

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

WRIT PETITION NO. 16505 OF 2024

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Dayem Khandker

...Petitioner

-VERSUS-

The Government of People's Republic of Bangladesh, represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Ramna, Dhaka and others.

... Respondents

Mr. Ahsanul Karim, Senior Advocate with

Mr. Md. Kayser Kamal, and

Mr. Aminul Haque, Advocate

.... For the Petitioner

Ms. Sara Hossain, Senior Advocate with

Mr. Mohammad Aminul Haque, Advocate

.... For the respondent No. 8

Mr. Khan Ziaur Rahman, DAG with

Mr. Al-Faishal Siddique, AAG and

Mr. Md. Emdadul Haif, AAG and

Mr. K. M. Rezaul Firoj (Rintu), AAG and

Mr. Md. Husni Mubarak, AAG

..... For the other Respondents

Heard on: 20.08.2025 & 27.08.2025.

And

Judgment on: 03rd September, 2025

Present:

Mr. Justice Md. Akram Hossain Chowdhury

&

Mr. Justice Foyej Ahmed

Md. Akram Hossain Chowdhury, J:

While the matter is taken-up for pronouncement of the judgment,
at this stage, the learned Advocate for the respondent No. 8 by filing an

application seeks for passing an order to initiate an appropriate proceeding against the writ petitioner for making false statement and for the other allegation as made in the application. However, since we have taken-up the matter for pronouncement of the judgment and at this stage filing such type of application appears only to linger the matter for an uncertain period. Since, this Court has already taken-up the matter for passing judgment, the Court itself can pass any such order which is appropriate for the proper disposal of the Case. Hence, the application, affirmed on 02.09.2025, is rejected summarily.

We have thus turned up to pass the judgment in the matter in hands on merit.

Upon an application under article 102 of the Constitution of the People's Republic of Bangladesh, the petitioner (the biological father of the detenu child) obtained the rule *nisi* calling upon the respondents to show cause as to why the child of the petitioner, namely-Sarahi Hasan Khandker, aged about 9 years 2 months, now being kept under the custody of the respondent No. 8 (mother of the child) should not be brought before this Court, so that this Court may satisfy itself that the child of the petitioner is not being held in the custody of the respondent No.8 without lawful authority and in an unlawful manner and/or such other or further order or orders be passed as to this court may seem fit and proper.

Pending hearing of the rule two sets of direction had been passed upon the respondents; one for producing the detenu child before the Court on 08.01.2025 and another for not to allow the respondent no. 9 to leave Bangladesh along with the child without permission from this Court.

The material averments as made in the writ petition and as of behind the issuance and continuation of the rule *nisi* are in brief that the petitioner got married the respondent No. 8 on 01.12.2008 under the Muslim Shariah law in Bangladesh. The petitioner and the respondent No.8 started to live peacefully under the same roof in Baridhara in the house of the petitioner. After their marriage, in their wedlock, only child namely-Sarahi Hasan Khandker was born on 13.10.2015 in the UK. After the child attained at the age of four, she got admitted in one of the most prestigious English medium school in Bangladesh, namely-American International School in Dhaka (AISD). Apart from this, the petitioner also got his child admitted in swimming and violin classes under the supervision of the best trainer's and professional's care in the country.

That after the marriage, the respondent No.8 continued her profession as a lawyer with full support and co-operation from the petitioner, especially the petitioner used to take care of the daily life needs of the child of the petitioner, since the respondent No.8 used to very busy in her profession in Court all the day and in Chamber after the Court hour.

That after 15 years of their marriage, suddenly in the year 2023, the respondent No.8 came up with a decision to get study in abroad and to be got settled in the United Kingdom (UK) and expressed her intention to take the child of the petitioner away with her to the United Kingdom. The petitioner never agreed to such proposal of the respondent No.8, since a sudden change will be in the child's lifestyle and the environment of there will affect her adversely and can ruin her education and other extra curriculum courses which will clearly damage her physical and mental growth in life. Apart from this, Sarahi Hasan Khandker being the only

child of the petitioner, the petitioner is never prepared and agreeable to send her abroad, at this tender age. The petitioner believes that his daughter should be brought up in Bangladesh with its culture and Muslim values.

That the petitioner having turned down the idea of the respondent No.8 to get settled in the UK with the child of the petitioner, the respondent No.8 invented a new idea. In the first week of July, 2024, the respondent No.8 informed the petitioner that she will go to the UK with the child for a short vacation about to visit her sister's family there, like the previous years. At that time, the school of the child was in summer vacation and it was scheduled to re-open on 10.08.2024. Therefore, the petitioner in order to avoid family chaos agreed to the plan of the respondent No.8 to allow his child to go to London, UK for a short vacation with the respondent No.8. The respondent No. 8 thus purchased round trip tickets for her and the child as well by fixing the schedule for travelling to London on 15.07.2024 and returning to Bangladesh on 10.08.2024.

