

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

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Appeal No. 6494 of 2023

In the matter of:

An application under section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000

In the matter of:

Mosammat Khadiza Khatun Mona

...Complainant- Appellant

Versus

Sahid Sing @ Abu Sahid Sing and others

...Accused-Respondents

Mr. Md. Ershad Hossain Rashed, Advocate

...For the Complainant-Appellant

Mr. Minhazul Hoque Chowdhury, Advocate

...For the Accused-Respondent No. 2

Mr. S.M. Asraful Hoque, D.A.G with

Mr. Sheikh Serajul Islam Seraj, D.A.G

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Heard on: 10.12.2023 and

Judgment on: 11.12.2023

Md. Riaz Uddin Khan, J:

This Criminal Appeal is the outcome of an order dated **13.06.2023** passed by the Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Mymensingh in Nari-O-Shishu Case No. 344 of 2023 arising out of Nari-O-Shishu Petition Case No.

92 of 2020 under section 9(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 read with section 6(2) of the Manab Pachar Protirodh-O-Daman Ain, 2012, now pending in the Court of Nari-O-Shishu Nirjatan Daman Tribunal, Mymensingh.

The prosecution story in brief is that the appellant filed a complaint case before the Nari-O-Shishu Nirjatan Daman Tribunal, Mymensingh alleging inter alia that she is a married woman having two children and her husband used to live in Italy. On 15.12.2018, the 1st date of occurrence, at about 11.00 p.m. when the appellant went outside of her house for natural call the Respondent No. 1 forcefully raped her and Respondent No. 2 photographed that scene by mobile phone. Taking advantage of that the Respondent No. 1 on several occasions compelled her to make sexual intercourse with him for which at one stage she became pregnant and on 19.08.2019 she was taken to Spondon Clinic owned by respondent No. 2 and since there was no bed in that Clinic she was then taken to Janani Nursing Home where after caesar operation she gave birth a male child. The appellant was again taken to Spondon Clinic and on her query the staff of that Clinic informed that she gave

birth a male child who will be handed over after her treatment but subsequently on repeated request the respondents refused to hand over her child to her and her child may be sold out by the respondents.

After receiving the complaint the Tribunal sent the matter for inquiry to the department of Police Bureau of Investigation (PBI) and after holding inquiry the PBI could not find any truth of the allegation made by the appellant. On naraji application filed by the appellant, the matter was sent to the Criminal Investigation Department (CID) for further inquiry and this time after holding inquiry the CID filed inquiry report on the finding that there is no truth of the occurrence dated 15.12.2018 as alleged by the appellant. However, the inquiry officer stated that there was an extra marital relationship between the appellant and the Respondent No. 1 for a long time for which she became pregnant and gave birth a child in the Janani Clinic and was taken to Spondon Clinic owned by the Respondent No. 2 and he came to know that the child of the appellant was sold to unknown person and he submitted the inquiry report opining that there is a prima facie case under section 9(1) of the Nari-O-Shishu Nirjatan

Daman Ain, 2000 and 6(2) of the Manab Pachar Protirodh-0-Daman Ain, 2012.

After receiving the 2nd inquiry report the Tribunal took cognizance of the case and issued process against the accused respondents.

On 13.06.2023 on an off day the respondents appeared before the Tribunal with an application for bail and after hearing the accused-respondents and the Public Prosecutor, the Tribunal enlarged them on bail against which the complainant preferred this Appeal.

Md. Ershad Hossain Rashed, the learned Advocate appearing for the appellant submits that under section 19 of the Nari-0-Shishu Nirjatan Daman Ain, 2000 the Tribunal has got no jurisdiction to grant interim bail to any accused without giving an opportunity of hearing the complainant. Since the Tribunal granted bail in an off day for which the complainant could not place her case and in that view of the matter the Tribunal acted illegally granting bail to the accused-respondents.

On the other hand Mr. Minhazul Hoque Chowdhury, the learned Advocate appearing for the Respondent No. 2 submits that the allegation made in the petition of complaint alleged to have been occurred on the 1st date of occurrence

has not been proved for which there is no allegation under section Nari-O-Shishu Nirjatan Daman Ain, 2000 against the respondent no.2. The 2nd inquiry officer only suspected that the male child of the appellant might be sold but in the inquiry report there is no such finding that who bought the child and where is the child now and whether there is any existence of the child at all.

He then submits that since there is no allegation of Nari-O-Shishu Nirjatan Daman Ain, 2000 against the respondent no.2, the restriction of section 19 is not applicable to him.

He finally submits that there is no allegation of misuse of the privilege of bail and the principle of granting of bail and cancellation of bail is all together different. Without proof of misuse of privilege, the bail should not be cancelled.

We have heard the learned Advocates of both the parties, perused the records including FIR, both the inquiry reports and the impugned order.

It appears that the Tribunal in an off date granted bail to the respondents without giving an opportunity to the complainant appellant of being heard. As per section 19 of the Nari-O-

Shishu Nirjatan Daman Ain, 2000 the learned Judge of the Tribunal should have given an opportunity to the complainant of being heard. However, since there is no allegation against the Respondent No. 2 under the Nari-O-Shishu Nirjatan Daman Ain, 2000 and he is not the principal accused, the precondition imposed under section 19 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 in granting bail without hearing the complainant is not applicable to Respondent No. 2.

On the other hand there is prima facie allegation against the Respondent No. 1 under the Nari-O-Shishu Nirjatan Daman Ain, 2000, the complainant should have given an opportunity of being heard as per section 19 of the Ain, 2000 by the Tribunal before granting interim bail. However, there is no allegation of misuse of the privilege of bail by any of the respondents.

In that view of the matter the Appeal is allowed in part. The impugned order dated 13.06.2023 is hereby set aside so far as it relates to Respondent No. 1 and we are not inclined to interfere with the interim order of granting bail to the Respondent No. 2.

In the result the instant Criminal Appeal No. 6494 of 2023 is allowed in part.

Respondent No. 1 is directed to appear before the Tribunal within 30(thirty) days from receipt of this order and on his surrender, the Tribunal shall consider his prayer for bail, if any, after giving the complainant an opportunity of being heard.

The office is directed to communicate the judgment and order at once.

Ashish Ranjan Das, J:

I agree.

ZIA B.O