

**IN THE SUPREME COURT OF BANGLADESH**  
**Appellate Division**

**PRESENT**

**Mr. Justice Syed Mahmud Hossain, Chief Justice**  
**Mr. Justice Muhammad Imman Ali**  
**Mr. Justice Hasan Foez Siddique**  
**Mr. Justice Md. Nuruzzaman.**  
**Mr. Justice Obaidul Hassan**

**CRIMINAL PETITION FOR LEAVE TO APPEAL NO.1088 OF 2019**

(From the order dated the 18<sup>th</sup> of June, 2019 passed by the High Court Division in Criminal Appeal No.5923 of 2019).

The State ... Petitioner

= Versus =

Aslam Shikder ... Respondent

For the Petitioner : Mr. A.M. Amin Uddin  
Attorney General, with  
Mr. Biswajit Deb Nath  
Deputy Attorney General  
Mrs. Sufia Khatun  
Advocate-on-Record

For the Respondent : Mr. Md. Bodrul Islam  
Advocate-on-Record

**Date of hearing and : The 22<sup>nd</sup> day of November, 2021**  
**judgement**

**J U D G E M E N T**

**MUHAMMAD IMMAN ALI, J**:-This criminal petition for leave to appeal was filed by the State against the order dated 18.06.2019 passed by the High Court Division in Criminal Appeal No.5923 of 2019 granting *ad interim* bail for a period of one year to Aslam Shikder who was accused in Nari O Shishu Case No.15 of 2019 pending in the Nari O Shishu Nirjatan Daman Tribunal No.7, Dhaka.

The accused, Aslam Shikder was charged with an offence under section 9(1) of the Nari O Shishu Nirjatan Daman Ain, 2000. During the course of trial, the accused filed a number of applications for bail, lastly on 16.05.2018, which was rejected by the trial Court. The accused then filed Criminal

Appeal No.5923 of 2019 before the High Court Division which culminated in the impugned order granting *ad interim* bail. The State filed Criminal Miscellaneous Petition for Leave to Appeal No.694 of 2019 before this Division with a prayer for staying operation of the order dated 18.06.2019 passed by the High Court Division. The State obtained an order of stay of the said order of *ad interim* bail from the learned Judge-in-Chamber on 25.06.2019 for a period of four weeks which was extended by application for extension dated 14.07.2019.

When the criminal petition for leave to appeal was taken up for hearing on 12.03.2020, this Court was informed that the appellant had already been released on bail granted by the trial Court. In view of such revelation, this Court passed the following order on 12.03.2020.

"Having gone through the order sheet in particular order No.44 dated 02.03.2020 of Nari-O-Shishu Nirjatan Daman Tribunal No.7 in Nari-O-Shishu Case No.15 of 2019, we are inclined to call Ms. Musammat Qumrunnahar, Judge, Nari-O-Shishu Nirjatan Daman Tribunal-7, Dhaka to appear in person on 02.04.2020 at 9.00 A.M. before this Court to explain how she could grant *ad interim* bail to the accused respondent Aslam Shikder, notwithstanding the fact that the order of bail granted by the High Court Division in Criminal Appeal No.5923 of 2019 was stayed by the learned Judge-in-Chamber on 25.06.2019. The order of stay was duly communicated to the Nari-O-Shishu Nirjatan Daman Tribunal-7, Dhaka as is evident by order No.32 dated 26.09.2019.

For compliance of the order of stay dated 25.06.2019 passed by the learned Judge-in-Chamber, the respondent Aslam Shikder is directed to surrender before the learned Nari-O-Shishu Nirjatan Daman Tribunal-7, Dhaka within 02 (two) weeks from date.

Let this order be communicated by a special messenger of this Court. The office is directed to return the L.C. records of Nari-O-Shishu Case No.15 of 2019 of the Judge, Nari-O-Shishu Nirjatan Daman Tribunal-7, Dhaka at once.

Accordingly, the petition is adjourned to 02.04.2020 for further order."

Due to COVID-19 pandemic, this Court could not sit on 02.04.2020. Thereafter, the matter was again posted in the daily cause list on 15.11.2021 and an order was passed directing Ms. Musammat Qumrunnahar to appear in person before this Court on 22.11.2021 at 9.30 A.M.

Today (22.11.2021) Ms. Musammat Qumrunnahar, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal-7 physically appeared in Court No.1 and was heard in camera by virtual means. All members of the public, learned Advocates, court staff and officers, apart from the Special Officer of the Supreme Court, were excluded from the hearing.

