

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

**(CRIMINAL REVISIONAL
JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1073 of 2007

Rafiqul Islam Murad

.....Convict Petitioner

-versus-

The State

.....Opposite Party

No one appears

.... For the convict petitioner

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG with

Ms. Nargis Parvin (Alija), AAG

....For the State

Heard on 21.06.2026

Judgment delivered on 02.02.2026

On an application under sections 439 and read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 17.05.2007 passed by

Sessions Judge, Netrokona in Criminal Appeal No. 08 of 2007 affirming the judgment and order of conviction and sentenced dated 31.01.2007 passed by Magistrate, First Class, Druta Bichar Adalat, Netrokona in Aatpara P.S. Case No. 2(12) 2006 corresponding G.R. No. 402(2) of 2006 and T.R. No. 10 of 2006 convicting the petitioner under section 4 of the আইন-শঙ্খলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1000, in default, to suffer imprisonment for 3 (three) months, should 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's case, in short, is that on 06.12.2006 at 1.15 pm, the convict petitioner Rafiqul Islam Murad instructed the informant to come out of his shop situated at Khaluabazar of Aatpara Thana. When the informant came out of his shop, the convict petitioner demanded Tk. 10,000 pointing a revolver. When he refused to pay the subscription, the accused tried to snatch away Tk. 8000 from his pocket. At that time, hearing the hue and cry of the informant, the neighbours came to the place of occurrence and detained the accused with a revolver. After that, the matter was reported to the police. Subsequently, the police came to the place of occurrence and detained the accused along with the arms.

During investigation, the investigating officer visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the

Code of Criminal Procedure, 1898 and after completing investigation found prima facie truth of the allegation against the convict petitioner and submitted charge sheet under section 4 of আইন-শুজলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ on 14.12.2006 against him.

During trial, the Magistrate, First Class, and Druta Bichar Adalat, Netrokona framed charge on 20.12.2006 against the convict petitioner Rafiqul Islam Murad under section 4 of the আইন-শুজলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২, which was read over and explained to him, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 11 witnesses to prove the charge against the convict petitioner, and the defence cross-examined the prosecution witnesses. After examination of prosecution witnesses, the convict petitioner was examined under section 342 of the Code of Criminal Procedure, 1898, and he declined to adduce any DW.

After concluding the trial, the Magistrate, First Class and Druto Bichar Adalat, Netrokona, by judgment and order dated 31.01.2007, convicted the accused Rafiqul Islam Murad under section 4 of the আইন-শুজলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentenced him thereunder to suffer rigorous imprisonment for 2 (two) years and a fine of Tk. 1000, in default, to suffer imprisonment for 3 months, against which the convict petitioner filed Criminal Appeal No. 8 of 2007 before the Sessions Judge, Netrokona, who by impugned judgment and order dated

17.05.2007 affirmed the judgment and order passed by the trial court, against which the convict petitioner obtained the Rule.

P.W. 1 Abu Hanif is the informant. He stated that on 06.12.2006 at 01.15 pm, the accused Rafiqul Islam Murad instructed him to come out of his shop. When he came out of his shop, the accused Rafiqul Islam Murad, pointing a revolver at him, demanded Tk. 10,000. He refused to pay the said amount and raised hue and cry, and the locals assembled at the place of occurrence and reported the matter to the police. Thereafter, the police came to the place of occurrence and detained the accused along with a pistol. P.W. 1 proved the pistol as a material exhibit. He proved the FIR as exhibit-1 and his signature on the FIR as exhibit-1/1. During cross-examination, P.W. 1 admitted that the accused is the owner of the shop in front of the school, and he also affirmed that he and the accused Rafiqul Islam Murad are inhabitants of the same village. He did not demand any money earlier. Except he, no one heard about the demand for subscription. He made an attempt to snatch away the money from the pocket of the informant. The shop of Hafiz Mia is situated on the west side of his shop, and the shop of Babul is situated on the east side of his shop. The shops of Hashem and Khokan are also there. They were not present on that day in their shops. They were not cited as witnesses in the case. He admitted that her younger sister Popi, and Dolly are unmarried. He could not say as to whether the accused demanded subscription to any other person. The bazar is situated near the house of Bulbul

