

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqul Islam

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.1690 OF 2022

(From the judgment and order dated 14.11.2022
passed by the High Court Division in Criminal
Miscellaneous Case No.24677 of 2022)

The State, represented by the
Deputy Commissioner, Dhaka Petitioner

=VERSUS=

AHM Fuad Respondent

For the Petitioner :Mr. Mehedi Hasan
Chowdhury, Additional
Attorney General,
instructed by Mr. Md.
Helal Amin, Advocate-
on-Record

For the Respondent :Mr. Munsurul Hoque
Chowdhury, Senior
Advocate, instructed by
Syed Mahbubur Rahman,
Advocate-on-Record

Date of hearing :The 1st June, 2023

J U D G M E N T

M. Enayetur Rahim, J: Having gone through the
proposed judgment delivered by my learned

brother Md. Ashfaqul Islam, J. I would like to add some few words.

Money laundering Protirodh Ain, 2012 (hereinafter referred to as the Ain, 2012) is a special law and it is now well settled that the special law should prevail over the general law, if same provision of law is made in both the laws.

In a case under Money Laundering Ain, section 13 of the Ain, 2012 makes provision relating to granting bail to an accused, which runs as follows:

“**১৩। জামিন সংক্রান্ত বিধান।-** এই আইনের অধীন অভিযুক্ত কোন ব্যক্তিকে জামিনে মুক্তি দেওয়া যাইবে, যদি-

(ক) তাহাকে জামিনে মুক্তি দেওয়ার আবেদনের উপর অভিযোগকারী পক্ষকে শুনানীর সুযোগ দেওয়া হয়; এবং

(খ) তাহার বিরুদ্ধে আনীত অভিযোগে তিনি দোষী সাব্যস্ত হওয়ার যুক্তিসঙ্গত কারণ রহিয়াছে মর্মে আদালত সন্তুষ্ট না হন; অথবা

(গ) তিনি নারী, শিশু বা শারীরিকভাবে বিকলাঙ্গ এবং তাহাকে জামিনে মুক্তি দেওয়ার কারণে ন্যায় বিচার বিঘ্নিত হইবে না মর্মে আদালত সন্তুষ্ট হন।”
(Underlines supplied).

In this particular case, section 13 of the Ain, 2012 will govern in dealing the prayer for bail, not section 497 and 498 of the Code of Criminal Procedure.

From the impugned order it does not transpire that the High Court Division in granting bail to the accused has at all considered the provision of section 13 of the Ain, 2012; rather it shows that the High Court Division has considered some inconsequent issues and disposed of the matter as if it had dealt an application for bail under the provision of the Code of Criminal Procedure.

This Division in the case of **State Vs. Joy GopalSarker** reported **in 27 BLC (AD) 48** has observed as follows:

"Having gone through the first information report it appears that the allegation of money laundering has been imputed therein though the respondent's name was not disclosed in the first information report. His name was disclosed by one of the confessing accused. Money laundering is a serious offence now-a-days. In such view of the matter the High Court Division was not justified in allowing the appeals and enlarging the respondent on bail."

(Underlines supplied).

In the above case, this Division had set aside the order of bail granted to the accused of the said case by the High Court Division.

Upon consideration the above proposition of law settled by this Division coupled with attending facts and circumstances of the present case, in particular the offence of money laundering is an organized crime, the allegations made in the police report against the accused and, purport and scope of section 13 of the Ain, 2012, I have no hesitation to hold that the High Court Division committed serious error in granting bail to the accused.

J.

Md. Ashfaqul Islam, J:

This criminal petition for leave to appeal is directed against the judgment and order

dated 14.11.2022 passed by the High Court Division in Criminal Miscellaneous Case No.24677 of 2022 making the Rule absolute and granting bail to the accused respondent-AHM Fuad.

Prosecution case, in brief, is that one S M Miraz Al Mahmud, BP No.7096009017, Police Inspector, Team Number-3, Dhaka Metro-Poshchim Bibhag, Bangladesh Police, CID, Dhaka as an informant lodged the First Information Report (in short, FIR) against the FIR named accused persons on 26.06.2020 at around 13.45 hours under section 4(2) of the Money Laundering Protirodh Ain, 2012 (as amended in 2015) (in short, Ain, 2012) before the Officer-in-Charge, Kafrul Police Station, DMP, Dhaka alleging, inter alia, that, the accused persons are blood

connected brothers and they had no property before 2008. But, after that, they took control over tender process of different Government offices and also involved in land grabbing, taking commission from transport sector and earned crores of money. Moreover, they also earned huge amount of illegal money from drug business. They established an office in Dhaka and grabbed effective control of all the offices of the LGED, BRTA, Roads and Highway, Pourashava, District Council, Passport Office, Education and Health Sector of District Faridpur from 2008 and they are also owner of 23 buses named as South Line Jatri Paribahan. At the time of investigation, it is ascertained that, the accused persons become owner of the property which is valued at an amount of

