

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice A.K.M. Rabiul Hassan

Criminal Appeal No. 728 of 2026.

Md. Habibur Rahman Sheikh Ebad alias Rajjak
.....Accused-appellant

-Versus-

The State and another

..... Respondents

Mr. Md. Tajul Islam, Senior Advocate along with

Mr. Md. Omor Faruq

Mr. Mohammed Enam

Mr. Md. Mamun and

Mr. Sabbir Azam, Advocates

..... For the appellant

Mr. Rafiqul Islam (Hiru), Advocate

... for the respondent Nos.2

Mr. Md. Masudul Alam Doha, D.A.G

.....For the State

Heard on: 28.06.2026 and

Judgment on: 02.07.2026

Md. Khairul Alam, J:

This appeal under section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (As amended 2020) is directed against Order No. 49 dated 17.02.2026 passed by the learned Judge of the Nari-O-Shishu Nirzatan Daman Tribunal No. 6, Dhaka in Nari-O-Shishu Case No. 137 of 2020, arising out of Dhanmandi Police

Station Case No. 2 dated 03.03.2020 under sections 11 (kha)/11 (ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (As amended 2020) rejecting the accused-appellant's application seeking return of his passport.

Relevant facts necessary for disposal of the appeal are that Tanjila Haque Urmi, wife of the accused-appellant, instituted a petition of complaint against the accused-appellant along with six others under sections 11(kha), 11(ga) and 30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended up to 2020) before the learned Nari-O-Shishu Nirjatan Daman Tribunal No. 6, Dhaka. Upon receipt of the complaint, the learned Tribunal forwarded the same to the Officer-in-Charge of Dhanmondi Police Station for treating it as a First Information Report. Accordingly, Dhanmondi Police Station Case No. 02 dated 03.03.2020 was registered, giving rise to G.R. Case No. 36 of 2020 corresponding to Nari-O-Shishu Case No. 137 of 2000 of the learned Nari-O-Shishu Nirjatan Daman Tribunal No. 6, Dhaka. Upon completion of investigation, the police submitted Charge-sheet No. 33 dated 23.03.2020 against all the F.I.R.-named accused, including the present accused-appellant. In the said case, when process was issued against the accused-

appellant, he was residing abroad. Consequently, through his brother, he moved this Court by filing Writ Petition No. 17818 of 2025 seeking protection from arrest and permission to surrender before the competent Court. The Rule issued therein was ultimately made absolute. Pursuant thereto, the accused-appellant returned to Bangladesh, surrendered before the learned Tribunal on 15.01.2026 and was enlarged on bail. Subsequently, on 02.02.2026, the complainant-respondent filed an application praying for impounding the passport of the accused-appellant. The learned Tribunal allowed the said application, whereupon the accused-appellant deposited his passport before the Tribunal on 09.02.2026. Thereafter, on 17.02.2026, the accused-appellant filed an application seeking return of his passport and permission to travel abroad for business purposes. By the impugned order, the learned Tribunal rejected the said application, giving rise to the present appeal.

Mr. Md. Tajul Islam, the learned Advocate appearing on behalf of the accused-appellant, submits that the learned Tribunal committed an error of law in refusing to return the passport of the accused-appellant. He further submits that at the time of issuance of the process, the accused-appellant was

abroad and, pursuant to an order obtained from this Court, voluntarily returned to Bangladesh, surrendered before the learned Tribunal, and was thereafter enlarged on bail and has been enjoying such privilege without any allegation of misuse, and therefore, there is nothing on record to suggest that he has ever attempted to evade the process of law or violated any of the conditions of the bail granted to him. He further submits that the proposed foreign travel is solely for bona fide business purposes and that the retention of the passport would seriously prejudice the accused-appellant's business and livelihood. Referring to Article 36 of the Constitution, the learned Advocate submits that the right to travel abroad is a fundamental right which may be restricted only in accordance with law and on the grounds specifically contemplated therein. According to him, no such circumstance exists in the instant case warranting the continued retention of the passport. He therefore prays that the impugned order be set aside and the passport be returned to the accused-appellant, subject to such terms and conditions as this Court may deem fit and proper. In support of his submissions, he has placed reliance upon the decisions in the cases of *Durnity Daman Commission vs. G. B. Hossain*, reported in 74 DLR (AD)

1, and State vs. M. M. Rahmatullah, reported in 2 BLC (AD) (1997).

Conversely, Mr. Rafiqul Islam Hiru, the learned Advocate appearing for the complainant-respondent, opposes the appeal and submits that the accused-appellant is facing trial for a serious non-bailable offence punishable under section 11(ga) of the Act, 2000. According to him, release of the passport would create a real possibility of the accused-appellant leaving the country and thereby frustrating the trial. He submits that the learned Tribunal rightly exercised its judicial discretion in refusing the application and accordingly prays for dismissal of the appeal.