Ms. Musammat Qumrunnahar was heard at length by the Full Bench of this Court. She was asked to explain how she could pass the order of *ad interim* bail to accused Aslam Shikder on 02.03.2020 when there was in existence an order of this Court dated 25.06.2019 staying the order of bail granted in his favour by the High Court Division. She replied that she was not aware of the order of stay passed by this Court. It was then pointed out to her that the records of the concerned case kept in her Court, particularly Order No.32 dated 26.09.2019 shows that the order of stay passed by this Court had been communicated to her Court. In reply she stated that she did not go through

the record of the case and was not aware of the order of this Division which stayed the order of bail granted by the High Court Division. She repeatedly apologized for not having gone through the records of the case before passing the order granting bail to the accused.

The learned members of the Bench pointed out to Ms. Musammat Qumrunnahar that her orders dated 30.01.2020 and 02.03.2020 indicate that she had in fact gone through the records. We find that her order dated 02.03.2020 refers to an earlier order of the Tribunal dated 11.03.2019 by which an application for bail filed by the accused had been rejected and the subsequent Criminal Appeal No.3526 of 2019 had been disposed of by the High Court Division on 16.04.2019. That order of the High Court Division is mentioned in the Tribunal's order No.13 dated 16.06.2019 and order No.15 dated 25.06.2019. If she had diligently performed her judicial function and looked a little further, then she would have found that her predecessor had granted bail to the accused on 25.06.2019 pursuant to the order of bail granted by the High Court Division on 18.06.2019 which was communicated under a memo of the High Court Division dated 24.06.2019. She would have also found that by order No.16 dated 27.06.2019 her predecessor had cancelled the bail of the accused in view of the order of stay passed by this Division on 25.06.2019, and on the next date (01.07.2019) the accused was produced from jail custody.

We find from the records of the Tribunal that Ms. Musammat Qumrunnahar's predecessor refused the bail applications of the accused on five occasions. Ms. Musammat

Qumrunnahaar's intentional oversight to see the entire records of the case indicates bad intention.

It is true that the matter of granting bail to any accused is within the discretion of the learned Judge considering the bail application, but bail cannot be granted to an accused whose bail order has been stayed by the apex Court. Moreover, discretion must be exercised judiciously, and any such application must be scrutinised in the light of all the facts and circumstances of the case and the evidence and materials on record. In the instant case, the prosecution case had been closed and arguments placed by the learned Advocates. It is highly improper to grant an accused bail when the case is ready for pronouncement of judgement, especially when the allegation is of an offence so serious as rape and when bail has been consistently refused by all the Courts.

Moreover, it is evident that the order of bail granted by Ms. Musammat Qumrunnahaar to accused Aslam Shikder is in violation of the order passed by this Court, which she evidently ignored. Ms. Musammat Qumrunnahaar has palpably acted in defiance of the order of this Court ignoring the fact that her predecessor had canceled the bail of the accused in view of the selfsame order of this Court and the existence of that order is apparent on the face of the record. Thereafter, within seven days of granting bail to the accused, on 10.03.2020 Ms. Musammat Qumrunnahaar expressed her embarrassment and recused herself from further dealings with the trial. This was done on a date when the case was not fixed for trial and there was no apparent reason for her to feel embarrassed after giving uncalled for

relief to the accused by granting him bail in utter violation of the order of this Court.

In the light of the discussion above, we are of the view that Ms. Musammat Qumrunnahar in granting bail to accused Aslam Shikder has acted in patent violation of the order of this Court. We hold that Ms. Musammat Qumrunnahar is not fit to preside over any criminal matters. Hence, in exercise of our power under Article 104 of the Constitution, the Sessions power of Ms. Musammat Qumrunnahar is hereby seized. Henceforth Ms. Musammat Qumrunnahar will not preside over any criminal matters in any Court of law in Bangladesh.

We note that by a subsequent order the judgement in the case was pronounced on 14.10.2020 acquitting the accused, and the said acquittal is under appeal in Criminal Appeal No.05 of 2020.

Accordingly, with the above observations and direction the criminal petition for leave to appeal is disposed of.

Let a copy of this order be communicated to Ms. Musammat Qumrunnahar and the Secretary, Ministry of Law, Justice and Parliamentary Affairs.

Let a copy of this order be placed on the Annual Confidential Record (ACR) of Ms. Musammat Qumrunnahar.

**C.J.**

**J**

**J**

**J.**

**J.**