Tk.2000 crore (Taka two thousand crore). Hence, the accused persons committed offence under section 4(2) of the Ain, 2012. Accordingly, Kafrul Police Station Case No.24 dated 26.06.2020 corresponding to G.R. No.135 of 2020 under section 4(2) of the Ain, 2012 was started against the accused persons in pursuance of the F.I.R.

The Assistant Police Super of CID as Investigating Officer, after completion of investigation, submitted charge-sheet being Charge-sheet No.58 dated 02.03.2021 under section 4(2) of the Ain, 2012 against the accused persons including the accused respondent-AHM Fuad which was submitted before the Chief Metropolitan Magistrate, Dhaka.

The learned Chief Metropolitan Magistrate, Dhaka transferred the case record to the learned Special Judge, Court No.10, Dhaka for disposal and trial, who took cognizance against the accused persons under section 4(2) of the Ain, 2012 and registered the Special Case No.10 of 2021.

The four co-accused namely, Sazzad Hossain Borkot, Intiaz Hasan Rubel, Ashikur Rahman Farhan and Nazmul Islam Khondakar Levy made inculpatory confessional statements under section 164 of the Code of Criminal Procedure, 1898 before the learned Metropolitan Magistrate, Dhaka and mentioned the name of the instant accused respondent-AHM Fuad in their statements.

The accused respondent prayed for bail on 20.02.2022 before the learned Special Judge, Court No.10, Dhaka which was rejected.

Feeling aggrieved by the order dated 20.02.2022 passed by the learned Special Judge, Court No.10, Dhaka in Special Case No.10 of 2021, the accused respondent filed an application for bail being Criminal Miscellaneous Case No.24677 of 2022 before the High Court Division and obtained Rule.

The opposite party-State contested the said Rule by filing counter affidavit.

The High Court Division, upon hearing both the parties, made the Rule absolute and granted bail to the accused-respondent-AHM Fuad by the impugned judgment and order dated 14.11.2022.

Feeling aggrieved by the impugned judgment and order dated 14.11.2022 passed the High Court Division, the opposite party-State as petitioner herein preferred the Criminal Petition for Leave to Appeal No.1690 of 2022 before this Division.

Mr. Mehedi Hasan Chowdhury, the learned Additional Attorney General appearing on behalf of the Petitioner submits that, the impugned judgment and order passed by the High Court Division in making the Rule absolute clearly shows non-application of judicial mind having failed to appreciate that, the allegation brought against the accused respondent-AHM Fuad under section 4(2) of the Ain, 2012 that, the accused respondent illegally earned a huge amount of money by doing various offences in

the locality by way of illegally controlling tender in the offices of LGED, BRTC, Roads and Highway, Pourashava, Zila Parishad, Passport Office, Education and Health Sector and committed offence of money laundering with full knowledge. So, there is no way to enlarge him on bail during the period of trial, considering the gravity of offence. He further submits that, the accused respondent is a habitual offender and involved with various offences specially when he was APS of the former Minister Mr. Khondaker Mosharraf Hossain and using that identity, he illegally controlled tender process and earned a lot of money. He further submits that, co-accused namely, Sazzad Hossain Borkot, Imtiaz Hasan Rubel, Ashikur Rahman Farhan, and Nazmul Islam Khondakar Levy

made in-culpatory confessional statements under section 164 of the Code of Criminal Procedure and mentioned the name of the instant accused respondent as he is a member of so-called syndicate circle and directly involved with the alleged offence. He finally submits that, the allegation against the accused respondent is of money laundering offence and the money laundering offence is a serious offence against the country, the activities of the accused respondent is highly prejudicial to the State and discipline and such kind of person is a threat to the nation, but, the High Court Division without considering these points, made the Rule absolute and enlarged the accused respondent on bail which calls for interference by this Division and, as such, the impugned

judgment and order passed by the High Court Division is liable to be set aside.

Mr. Munsurul Hoque Chowdhury, the learned Senior Counsel appearing on behalf of the accused respondent made submissions in support of the impugned judgment and order of the High Court Division. Therefore, he prays for dismissal of the instant leave petition.