That after travelling to the UK for short summer vacation, the respondent No.8 got herself admitted in LL.M program in School of Oriental and African Studies (SOAS) without even informing the petitioner. The respondent No.8 also got the child of the petitioner admitted into Merton Park Primary School, London, UK on 31.07.2024, even without taking permission from the petitioner or even without consulting with the petitioner. The respondent No.8 was well aware that the petitioner would not be given permission to get his only child admitted in the UK.

That when the petitioner was awaiting for his wife and child to return to Bangladesh on 10.08.2024, the respondent No. 8 on 07.08.2024

through Email informed the petitioner that they both got admitted in the UK and are not returning back to Bangladesh on 10.08.2024, as per the fixed Schedule. The petitioner was seriously shocked to find that the respondent No.8 took away his only child from Bangladesh to get settled in the UK by practicing serious fraud upon the petitioner by letting him to believe that they were going to the UK for a short summer vacation, like the previous years. The respondent No.8 even requesting the petitioner purchased the return-ticket to get return to Bangladesh from the UK on 10.08.2024 and she thus has deceived the petitioner.

That the petitioner took all his possible steps to convince the respondent No. 8 to return back to Bangladesh with the child. The petitioner even then went to the UK on several occasions and spent a few days there to persuade the respondent No.8 to return back to Bangladesh. But all his attempt went in vain. After travelling to London, UK on 15.07.2024, the respondent No. 8 did not allow the petitioner to have the regular access to the child in UK. The respondent No.8 with a view to create impediment to have the access to the child of the petitioner even initially resorted to the excuse that due to volatile political situation, there was lack of communication between the petitioner and the respondent No.8 and also the child. During this period, the petitioner had very limited access to his child and limited visitation was possible depending on her whim. His access to the child was permitted when she wanted to through Facetime or WhatsApp. The respondent No.8 intentionally did not allow the child to regularly use the iPad which the petitioner gifted her in October, 2024 in order to put out unlawful restriction on the access of the petitioner to his only child.

That the respondent No. 8 and the child both in the meantime have got dual citizenship of the United Kingdom and Bangladesh, whereas the petitioner is a citizen and resident of Bangladesh. The respondent No. 8 thus travels abroad with the child by using their British Passports. Therefore, the respondent No.8 can travel to the UK with the daughter of the petitioner without any hassle which is not even possible for the petitioner as a Bangladeshi citizen. Being a Bangladeshi citizen, the petitioner require to obtain Visa for travelling to the UK.

That the respondent No.8 came to Bangladesh on 22.12.2024 with the minor daughter of the petitioner for a short winter vacation with a return ticket to London as scheduled to be on 05.01.2025. To the utter shock and surprise of the petitioner, the respondent No.8 directly went to her paternal home with the child of the petitioner from Dhaka airport on 22.12.2024.

That the petitioner tried his best to convince the respondent No.8 not to go back to the UK on 05.01.2025 but without any result. During this brief period, the petitioner could meet his daughter in the Christmas Lunch hosted by the petitioner in Hotel Radisson Blu, Dhaka on 25.12.2024.

That from the activities of the respondent No.8 since in not paying heed to the repeated request of the petitioner not to go back to the UK, the petitioner got seriously apprehended that if his child can be taken to the UK again by the respondent No.8, he will not be able to meet his daughter again, in near future. In such situation, the petitioner finding no other alternative has filed the instant Writ Petition before this Court. This Court upon which vide order dated 31.12.2024 issued a Rule Nisi and directed the respondents to produce the child of the petitioner before this

Court on 08.01.2025. In the said order dated 31.12.2024, this Court also directed the respondent Nos. 1-7 not to allow the respondent No.8 to travel outside Bangladesh along with the child of the petitioner without permission from this Court.

That the respondent No.8 came to know about the said order dated 31.12.2024 as passed and on the following day in a family meeting as arranged in the house of the father of the petitioner, the respondent No.8 and her father even attended at the request of the father of the petitioner. However, the respondent No.8 regretted to the request and was adamant to go back to the UK.

MODIFICATION OF THE ORDER DATED 31.12.2024:

That after coming to know about the aforesaid order dated 31.12.2024 on 01.01.2025, the respondent No.8 got furious with the petitioner and informed the child that she would be produced before the Court on 08.01.2025. In such a way that the child became very upset and traumatized and thus after coming to know about the situation of the child, the petitioner filed an application before this Court on 07.01.2025 to modify the order dated 31.12.2024 by expunging the direction order, so far the same relates to produce the child before the Court on 08.01.2025. The petitioner filed the said application of his own for modification on 07.01.2025 only for the sake of the child to save her from the trauma.

This Court upon hearing the said application vide order dated 08.01.2025 allowed the same modifying the earlier order dated 31.12.2024 as prayed for by the petitioner, dispensing with the production of the child before this Court.

