

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 26865 of 2018

IN THE MATTER OF:

An application under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF:

Md. Zakir Hossain alias Baitta Zakir and another

... Accused-Petitioners

Versus

The State

...Opposite Party

Mr. Md. Abdul Bari, Advocate

....For the Petitioner

Mr. Farid Uddin Khan, DAG with

Mr. Md. Anichur Rahman Khan, DAG

...For the State

Judgment on: 31.10.2024

Md. Riaz Uddin Khan, J:

Rule was issued asking the opposite party to show cause as to why the proceedings of Sessions Case No. 14 of 2018 arising out of Gulshan Police Station Case No. 02 dated 05.03.2017 corresponding to G.R. No. 50 of 2017 under Table 9(Kha) of Section 19(1) of the Madak Drabya Niontran Ain, 1990, now pending in the Court of Jano Nirapatta Bighnokari Aparadh Daman Tribunal Dhaka should not be quashed and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule all further proceedings in Sessions Case No. 14 of 2018 arising out of Gulshan Police Station Case No. 02 dated 05.03.2017 was stayed so far as it relates to the accused-petitioners initially for a period of six months which was extended time to time.

Facts, in a nutshell, for disposal of this Rule are that one S.I Md. Mashiar Rahman lodged the FIR with the Gulshan police station on 05.03.2017 alleging *inter alia* that the informant along with his accompany forces while were on duty for recovery of Madak Drabya and execution of W/A, on 04.03.2017 at 21.15 pm acting on a tip off went to a house near Gulshan Azad Mosque and arrested the accused Md. Abul Bashar with 42,000 (forty two thousand) pieces of Yaba Tablets from the drawer of a ware drop and made a seizure list in present of the witnesses. On query the accused informed that co-accused Harun and Badsha were waiting with more yaba tablets in a private car being no. Dhaka Metro-Ga-33-0243 at the underground car parking of Subastu Najar Valley, Shahjatpur. Then the informant party quickly arrived there with the arrested accused and sensing their presence the co-accused fled away and the arrested accused brought out 500 pieces of Yaba Tablets from the Desk board of that private car. The informant prepared a seizure list there. Thus in total 42,500 pieces of Yaba Tablets valued at TK-12,750,000/ were recovered

from the accused. Thereafter the FIR was lodged which gave rise to Gulshan Police Station Case No. 02 dated 05.03.2017.

Police took up the matter for investigation and the investigating officer submitted charge sheet on 30.05.2017 under Table 9(Kha) of section 19(1)/25 of the Madak Drabya Niontran Ain, 1990 against 3 FIR named accused out of 4 including the petitioners.

That in course of time the case was transmitted to the court of Metropolitan Session Judge, Dhaka for trial and was registered as Metropolitan Session case no. 20421 of 2017. However, the case was transferred to the court of Jano Nirapatta Bighnokari Aporadh Daman Tribunal, Dhaka for trial and was renumbered as Session case no. 14 of 2018 and were fixed on 15.01.2018 for framing of charge. The accused petitioners filed an application under section 265C of the Code of Criminal Procedure for discharge and after hearing both the parties the learned trial judge was pleased to reject the petition for discharge and framed charge against the accused petitioners along with another under Table 9(Kha) of section 19(1) of the Madak Drabya Niontran Ain, 1990 by his order dated 02.04.2018 and fixed 22.05.2018 for examination of witness. At this stage the petitioners moved this Court and obtained the Rule and order of stay as stated at the very outset.

Mr. Md. Abdul Bari, the learned advocate appearing for the accused-petitioners submits that the accused petitioners voluntarily surrendered on 14.01.2018 before the trial court and were enlarged on bail by the trial court and they never misused the privilege of bail. The accused petitioners were not arrested from the place of occurrence. The alleged incriminating articles were not recovered from the exclusive possession or control of the accused-petitioners but admittedly from accused Md. Abul Bashar as such the initiation of the proceeding against the present petitioners is an abuse of the process of the court.

The learned advocate then submits that the charge is framed under Table 9(Kha) of section 19(1) of the Madak Drabya Niontran Ain, 1990 against all the accused including the petitioners while admittedly the recovery was made from accused Md. Abul Bashar only and there was no allegation of recovery of Madak from the present petitioners and in that view of the matter the impugned order of framing charge against the petitioners is not sustainable in law. In support of his submission the learned advocate cited the decision of State Vs. Md. Ramizuddin and another reported in 29 BLC (AD) 52.

On the other hand the learned Deputy Attorney General appearing for the State submits that though the charge has been framed by the

trial court is defective but charge can be altered at any time. There is allegation in the FIR that the petitioners have involvement in dealing with Madak Drabya (Yaba tablets).

We have heard the learned advocates for both the parties, perused the application along with the annexures. It appears from the record that the accused-petitioners were not arrested in this case from the place of occurrence which was took place on 04.03.2017 and they voluntarily surrendered before the trial court on 14.01.2018 and were enlarged on bail by the trial court.

It further appears from the FIR that 42,000 (forty two thousand) Yaba tablets were recovered from accused Md. Abul Bashar from his house and further 500 (five hundred) yaba tablets were recovered from inside a private car at the car parking of Subastu Najar Valley on the pointing of that accused Md. Abul Bashar. Charge sheet was submitted without mentioning how the accused-petitioners were involved with the recovery of those Madak Drabya. Only allegation against the present petitioners that principal accused Md. Abul Bashar said to the police that the present petitioners helped him in selling those Madak Drabya. It emerged from the record that the private car allegedly from which 500 (five hundred) yaba tablets were recovered was handed over to its owner one Md. Saiful Islam who is not an accused.

The learned judge of the trial court framed charge against the present petitioners under Table 9(Kha) of section 19(1) of the Madak Drabya Niontran Ain, 1990 while there is no allegation either in FIR or in the charge sheet of recovery of any Madak Drabya from the present petitioners which appears to us non application of judicial mind of the trial judge in framing charge.

Since there is no specific allegation how these petitioners were involved with the dealing of the Madok Drabya while there is specific allegation that 42,500 (forty two thousand five hundred) yaba tablets were recovered from accused Md. Abul Bashar as such the order of framing charge against the present petitioner under the above quoted section of law is not sustainable in law. We find substance in the submissions of the learned advocate for the petitioners and we are inclined to interfere with the instant proceedings.

In the result, the Rule is made **absolute**.

The proceedings of Sessions Case No. 14 of 2018 arising out of Gulshan Police Station Case No. 02 dated 05.03.2017 corresponding to G.R. No. 50 of 2017 under Table 9(Kha) of Section 19(1) of the Madak Drabya Niontran Ain, 1990, pending in the court of Jano Nirapatta Bighnokari Aparadh Daman Tribunal, Dhaka **is hereby quashed, so far it relates to the accused-petitioners**. The order of stay granted earlier stands vacated.

The trial court is directed to conclude the trial against other accused as early as possible.

Communicate the judgment and order at once.

Md. Iqbal Kabir, J:

I agree.