

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

WRIT PETITION NO. 21234 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:

Rubel Ahmed Pabel

.....Petitioner

-VERSUS-

Government of Bangladesh and others

..... Respondents

Mr. Dewan Abdun Naser with
Md. Sarwar Alam, Advocates

..... For the Petitioner

Mr. Md. Ershadul Bari Khandakar, D.A.G with
Ms. Nilufar Yesmin, A.A.G with

Mr. Md. Moshir Rahman (Rahat), A.A.G with

Mr. Md. Motasim Billah Parvez, A.A.G with

Mr. Md. Faridul Islam, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 07.01.2026 and
Judgment on 12.01.2026

Urmee Rahman, J:

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

calling upon the respondents to show cause as to why the order of detention of the detenu as contained in Memo No. 44.00.0000.075.10.014.2025-699 dated 25.08.2025 (Annexure-C) issued by the respondent No. 3 under Section 3(1) of the Special Powers Act, 1974 directing to detain the detenu in Sylhet Central Jail, Sylhet for a period of 60 (Sixty) days from the date of issuing of the order and thereafter, extended the same for a period of 90 (ninety) days from 24.10.2025 through Memo No. 44.00.0000.075.10.14.2025-933 dated 14.10.2025 (Annexure D and D-1) issued by the respondent No. 3 should not be declared to have been passed without lawful authority and is of no legal effect and as to why the detenu should not be brought before this Court so that it may satisfy itself that said detenu is not being held in custody without lawful authority or in an unlawful manner and/or such other or further order or orders passed as to this Court may seem fit and proper.

The fact necessary for disposal of the instant Rule is that, the detenu Ansar Ahmed Ruhul was arrested on 07.11.2024 by the Law Enforcing Agencies from his residence in connection with Shahporan (Rah.) Police Station Case No. 15 dated 28.08.2024 corresponding to G.R. No. 212 of 2024 under Sections 143/341/348/323/325/307/385/506 of the Penal Code 1860. Thereafter he was produced before the learned Chief Metropolitan Magistrate, Cognizance Court No. 03, Sylhet and the learned Magistrate sent him to the Sylhet Central Jail, Sylhet. In this case

he was enlarged on bail by the order dated 04.02.2025 (Annexure-B). On 25.08.2025 the present detenu had been served with an order of detention containing memo no. 44.00.0000.075.10.014.2025-699 dated 25.08.2025 issued by the Respondent no. 3 under Section 3(1) of the Special Powers Act, 1974 directing to detain him in Sylhet District Jail for a period of 60 (sixty) days from the date of service in order to prevent him from doing prejudicial activities to the law and order situation (Annexure-C). This order of detention was further extended for 90 (ninety) days by the memo dated 14.10.2025 (Annexure-D-1).

Mr. Dewan Abdun Naser, with Mr. Md. Sarwar Alam, Advocates appearing on behalf of the petitioner at the very outset submitted that, the detenu never acted in a manner as stated in the detention order and grounds of detention and he has never been involved in any activities prejudicial to the law and order situation. He further submitted that, the order of detention and the grounds of detention are vague, unspecified and there are wants of material particulars and there is no nexus between the order of detention and the grounds thereof.

He finally submitted that, the detention order is illegal since it has been made beyond the scope of the provisions of Special Powers Act, 1974 and the detenu is being held in custody in an unlawful manner. Therefore he prayed that the order of detention is liable to be declared to have been made without lawful authority having no legal effect.

Learned Deputy Attorney General Mr. Md. Ershadul Bari Khandakar represented the Respondent No. 1 and contested the Rule by filing an affidavit in opposition.

Learned Deputy Attorney General emphatically submitted that, the detenu is a habitual offender known as ‘Ansar Shooter’ in his locality; there are as many as ten criminal cases are pending against him. In all the cases he is FIR named accused. Out of these ten cases six are under Explosive Substance Act, 1908 and one under Arms Act, 1878 with the allegation of having physical possession of arms. Charge sheet was given against him in all the cases; however, he is on bail in nine cases out of ten. He submitted that the detention order was lawfully issued under Section 3 of the Special Powers Act to restrain him from doing prejudicial acts. The detenu was communicated with the grounds after detention and as such no illegality has been committed.

We have heard the learned Advocates for the petitioner and the learned Deputy Attorney General for the Respondents, perused the writ petition, affidavit in opposition and the documents annexed therewith.

