

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Justice Md. Habibul Gani

And

Justice Sk. Tahsin Ali

Writ Petition No. 2327 of 2022

In the matter of:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Md. Nasir Uddin

..... Petitioner

Vs.

Govt. of Bangladesh represented by the
Secretary, Ministry of Law, Justice and
parliamentary Affairs, Bangladesh Secretariat
Building, Ramna, Dhaka and others.

...Respondents

Mr. Md. Shah Alam, Advocate

...petitioner

Mr. Md. Sameer Sattar, with
Mr. Mamun Chowdhury with
Mr. Md. Yadnaan Rafique with
Mr. Rajib Ahmed with
Mr. Rabiul Ahmed with
Mr. Mahbub Hasan, Advocates

... for the respondent No. 11

Mr. Muhammad Ali Akkas Chowdhury, adv.

... for the respondent No. 14

Mr. Md. Mohaddesh-Ul-Islam, DAG with

Mr. Mahfuz Bin Yusif, DAG

Mr. Md. Alamgir Hossian, AAG

Mr. Kamrul Islam, AAG

Mr. Kamrunnahar Tamanna, AAG and

Mr. Ahmad Musanna Chowdhury, AAG

..... For the respondents

**Heard on: 25.06.2025, 4.08.2025, 20.08.2025,
21.08.2025 and**

Judgment on: 27.08.2025

Sk. Tahsin Ali, J:

On an application under Article 102 of the Constitution of the

People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was

issued calling upon the respondents to show cause as to why the inaction and failure of the respondents to release the petitioner from jail in connection with the schedule cases i.e. Sessions Case No. 1922 of 2019, arising out of C.R. Case No. 1892 of 2018 (Kotwali), Sessions Case No. 5888 of 2016 arising out of C.R. Case No. 274 of 2016 (Phartoli), Sessions Case No. 5889 of 2017 arising out of C.R. Case No. 273 of 2016 (Partoli, Sessions Case No. 9179 of 2017 arising of C.R. Case No. 655 of 2014 (Doublemoring), Sessions Case No. 1934 of 2019 arising out of C.R. Case No. 2168 of 2018 (Kotwali) and Sessions Case No. 6890 of 2017 arising out of C.R. Case No. 1264 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 despite the petitioner having already served out the sentences pursuant to the judgment and orders of conviction and sentences dated 28.10.2021 29.11.2018, 13.09.2020, 27.09.2020 and 23.01.2020 respectively passed by the respondent Nos. 6-10 in connection with the above cases, shall not be declared to have been done without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule on 11.04.2022 the Hon'ble High Court Division somehow misconceived the submissions of the learned advocate for the petitioner on motion hearing passed a direction upon the respondents to release the petitioner from jail in connection with the above mentioned Sessions Cases subject to condition that the petitioner shall remain present before the court concerned as and when

asked for. Since then they are enjoying the privilege of the said release order till today.

Facts relevant for disposal of the said Rule in short, are that the petitioner filed this writ petition before this Hon'ble Court challenging the failure of the respondents to release the petitioners from jail in connection with the schedule cases being C.R. case No. 1892 of 2018, C.R. Case No. 274 of 2016, C.R. Case No. 273 of 2016, C.R. Case No. 655 of 2014, C.R. Case No. 2168 of 2018 and C.R. Case No. 1264 of 2016 under Section 138 of the Negotiable Instruments Act, 1981. Upon receiving the summons of the cases, the petitioner duly surrender before the learned court below and obtained bail in the said cases. The petitioner having already served imprisonment pursuant to the judgment and order of the convictions and sentences passed by the respondents No. 6-10.

Mr. Md. Shah Alam learned Advocate appearing on behalf of the petitioner submits that the pronouncement of the trial courts judgment and order of conviction and sentences of the petitioner passed by the respondent Nos. 6-10. The petitioner was arrested on 05.09.2021 by the police in connection with Sessions Case No. 5888 of 2016 and 5889 of 20016. He also submits that the petitioner was shown arrested in other cases on different dates and thereafter the petitioner has already served out his conviction and sentences which judgment and order passed by the learned Courts below in (1) Sessions Case No. 1922 of 2019 arising out of C. R. Case No. 1892 of 2018 (Kotwali), (2) Sessions Case No. 5888 of 2016 arising out of C.R. Case No. 274 of 2016, (Phartoli), (3)

Sessions Case No. 5889 of 2016 arising out of C.R. Case No. 273 of 2016 (Phartoli), (4) Sessions Case No. 9179 of 2017 arising out of C. R. Case No. 655 of 2014 (Doublemooring) (5) Sessions Case No. 1934 of 2019 arising out of C. R. Case No. 2168 of 2018(Kotwali), 6. Sessions Case No. 6890 of 2017 arising out of C. R. Case No. 1264 of 2016. The details of the Judgment and Orders of Conviction and Sentences dated which the petitioner was shown arrested in the above mentioned cases and the period of time the petitioner has served in jail pursuant to the said Judgment and Order of Conviction and Sentences passed by the learned courts below respondents No. 6-10. In such circumstances, the respondents may kindly be directed to release the petitioner from jail custody.