Chowdhury and Sohel. The accused instructed him to come out of his shop. Habibur Rahman and Ful Miah reported the matter to the Thana over the mobile phone. He came to his shop by bicycle, keeping the bicycle in the middle of the market. House of Selim is situated in front of his shop, but he is not cited as a witness in the case. He admitted that his sister-in-law Ripon is the owner of the shop. After hearing the hue and cry, Selim came first, and subsequently, others came to the place of occurrence. The accused was detained. He did not see the person who detained the accused. He was present at the bazaar at the time of the occurrence. Habibur Rahman is his uncle. There are 14/15 shops in the bazaar, and other shopkeepers are not the witness of the case. The accused is not previously known to him. At that time, the defence drew the attention of P.W. 1, showing a picture, and he admitted that his sister is appearing in the picture, but he could not identify the boy who was standing along with his sister. The picture was proved as material exhibit 'A'. He denied the suggestion that there was an affair between his sister Dolly and the accused, or that his sister and the accused are appearing in the picture, or that, due to an affair between the accused and his sister Dolly, he filed a false case against the accused, collecting a pistol.

P.W. 2 Md. Selim Kha stated that the informant and the accused are known to him. The occurrence took place on 06.12.2006, Wednesday at 01.15 pm. At that time, he was present at the bazaar. Hearing a hue and cry, he went to the shop. Hanif told him that the accused demanded Tk. 10,000 as a

subscription, but he refused to pay. At that time, the accused was detained. He, along with Kanchon and Osman, went to the place of occurrence. Hanif informed that the accused was carrying a pistol. After detaining the accused, Habibur, and he reported the matter to the police over the telephone. Thereafter, the police came to the place of occurrence and detained the accused. He proved his signature on the seizure list as Exhibit 2. The occurrence took place on 6th December. He could not remember the year. At that time, he was present in the tea stall of Mafiz. The father of the informant is his cousin. Many people were also present in the tea stall. Osman, Bahar, Kanchon, and many other people were present there. Hearing the hue and cry, instantaneously, he went to the place of occurrence. The accused was previously known to him. Earlier, there was no allegation of demanding subscription against the accused. He did not hear about the demand of subscription. He did not make any statement to the Magistrate regarding the demand of subscription. The arm was recovered from the bazaar. The accused was detained in front of the house of Ful Miah while he was standing. The police recovered the accused from the tea stall of Mafiz. He could not remember the statement made to the Magistrate. He is not aware whether the accused had given a proposal to marry Dolly. He is also not aware of the affair between Dolly and the accused. He denied the suggestion that, due to an affair between the accused and Dolly, the case was filed against him.

P.W. 3 Habibur Rahman Khan @ Fulmia stated that the informant and the accused are known to him. The occurrence took place on 06.12.2006 at 1.00/01.15 pm on Wednesday. He was present in his fertilizer shop. Suddenly, hearing hue and cry, he came out from his shop and saw that a scuffling took place between the accused and Hanif. The accused demanded Tk. 10,000 to Hanif. Hanif raised hue and cry. The accused pointed a pistol. The accused was detained in his shop. Subsequently, the police detained the accused. He proved his signature on the seizure list as exhibit-2/1. During cross-examination, he stated that the house of Kanchon is situated on the west side of his shop. His shop was closed. The house of Hashem and Khoka was opened. He did not hear about the demand of subscription. He did not see that the accused pointed a dagger at the informant. At the time of occurrence, 10/15 persons were present. Osman, Selim, Kanchan, Sabuj, and others were present there. There were about 200/250 people at the place of occurrence when the police arrived. The accused was detained in front of his shop. The arm was recovered from in front of the shop. The shop of Kanchon is situated along with his house. He admitted that Dolly and the accused are appearing in the picture. He is not aware whether there was any affair between them. He denied the suggestion that, due to an affair between the accused and Dolly, a false case was filed. He also denied the suggestion that he deposed falsely.

P.W. 4 Md. Osman Gani stated that the accused and the informant are known to him. The occurrence took place on

06.12.2006, Wednesday at 1.15 pm. Hearing hue and cry, he went to the place of occurrence and saw the arms in the hand of the accused Murad. He, along with others, detained the accused in the shop of Habibur Rahman. Thereafter, the police came and detained the accused. He proved his signature on the seizure list as Exhibit 2. He did not hear that the accused demanded a subscription. He is not aware of the cause of the quarrel.

P.W. 5 Sabuj Kha stated that the informant and the accused were known to him. The occurrence took place on 6th December at 01.15 pm. Hanif raised hue and cry. He saw that the accused tried to snatch away Tk. 8,000 from him. At that time, Selim, Osman, Kanchon, and Ful Miah were present there. The accused was detained along with the arms. He saw the arms. Habibur Rahman detained the accused. Subsequently, the police came and arrested the accused. After hearing the hue and cry, he did not see the money in the hands of the accused.

P.W. 6 Kanchon Kha stated that the accused and the informant are known to him. The occurrence took place on 06.12.2006. He went to the bazaar. Suddenly, he heard the hue and cry of Hanif and went there by running. Hanif informed him that, pointing an arm, Rafiqul Islam Murad demanded subscription. He did not see the occurrence. It was said that Tk. 10,000 was demanded. The accused was detained in the shop of Habibur Rahman. Subsequently, the police came and detained the accused. He and the informant are also residents of the same village. The informant is his cousin. Hearing the hue and cry,

he went to the place of occurrence. The accused was detained at 2.30/3.00 pm. He is not aware of the affair between the accused and the sister of the informant. He denied the suggestion that, due to an affair between the accused and the sister of the informant, the accused was falsely implicated in the case or that he deposed in a false case.

P.W. 7 A. Wahab stated that the occurrence took place on 06.12.2006 at 1.15 pm. He was discharging his duty in the Madrasha. At that time, hearing hue and cry, he went to the place of occurrence and saw the people in the shop of Habiubur Rahman, and saw that Rafiqul Islam Murad was encircled there. He saw that an arm was recovered from the accused Rafiqul Islam Murad. Thereafter, he went to the Madrasha. He heard that after recovery, the arms was kept in possession of Selim. He did not hear that the accused demanded a subscription. The Madrasha is situated beside the bazaar.

P.W. 8 Lukuj Ali Khan stated that the occurrence took place on 22nd Agrahayon last year. Hanif snatched away the arms from the accused Murad and detained him. After the occurrence, the police came to the place of the occurrence. During cross-examination, he stated that he is also the shopkeeper of the bazaar. He did not hear that the accused demanded a subscription. He did not hear about the handing over arms from the hand of the accused. He saw that the accused was detained. He found that Osman carried the arms

and handed over to the police. He did not hear that the accused demanded a subscription.

P.W. 9 Kamrul Islam is the Constable No. 878. He stated that he heard over the phone that a man was detained with arms. He saw that the accused was detained in the shop of Habibur Rahman. The arms was seized. He went to the place of occurrence and saw that the accused was confined in the shop of Habibur Rahman. He could not say whether the arms was recovered from Osman Gani. It was seized from the accused. He heard about the demand of subscriptions from the people.

P.W. 10 Constable, Md. Jahangir Alam stated that on 06.12.2006, he received information that the accused was detained along with arms in the bazaar. He, along with the force, went to the bazaar. The accused was taken to Thana along with the arms. The accused was detained in front of the shop of Solaiman. The informant is not known to him.

P.W. 11 S.I. Arifur Rahman is the investigating officer. He stated that on 06.12.2006, he received the information that the accused was detained along with arms. He went to the bazaar and found the accused in front of the house of Habibur Rahman. He was detained with arms. S.I. Ramjan interrogated the accused. He was appointed as the investigating officer. After the investigation, he submitted charge sheet. He proved the sketch map as exhibit-3 and his signature as exhibit-3/1. He proved the charge sheet as exhibit-4 and his signature as exhibit-4/1. The signature of S.I. Ramjan is known to him.

Rajab Ali prepared the seizure list (Exhibit-7). He proved the sketch map as Exhibit 1. He proved the signature of Rajab Ali as material exhibit-1/1. He did not record the statements of Nadim and Selim. He only recorded the statements of Habibur Rahman and Kanchon. They did not detain the accused. During the investigation, he did not find that the accused also demanded subscription earlier. He denied the suggestion that during the investigation, the demand for subscription was not proved. He affirmed that the PCPR of the accused is nil. He denied the suggestion that the accused was falsely implicated in the case.

No one appears on behalf of the convict petitioner.

The learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Ms. Nargis Parvin (Alija) on behalf of the State, submits that the convict petitioner demanded subscription of Tk. 10,000 to P.W. 1 Md. Abu Hanif, pointing a pistol, and when he raised hue and cry, P.Ws 3 to 8, the shopkeepers of the bazaar assembled at the place of occurrence and detained the accused along with the arms. During the trial, prosecution witnesses corroborated evidence of P.W.1 regarding the demand of subscription and proved the charge against the accused beyond all reasonable doubt, and both the courts below, on correct assessment and evaluation of the evidence, legally passed the impugned judgment and order. He prayed for discharging the Rule.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared along with the learned Assistant Attorney General Ms. Nargis Parvin (Alija) on behalf of the state, perused the evidence, impugned judgments and orders passed by the courts below, and the records.