Mr. Md. Masudul Alam Doha, the learned Deputy Attorney General appearing for the State, adopts the submissions advanced on behalf of the complainant-respondent and further submits that retention of the passport is necessary to secure the attendance of the accused-appellant during the pendency of the trial. He further submits that the accused-appellant procured the passport by using a false name and describing the complainant as his wife therein, and therefore, release of the passport at this stage is likely to seriously prejudice the interest of the complainant. He, therefore, prays for dismissal of the appeal.

We have heard the learned Advocates appearing for the respective parties, considered their submissions and perused the materials on record including the judgments cited by the learned Advocate for the Appellant.

The sole question for adjudication in this appeal is whether the learned Tribunal was justified in refusing to return the passport of the accused-appellant and thereby restraining him from travelling abroad.

Freedom of movement of a citizen is guaranteed by the Constitution. Article 36 of the Constitution guarantees every citizen the fundamental right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh, subject to any reasonable restrictions imposed by law in the public interest. Thus, the right is a constitutionally protected right, though not an absolute one. It may be restricted only in accordance with law and only for the public interest.

The Passport Act, 1973 regulates the issuance, renewal, impounding and revocation of passports. Although the Act does not expressly confer any power upon a criminal Court to impound a passport, it is now well settled that a criminal Court

may, in an appropriate case, direct to deposit a passport as a measure to secure the attendance of an accused person during trial. Such power, however, is to be exercised judicially and upon the existence of cogent and compelling reasons, and not merely because a criminal prosecution is pending.

In the Case of Durnity Daman Commission vs GB Hossain, reported in 74 DLR (AD) 1, the Appellate Division held that the right to leave the country and to possess a passport may be restricted, most notably if the person's presence is required due to their having been charged with a criminal offence. However, merely because a person is involved in a criminal case, he is not deprived of his fundamental right.

In the case of State vs M M Rahmatullah, reported in 2 BLC (AD) (1997), the passport of an accused was seized during investigation of a criminal case in which he was convicted. In an appeal to this Division, the convict filed an application for return of the passport, which was allowed against which the state preferred appeal to the Appellate Division, wherein the Appellate Division held that the direction to return the passport cannot be interfered with without any basis of the apprehension that if leave the country, the respondent will not return.

It is not in dispute that the accused-appellant has already surrendered before the learned Tribunal and has been enlarged on bail. There is no allegation, nor is there any material on record, to suggest that he has violated any condition of bail or made any attempt to evade the due process of law. The accused-appellant is a permanent resident of Bangladesh and has asserted a genuine business necessity to travel abroad. On the contrary, the complainant-respondent has failed to place any material before this Court demonstrating a real or reasonable apprehension that the accused-appellant would abscond if his passport were returned. The mere gravity of the allegation under section 11(ga) of the Act, 2000, by itself, cannot justify the continued retention of the passport, particularly when it is an admitted position that the accused-appellant was abroad at the time of issuance of the process, voluntarily returned to Bangladesh pursuant to an order obtained from this Court in a writ petition, surrendered before the learned Tribunal, and has been enjoying the privilege of bail without any allegation of misuse.

We are accordingly of the view that the learned Tribunal fell into error in rejecting the application for return of passport.

At the same time, we are conscious that the accused-appellant is facing a serious charge and that securing his presence for trial is necessary. We therefore consider it appropriate to permit return of the passport subject to some conditions to safeguard the process of the trial.

In the result, the appeal is allowed.

The Order No. 49 dated 17.02.2026 passed by the learned Judge of the Nari-O-Shishu Nirzhan Daman Tribunal No. 6, Dhaka in Nari-O-Shishu Case No. 137 of 2020, so far as it related to rejecting the application for return of passport of the accused appellant, is set aside.

The learned Tribunal is directed to return the passport to the accused-appellant, subject to the following conditions:

(i) The accused-appellant shall furnish a bond of Tk. 5,00,000 (five lac), to the satisfaction of the learned Tribunal, undertaking not to abscond and to appear before the Tribunal on the date of hearing.

(ii) The accused-appellant shall furnish his contact address and telephone number abroad, to the learned Tribunal.

It is made clear that any breach of the above conditions shall entitle the learned Tribunal to cancel the accused-appellant's bail and take appropriate steps for his arrest.

Let a copy of this judgment and order be communicated to the court below at once.

A.K.M. Rabiul Hassan, J.

I agree.

Kashem, B.O