DISSOLUTION OF THE MARRIAGE BETWEEN THE PETITIONER AND THE RESPONDENT NO.8:

That the father of the petitioner on 31.12.2024 invited the parents of the respondent No.8 to his house on the next day i.e. on 01.01.2025 for having discussion of the tension in the family of the petitioner and the respondent No.8 over a cup of tea. The respondent No.8 and her father even attended the said meeting on 01.01.2025 in the house of the father of the petitioner, but no solution could be reached in the meeting. However, the petitioner and his parents were in favour of continuing the discussion and negotiation with the matter through their common family friends.

The process of conciliation between the petitioner and the respondent No.8 continued for several days. During this time, the respondent No.8 visited the house of the petitioner on several occasions, mostly in the absence of the petitioner, as the respondent No.8 had her own set of keys of the house of the petitioner. The grandmother of the petitioner in the meantime died on 02.01.2025. The respondent No.8 went to the house of the petitioner on 05.01.2025 and attended the Qulkhani of the grandmother of the petitioner. Thereafter, the respondent No.8 visited the house of the petitioner on a few occasions to collect her necessary belongings, since she could not travel to the UK on 05.01.2025.

That despite all out efforts as taken by the petitioner as well as his family members and the common friends of the petitioner and respondent no. 8 but the differences between the petitioner and the respondent No.8 could not be resolved, since the respondent No.8 was adamant to settle her in UK with the sole child of the petitioner against the will of the petitioner. All the attempts for reconciliation having been failed, the petitioner decided to divorce the respondent No.8 and accordingly a Divorce Notice was sent to the respondent No.8 in her paternal house where she was staying since 22.12.2024. The respondent No.8 received

the Divorce Notice on 26.01.2025 in her paternal residence. Thereafter, the respondent No.8 came to the house of the petitioner on 29.01.2025 and collected most of her belongings from the house of the petitioner. Since then the respondent No.8 stopped allowing the petitioner to meet with his child in private and did not allow him to spend time with the child.

That after collecting most of her belongings from the house of the petitioner on 29.01.2025, the respondent No.8 filed an application before this Court on 02.02.2025 to discharge the Rule and vacate the interim order dated 31.12.2024 as passed at the time of issuance of the rule.

However, in the said application dated 02.02.2025, the respondent No.8 did not disclose the fact that the petitioner sent Divorce Notice to her which she received on 26.01.2025. Rather in the said application dated 02.02.2025, the respondent No.8 claimed that she is residing with the petitioner under the same roof in the house of the petitioner. By the said application dated 02.02.2025, the respondent No.8 also challenged the maintainability of the Writ Petition claiming that she along with the child of the petitioner has been residing in the house of the petitioner, since 22.12.2024 and therefore, the Writ Petition being filed with a false plea on 30.12.2024, it is not maintainable.

The petitioner by filing Affidavit-in-opposition to the said application, as affirmed on 24.02.2025, controverted the allegation as made by the respondent No.8 stating *inter-alia* that after coming to know about the order dated 31.12.2024 as passed by this Court, the respondent No.8 started visiting the house of the petitioner only to frustrate the merit of the rule, but nothing else.

That at the same time, the petitioner also filed an application, affirmed on 24.02.2025, seeking to pass an order of a direction upon the respondent No.8 to allow the petitioner to meet with his child in private and to take her to the house of the petitioner for night stay claiming that after 29.01.2025, the respondent No.8 totally stopped allowing the petitioner from meeting with his only child freely and unsupervised. The respondent No.8 however by filing Affidavit-in-Opposition to the said application opposed the said prayer of the petitioner.

It is pertinent to mention that after received the Divorce Notice by the respondent No. 8, on 26.01.2025, the petitioner filed Family Suit No. 105 of 2025 before the Family Court, i.e. 5th Court of Additional Assistant Judge, Dhaka under section 5(e) of the Family Courts Act, 2023 for having the custody of the child of the petitioner. Upon receiving the notice of the said Family Suit No. 105 of 2025, the respondent No.8 filed a counter suit being Family Suit No. 187 of 2025 before the same Family Court praying for having the custody of the child by her. Both the Family Suits are now pending before the same Family Court for its disposal.

The respondent No.8 then filed an application before this Court on 26.02.2025 praying for passing an order to allow the child to go to UK for the purpose of continuing her education which the petitioner opposed by filling affidavit-in-opposition thereto on 22.04.2025.

Thereafter, the respondent No.8 filed another application in the instant Writ Petition on 18.05.2025 to allow her and the child of the petitioner to travel to the UK for education purpose and also prayed for making direction upon the petitioner to return the British Passport of the child. The petitioner opposed the said application dated 18.05.2025 by filling affidavit-in-opposition thereto on 26.05.2025. All the applications

are pending for its disposal, since the respondent No. 8 vehemently urges for disposing of the rule, expeditiously.

DEFENCE TAKEN BY THE RESPONDENT NO.8 AGAINST THE WRIT PETITION:

That the respondent No.8 by filing affidavit-in-opposition dated 11.03.2025 has contested the rule nisi as issued in the instant Writ Petition. The respondent No.8 also filed two Supplementary Affidavit-in-Opposition to the Writ Petition on 22.04.2025 and 28.07.2025, respectively.

The respondent No.8 in her affidavit-in-oppositions raised the question firstly about the maintainability of the instant Writ Petition contending *inter-alia* that since her arrival at Dhaka was on 22.12.2024 while, she was staying with the petitioner under the same roof of the petitioner house and as on the day of filing of the instant Writ Petition was on 30.12.2024 while she claimed to has been living with the petitioner in the same house with the child. The respondent No.8 produced some pictures as annexure to prove her above contention that she along with the child of the petitioner was staying with the petitioner at the time of filing of the Writ Petition. Hence, upon a false plea the writ petition being filed which is thus not maintainable, at all.

The further contention of the affidavit-in-opposition of respondent No. 8 is that a draft agreement was sent by the petitioner to the respondent No.8 on 8th January, 2025 regarding custody of his minor daughter assuring to resolve the matter amicably. Despite such initiative the writ petitioner threatening to take away the minor detenu from the respondent No. 8.

The respondent No.8 by producing some pictures to the Affidavit-in-Opposition dated 11.03.2025 raised another contention that the petitioner had travelled to the UK several times during the period from August, 2024 to November, 2024 and stayed there with the child and spent time with her and even accompanied the child to her new school in the UK. Therefore, the petitioner had sufficient regular access to his child during her stay in the UK and the petitioner consented to her admission in the new school in the UK. Even then it is an utter shock of the respondent No. 8 that while she was living with the petitioner and the child as well in the conjugal home and awaiting for resolution of the agreement but at while she on 26.01.2025 received the divorce notice as forwarded to her parental house. That was done without any regard for the physical and emotional impact, such action would have to impact on the minor child's mind who was already severally distressed by the petitioner's under refusal to allow her to return to her school and settled life in the UK with the respondent No. 8. Such action of the petitioner established a clear pattern of harassment and demonstrate the petitioner's deliberate in time to create under hardship of respondent No. 8 and to delay to settle the matter, further.

Further contention of the affidavit in opposition of the respondent No. 8 is that she being the mother of detenu Child has repeatedly proven herself as a reliance and devoted mother, fiercely committed to the best interest of her minor child; she has endured countless unwarranted battles instigated by the petitioner, whose sole intention appears to be harassment and intimidation, pressuring her to relinquish the minor detenu and to submit to his unjust demands, control and influence against the sanctity of motherhood.

More so, the respondent No. 8 made numerous attempts to reconcile with the petitioner and restore stability to their marriage. However these efforts were consistently undermined by the petitioner's indifference, hostile and aggressive behavior. The petitioner's exercised coercive control over all aspects of the life of respondent No. 8, including limiting her access to financial support and subjected her to continuous verbal and emotional abuse, regularly engaging in dismissive and humiliating behavior and remarks towards her in the presence of the minor detenu.

That the respondent No.8 in her Supplementary Affidavit-in-Opposition dated 28.07.2025 also contends that the petitioner had removed the British Passport of her child from own residence of the petitioner, even without the consent of the respondent No.8 and that the petitioner stole the British Passport of her child from the handbag of the respondent No.8 on 23.12.2024. The respondent No.8 to that extent has filed General Diary No. 2055 dated 29.12.2024 with the Gulshan Police Station, DMP, Dhaka stating that the British Passport of the child of the petitioner has been lost from the house which could not be found even after thorough search. However, searching for the said Passport is still continuing.

VISITATION ORDER AS PASSED BY THIS COURT:

That in course of opposing the application dated 24.02.2025 filed by the petitioner praying for passing a visitation order to meet his child and to spend private time with her, while the respondent No.8 filed an application on 02.06.2025 to hear the child by the Court in camera proceeding for the purpose of passing any order relating to the visitation of the child by the petitioner.

This Court eventually heard the child and the parents of her in the Court Chamber in camera proceeding on 04.06.2025. This Court after hearing the petitioner and the respondent No.8, in person as well as the child of the petitioner, namely-Sarahi Hasan Khandker on 04.06.2024 in the Court Chamber passed an order dated 04.06.2024 directing the respondent No.8 to send the child of the petitioner to his house on 05.06.2025 at 12.00 PM to stay with her father i.e. the petitioner herein till 03:00 PM. In the said order dated 04.06.2025, this Court however rejected the repetitive insistence of the respondent No.8 that she will have to accompany the child to the house of the petitioner but the Court directed that the child will be taken to the house of the petitioner by the maternal grandmother of the child and she will also bring the child back therefrom to the respondent No.8, after conclusion of the three hours visiting time there.

After passing the said order dated 04.06.2025 though once sent the child to the house of the petitioner but later the respondent No.8 invented illness of her mother and the child to avoid the compliance of the order of this Court dated 04.06.2025. The order of this Court dated 04.06.2025 was in fact a simple and short order. However, the respondent No.8 left no stone unturned to avoid the said order dated 04.06.2025.

That having failed to establish any excuses to avoid in complying the order dated 04.06.2025 of this Court, the respondent No.8 ultimately sent the child of the petitioner to his house along with her grandmother on 05.06.2025 at 03:00 PM. The child stayed there with the petitioner and her paternal grandparents and had a pleasant time with all. During this brief period, the child did not show any discomfort, either physical or mental, to stay with the petitioner in his house. After spending time with

the petitioner and her paternal grandparents, the child returned to the respondent No.8 at 06:00 PM on 05.06.2025.

The petitioner by filing a Supplementary Affidavit dated 24.06.2025 has stated the above facts in relation with the compliance of this Court's order dated 04.06.2025.

Thereafter, this Court after hearing both the grandparents of the minor child of the petitioner in the Court Chamber has passed an order on 01.07.2025 directing the paternal grandfather of the child Mr. Badrul Huda Rownak Khandker and the maternal grandfather of the child Dr. F. R. Mahmood Hasan to meet them together by 05.07.2025 at their convenience to discuss over the matter as to how the father will visit the child and how the education career of the child will be proceeded in the coming days, since the child now staying with her mother respondent No. 8 in her maternal grandfather's house.

That the main purpose of passing the order dated 01.07.2025 was to inspire both the grand fathers of the child to sit together with open mind to arrive at an amicable arrangement for visitation of the child by the petitioner and also to continue her education. Both of them even fixed the meeting place at the Space Hotel at Road No. 59, Gulshan-2, Dhaka at 05:00 PM on 05.07.2025. However, just 30 minute before the scheduled time, when the paternal grandfather Mr. Badrul Huda Rownak Khandker was on his way to the meeting venue, he received a WhatsApp SMS from the maternal grandfather Dr. F.R. Mahmood Hasan imposing several strict condition at his proposal.

That after getting such SMS from Dr. Hasan, the paternal grandfather Mr. Badrul Huda Rownak Khandker understood that the ensuing meeting has very less chances of being fruitful, since the contents

of the SMS is totally against the spirit of the entire efforts as given by the Court in passing the aforesaid order dated 01.07.2025. However, Mr. Badrul Huda Rownak Khandker met with Dr. F. R. Mahmood Hasan at the fixed time and place and sat with him. In the meeting, the ice did not melt as Dr. F. R. Mahmood Hasan was adamant and stuck to his conditions for the visitation of the child. The meeting thus ended without any amicable decision. After returning from the meeting, Mr. Badrul Huda Rownak Khandker on 07.07.2025 sent a WhatsApp SMS to Dr. F. R. Mahmood Hasan giving several alternative proposals for the visitation of the child by the petitioner.

In the meantime the respondent No. 8 has changed her pleader engaging Ms. Sara Hossain, the learned Senior Advocate by replacing her previous Senior Counsel Ms. Fawzia Karim Firose.

In such situation this Court on 28.07.2025 upon perusing the affidavit-in-opposition and the supplementary affidavits of the respective parties as filed and found therefrom that no development, so far the direction given by this Court, happened; because both the party failed to make a settlement on the visiting right of the child by her biological father and also to decide how the education career of the child will smoothly run. Even then, since the pleadings comes before the Court that the respondent No. 8 is not willing to proceed with amicable settlement of the matter, so far the visiting right of child by the biological father as well as about to proceed with the child's education here and of taking proper care of her; other than to dispose of the rule expeditiously. This Court has thus fixed the next date for passing necessary order thereto. Thereafter, the matter has been taken-up for its disposal on merit in several occasion.

Deliberations and submissions placed for and on behalf of the writ petitioner:-

Mr. Ahsanul Karim, learned Senior Counsel appearing with Mr. Md. Kayser kamal and Mr. Aminul Haque, the learned Advocate for the petitioner in support of the rule submits that the petitioner from his side even has given all efforts in taking care and proper education of the child and in return to have the visiting right of his only child but the respondent No. 8 has not only deprived him from his legal right of visiting her only child as the biological father; rather she filed a false criminal case against the petitioner alleging that the petitioner abused the respondent No.8 during their conjugal life. Ultimately, the respondent No.8 in clear terms declared that she will not allow the petitioner to meet his sole child for a single moment without her supervision. The birthday celebration of the mother of the petitioner even scheduled to be held which thus turned into a melancholy event. The family members of the petitioner, especially the paternal grandparents of the child were heartbroken not to have her even in the event as either of them may not be alive to celebrate the birthday, in the next year.

Learned Senior Counsels for the petitioner next submits that after passing the order of the Court dated 31.12.2024, the child of the petitioner could not be removed from Bangladesh to the UK with the respondent No.8. The child of the petitioner has been staying with the respondent No.8, as yet. Moreover, after removal of the child from Bangladesh on 15.07.2024 by the respondent No.8, the admission of the child in her previous school, namely-American International School, Dhaka (AISD) was cancelled. And that even if again take the child of the petitioner away to the UK, it became uncertain of her returning back in

Bangladesh, since the respondent No. 8 and the child got dual passport of their own. The respondent No.8 also is not willing to send the child of the petitioner back to any school in Bangladesh for long time. Therefore, the child of the petitioner was sitting idle in the house of the parents of respondent No.8 for a considerable period of time. As a result, the child of the petitioner was becoming bored and frustrated in living an isolated life without any friends around her. Taking that chance, the respondent No. 8 was also influencing her mind with all sorts of false accusations against the petitioner who even the biological father of the child. The respondent No. 8 was putting very bad impression in the mind of the child about her father. The respondent No.8 was portraying the image of the petitioner as a devil to his child. Keeping the child of the petitioner isolated at home without sending her to any school is very much detrimental to the physical and psychological health of the child of the petitioner.

Learned Advocate for the petitioner then contends that considering the gravity of the said situation, the petitioner arranged to get his child admitted in to Aurora International School, situated at House No. NE (A), Road No.74, Gulshan-2, Dhaka-1212 where the child of the petitioner initially started her educational carrier. As a result, the said Aurora International School and its environment are known to the child of the petitioner and it would be easy for the child to quickly cope with the environment of Aurora International School. After arranging the admission of the child in Aurora International School, the petitioner immediately informed the respondent No. 8 and requested her to send the child to the said school. However, the respondent No.8 took it to her ego and most whimsically refused to send the child to the school. Such decision of the

respondent No.8 was seriously detrimental to the development and welfare of the child of the petitioner.

Learned Senior Counsel for the petitioner next contends that in such situation, the petitioner filed an application on 24.03.2025 before the Court of 5th Additional Assistant Judge, and Family Court, Dhaka (the Family Court) for passing an order of direction upon the respondent No.8 to allow the sole child of the petitioner, namely- Sarahi Hasan Khandker to attend her previous school in Bangladesh, namely-American International School, if there is an availability and/or to start her schooling in her new school, namely-Aurora International School, situated at House No. NE(A), Road No.74, Gulshan-2, Dhaka-1212 till disposal of the Family Suit No. 105 of 2025 for the sake of securing the best interest and welfare of the child.

The respondent No.8 even initially opposed the said application of the petitioner to get the child admitted in a school in Bangladesh, however, subsequently, good sense prevailed and the respondent No.8 agreed to get the child admitted in a school in Bangladesh.

Thereafter the Court of 5th Additional Assistant Judge, and Family Court, Dhaka (the Family Court) vide order dated 13.08.2025 as passed in Family Suit No. 105 of 2025 directed the petitioner and the respondent No.8 to get the child admitted in Grace International School, Dhaka. The said order dated 13.08.2025 was passed on consent of both the parties. The petitioner took all necessary steps to get the child admitted in Grace International School, Dhaka in Grade-5 as per the order of the Court dated 13.08.2025. The petitioner paid Tk.5,67,600.00 (five lac sixty seven thousand six hundred) as the Security Deposit of the admission of the

child of the petitioner in Grace International School. The child eventually got admitted in the Grace International School on 24.08.2025.

The learned Senior Counsel then argues that there is no urgency for the time being to allow the respondent No.8 to take the child to the UK, on the false pretext of her education in the UK, since the child has been admitted, by this time, in an international standard school in Bangladesh as per the order of the Family Court dated 13.08.2025 as passed in Family Suit No. 205 of 2025 which was passed on the basis of both the party's consent. Since the admission of the child has been held in Grace International School in Dhaka on 24.08.2025, the applications filed by the respondent No.8 on 26.02.2025 and 18.05.2025 herein for allowing the child to be taken to the UK for continuing her education have become infructuous.

Learned Counsel for the petitioner next argues that the respondent No.8 and the child of the petitioner both since have the British Passport; on contrary, the petitioner is being a Bangladeshi citizen and therefore, unless there is a restriction on the travel of the child from Bangladesh to abroad without written consent of the petitioner, the respondent No.8, like before, may at any time travel to the UK with the child of the petitioner and thereby she may take away the child from the jurisdiction of the Court of law in Bangladesh during pendency of the Family Suits, even before final adjudication of the matter of custody of the child by the Family Court. If the respondent No.8 can remove the child from the jurisdiction of Bangladesh, she will never return to Bangladesh and thereby the petitioner being the biological father will be deprived from having the visiting right of his beloved only minor daughter to whom she even

sending Tk. 1,00,000/- (one lac) per month through the respondent No. 8 for maintaining her daily expenditure.

The respondent No.8 however even then filed the false criminal case in Bangladesh being C.R. Case No. 578 of 2025 before the Court of Chief Metropolitan Magistrate, Dhaka with absolutely false and vague allegation of domestic abuse which is a cunning device of the respondent no. 8 only to harass the petitioner. If the respondent No.8 can remove the child of the petitioner again from Bangladesh to the UK, the respondent No.8 may file another false criminal case of domestic abuse against the petitioner before the Courts of the UK. In such situation, the petitioner will never be allowed to visit her only child and will be debarred from entering the UK or even in getting UK Visa as well for the reason of pending criminal case against him in the UK.

Learned Senior Counsel Mr. Karim on the ground of maintainability of writ petition has referred before us the Apex Court's recent decision as passed in the case of Eriko Nakano, Tokyo, Japan Vs. Bangladesh and Imran Sharif, reported in XIX ADC(2022)-24 and upon relying which he makes force to his submission that the present habeas corpus writ as well as the rule is very much maintainable, since our apex Court entertained such habeas corpus petition from very long till the recent date and as such, the visiting right of the father-petitioner have to be given in the light of the above noted judgment passed by our apex Court. More so, our apex Court like the above noted case, in numerous cases including Abdul Jalil Case, reported in 50 DLR(AD)-55 have given the visiting right of the parents maintaining the writ petition filed to that extent.

It is therefore necessary, as per submission of the learned Counsel, to continue the travel restriction of the minor child of the petitioner along

with the respondent No. 8. The travel restriction so imposed by this Court on the child of the petitioner along with the respondent No. 8 in earlier on 31.12.2024 is thus to be continued and effective till final disposal of the Family Suit No. 105 of 2025 as being filed to have the custody of the child by the biological father, the petitioner herein which is yet pending for its disposal before the Family Court i.e. the 5th Additional Assistant Judge, and Family Court, Dhaka. And a direction to that extent, to be given by this Hon'ble Court allowing the visiting right of the child by the biological father i.e. the petitioner herein.

Submission and arguments as advanced in opposing the rule for and on behalf of the respondent No. 8.

Ms. Sara Hossain, learned Senior Counsel appearing with Mohammad Aminul Haque, learned Advocate for the respondent No. 8, at the very outset submits that since the child admittedly living with her biological mother, in that case, in no way it can be said that the child is in illegal custody. The petitioner since filed the writ petition with false plea and allegation, the rule itself should be outright discharged and the petitioner should be prosecuted for making such false allegation by way of practicing fraud upon the Court. Learned Senior Counsel for the respondent No. 8 next submits that the writ petitioner only to harass the respondent No.8 filed cases one after another, even he already filed a suit for having the custody of the child which is yet pending alongside the suit as also filed by this respondent No.8 to have the custody of her child which are yet pending before the 5th Additional Assistant Judge and Family Court, Dhaka for disposal. Whereas, the petitioner by this writ petition during pendency of the said suits has taken a dilatory tactic seeking for visiting right of the child, even against her will. The respondent

No. 8 along with her child are very much afraid of the aggressive behaviour of the petitioner who may cause any danger to their life and asset and as such, they have to leave the country to the UK for the betterment and also getting proper education of the child therein.

Learned Counsel for the respondent No. 8 also submits that the petitioner has visited the respondent and the child in UK several times who travelled there and stayed together with them and that their travelling tickets also arranged by the present petitioner; whereas even then by describing false facts with a guilty mind the present writ petition has been filed as and when this respondent and the child were staying with the petitioner under the same roof. Thus the petitioner only to harass the respondent No. 8 but nothing else has filed the present writ petition and obtained the rule with a false plea which thus liable to be discharged for securing ends of justice.

Learned Counsel for the respondent no. 8 then takes to our notice that the writ petitioner himself divorced the respondent No. 8, at while she was even staying in the same house with the petitioner under the same roof and thus the rule being obtained relying on a false plea, it should be outright discharged.

Learned Senior Counsel finally submits that the writ petitioner has/had very much access to the child in all time through video calls on iPad and iPhone, even while the child was in London, UK prior to 22.12.2025 with the respondent No.8 as it very much reflects and evident from the screenshots of messages as annexed with the affidavit-in-opposition. And that the child while staying in Bangladesh has/had visited the petitioner's home and stayed there several times with him whenever she likes; so the allegation as made in the writ petition is totally

baseless and the statements made thereto very much concocted. Therefore, the present rule since obtained upon relying on such false claim, it is not maintainable in the eye of law and thus it liable to be discharged with cost.

Learned Senior Counsel for the respondent No. 8 in support of her above submissions has referred before us a single Bench Judgment passed by the Allahabad High Court of India in the case of Mithilesh Maurya and others Vs. State of U P and others and an unreported judgment passed in our jurisdiction in writ petition No.8667 of 2009, in the case of Kazi Fariduzzaman Vs. Farzana Hasan alias Mipu wherein a Division Bench of this Court as well as the Allahabad High Court discharged similar rules holding that to redress the petitioner's grievances only forum is the Family Court but not exercising the extraordinary prerogative Jurisdiction of the High Court Division in the form of habeas corpus writ petition.

Senior Counsel Ms. Hossain in support of her contention also relied upon the case of Abdul Jalil and others Vs. Sharon Lily Begum Jalil, reported in 50 DLR(AD)(1998)-55 in which their Lordships of the Appellate Division dismissed the appeals without cost, even by making some observation and finding therein.

Upon relying on the decisions above, the learned Senior Counsel for the respondent No. 8 urges for discharging the present rule with a direction upon the Family Court concern to dispose of the Family Suits, expeditiously and in accordance with law.

