

District-Dhaka.

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

Criminal Revision No. 1525 of 2022

An application under Section 10(1A) of the  
Criminal Law Amendment Act, 1958.

-And-

**IN THE MATTER OF:**

Durnity Daman Commission

..... **Petitioner.**

-Versus-

Ismail Chowdhury Samrat and others.

.....**Opposite-parties.**

Mr. Md. Khurshid Alam Khan, Senior Advocate,

..... **For the petitioner.**

Mr. Md. Munsurul Hoque Chowdhury, Senior Advocate with

Mr. Ehsanul Hoque Somaji, Advocate,

Mr. Mohammad Shafikul Islam Ripon, Advocate,

Mr. Md. Ismail Mia, Advocate and

Ms Azora Azmiri Hoque, Advocate

....**For the Accused-opposite party No.01.**

Mr. A.K.M. Amin Uddin, D.A.G with

Ms. Anna Khanom Koli, A.A.G and

Mr. Md. Shaifour Rahman Siddique, A.A.G

.... **For the State-opposite party.**

**Present:**

**Mr. Justice Md. Nazrul Islam Talukder**

**And**

**Mr. Justice Kazi Md. Ejarul Haque Akondo**

**Order dated: the 18<sup>th</sup> day of May, 2022.**

This is an application under Section 10(1A) of  
the Criminal Law Amendment Act, 1958 filed by the

Anti-Corruption Commission challenging the order dated 11.05.2022 passed by the learned Special Judge, Court No. 06, Dhaka granting bail to the accused-opposite party No. 01-Ismail Chowdhury Samrat in Special Case No. 07 of 2022 arising out of DUDOK, SOJEKA, Dhaka-1's Case No. 10 dated 12.11.2019 under Section 27(1) of the Anti-Corruption Commission Act, 2004 read with Sections 4(2) and (3) of the Money Laundering Protirodh Ain, 2012, now pending in the Court of Special Judge, Court No. 01, Dhaka.

The prosecution case, in short, is that the accused-opposite party No.1 allegedly earned and possessed illegal properties worth Tk. 2,94,80,087.71/- which are disproportionate to his known sources of income. It is alleged in the F.I.R that the accused-opposite party No.1 earned and possessed

such properties by way of extortion, tender bidding and illegal drug business. During investigation, it is found that the accused-opposite party No.1 made some suspicious transactions and kept an amount of Tk.219,48,58,500/- concealed by way of transfer and conversion. By this way, the accused-opposite party No.1 has also committed the offence under Sections 4(2) and (3) of the Money Laundering Protirodh Ain, 2012 as well. Hence, the F.I.R against the accused-opposite party No.1 under section 27(1) of the Anti-Corruption Commission Act, 2004 read with sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012.

Anyway, the Anti-Corruption Commission after holding investigation submitted charge-sheet against the accused-opposite party No.1 under Section 27(1) of the Anti-Corruption Commission Act, 2004 read

with Sections 4(2) and (3) of the Money Laundering Protirodh Ain, 2012.

Having received the charge-sheet, the learned Metropolitan Senior Special Judge, Court No.1, Dhaka took cognizance of the offence against the accused-opposite party No.1 under Section 27(1) of the Anti-Corruption Commission Act, 2004 read with Sections 4(2) and (3) of the Money Laundering Protirodh Ain, 2012.

Subsequently, the record of the case was transferred to the court of learned Special Judge, Court No.6, Dhaka for hearing and disposal of the same.

During pendency of the case, the accused-petitioner submitted an application for bail on medical ground.

The learned Special Judge, Court No. 06, Dhaka, by an order dated 11.05.2022, enlarged the accused-opposite party No. 01 on bail on medical ground putting up three conditions- 1. he will not leave the country without the prior permission of the court, 2. he will submit his passport to the Court and 3. on the next date i.e on 09.06.2022, the accused-opposite party No.1 shall submit the medical report before the court examining his health conditions.

Being aggrieved by the same, the Anti-Corruption Commission has approached this court with an application under Section 10(1A) of the Criminal Law Amendment Act, 1958.