On perusal of the evidence, it appears that the occurrence took place on 06.12.2006 at about 1.15 pm in the shop of P.W. 1 at Khalua bazaar, Atpara. In the FIR, it has been alleged that the accused Rafiqul Islam Murad came to the shop of P.W.1 and instructed him to come out of the shop, and the accused, having brought out a revolver from his waist, pointed to P.W. 1 and demanded Tk. 10,000 failing, which he threatened to kill him. When he refused to pay the subscription, the accused made an attempt to snatch away Tk. 8,000 from his pocket. P.W. 1 did not say that the accused attempted to snatch away Tk. 8000 from his pocket. Furthermore, Tk. 8000 is not seized and proved in the case.

The investigating officer (P.W. 11) admitted in cross-examination that, except Habibur Rahman and Kanchon, he did not interrogate any other witnesses. Habibur Rahman is examined as P.W. 3, and Kanchon is examined as P.W. 6. Therefore, it is clear that P.Ws 2, 4, 5, 7, and 8 did not make any statement under section 161 of the Code of Criminal Procedure, 1898 to the investigating officer. Therefore, belated

statements of P.Ws 2, 4, 5, 7, and 8 to the court cannot be relied on by this court.

During cross-examination, showing a picture (Exhibit A) to P.W. 1, a suggestion was given that the accused and his sister are appearing in the picture, but he stated that the boy who appears in the picture is not known to him. P.W. 1 denied the suggestion that there was an affair between the accused and his sister Dolly or that the accused is appearing in the picture. During cross-examination, P.W. 3 admitted that the accused and Dolly, the sister of P.W. 1, are appearing in the picture (Exhibit A), but he is not aware whether there was any affair between the accused and Dolly. He denied the suggestion that due to an affair, the accused was falsely implicated in this case. P.W. 1 admitted in cross-examination that P.W. 3 Habibur Rahman is his cousin. On scrutiny of the evidence of P.Ws. 1 and 3 reveals that P.W. 3 admitted that the accused and Dolly, sister of P.W. 1, are appearing in the picture (exhibit-A), but P.W. 1 made a false statement stating that the accused is not appearing in the picture (exhibit-A). Since P.W. 3 admitted that the accused is appearing in the picture (Exhibit-A), there was no reason for not recognizing the accused by P.W. 1. Exhibits A and A1 reveal that a young girl and a young man are sitting and standing closely. I am of the view that P.W. 1 made a false statement to suppress the affair between the accused and his sister Dolly. The evidence adduced by the prosecution suggests that there was an affair between the accused and Dolly, the sister of the informant and due to an affair between the accused

and Dolly, the sister of the P.W. 1 the false implication of the accused cannot be ruled out.

P.W. 1 stated that he did not see the person who detained the accused, although he alleged that the accused pointed a revolver at him and demanded subscription. During cross-examination, PW 1 affirmed that the accused is not known to him, although both of them are residents of the same village, i.e., Dattagaon. P.W. 2 stated that the police recovered the accused from the tea stall of Mofiz, but he was not examined in the case. The investigating officer P.W11 stated that he found the accused in front of the shop of Habibur Rahman. P.Ws 3, 4, 6, 7, and 9 stated that the accused was detained in the shop of P.W. 3 Habibur Rahman. The occurrence took place in broad daylight at 1.00 pm at the bazaar. The prosecution examined only shop owners who are closely related to P.W. 1, and other neutral shopkeepers and locals were not examined in the case, although 10/15 locals were present there, for which an adverse presumption should be drawn against the prosecution for non-examination of the neutral shopkeepers and locals who were present at the place of occurrence.

The prosecution failed to prove the charge against the accused beyond all reasonable doubt. Both the courts below ought to have arrived at a concurrent finding that there was an affair between the accused Rafiqul Islam Murad and Dolly, the sister of the informant P.W 1, and arrived at a wrong decision as to the guilt of the accused.

I find merit in the rule.

In the result, the Rule is made absolute.

The impugned judgment and order of conviction and sentence passed by the courts below against the convict petitioner Rafiqul Islam Murad, are hereby set aside.

Send down the lower Court's records at once.