Finding and decision of the Court:-

This Bench even had tried to hold an amicable settlement over the dispute arose between the parties, in respect of having the visiting right of the child by the biological father keeping in mind the declaration of the United Nations General Assembly as held in 1959 on the Rights of the child – wherein proclamation made that the best interest of the Child to be the paramount consideration and fortunately in later our Guardian & Wards Act in section 17 has included the same provision. But the said initiative of this Bench being failed and as such, we have taken-up the matter for its disposal on merit in presence of the respective party.

The first and prime argument of the respondent No. 8 has been though made that the rule itself is not maintainable, as because the habeas corpus writ does not lie on the subject matter; but our Apex Court in many cases like the Abdul Jalil Case (50 DLR(AD)-55), even dismissed the appeal, but their Lordships of our Apex Court had made therein some observation amongst others that-

“The father will have the right to visit the children at a conveniently agreed time, place and period on not more than three occasions in a week.”

But in no where their Lordships of our Apex Court in the Abdul Jalil Case (50 DLR (AD)-55) nor in Akhtar Masood case (50 DLR(AD)-14) and even in the recent decision passed in the Eriko Nakano Case (XIX ADC (2022)-24) held that the habeas corpus writ does not lie in a case where even the suit pending before the Family Court praying the custody of the minor child. However in the Abdul Jalil Case (50 DLR(AD)-55), our Apex Court (at paragraph-33) observed that the aggrieved party has the right to move High Court Division under Article 102 of the Constitution for immediate custody of the children which may be ordered in the interest and for welfare of the children. Thus we are unable to hold the view that

the writ does not lie where visiting right sought for by filing habeas corpus petition under Article 102 of the constitution.

Admittedly, the parties are already before a Family Court i.e. the 5th Additional Assistant Judge, Dhaka by filing Family Suit No. 105 of 2025 by the father of the child and Family Suit No. 187 of 2025 as filed by the mother, respondent No. 8 seeking to have the custody of their minor child namely- Sarahi Hasan Khandker, aged about 9 (nine) years plus which have not get much progress because of pendency of the present rule. It will be the appropriate forum, in our opinion, where the parties can usefully lead evidence and the Court will be at a greater advantage to decide the question of custody on the principles which we have taken some pains purposely to allude as above without burdening this judgment with disputed facts and dark apprehension expressed by the petitioner and the respondent No. 8 against each other who by this time, has been separated themselves by sending the divorce notice. Even then the petitioner-father, pending the Family Suit, insisted for an ad-interim order to get the visiting right of his minor child who admittedly now residing in a separate place with her mother, respondent No. 8 i.e. in her parent's house by agitating the ground of immediate necessity of care and affection.

The Court must look into the best interest of the minor child. It was thus held by our apex Court in the case of Abu Bakar Siddique Vs. SMA Bakar, reported in 38 DLD (AD)-106 that welfare of the child would be best served, if his/her custody is given to a person who is entitled to such custody. In that case only the Family Court has the jurisdiction to settle the question of custody of a minor child. The Family Court will look into

the case as referred by the parties therein and then come to a finding in whose custody serve the welfare and betterment of the minor child.

We have already indicated that the dispute between the parties as to the custody of the children should be decided upon taking evidence but even then it is our human concern which impels us to make some provisional orders without causing any prejudice to the parties concerned. It is heartening to note the both side expressed genuine concern for the interest and welfare of the children.

We are parting with this case still with hope which eluded us here that it may be possible for the parties to come to a workable understanding for the benefit and welfare of the children who is too precious for any bargain to both of them. As for the present, we propose to make an interim order as best as possible under the circumstances of the case upon disposing of the present rule, even without touching to the merit of the family suits as yet pending before the 5th Additional Assistant Judge, Dhaka for its disposal.

Under the prevailing circumstances of the case, we are at one with the decision passed by our Appellate Division in the case of Abdul Jalil and others Vs. Sharon Lily Begum Jalil, reported in 50 DLR(AD)(1198)-55 holding that- *“The father will have the right to visit the children at a conveniently agreed time, place and period on not more than three occasions in a week. In case of any disagreement, the parties will be free to seek necessary direction from the Family Court. And that the minor child of the petitioner will not be taken out of the jurisdiction of this Court save and except with the leave of the Court. Till disposal of the Family Suits the child will have to remain with her mother, respondent No. 8 within the jurisdiction*

of the Family Court i.e. the 5th Additional Assistant Judge and Family Court, Dhaka.

The Family Court concerned i.e. the 5th Additional Assistant Judge, Dhaka is thus directed to dispose of the Family Suit No. 105 of 2025 and 187 of 2025 as filed for having the custody of the child, as expeditiously as possible and in accordance with law. However, this judgment, in no way, will affect the merit of the Family suits, as now pending between the parties, before the aforesaid Family Court.

With the above observation and direction the rule is disposed of.

Communicate this judgment and order to the parties concerned and the Family Court Concerned, at once.

Foyej Ahmed, J:

I agree.