At the very outset, Mr. Md. Khurshid Alam Khan, the learned Senior Advocate appearing on behalf of the Anti-Corruption Commission, submits that the F.I.R and charge-sheet disclose prima-facie

offence with regard to possession of properties disproportionate to his known sources of income and money laundering against the accused-opposite party No. 01-Ismail Chowdhury Samrat but the learned Special Judge granted bail to the accused-opposite party No.1 on flimsy ground without assigning any reason on merit of the case and as such, the impugned order of bail is not proper and the same is liable to be set aside.

He with reference to the legal decision taken in the case of Begum Khaleda Zia Vs. State and another reported in 72DLR(AD)(2020)80, next submits that the learned Special Judge has committed serious illegality in granting bail to the accused-opposite party No.1 without considering the guidelines taken by the Appellate Division in the aforesaid case because the learned Special Judge without calling for any medical

report from any of the dependable medical institutions of the country granted bail to the accused-opposite party No.1 with a condition that the accused-opposite party No.1 will submit medical report on the next date on 09.06.2022 examining his health condition which tends to show that at the time of granting bail, there was no up to date medical report before the court from any dependable medical institution and as such, the impugned order of granting bail to the accused-opposite party No.1 on medical ground is not legal, fair and sustainable in the eye of law.

Mr. Khan, in support of his submissions, has referred to a legal decision taken in the case of Begum Khaleda Zia Vs. State and another reported in 72DLR(AD)(2020)80, wherein it was held that :

“We do not find lacking sincerity of the doctors of BSMMU to provide adequate treatment for the

petitioner. It is the obligation of the BSMMU authority to provide appropriate treatment for the petitioner, if the petitioner gives necessary consent, the Board is directed to take steps for immediate advance treatment namely, biologic agent as per recommendation of the Board. Bangabandhu Sheikh Mujib Medical University is a dependable medical institution of the country for providing proper treatment for a patient. The Medical Board did not suggest that it is necessary to send the petitioner abroad or any other specialized hospital in Bangladesh for her better treatment. Nowhere in the criminal petition for leave to appeal, it has been stated that the petitioner has expressed her desire or eagerness to take better treatment abroad stating that the treatment provided by BSMMU authority is not adequate and dependable. It further appears that the Board is open to accept suggestions of other qualified rheumatologists.”



He candidly submits that the order of bail can't stand on wrong conception and proposition of law and this court being the highest court of law and being a constitutional court, can't accept and allow the accused-opposite party No.1 to continue on bail on a wrong order.

Mr. Khan has pointed out that the gravity of the offences that have been alleged in the prosecution materials have not been taken into consideration at all at the time of granting bail to the accused-opposite party No.1 and that the learned special judge granted bail to the accused-opposite party No.1 basing on two old medical opinions without calling and examining the up to date medical report.

Mr. Khan vigorously submits that the accused-opposite party No.1 is a casino kingpin who earned and possessed a huge number of properties by way of

extortion, tender bidding, illegal drug business and casino business and that the accused-opposite party No.1, as per submission of the learned Advocate for the accused-opposite party No.1, is still in the Bangabandhu Sheikh Mujib Medical University Hospital for treatment and as such, the question of granting bail to the accused-opposite party No.1 on medical ground does not arise at all.

Mr. Khan lastly submits that in view of Section 13 of the Money Laundering Protirodh Ain, 2012, there are some parameters for granting bail to the accused-opposite party No.1, but in the instant case, the learned trial judge without considering those parameters granted bail to the accused-opposite party No.1, so the impugned order of bail granted by the learned Special judge on medical ground does not

appear to be legal and fair and as such, the same can't sustain in the eye of law.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing for the State, has adopted the submissions advanced by the learned Advocate for the Anti-Corruption Commission.

On the other hand, Mr. Md. Monsurul Hoque Chowdhury, the learned senior Advocate along with Mr. Mohammad Shafikul Islam Ripon, the learned Advocate appearing on behalf of the accused-opposite party No. 01- Ismail Chowdhury Samrat, submits that the accused-petitioner is a patient of bypass surgery which was done on him in the year of 1999 and still he is taking treatment remaining in Bangabandhu Sheikh Mujib Medical University.

