

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

Present:

Mr. Justice Md. Nazrul Islam Talukder

And

Mr. Justice Khizir Hayat

Criminal Revision No. 07 of 2023.

Durnity Daman Commission

.....**Petitioner.**

-Versus-

Md. Selim Prodhan and another

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

Mr. Md. Khurshid Alam Khan, Senior Advocate with
Mr. Mosharraf Hossain Kajol, Advocate with
Mrs. Fatema Khanom Neela, Advocate

.... **For the petitioners.**

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.**

Mr. Monsurual Haque Chowdhury, Senior Advocate with
Mr. Sheikh Baharul Islam, Advocate and
Mr. Md. Shaharia Kabir, Advocate

....**For the Opposite-party No.1.**

Heard on 23.01.2023, 19.02.2023 and

judgment on: 19.02.2023

Md. Nazrul Islam Talukder, J:

On an application under Section 10(1A) of the Criminal Law Amendment Act,1958, this Rule, at the instance of the Anti-Corruption Commission, was issued calling upon the opposite-party No.1 and another to show cause as to why the order dated 13.12.2022

passed by the learned Special Judge, Court No.6, Dhaka granting bail to the accused-opposite-party No.1, Md. Selim Prodhan in Special Case No.04 of 2021 arising out of Metropolitan Special Case No.153 of 2019 arising out of DUDOK G.R No.134 of 2019 corresponding to DUDOK, SOJEKA, Dhaka-1s' Case No.16 dated 27.10.2019 under Section 27(1) of the Durnity Daman Commission Ain, 2004 read with Sections 4(2) and 4(3) of the Money Laundering Protoridh Ain, 2012, now pending in the Court of learned Special Judge, Court No.6, Dhaka, shall not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in brief, is that on 27.10.2019, one Md. Gulshan Anowar Prodhan, Deputy Director, Durnity Daman Commission, Head Office, Dhaka being informant lodged a First Information Report before the Deputy Director, Durnity Daman

Commission, combined District Office, Dhaka-1, Segunbagicha, Dhaka against the accused-opposite-party No.1 alleging, *inter-alia*, that as per Nathi No.00.01.0000.502.01.101.19.40818 dated 22.10.2019, the Inquiry Officer during inquiry came to know that the accused-opposite-party No.1 earned movable property of Tk. 11,64,95,618/- and immovable property of Tk.20,00,000/- in the tax year 2018-219 standing in his name. He invested Tk.4,58,40,000/- for shares as director of the company, Tk.6,12,15,000/- as FDR investment, Tk. 76,62,000/- as savings certificate and kept cash Tk.6,28,618/- in the bank. By this way, the accused-opposite-party No.1 obtained immovable property of Tk. 11,53,45,618/- and movable property of Tk.20,00,000/-. From the documents of BFIU, it is found that the accused deposited Tk. 54,50,136/- in different Bank accounts but he did not mention about those properties in the income tax returns. Therefore, it

is found from the information and materials that for the movable and immovable property of Tk.12.27,95,754/- of the accused-opposite-party No.1, there is no specific legitimate source and the same has been preliminary proved to be disproportionate to his known source of income. Accordingly, he committed punishable offence under section 27(1) of the Durnity Daman Commission Ain, 2004. Hence, the FIR.

After initiation of the FIR, the Anti-Corruption Commission after holding investigation into the allegation submitted investigation report against the accused-opposite-party No.1 being charge-sheet No.3 dated 17.10.2021 under section 27(1) of the Durnity Daman Commission Ain, 2004 and Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012, which is evident from (**Annexure-B**) to the application.

Having received the investigation report, the case record was transmitted to the court of Metropolitan

Senior Special Judge, Dhaka, who having received the record from the Chief Metropolitan Magistrate, took cognizance of the offences against the accused under Section 27(1) of the Durnity Daman Commission Ain, 2004 read with Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012, and the same was registered as Metropolitan Special Case No.153 of 2019.

Subsequently, Metropolitan Senior Special Judge, Dhaka transferred the case record to the Court of learned Special Judge, Court No.6, Dhaka for trial. Therefore, the learned Special Judge, Court No.6, Dhaka receiving the case record from the court of Metropolitan Senior Special Judge, Dhaka registered the same as Special Case No.4 of 2021.

