

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

WRIT PETITION NO. 17862 OF 2025

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Md. Nur Hossain

.....Petitioner

-VERSUS-

Bangladesh and others

..... Respondents

Mr. N K M Nazmul Hassan, Advocate

..... For the Petitioner

Mr. Khan Ziaur Rahman, D.A.G with

Mr. Mohammad Abdul Karim, D.A.G with

Mr. Khorshed Alam (Selim), A.A.G with

Mr. Md. Ujjal Hossain, A.A.G with

Mr. Rayhanul Islam, A.A.G and

Mr. Md. Husni Mubarak (Rocky), A.A.G.

.....For the Respondents

Present:

Justice Md. Bazlur Rahman

And

Justice Urmee Rahman

Heard on 10.12.2025 and
Judgment on 11.12.2025

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102(2) of the Constitution of the People's Republic of Bangladesh

calling upon the respondents to show cause as to why the detention of Mohammad Nure Habib @ Nur Habib Nur, son of Nurul Haque should not be declared to have been made without lawful authority and is of no legal effect and why the said detenu should not be directed to be produced before this court to be dealt with in accordance with law and why such other or further order or orders should not be passed as to this Court may seem fit and proper.

The fact necessary for disposal of the instant Rule is that, on 08.10.2025 the detenu was taken into custody by police in reference to a detention order dated 10.09.2025 passed by the respondent No. 2 that is the Deputy Secretary, Public Security Division, Political Branch to Ministry of Home Affairs, vide Memo No.44.00.0000.075.10.011.2025-784, annexed as Annexure-A, which is impugned herein. It appears from the impugned order dated 10.09.2025 that an order was passed under the signature of the Deputy Secretary of the Ministry of Home Affairs in the manner that, the present detenu needs to be arrested for public interest in order to refrain him from getting involved in any kind of activities subversive to law. It was further ordered that, he should be held in custody in the Rangpur Central Jail for 60 (sixty) days from the date of arrest. It has been stated in the application that, the detenu Mohammad Nure Habib @ Nur Habib Nur @ Md. Nur Habib, son of Md. Nurul Haque was taken into custody by the police on 08.10.2025.

At the very outset Mr. N. K. M. Nazmul Hassan, Advocate appearing on behalf of the petitioner submits that, the detenu-petitioner is a government employee as office assistant of Haragach Pouashava, Haragach, Rangpur; he is a law abiding and peace loving citizen, has never been involved in any anti-state or subversive activities against the state and no criminal case is pending against him. Learned Advocate submitted that the detenu is under detention of the authority based on mere surmise and conjecture and the same is contrary to the provision of Article 33(5) of the Constitution as well as Section 8(2) of Special Powers Act 1974. According to Article 33 (5) of the Constitution the authority is liable to communicate the grounds on which the order has been made as soon as possible and as per the provision of Section 8 (2) of the Special Powers Act 1974 it is a mandatory legal requirement that a detenu should be communicated with the grounds for his detention within 15 days. In the instant case the detenu has not been communicated with any grounds of his arrest by the authority making the order since the date of detention till date. He finally submitted that, the detention order has been made contrary to the legal provisions and as such the act of the respondents in detaining the petitioner is liable to be declared to have been made without lawful authority having no legal effect. He also prays for a direction upon the respondents to release him at once.

It appears from the record that the instant Rule Nisi was issued on 16.11.2025 and notice was served upon all the respondents through special messenger and upon service of notice duly on all of them the case was ready for hearing and the matter appeared in the list for hearing before this bench following the order dated 07.12.2025.

No one appears to oppose the Rule.

We have heard the learned Advocate, perused the writ petition and the documents annexed therewith. It transpires from the impugned order, Annexure-A to this writ petition, dated 10.09.2025 that, the Deputy Secretary of Ministry of Home Affairs passed the order directing the law enforcing agency to arrest Mohammad Nure Habib @ Nur Habib Nur @ Md. Nur Habib and ordered him to be detained in Rangpur Central Jail for 60(sixty) days from the date of arrest. It also appears from the impugned order that no specific reason or ground has been mentioned for making such order of arrest.

Article 33(5) of the Constitution has given every citizen of this country a fundamental right to be informed of the reason of his arrest at the earlier opportunity. For better understanding Article 33(5) is quoted below:

“When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the

grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order;”

Furthermore Section 8(2) of the Special Powers Act, 1974 provides in this regard that:

“In case of detention order, the authority making the order shall inform the person detained under that order of the grounds of his detention at the time he is detained or as soon thereafter as is practicable, but not later than fifteen days from the date of detention.”

In the instant case the petitioner has not been communicated with any ground of his detention what so ever since the date of detention till date and at the time of hearing of this matter the respondents have not come forward by filing any affidavit in order to explain the reason of their act of such kind. It has been settled by many earlier decisions by the apex court of this country that in absence of any written reply by the respondents the appellant’s contention that the grounds were not served on the detenu beyond statutory period prescribed in Section 8(2) of the Special Powers Act, 1974 and that the detenu was deprived of his right to make an effective representation before the authority remained unchallenged and therefore inference against the respondents can be made in this regard. In the case of ***Habiba Mahmud Vs. Bangladesh*** reported in **45 DLR (AD) 89** it has been held that, in such a circumstance the

detention would be held unlawful, illegal and without any lawful authority.

As per Section 3(3) of the Special Powers Act, 1974, when an order of detention is made under sub section (2) of this Act, the authority making the order shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than thirty days after the making thereof unless in the meantime it has been approved by the Government.

In the present case the detenu Mohammad Nure Habib @ Nur Habib Nur @ Md. Nur Habib has been detained for over 63 days from the date of detention and no such action has been taken by the authority making the order.

It is also a settled principle that preventive order of detention must strictly adhere to the procedural safeguard prescribed under the Special Powers Act, 1974 and the basic mandate enshrined in Article 33 of the Constitution. Any deviation therefrom vitiates the detention order from its inception.

In view of the facts and circumstances discussed herein above and considering the existing provisions of law, we are of the opinion that the detention being against the provisions laid down in the Constitution as well as Section 8 (2) of the Special Powers Act, 1974, the detention order

has been passed without any lawful authority and therefore of no legal effect.

Hence it is ordered that, the detenu Mohammad Nure Habib @ Nur Habib Nur @ Md. Nur Habib shall be released from the custody in Rangpur Central Jail at once upon receiving this order unless he is wanted in connection with any other legal case.

In the result, the Rule is made absolute.

However, without any order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities concerned at once.

Md. Bazlur Rahman, J:

I agree.