Mr. Chowdhury next submits that after passing the order of bail, the accused-opposite party No.1

submitted bail bond and then he was released on bail from jail custody.

He then submits the accused-opposite party No. 01 still is suffering from serious diseases and he is now taking treatment admitting himself to Bangabandhu Sheikh Mujib Medical University, Dhaka, at Block No. D, 2<sup>nd</sup> Floor, CCU, Ward No. 02, so considering all the aspects of the case, the impugned order granting bail to the accused-opposite party No.1 should not be interfered with by this court for the ends of justice.

He frankly submits that the learned special judge, in fact, has committed some irregularities and mistakes in granting bail to the accused-opposite party No.1, and as such, an opportunity may be given to the accused-opposite party No.1 so that he can take steps to rectify and correct the irregularities and mistakes

occurred in the impugned order by following the proper procedures in accordance with law.

He lastly submits that the accused-opposite party No.1 produced two old medical opinions dated 20.02.2020 and 27.01.2021 and basing on the same, the learned special judge granted bail to the accused-opposite party No.1 considering his health issues and as such, the impugned order of bail should not be set aside for ends of justice.

We have gone through the application and heard the learned Advocates for both parties and perused the prosecution materials annexed therewith. We have also considered the submissions advanced by the learned Advocates for the respective parties to the best of our wit and wisdom.

It appears from the record that the allegations have been brought against the accused-opposite party

No.1 under Section 27(1) of the Anti-Corruption Commission Act, 2004 read with Sections 4(2) and (3) of the Money Laundering Protirodh Ain, 2012.

The Anti-Corruption Commission after holding investigation submitted charge-sheet against him under the aforesaid sections and the learned special judge following the same took cognizance against him and the same is pending for trial before the concerned court below.

During pendency of the case, the accused-opposite party No.1 submitted an application for bail and the learned special judge, by an order dated 11.05.2022, granted bail to the accused-opposite party No. 01 on medical ground putting up three conditions- 1. he will not leave the country without the prior permission of the court, 2. he will submit his passport to the court and 3. on the next date on 09.06.2022, the

accused-opposite party No.1 shall submit the medical report before the court examining his health conditions. Granting bail to the accused-opposite party No.1 with a condition to calling and examining the medical report on the next date is just like putting the cart before the horse. So, it is apparent from the impugned order that the learned special judge granted bail to the accused-opposite party No.1 on medical ground without calling and taking into consideration of any medical report. Furthermore, granting bail to the accused-opposite party No.1 basing on two old medical opinions appears to be baseless in view of the condition No.3 set out in the impugned order of bail. Under the aforesaid circumstances, the order of bail passed by the learned special judge on medical ground does not appear to be legal, fair and transparent for the ends of justice.

It is now well settled that an accused can be enlarged on bail on medical ground if the medical report is called for and the same appears to be satisfactory but in the instant case, no medical report was called for and no medical report was received and the bail was granted to the accused opposite-party No.1 without considering any up to date medical report.

Our considered view is that the learned special judge in granting bail to the accused-opposite party No.1 on medical ground has totally failed to apply his judicial mind, which amounts to sharking of duties and responsibilities on the part of the learned special judge. This sort of order is not appreciated and approved by this court.

Having considered all the facts and circumstances of the case, the submissions of the



learned Advocates for the respective parties and the proposition of law cited and discussed above, we are of the view that this order of bail granted to the accused-opposite party No.1 on wrong conception of law can't sustain in the eye of law.

In consequence thereof, the order granting bail to the accused-opposite party No. 01 is set aside.

Anyway, the accused-opposite party No. 01 is directed to surrender before the concerned court below within 7 (seven) days from date.

The learned special judge is directed to dispose of an application for bail along with an application for calling for medical report if any of the accused-opposite party No.1 afresh giving opportunities to all the parties following proper procedures in accordance with law.

With the aforesaid observation and direction, the application is disposed of accordingly.

The learned special judge is cautioned not to repeat this sort of practice in writing out judgment and/or order in future.

Communicate the order to the learned judge of the concerned court below and the Registrar General of the Supreme Court of Bangladesh at once.