

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 10640 of 2006

-AND-

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Anis

.....Petitioner

-Versus-

The Government of Bangladesh and others

..... Respondents

None appears.

.....For the petitioner

Mr. Wayesh Al-Haroni, DAG

...For the respondents

Heard on: 12.01.2023

Judgment on: 05.02.2023

Present:

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice A.K.M. Rabiul Hassan

Abu Taher Md. Saifur Rahman,J:

This Rule was issued on an application filed by the petitioner under Article 102 of the constitution calling upon the respondents to show cause as to why section 3 of the Jananirapatta (Bishesh Bidhan) (Rahitkaran) Ain (No. 06 of 2002) (**Annexure-‘F’**) published in the Bangladesh Gazette

on 03.04.2002 should not be declared to be *ultra vires* with the Constitution and as to why the Jananirapatta Tribunal Case No. 18 of 2001 (Sadar), corresponding to Kotowali Police Station (Barishal) Case No. 11 of 242 dated 10.05.2001 now pending before the Jananirapatta Bighnakari Oporadh Daman Tribunal, Barishal should not be declared to have been commenced and presently continuing 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, this Court was pleased to enlarge the accused-petitioner on bail till to disposal of the Rule.

For the purpose of disposal of the Rule, the relevant facts may briefly be stated as follows:

That on 09.05.2001 one Professor Mohammad Hanif was mugged in Barisal. On the next day the aforesaid victim lodged an FIR with Kotowali Police Station. The case was registered as Kotowali Police Station Case No. 11 dated 10.05.2021 under section 4 of the Jana Nirapatta (Bishesh Bidhan) Ain, 2000 along with sections 324/326 and 341 of the Penal Code corresponding to General Registrar Case No. 242 of 2001 wherein the petitioner was not named in the FIR which is now pending in the Court of respondent No. 4. Subsequently, the police took up the case for investigation and submitted the charge sheet on 07.07.2001. That in the

charge sheet there was an oblique reference to the petitioner in the sense that one Soheli, who was arrested in connection with the aforesaid case on 12.05.2001 made a statement under section 161 of the Code of Criminal Procedure to the police wherein the petitioner's name was mentioned. Subsequently, in the charge sheet the circumstantial evidence led the police to conclude that the petitioner along with eight (including Soheli) other co-accused were directly involved in the alleged occurrence.

It is stated that there was no substantiation in the charge sheet of either Soheli's statement or the so-called "circumstantial evidence" implicating the petitioner. Subsequently the aforesaid Jana Nirapatta (Bishesh Bidhan) Ain 2000 has been repealed in 2002, but even though the impugned proceeding is continuing. Being aggrieved, the petitioner has preferred this application before this Court and obtained the Rule and bail.

None appears for the petitioner to support the Rule.

In this application, it has been stated that the impugned provision of law facilitates as well as caters to 'selective prosecution. That selective prosecution without any basis or guideline is inherently discriminatory, arbitrary and unfair. The said uncontrolled and unregulated discretionary power creates the danger of official arbitrariness which is subversive of the doctrine of

equality as enshrined in and guaranteed by Article 27 of the Constitution.

Mr. Wayesh Ali-Haroni, the learned Deputy Attorney General for the respondents submits that the contention as stated in this application is a matter of fact which cannot be determined under the writ jurisdiction and as such the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocate for respondents and perused the instant writ petition thoroughly.

In the instant writ petition, the accused-petitioner has challenging the provision of section 3 of Jananirapatta (Bishesh Bidhan) (Rohikoran Ain) 2002 as being untravirous to the constitution along with the proceedings of Jananirapatta Mamla No. 18 of 2001, arising out of G.R. No. 242 of 2001, corresponding to Kotowali Police Station (Barisha) Case No. 11 dated 11.05.2001 under section 4 of the Jananirapatta (Bishesh Bidhan) Ain, 2000 along with sections 341/326/324 of the Penal Code now pending before the Jananirapitta Bighnakari Aparadh Daman Tribunal, Barishal.

জননিরাপত্তা (বিশেষ বিধান) রহিতকরণ আইন, ২০০২

(২০০২ ইং সনের ৬ নং আইন)

জননিরাপত্তা (বিশেষ বিধান) আইন, ২০০০ রহিতকরণকল্পে প্রণীত আইন

যেহেতু জননিরাপত্তা (বিশেষ বিধান) আইন, ২০০০ (২০০০ সনের ৭ নং আইন) রহিত সমীচীন ও প্রয়োজনীয়, সেহেতু এতদদ্বারা নিম্নরূপ আইন করা হইলঃ

সংক্ষিপ্ত শিরোনামা ২০০০ সনের ৭ নং আইনের রহিতকরণ হেফাজত	১। এই আইন জননিরাপত্তা (বিশেষ বিধান) (রহিতকরণ) আইন, ২০০২ নামে অভিহিত হইবে। ২। জননিরাপত্তা (বিশেষ বিধান) আইন, ২০০০ (২০০০ সনের ৭ নং আইন) অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এতদদ্বারা রহিত করা হইল। ৩। উক্ত আইন রহিতকরণ সত্ত্বেও- (ক) সরকার কর্তৃক মামলা প্রত্যাহার না হইলে সংশ্লিষ্ট কোন ব্যক্তির বিরুদ্ধে আনীত অভিযোগের ক্ষেত্রে, অধিকতর তদন্ত, মামলার বিচার, আপীল এবং অন্যান্য কার্যধারা অব্যাহত থাকিবে। (খ) উক্ত আইনের অধীন স্থাপিত সকল ট্রাইব্যুনাল, সরকার কর্তৃক সরকারী গেজেটে বিজ্ঞপ্তি দ্বারা বিলুপ্ত করা পর্যন্ত বহাল থাকিবে।
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On perusal of the aforesaid provision it is crystal clear that the case which was initiated prior to this Act will be continued subject to the provision of section 3 of the said Act. So apparently there is no legal bar to continue the impugned proceedings. Without provision of the aforesaid savings clause section 3, the aforesaid Jananirapatta (Bishesh Bidhan) (Rohitkoran) Ain, 2002 would be in effective and as such there is no scope to argue at all that the provision of section 3 of Jananirapatta (Bishesh Bidhan) (Rohitkoran) Ain, 2002 is ultravirus to the constitution. The other contention as raised by the petitioner is absolutely a matter of evidence which needs to be decided at the time of trial.

Under the aforesaid facts and circumstances of the case and the reasons as stated above we do not find any substances of this Rule.

As a result, the Rule is discharged.

The petitioner is hereby directed to surrender before the Court below within the period of **30 (thirty)** days from the date of receipt of a copy of this order and if surrender the trial Court below should consider his bail application in accordance with the law.

Communicate this judgment and order to the concerned Court below at once.

A.K.M. Rabiul Hassan, J:

I agree.