It appears from the impugned order, Annexure-C to this writ petition, dated 25.08.2025 that, the Senior Assistant Secretary of Ministry of Home Affairs passed the order directing the law enforcing agency to detain Mr. Ansar Ahmed Ruhul, son of Unai Mia in Sylhet Central Jail for 60(sixty) days from the date of the order. In the impugned order it has been stated that it is necessary to detain him in order to refrain him from

doing any prejudicial acts to the law and order situation and for public interest.

From the Annexures II-1 and II-2 to the affidavit in opposition it transpires that by the memo dated 07.08.2025 the Officer in Charge of Shaparan (Rah.) Police Station, Sylhet Metropolitan Police informed the Police Commissioner, Sylhet that, there are about ten criminal cases pending in the name of the present detenu Ansar Ahmed Ruhul and he has obtained bail in nine of them and is in custody in reference to Sylhet Shahporan (Rah.) Police Station Case no. 26 dated 22.09.2024 under Sections 143/148/307/326/506/114 of the Penal Code and also under Sections 3/4 of the Explosive Substances Act 1908. It is also stated in that letter that he is a dangerous terrorist type person and poses threat to the society and if he is enlarged on bail, the law and order situation of the locality will be at jeopardy. As such it was requested that in order to refrain him from doing any criminal act, he may be detained under Section 3(2) of the Special Powers Act 1974 for public interest.

Upon receiving this letter, the Deputy Police Commissioner, CTSB, Sylhet Metropolitan Police, Sylhet by the letter dated 13.08.2025 (Annexure II-2) informed the Senior Secretary, Public Safety Department, Ministry of Home Affairs that, this person is widely known for his criminal activities and is a terrorist. He was arrested on 07.11.2024 and now is in custody in reference to Shahporan (Rah.) Police Station Case No. 06 dated 05.09.2024 under Sections 143/323/324/326/307/114 of the

Penal Code and also under Sections 3/4 of the Explosive Substances Act 1908. However, there is an apprehension that he might be enlarged on bail at any time and as such it was requested that an order of detention may be passed against him under Section 3(1) of the Special Powers Act 1974, in order to refrain him from doing any criminal activities and for the sake of public interest and safety.

Accordingly the impugned order of detention was issued on 25.08.2025 by the Senior Assistant Secretary.

In this context relevant part of Section 3 of Special Powers Act, 1974 is quoted below:

*“3. Power to make orders detaining or removing certain persons- (1) The Government may, **if satisfied** with respect to any person that with view to preventing him from doing any prejudicial act it is necessary so to do, make an order-*

(a) directing that such person be detained

(b).....”

Therefore subjective ‘satisfaction’ is a mandatory condition precedent while making any order of detention under this Section.

In the instant case we have seen that pendency of specific criminal cases have been used as grounds of detention. In the case of ***Habiba Mahmud Vs. Bangladesh*** reported in ***45 DLR (AD) 89*** it was held by the

apex court that, “pendency of a criminal case or cases involving petty offences, far removed from "prejudicial act," as defined in the Act, can neither be a basis for reasonable apprehension or satisfaction for making an order of detention. But where the allegations are of serious nature the detaining authority may consider them and, despite the pendency of a criminal case, can make an order of detention if it is satisfied that the detenu is to be prevented, in view of his background, from indulging in prejudicial activities.”

However, in the instant matter the detenu was already in custody in reference to a specific criminal case and the authority apprehended that the accused may be enlarged on bail at any time and as such they prayed for issuance of a detention order. The authority even subsequently extended the detention order for further 90 (ninety) days on the basis of the same ground of apprehension. A mere apprehension cannot be construed as subjective ‘satisfaction’ as has been referred to in the Act. When an accused is arrested in relation to a specific criminal case and is very much in custody, it is nothing but colorable use of power to issue a detention order under the Special Powers Act, 1974 on the basis of the apprehension that he might get bail at anytime.

In view of the facts and circumstances discussed herein above and considering the existing provisions of law, we are of the opinion that the impugned detention order being against the provisions of the Special Powers Act, 1974, the detention order and the extension thereto has been

passed without any lawful authority and therefore of no legal effect and accordingly the detention of the detenu under the Special Power Act, 1974 is declared to be unlawful. He is therefore directed to be released unless he is wanted in relation to any other cases pending against him.

We therefore find substance in the Rule and with the observation made herein before the Rule is made absolute.

However, without any order as to cost.

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

Sashanka Shekhar Sarkar, J:

I agree.