

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

Writ Petition No. 912 of 2026

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Asmaul Husna

.....Petitioner

-Versus-

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmeem Rahman

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

..... Respondents

Mr. Md. Altaf Hossen Amani, Advocate

...For the petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with

Mr. Md. Ershadul Bari Khandakar, D.A.G,

Ms. Nilufar Yesmin, A.A.G,

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

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

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

.... For the respondents

Heard on 01.02.2026, 22.02.2026 and

Judgment on 26.02.2026

Urmeem 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 in the following terms:

*“Let a Rule Nisi be issued calling upon
the respondents to show cause as to why the
detenu Md. Shahinur Rahman alias Shahin*

Dakat, son of late Hazi Mohammad Islam should not be brought before this Court so that it may satisfy itself that the detenu is not being held in custody without lawful authority or in an unlawful manner and as to why the detenu should not be set at liberty and /or such other or further order or orders passed as to this Court may seem fit and proper.”

The wife of the detenu Md. Shahinur Rahman alias Shahin Dakat has filed the instant writ petition of Habeas Corpus under Article 102 (2) (b)(i) read with Article 44 of the Constitution.

The facts necessary for disposal of the instant Rule are that, on 27.11 2025 the District Magistrate, Cox's Bazar communicated the detenu as to the grounds of detaining him mentioning pendency of as many as 19 criminal cases against him. Later on, the Deputy Secretary, Ministry of Home Affairs issued a letter on 25.12.2025 extending the detention order for a further period of 90 days.

By filing a supplementary affidavit it has been stated that, earlier the detenu was arrested in connection with 4 specific criminal cases on 06.06.2025. He was enlarged on bail in all of those cases by the trial court on 31.08.2025, 24.11.2025 and 14.12.2025 respectively. There are also 16 other criminal cases pending against him and he has been enlarged on bail in all of those cases either from the trial court or from the High Court Division.

Mr. Md. Altaf Hossen Amani, learned Advocate appearing on behalf of the petitioner submits that, the detenu is in jail custody

in connection with 19 criminal cases and the grounds cited in the detention order are indefinite, vague, nebulous and constitutionally infirm in their patent ambiguity and as such the order of detention being unlawful, the respondents may kindly be directed to bring the detenu before this Court.

Learned Advocate for the petitioner next submits that, the detention order passed against the detenu is illegal, mala fide and arbitrary and it has been issued without due process of law in compliance of Articles 31 and 32 of the Constitution.

He further submits that, the detaining authority has conspicuously failed to particularize any concrete prejudicial activities allegedly committed by him that would satisfy the statutory pre-requisites under Sections 2 and 3 of the Special Powers Act, 1974.

He finally submits that, at the time of issuance of the detention order the detenu was in the custody in relation to a number of criminal cases. However, he obtained bail in all the 19 cases and was acquitted from another one case but due to the detention order he is not being released from the jail custody. Hence, he prays that the Rule may be made absolute.

In support of his submission learned Advocate for the petitioner referred to a decision reported in a case of *M Mahmood Vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs and another* reported in *43 DLR (1991) 372*. In that case it has been held by a Division Bench of the High Court that “the

detenu might have a capability to create problems to public safety and public order, but that by itself cannot be the basis for passing an order of detention so long as he does not indulge himself in any prejudicial act endangering public safety and public order and the members of the public are not affected by his activities.”

On the other hand, Mr. Md. Ershadul Bari Khandakar, learned Deputy Attorney General contested the Rule by filing an affidavit in opposition. Learned Deputy Attorney General submits that, the Officer in Charge of Ramu Police Station sent a proposal to the Police Super, Cox's Bazar for issuing preventive detention order in the name of the present detenu under Section 3(2) of the Special Powers Act, 1974 mentioning the reasons for detention. The Police Super-DSB, Cox's Bazar forwarded a letter to the District Magistrate with a detail of the previous case history of the detenu. The District Magistrate sent an office letter to the Senior Secretary, Department of Public Security, Ministry of Home Affairs, for taking initiatives for the sake of protection and safety of the citizens. The particulars of the detenu including the list of the pending cases against him were prepared by the Officer in Charge, Ramu Police Station under Special Powers Act 1974. In that memo it is stated that the charge sheet was given in 25 cases out of 26 criminal cases pending against him. In all the cases the detenu is charge sheet named accused. One case is under investigation.