Mr. Md. Sameer Sattar, learned Advocate appearing for the respondent No. 11, The City Bank Ltd, Khatungonj Branch, Kotwali of 1082, Shamsul Alam Bhabon, Agrabad, Badamtoi, Police Station, Doublemooring, District- Chattogram opposes the Rule. He submits that the Writ Petition is not maintainable, as the petitioners cannot lawfully invoke Article 102 of the Constitution to seek interference with Criminal Proceeding. He further submits that the Section 35A of the Code provides for the deduction of time spent in custody prior to conviction, however, this provision applies only to pre-trial detention in the same case. He further submits that the sentences in the Sessions Cases were imposed separately, the time served under one sentence cannot be credited against another. He submits that the Section 397 of the Code clearly stipulates that when a person is already serving a sentence of

imprisonment, any subsequent sentence shall commence only upon completion of the previous sentence, unless the court expressly directs the sentences to run concurrently. He further submits that the learned Sessions court did not issue any directions in the Sessions cases. In support of his submissions, he cites some decisions in the case of Begum Khaleda Zia Vs. ACC reported in 70 DLR (AD) (2018) and in the case of Nazrul Islam Vs. Bangladesh reported in 75 DLR (2023). He concludes his submission upon assertion that the Rule bears no merit and ought to be discharged for ends of justice.

Learned Advocate Mr. Muhammad Ali Akkas Chowdhury appeared for the respondent No. 14, First Security Islami Bank Plc. did not submit any affidavit in opposition but he agree with the submissions of the leaned advocate Mr. Sameer Sattar for the respondent No. 11.

We have heard the learned Advocates from both sides, perused the application and materials before us. The petitioners have sought this Hon'ble court's intention to interfere with the criminal proceedings and to pass an order to release the petitioners from jail in connection with the judgment and order of conviction passed in the scheduled sessions cases under Section 138 of the Negotiable Instrument Act, 1881.

The petitioner main legal argument is inter alia that the respondents illegally detained the petitioners in jail custody without giving him the benefit of Section 35A of the Code of Criminal Procedure, 1898 Section 35A of the Code provider for the deduction of time spent in custody prior to conviction, however this provision applies

only to pretrial detention in the same case hence the petitioner may get benefit of Section 35A of the Code, if the petitioner was in custody before pronouncing the judgment. As the sentences in the Sessions Cases were imposed separately, the time served under one sentence cannot be credited against another. Learned advocate Mr. Md. Sameer Sattar for the respondent Bank submits that it is well settled principle under Section 397 of the Code that when a person already undergoing a sentence, unless the court expressly directs that the sentences run concurrently, Section 397 of the Code states as follows:

"397. Sentence on offender
already sentenced for another offence

When a person already
undergoing a sentence of imprisonment,
or transportation, is sentenced to
imprisonment, or transportation, such
imprisonment, or transportation shall
commence at the expiration of the
imprisonment, or transportation to which
he has been previously sentenced, unless
the Court directs that the subsequent
sentence shall run concurrently with
such previous sentence.

Provided that, if he is undergoing
a sentence of imprisonment, and the
sentence on such subsequent conviction

is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately."

That Section 397 of the Code make it clear that if a person already serving a sentence of imprisonment, is sentenced again the subsequent sentence will begin after the first sentence ends. Unless the courts explicitly directs that the sentence should run concurrently unless expressly ordered by the court. This principle is well established in case of Nazrul Islam Vs. Government of People's Republic of Bangladesh 75 DLR (2023) 427, where the Hon'ble High Court unanimously held that:

"On a plain reading of the aforesaid provision, it appears that in the case more than one sentence of

imprisonment, the subsequent imprisonment shall commence after the expiration of the imprisonment to which has been previously sentenced. In other words, the sentences shall run consecutively one after another i.e. the Sentence being one year in each case, in 8 (eight) cases the detenu has to suffer eight consecutive years, one after another. However, in the said provision there is an exception with the words “unless the court directs that the subsequent sentence shall run concurrently with such previous sentence” which clearly indicate that sentences of all cases may run concurrently i.e. by one year if in the subsequently judgment the court directs as above.”