Having received the prosecution materials along with the investigation report, the learned Special Judge,

Court No.6, Dhaka framed charge against the accused under the aforesaid Sections.

It is stated in the application that the prosecution, in the meantime, examined as many as 26 witnesses. During pendency of the case, the accused-opposite-party No.1 submitted an application for bail but the same was allowed by the impugned order granting bail to the accused-opposite-party No.1.

Being aggrieved by the same, the Anti-Corruption Commission preferred this application before this court under Section 10(1A) of the Criminal Law Amendment Act, 1958 and obtained this Rule along with the order of stay of the order granting bail to the accused-opposite-party No.1.

At the time of hearing of the Rule on 31.01.2023, Mr. Mosharraf Hossain Kajol, the learned Public Prosecutor along with Ms. Fatema Khanom Neela, the learned Public Prosecutor, argued before this court to

the effect that on the date of hearing of the application for bail, they submitted an application for time as well as an application under Section 344 for staying all further proceeding of the case but the learned Special Judge of the concerned court without passing any order on those applications granted bail to the accused-opposite party No.1 without hearing them and they came to know about the order of bail after 03 (three) days from the date of taking up the applications for hearing.

On such arguments advanced by Mr. Mosharraf Hossain Kajol, the learned Public Prosecutor along with Ms. Fatema Khanom Neela, the learned Public Prosecutor, on 31.01.2023, we directed Mr. Al Asad Md. Asifuzzaman, the learned Special Judge, Special Judge Court No.6, Dhaka to submit a written explanation with regard to the allegation made against him by the learned prosecutors, before this court on or

before 13.02.2023 through the Registrar, Supreme Court of Bangladesh, High Court Division, Dhaka.

Following our order, Mr. Al Asad Md. Asifuzzaman, the learned Special Judge, Special Judge Court No. 6, Dhaka sent/submitted a written explanation before this court through the Registrar, Bangladesh Supreme Court, High Court Division contending, *inter-alia*, that he granted bail to the accused opposite-party No.1 in presence of both the parties and that the application for bail was disposed of in open court upon hearing the parties and considering the facts and circumstances of the case and having found prima-facie case in favour of the accused opposite-party No.1, he granted bail to the accused, so there is no procedural illegality in disposing of the application for bail and granting bail to the accused opposite-party No.1 and under these circumstances, the allegations so far alleged against him are not true and

for this reason, he may be exonerated from any condemnation and he also begs mercy for any unintentional wrong if occurred in disposing of the application for bail and other applications.

Mr. Md. Khurshid Alam Khan, the learned Senior Advocate appearing on behalf of the Anti-Corruption Commission, submits that since the application for bail was not disposed of in presence both the parties and the order was not passed in open court violating the settled principle of law, so the Rule may be made absolute setting aside the order granting bail to the accused opposite party No.1.

He next submits that since the learned public prosecutors appearing before this court categorically and vigorously submit that their applications for time and adjournment along with application for bail were not disposed of in their presence and no positive findings and observations were given in the impugned

order so it may be assumed that the facts narrated by the public prosecutors are true to the effect that the application for bail was not disposed of in their presence upon hearing of the learned public prosecutors of the Anti-Corruption Commission, so in that view of the matter, the impugned order granting bail to the accused-opposite party No.1 should not sustain for ends of justice.

He with reference to the explanation given by the learned Special Judge, submits that though the learned judge categorically contends that he disposed of the application for bail on merit in presence of both the parties and passed the order on merit in open court but at the same time, he prays for mercy of his unintentional wrong if any which appears to be contradictory and in that view of the matter, the impugned order should not sustain for ends of justice

since there is no fairness and transparency in the order of granting bail to the accused opposite party No.1.

Mr. Khan submits that at the time of granting bail to the accused-opposite party No.1, the learned Special Judge did not take into consideration of Section 13 of the Money Laundering Protirodh Ain, 2012 i.e. the parameters of granting bail to the accused-opposite party No.1 and it is crystal clear that no such observations in the light of parameters have been reflected in the impugned order which indicates that the parameters of granting bail to the accused opposite-party No.1 in view of Section 13 of the Money Laundering Protirodh Ain 2012 have not been complied with though there are specific allegations of the Money Laundering and obtaining of property disproportionate to his known source of income are there against him; Mr. Khan, with reference to Section 33(5) of the Anti-Corruption Commission Act, 2004, submits that there

is a complete bar to granting bail to an accused unless the learned Advocate for the Anti-Corruption Commission is heard and the application for bail is disposed of in their presence.

Mr. Khan with reference to the legal decision taken in the case of Durnity Daman Commission Vs Partho Gopal Bonik and another, reported in 73 DLR(HC)(2021)625, submits that the judgment or order must be pronounced in open court but in the instant case, the application for bail was disposed of violating the settled principle of law that has been enunciated in the aforesaid judgment; since there is a serious violation of the settled principle of law, the order granting bail to the accused should not sustain at all for ends of justice.

Mr. Munsurul Haque Chowdhry, the learned Senior Advocate along with Mr. Sheikh Baharul Islam, the learned Advocate and Mr. Md. Shaharia Kabir, the

learned Advocate appearing on behalf of the accused-opposite-party No.1, submits that Mr. Al Asad Md. Asifuzzaman, the learned Special Judge has categorically stated in his written explanation that the application for bail was taken up for hearing in presence of the learned Advocates for both the parties and the order was passed in open court upon hearing the learned Advocates for the respective parties and under such circumstances, the contentions of the learned Judge may be taken into consideration ignoring all the arguments of the learned Public Prosecutors and the learned Advocate for the Anti-Corruption Commission, and for this reason, the Rule may be discharged upholding the order of bail granted to the accused-opposite party No. 1.

He then submits that from the impugned order of bail, it is explicitly clear that the learned judge granted bail to the accused-opposite party No.1 complying with

all the provisions of law and upon hearing the parties passed the order in presence of both the parties in open court, so the impugned order should not be set aside for ends of justice.

He lastly submits that the accused-opposite party No.1 is in jail custody for more than 3(three) years and considering the long custody and gravity of offences, the learned Special Judge rightly granted bail to the accused opposite-party No.1 as such the Rule may be discharged for ends of justice upholding the order of bail to granted to the accused-opposite party No. 1.

We have gone through the revisional application and heard the learned Advocates for the respective parties and considered their submissions to the best of our wit and wisdom. It appears from the record that the proceeding against the accused opposite-party No.1, has been started under Section 27 (1) of the Anti-Corruption Commission Ain, 2004. The investigating

officer after holding investigation submitted investigation report against the accused-opposite party No. 1 under Section 27(1) of the Anti-Corruption Commission Act, 2004 and Sections 4(2) and 4(3) of the Money Laundering Protirodh Ain, 2012 and following the same, the learned Special Judge framed charge and examined as many as 26 witnesses. Anyway, during pendency of the case, the accused-opposite party No.1, submitted an application for bail and the same was allowed. According to the submissions of the learned Advocate for the Anti-Corruption Commission and the learned public prosecutors, the objection to granting bail to the accused-opposite party No.1 are as follows:

(i) that the application for bail submitted by the accused-opposite party No.1 has not been disposed of upon hearing the learned public prosecutor and the order granting bail to the accused-opposite party No.1

was not given in open court in presence of the parties violating the settled principle of law;

(ii) that while disposing of the application for bail, the gravity of the offence as well as the parameters of granting bail to the accused-opposite party No.1 following the provisions of section 13 of the Money Laundering Protirodh Ain, 2012 have not been considered in accordance with law;

(iii) that no positive orders were passed on the applications for time and adjournment of proceeding filed by the learned public prosecutors on behalf of the Anti-Corruption Commission;

(iv) that on 02.10.2022 and 27.11.2022, the learned special judge rejected the application for bail observing that there are some sorts of guidelines in granting bail to the accused-opposite party No.1 in the money laundering cases and that there is also an apprehension of absconding of accused from the case as

well as from the country but the learned special judge granted bail to the accused on 13.12.2022 without giving any explanation with regard to the observations made in his earlier orders and granted bail without assigning any cogent reason and satisfaction whatsoever in support of the order of granting bail.

On the other hand, according to the submissions of the learned Advocates for the accused-opposite party No.1, the learned special judge passed the order of bail in open court granting bail to the accused-opposite party No.1 and that the public prosecutors have made objection to the order of granting bail taking malafide intention because of the fact that the learned special judge in his written explanation has clearly contended that he passed the order in open court in presence of both the parties upon hearing the respective parties.