We have considered the submissions of the learned Additional Attorney General for the leave petitioner and the learned Senior Advocate for the accused respondent. Perused the impugned judgment of the High Court Division and connected other materials on record.

It appears that, there is specific allegations mentioned in the charge-sheet

against the accused-respondent and four co-accuseds made their confessional statements under section 164 of the Code and they mentioned the name of the accused respondent in their statements directly implicating him in money laundering. He has been involved with the co-accused in the case, hence, the co-accused mentioned his name in their confessional statements made under section 164 of the Code and, as such, there is a strong presumption against the accused respondent of commission of offence under section 4(2) of the Ain, 2012 (as amended in 2015).

In connection with the aforementioned annotations this Division observed in the case of Major Md. Bazlul Huda (Artillery) vs. State reported in 2010 30 BLD (AD) 67 that:

"With due respect, I am unable to endorse the latter views for, once a reasonable ground exists to believe that two or more persons have conspired together to commit an offence, anything said, done or written by one of the conspirators in reference to the common intention after the common intention was entertained, is relevant against the other, not only for the purpose of proving existence of the conspiracy but also for proving that the other person was a party to it."

This Division further in the case of Sumon vs. The State reported in 14 ADC (2017) 931 that:

"...confessional statement of the co-accused per se is not admissible

against the appellant.....The confession of a co-accused is not evidence as defined in Section 3 of the Evidence Act and that Section 30 enables the Court to take into consideration the confession of a co-accused to lend assurance to other evidence against the co-accused. The expression "may take into consideration" means that the use of the evidence of confession of an accused may be used for purposes of corroborating the evidence on record against the co-accused and that no conviction can be based on such confession. If the Court believed other evidence and felt the necessity

of seeking an assurance in support of its conclusion deducible from the said evidence, the confession of the co-accused would be used.....The preponderance of opinion expressed in the decided cases of our apex court that confession of an accused may be taken into consideration against co-accused by the provision of section 30 of the Evidence Act, its value is extremely weak and there could be no conviction without any independent evidence as to the connection of the accused."

From the discussion above it is clearly evident that, though generally the confessions of a co-accused are not admissible, however,

there are certain exceptions where such confessional statements could be weighed up in reaching a verdict. Nevertheless, these rules applied at the time of convicting and sentencing any person after taking all the evidences. This is merely a plea for granting bail of an under trial accused. At this summary proceeding and premature stage, we cannot foretell whether there will be no other incriminating evidence adduced that could be corroborated by the confessions of the co-accused.

Granting of bail is undoubtedly a discretion of the Court. But, that discretion has to be exercised upon a sound footing of laws governing the gamut of a particular case. It has to be remembered that, it is not the

prima facie case against the accused respondent, but, the 'reasonable grounds' for believing that, he has been guilty__ is the concept of granting bail that gets paramount consideration. The Court has to examine the data available to connect whether reasonable grounds exist for considering, as such, in a particular case (for granting or non-granting bail). In the instant case, as we have found that, the High Court Division did not exercise its discretion while making the Rule absolute and by granting bail to the accused respondent inasmuch as in so doing it has not considered the well settled proposition of law as hinted above. The findings of the High Court Division simply rest upon the consideration that, confessional statements of co-accused cannot

form the sole basis of implication and for that reason, it granted bail to the accused respondent. Palpably, it escaped notice of the High Court Division that, allegation of money laundering is heinous in nature and is under public condemnation and that, the accused respondent is a habitual offender. These are the criterion to be regarded as predominant aspect of considering granting of bail under section 498 of the Code of Criminal Procedure. The accused respondent was enlarged on bail within a very short period of time from the date of his arrest. Offence of this kind should not have been dealt with by the High Court Division in such a manner while granting bail to the accused respondent. Indeed, it was done hastily.

Besides, it has already been discussed under what circumstances confessional statements of co-accused becomes relevant and weighty. That being the position, we are of the view that, the High Court Division has certainly misdirected itself enlarging the accused respondent on bail ignoring the settled principle of granting bail under section 498 of the Code of Criminal Procedure.

In view of the above discussions, the High Court Division wrongly made the Rule absolute and enlarged the accused respondent on bail. So, we are inclined to interfere with the same.

Accordingly, this petition is disposed of. The impugned judgment and order of the High Court Division is set aside and the order of

bail granted to the accused respondent-AHM Fuad
is cancelled.

J.

J.

J.

The 1st June, 2023
Hamid/B.R/ *Words 2481*