The learned Deputy Attorney General submits that the detenu is a habitual offender, popularly known as '*Shahin dakat*'. There

are 26 criminal cases pending against him under the Penal Code, Arms Act, 1878, The Special Powers Act 1974, The Anti-Terrorism Act, 2009 and the Narcotics Act, 2018 etc. under different sections. The detenu has found to have been connected with various prejudicial activities and poses a threat to the society and community of his locality.

He then submits that the detention order was issued to prevent prejudicial acts to be committed by the detenu under Section 3 of the Special Powers Act which is covered by Section 2 (f), 'to prejudice the security of Bangladesh or to endanger public safety and maintenance of public order'.

Learned Deputy Attorney General finally submits that, the release of the detenu will prejudice the law and order situation before the upcoming 13th (thirteen) National Parliamentary Election which is going to be held on 12.02.2026.

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

From Annexure-II to the affidavit in opposition it appears that on 19.10.2025 the Officer in Charge of Ramu Police Station communicated to the Police Super-DSB, Cox's Bazar about the pendency of as many as 26 criminal cases in the name of the present detenu and also informing him that the accused has been

arrested on 06.06.2025 in connection with those criminal cases and that he is a terrorist type of person being intimately involved with the political activities of the banned political party *Awami League* and if he is released on bail, the law and order situation in the locality will be deteriorated. As such he recommended that in order to restrain him from doing any criminal activities, he may be detained under Section 3(2) of the Special Powers Act, 1974 as soon as he is released on bail in those criminal cases.

By the letter dated 22.10.2025 as appeared in Annexure-II(1) to the affidavit in opposition, the Police Super communicated this matter to the District Magistrate, Cox's Bazar. Accordingly, on 27.11.2025 the District Magistrate issued the detention order against the instant petitioner initially for 30 days. From the detention order it appears that mainly the pendency of the criminal cases has been mentioned as the ground for preventive detention. The rest of the grounds made in the detention order are not specific and definite.

These grounds of detention were communicated to the detenu on the same day, who was already in the custody at that time. Subsequently, this detention order was requested to extend on the ground that, if the accused is released at this time, he will cause impediment in holding the upcoming 13th National Parliamentary Election and with some other unspecific grounds. Accordingly by the order dated 25.12.2025 the detention order was further extended

for a period of 90 days. The relevant part of the extension order is quoted below:

“১৭৪ সালের বিশেষ ক্ষমতা আইনের ৩(১) ধারায় প্রদত্ত ক্ষমতাব-ল আইন-শৃঙ্খলা বিঘ্নকারী ক্ষতিকারক কার্য হ-ত বিরত রাখার জন্য গণপ্রজাতন্ত্রী বাংলা-দশ সরকার নিম্নবর্ণিত ডি-টন্যু-ক আটকা-দশ নিম্নরু-প বর্ধিত কর-লন।”

The grounds for extension of the preventive detention order is absolutely vague and unspecific in nature.

It has been already held in a number of decisions of this Division that mere pendency of criminal cases cannot be the sole ground for issuing preventive detention order under Section 3 (2) of the Special Powers Act, 1974.

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.” [emphasis added]

However, in the present case there is no material on record on the basis of which the detaining authority has reached to such satisfaction before issuing the preventive detention order.

Furthermore, in the case of *Anwara Begum Vs. Government of Bangladesh* reported in *30 DLR 131* it has been held that, “Where there are two modes of proceedings, namely, by way of criminal prosecution or preventive detention, it is for the executive to decide which course to follow, but the law does not authorize to follow both simultaneously.”

As we have already seen that specific criminal cases are pending against the detenu and the authority is dealing with the cases and that the petitioner has been enlarged on bail in all the criminal cases pending against him by the appropriate Court of law, the issuance of preventive detention order in such circumstances is nothing but colorable exercise of power and abuse of the process of law.

The 13th (thirteenth) National Parliamentary Election being over by this time (held on 12.02.2026), learned Deputy Attorney General finds it difficult to substantiate his argument that the petitioner will cause impediment in holding the election process.

Considering the facts and circumstances and with the discussion made hereinabove, we find merit in the Rule.

In the result, the Rule is made absolute.

However, without any order as to cost.

The order of detention order and the extension order thereto are hereby declared unlawful and without any lawful authorities.

The detenu is hereby directed to be released immediately unless he is wanted in any cases pending against him.

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

Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO