Vs. Emperor reported in ILR 37 Mad 567 and in the case of Sukhendra Das Vs. Secretary, Ministry of Home Affairs and others, reported in 42 DLR (HCD) 79 that for the purpose of custody of the girl age of majority laid down in the Majority Act, 1875 read with the Guardians and Wards Act, 1890 i.e. the age 18 years is the determining factor to decide whether the girl is to be given to the custody of the guardian or she is major. It is needless to state that reference to the age of sixteen years in case of female minor in section 361 of the Penal Code is only for the purpose of commission of the offence of kidnapping punishable under section 363 of the Penal Code and not for the purpose of deciding whether the girl is “sui juris”.

36. In the case of Muthu Ibrahim Vs. Emperor, reported in ILR 37 Mad, 567 it was held as follows, “For the purpose of lawful guardianship the age of majority is that as laid down in section 3 of the Majority Act, 1875. Though a Mohammedan female attains majority upon her attaining majority upon her puberty under Mohammedan Law, she is still a minor and subject to the control of

the guardian till she attains majority, that is, still she becomes “sui juris” according to the Majority Act, 1875”.

37. In the case of Sukhendra Das Vs. Secretary, Ministry of Home Affairs and others, reported in 42 DLR (HCD) 79, it has been observed by their lordships, “Under the Guardians and Wards Act, 1890 read with Majority Act, 1875 any person (male or female) below the age of eighteen years is a minor for the purpose of guardianship of minor’s persons and property.”

38. In the case of Arun Karmaker Vs. State reported in 7 BLC (AD) 61=8MLR(AD)162 their lordships of our Honorable Apex Court in paragraph 7 observed, “A girl’s majority is on attaining 18 years of age and presently prima facie the victim is minor. It appears that the said Mamota Karmaker is of 17 years two months as on today, 3rd of February, 2002.” In that case our Honorable Apex Court laid down the ratio of the age of majority of girl is 18 years. In that judgment our Honorable Apex Court mentioned the decision in the case of Krishna Pada Dutta Vs. Bangladesh reported in 42 DLR, 297, the case of Muthu Ibrahim Vs. Emperor reported in ILR 37 Mad 567 and the case of Sukhendra Das Vs. Secretary, Ministry of Home Affairs and others, reported in 42 DLR (HCD) 79. Those are mentioned in order to make it clear that the age of majority of the victim girl is 18 years.

39. We are of the opinion that age of majority of the victim must be determined according to section 03 of the Majority Act,

1875 read with Guardian and Wards Act, 1890 and for that reason in case of a “Shishu” if his age exceeds 16 years, he cannot be said to be major, reference to the age of sixteen years in case of Shishu in section 7 of the Ain, 2000 is only for the purpose of commission of the offence of kidnapping punishable under that section and his age of majority be determined by section 3 of the Majority Act, 1875 read with Guardian and Wards Act, 1890. Another reason is that the preamble of the Majority Act, 1875 states that whereas in the case of persons domiciled in Bangladesh, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists. According to section 3 of the Majority Act, 1875, every person domiciled in Bangladesh shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

40. So, in the long line of the discussion made above and decisions of our Honorable Apex Court, it appears that Majority Act, 1875 read with Guardian and Wards Act, 1890 will hold the field in deciding the majority of victim girl i, e 18 years. In view of the above, a person cannot be said to be “sui juris” unless he/she attains the age of 18 years. It is important to mention here that in case of a person is said to be “sui juris” in addition to his attainment of the age of 18 years, he must not be unsound mind.

41. The facts of the instant case reveal that the age of the victim petitioner Nabila Zaman Kotha by now (date of Judgment on 05. 03. 2023) is more than 16 years and she is patently a minor girl.

42. Considering the facts and circumstances of the instant case and the decisions of our Apex Court mentioned above, we find that the submission made by the learned Advocate for the victim petitioner with regard to the matter that if the age of victim girl exceeds 16 years, then she becomes major/sui juris and the majority of the victim of the instant case determined as per definition of “shishu” given in section 2(ta) of the Ain, 2000 is absolutely wrong and misconceived.

43. We further opine that submission of the learned Deputy Attorney General and submissions of the learned Advocate for the opposite party No.2 have no force as to the application of the Children Act, 2013 in deciding the age of majority of a victim girl.

44. In order to address the third issue i.e, if the victim minor girl expresses opinion/ desire in that case should the opinion/ desire of the minor girl be given priority in allowing her own jimma? This question/ issue has been addressed in the case of Mongal Chandra Nandi Vs Bangladesh 17 BLD (AD) 1997, page 33 = 2 BLC (AD) 18, in the case of Bodiur Rahman Chowdhury Vs. Nazrul Islam and another reported in 16BLD(AD) 263. In Mongal Chandra case, our Apex Court referred an unreported Criminal Petition for Leave to Appeal No. 101 of 1996 wherein it was held, “any observation made

by a minor girl must be taken with reservation and the same cannot be a factor for not giving a victim girl to the lawful guardian of a father”. In the case of Bodiur Rahman Chowdhury our Apex Court observed, “it is common knowledge that in cases as in the present the statement made by a girl while living with the accused after the alleged offence is generally the result of influence which is brought to bear upon her and meant to encounter the case of the lawful guardian and therefore should be taken with reservation. The court should give more importance to the words of parents than those of a wayward daughter who is currently enamoured”. But considering the peculiar circumstances of the case, the Apex Court in that case refused to interfere with the finding and decision of the High Court Division.

45. In view of the decision in the case Mongal Chandra and the case of Bodiur Rahman Chowdhury, we opine that in the instant case the opinion/desire of the victim Nabila Zaman Kotha be taken with reservation who is currently enamoured and accordingly her opinion/desire cannot be given priority in allowing her own jimma. So, the third issue is decided in the negative.

46. The fourth issue i.e., whether the victim of an offence under Ain, 2000 who is neither an accused nor a witness can be detained in safe custody for indefinite period or till her attainment of majority? It reveals from the facts of the instant case that the victim petitioner is neither an accused nor a witness in the case, so it

appears to us that the custody of the victim Nabila Zaman in Kishore Unnoyan Kendra, Konabari, Gazipur amounts to be unlawful. We find support in the case of Arun Karmaker Vs. State reported in 7 BLC (AD), 61 = 8MLR (AD), 162. In that case in Para 14 our Honorable Apex Court held, “In view of the above, the girl being prima facie minor we are of the view that the detainee not being an accused has been illegally and or improperly detained in judicial custody and she should be put in the custody of father who is her legal and natural guardian.” So, we opine that the custody/detention of the victim petitioner who is neither an accused nor a witness is not lawful and her detention in custody for indefinite period or her detention till her attainment of majority is illegal.

47. The fifth issue is i.e., who is lawful person for the custody of the minor girl who happened to be the victim of the offence under the Ain, 2000 and who can serve the best interest of the victim minor girl? To our mind parents of victim minor are the lawful guardian for the custody of the minor girl and the best person in the world to look after interest and welfare of the minor girl. Because it is common understanding that the children bear the legacy of the parents. All the parents in this earth sacrifice their lives for the cause of their children. The parents supersede the others in having the custody of the minor child. The custody of a minor girl must be given to the father. We find support in the cases of Arun Karmaker, reported in 7 BLC (AD) 61= 8MLR (AD), 162, Sree Mongal Chandra Case

reported in 2 BLC (AD) 18= 17 BLD (AD) 1997 page 33, Jharna Rani Shaha Vs. Khondaker Zayedul Haque reported in 52 DLR (AD) 66 wherein our Apex Court opined that a minor girl should be given to the custody of her father as the father is the best well-wisher of a minor child.

48. The sixth issue i.e., in case of victim's determined refusal to go with her father then what course left with the court? We understand that since the victim is neither an accused nor a witness, her custody in the Kishore Unnoyan Kendra, Konabari, Gazipur is detrimental to her welfare and interest. We have already observed that the custody of the victim in the said Kendra is unjustified and unlawful and also observed that she should be handed over to her father on the application of the father of the victim petitioner. In the cases of Arun Karmaker, Mongal Chandra, Krishna Pada and Sukhendra Chandra Das, the father of the victim moved to the High Court Division and the court had ordered to hand over the custody of the victim to the father but in the instant case, the father of the victim has not prayed in writing for the custody of the victim petitioner. So, we cannot direct the said Kishore Unnoyon Kendra to hand over the victim to her father since by now, we do not know what is the latest stand of the father of the victim petitioner. M/s. Shimonti Ahmed, the learned Advocate in her submission has expressed her concern that if the petitioner is forced to go with her father in spite of her firm determination not to go with her father, in that case the victim

may commit any thing which is not desirable. Her view is that girls of the age of the victim now a days in some cases becomes very emotional. We understand that what she has meant by the above submission.

We further need to say that, if the father of the victim petitioner wishes to have the jimma of the victim petitioner then he has the scope to submit a petition before the learned court below for the custody of the victim petitioner. There would not be any legal and factual impediment for the learned court below to consider the petition of the father of the victim petitioner if any petition files by the victim's father for the jimma of the victim petitioner. We also subscribe the idea that the minor victim of this age sometimes becomes emotional. However, in the meantime, the victim girl may be guided by head not by heart. While she made statement before learned Metropolitan Magistrate she came from the custody of the accused and she was emotionally obsessed. Now the situation may be otherwise. The learned Court below should talk with the petitioner on production before the Court and also observe her attitude and to decide really what she wants. If the court finds in case of strong refusal of the victim petitioner to go with her father, in such premises, she must not be forced to go with her father for the sake of saving her life and consequently there would be no room/option for the learned court below other than directing the concerned authority to keep her in the Kishore Unnoyon Kendra, Konabari, Gazipur till

her attainment of the age of majority, i.e., is the age of 18 years or till conclusion of the trial whichever is earlier. We find support in the case of Sanjit Baidya and others Vs. the State in Criminal Appeals Nos. 8092 and 8401 of 2014 decided on 11.02.2015 (Unreported) wherein the High Court Division of this Court held, “In case of her unwillingness to go with her father, she must be kept in the safe custody till conclusion of trial or attaining her majority whichever is earlier”.

49. Having regard to the facts and circumstances of the instant case and the law and decisions laid down by our Honorable Apex Court, we hold the view that the Rule issued by this court has no merit.

50. In the result, the Rule issued in the instant case stands discharged with directions and observations made as above. In the facts and circumstances, we pass no order as to costs.

51. The office is directed to communicate a copy of the judgment and order of this court to the concerned learned court below at once.

Mohammad Showkat Ali Chowdhury, J

Md. Habibul Gani, J

I agree

(Md. Habibul Gani, J)