Mr. Samir Sattar further submits that it is established position of law that Criminal Proceedings cannot be interfered with and quashed in the Writ Jurisdiction the principle has been firmly established by the Hon’ble Appellate Division in the case of Begum Khaleda Zia Vs. Anti-Corruption Commission, represented by its Chairman and others where the Hon’ble Appellate Division held:

“13. In proceedings under Article 102 of the Constitution it is not open to the High Court Division to hold an elaborate enquiry into disputed and complicated questions of fact. The High Court Division would only interfere with the proceeding of a criminal court if it is found that such proceeding is without jurisdiction and if there is no other efficacious relief provided in law against such proceeding or the vires of the law basing on which the proceeding initiated is challenged.”

This position was also established earlier in the case of Anti-Corruption Commission v. Mehedi Hasan and Ors., where the Hon'ble Appellate Division held:

"26. As regards Civil Petition for Leave to Appeal No. 652 of 2013 arising out of Writ Petition No. 7242 of 2008, we are of the view that there is no scope for quashing a criminal proceeding under the writ-jurisdiction unless the vires of the law involved is challenged. Having gone through the Rule issuing order, we find that the vires of the law

involved in the present case has not been challenged. Therefore, there is no scope for aggrandizement of jurisdiction of the High Court Division in quashing a criminal proceeding."

In the present writ petition the petitioner has not raised any question as to the vires of Section 138 of the Act of 1881, not have they demonstrated any jurisdictional error in the cognizance on conduct of the trial. Accordingly, any interferences and challenges to the criminal proceedings under Section 138 of the Act of 1881 (thought the instant writ petition) are legally not maintainable and are liable to be rejected. He further submits that the Registrar of the High Court Division of the Supreme Court of Bangladesh has issued directions through a circular to the concerned authorities regarding the implementing of Section 35A of the Code. The circular clarifies that Section 35A applies only to the period of custody undergone by the accused during the pendency of the trial in the same case and at the time of sentencing the trial court is required to deduct such period of pre-trial custody from term of imprisonment imposed. The circular states as follows:

“বিষয়: The Code of Criminal Procedure, 1898 এর 35A ধারার বিধান অনুসরণ প্রসঙ্গে।

The Code of Criminal Procedure, 1898 এর 35A ধারা অনুযায়ী শাস্তি কেবলমাত্র মৃত্যুদণ্ড গ্রন্থ অপরাধ ব্যতীত অন্যান্য অপরাধের ক্ষেত্রে সশ্রম বা

বিনাশ্রম যে কোনো প্রকারের কারাদণ্ড প্রদানক্রমে প্রচারিত রায় বা আদেশে আসামীর মামলা বিচারাধীন থাকা অবস্থায় আসামী কর্তৃক কারা হেফাজতে থাকা/অবস্থানরত সময়কাল তার মোট দণ্ডের সময়কাল হতে বিয়োগ (deduct) হবে। যদি একই অপরাধের জন্য মামলা বিচারাধীন থাকা অবস্থায় আসামীর কারা হেফাজতে থাকা/অবস্থানরত সময় মোট দণ্ডের সময়কালের অধিক হয়, তবে আসামী তার দণ্ড ভোগ সম্পন্ন করেছে বলে গণ্য হবে এবং অন্য কোনো অপরাধের কারণে কারাগারে আটক রাখার প্রয়োজন না হলে অবিলম্বে তাকে মুক্তি প্রদান করতে হবে। এরূপ ক্ষেত্রে আসামীকে যদি কারাদণ্ডের অতিরিক্ত অর্থদণ্ড প্রদান করা হয় তাহলে আসামীর উক্ত অর্থদণ্ড মওকুফ হয়েছে মর্মে গণ্য হবে।”

In the present writ petitions, the judgments of the Sessions Courts do not contain any direction for the sentences to run concurrently and as such the imprisonment under the individual Sessions Case, however the terms of imprisonment imposed in the Sessions Cases must run one after another and the petitioners’ contention that their custody should be adduced by treating the sentences as concurrent is without merit. Since the tenure of imprisonment unless the Sessions Cases have not expired yet, the jail authority did not arbitrarily keep the petitioners in jail without giving them be privilege of Section 35A of the Code of Criminal Procedure.

Considering the above, we are inclined to discharge the Rule for ends of Justice.

Accordingly, the Rule is discharged. The petitioner is directed to surrender within two months from date, failing which the court below/concern court shall issue conviction warrant against the petitioner Nasir Uddin. The learned advocate for the petitioner is at liberty to prepare a calculation sheet of his custody in respective 6(six) cases of this writ petition during trial. After examining the lower court records and submits the calculation sheet to the jail authority for proper calculation of the custody period during trial which will be deducted from the sentence as per Section 35A of the Code of Criminal Procedure in respect of the individual cases and the jail authority after proper calculation of the custody period during trial shall deduct the period of custody during trial from the total custody period of the petitioner in all cases.

Communicate this judgment and order at once.

Md. Habibul Gani, J.

I agree.