On the face of objection and counter objection to the order of bail, we want to discuss about the

provisions of law which are relevant to disposing of the case and the application for bail as well.

Sub-section 5 of section 33 of the Anti-Corruption Commission Act, 2004 contemplates that “দুর্নীতি দমন কমিশন কর্তৃক দায়েরকৃত মামলায় অথবা দুর্নীতি দমন কমিশন কর্তৃক গৃহীত যে কোন কার্যক্রমের যে কোন পর্যায়ে কোন আদালতে কেহ কোন প্রতিকার প্রার্থনা করিলে দুর্নীতি দমন কমিশনকে পক্ষভুক্ত করিতে হইবে এবং দুর্নীতি দমন কমিশন কর্তৃক দায়েরকৃত কোন মামলায় বা কার্যক্রমে কোন ব্যক্তি জামিন কিংবা অন্য কোন প্রকার প্রতিকার প্রার্থনা করিলে কমিশনকে শুনানীর জন্য যুক্তিসংগত সময় প্রদান করিয়া শুনানি গ্রহণ করা যাইবে না।”

Section 13 of the Money Laundering Prohibition Act, 2012 prescribes as under:

“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 যুক্তিসংগত কারণ রহিয়াছে মর্মে আদালত সন্তুষ্ট না হন; অথবা

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

Sub-section (1) of Section 366 of the Code of Criminal Procedure, 1898 runs as under:

“366.(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained-

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.”

Rule 179(2) of the Criminal Rules and Orders (Practice and Procedure of Sub-ordinate Courts), 2009, suggests that the learned judges of court below shall pronounce judgment and order in open court in presence of the respective parties of the case.

Similar view has been expressed in the decision taken in the case of Durnity Daman Commission vs Partha Gopal Bonik and another reported in 73 DLR(HC)(2021)625, wherein it has been decided that the judges of the court below shall pronounce the judgment and order in open court in presence of the parties.

In view of the above discussions, it is pertinent to note that the judgment in every trial in criminal court of original jurisdiction shall be pronounced or the

substance of such judgment shall be pronounced and/or explained in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or to the learned Advocates for the respective parties.

Since there is an allegation/objection to the effect that the learned Special Judge granted bail to the accused-opposite-party No.1 without hearing the learned Public Prosecutors for the Anti-Corruption Commission and no order was passed in presence of the parties in open court, so we are of the view that a direction may be given upon the concerned learned Senior Special Judge/Special Judge, Dhaka so that he can dispose of the case and/or the fresh/new the application for bail if any of the accused, as the case may be, following the relevant provisions of law and Rules. Under the circumstances, we are not inclined to make any observations and findings on the matter at hand rather we want to send this matter to another

Special Court for disposal of the case and the fresh/new application for bail if any of the accused.

Having considered all the facts and circumstances of the case, the submissions of the learned Advocates for the respective parties and the propositions of law cited and discussed above, we find substance in this Rule to interfere with the impugned order of bail.

Accordingly, the impugned order dated 13.12.2022 passed by the learned Special Judge granting bail to accused-opposite party No.1, is set aside.

In consequence of our observations, the learned Metropolitan Senior Special Judge, Dhaka and the learned Special Judge, Court No. 6, Dhaka are directed to transfer and transmit the record of Special Case No. 4 of 2021 pending before the learned Special Judge, Court No. 06, to the court of learned Senior Special Judge/Special Judge, Court No. 08, Dhaka at once.

The learned Senior Special Judge/Special Judge, Court No. 08, Dhaka is directed to dispose of the case as early as possible preferably within 4 (four) months from the date of receipt of this judgment and order and the fresh/new application for bail if any of the accused-opposite-party No. 1 on merit of the case in accordance with the law without being influenced by the order of any court.

With the aforesaid observations and directions, the Rule is disposed of.

Let this judgment and order be communicated to the learned Metropolitan Senior Special Judge, Dhaka, the learned Special Judge, Court No. 6, Dhaka and the learned Senior Special Judge/Special Judge, Court No. 08, Dhaka at once.

Khizir Hayat, J:

I agree