

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique
-Chief Justice
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim

CRIMINAL PETITION FOR LEAVE TO APPEAL NO.207 OF 2022

(From the judgment and order dated 06.01.2022 passed by the High Court Division in Criminal Miscellaneous Case No.35188 of 2020).

The State, represented by the : ...Petitioner.
Deputy Commissioner, Chattogram.

-Versus-

Md. Mir Ibrahim @ Md. Ibrahim @ : ...Accused-Respondent.
Md. Ibrahim Mir. (In Jail Hajat)

For the Petitioner. : Mr. Mohammad Saiful Alam, Assistant
Attorney General instructed by Ms.
Sufia Khatun, Advocate-on-Record.

For the Respondent. : Mr. Ruhul Quddus, Advocate instructed
by Mr. Nurul Islam Bhuiyan, Advocate-
on-Record.

Date of Hearing. : **The 28th November, 2022.**

Date of Judgment. : **The 28th November, 2022.**

J U D G M E N T

Borhanuddin, J: This criminal petition for leave to appeal is directed against the judgment and order dated 06.01.2022 passed by a Division Bench of the High Court Division in Criminal Miscellaneous Case No.35188 of 2020 arising out of G.R. Case No.263 of 2019 corresponding to Bondar Police Station Case No.12 dated 10.07.2019 under

sections 6/8/9/10/13 of the Santrash Birodhi Ain, 2009 (as amended in 2013) making the rule absolute.

The prosecution case, in brief, is that on 10.07.2019 Senior Warrant Officer Farukh Hussain, BJO 43748, CPC-3, RAB-2, Bosila, Mohammadpur, Dhaka as informant lodged an ejahar with the Bondar Police Station (CMP), Chattogram against the accused-petitioner and 13 others alongwith 12/13 unknown accused alleging that on 26.06.2019 at 10.00 hours he got an information from the Company Commander of RAB-2 that Safia Akter Tanji daughter of one Hafez Abdus Salam was missing and her father lodged a G.D. Entry No.396 dated 08.07.2019 to that effect; Thereafter, RAB-2 got an information through intelligence that said Safia Akter Tanji left her house with her sister Naima to be a member of the militant group namely 'Ansar-Al-Islam'; It is also known that Naima and Tanji go out for communicating with the lover of Naima namely Saif and in order to organize a militant group they use facebook, messenger, whatsapp to influence innocent young boys/girls for establishing Islamic Administration in the world by committing act of sabotage against the State; On the basis of said information the informant alongwith his

company reached to the place of occurrence and caught them red handed in presence of witnesses with one mobile phone model Redmi, Note-4, IMEI-865607034-223426, IMEI-286507034223434 from accused Naima and one mobile phone, model Walton Primo-EFS 4G, IMEI-1 No.358928090172032, IMEI No.358928090172040 from accused Tanji and after examining the mobile phones they recovered many files regarding jihadi activities; On 09.07.2019 at 01:30 hours, the informant prepared a seizure list in front of the witnesses and seized all the incriminating articles; On query accused Naima revealed names of her organizational associates and asserted that all her associates are involved with militant activities; According to the statement of Naima accused Afzal was caught by the police and recovered one SAMSUNG mobile phone, Model SM-G600 Fy and IMEI-359932/07/973327/6359933/07/973327/4 from him and also prepared another seizure list on 09.07.2019 and seized all the incriminating articles. On the basis of the ejahar, Bondar Police Station Case No.12 dated 10.07.2019 under sections 6/8/9/10/13 of the Santrash Birodhi Ain, 2009 (as amended in 2013) has been started.

Accused-respondent Md. Mir Ibrahim @ Md. Ibrahim @ Md. Ibrahim Mir was arrested by the police on 31.07.2019 and produced before the learned Chief Metropolitan Magistrate, Chattogram, with a prayer for remand of 5(five) days and the learned Magistrate granted remand for 2(two) days. After remand period the accused-respondent again produced before the learned Chief Metropolitan Magistrate, Chattogram, who sent him in jail hajot.

After investigation Police submitted Charge Sheet No.30 dated 20.02.2022 against the 10 accused persons including the accused-respondent under sections 6/8/9/10/13 of the Santrash Birodhi Ain, 2009 (as amended in 2013).

The accused-respondent as petitioner preferred an application for bail in the court of learned Chief Metropolitan Magistrate, Chattogram, on 23.08.2020 which was rejected.

Being aggrieved, the accused-respondent as petitioner filed Criminal Miscellaneous Case No.1492 of 2020 before

the learned Metropolitan Sessions Judge, Chattogram, which was also rejected after hearing on 17.09.2020.

Being dissatisfied, the accused-respondent as petitioner moved before the High Court Division under section 498 of the Code of Criminal Procedure by filing Criminal Miscellaneous Case No.35188 of 2020. Upon hearing the petitioner, a Division Bench of the High Court Division issued a Rule calling upon the opposite parties to show cause.

After hearing both the parties, a Division Bench of the High Court Division made the Rule absolute and thereby enlarged the accused-respondent Md. Mir Ibrahim @ Md. Ibrahim @ Md. Ibrahim Mir on bail vide judgment and order dated 06.01.2022.

Feeling aggrieved, the state as petitioner preferred instant criminal petition for leave to appeal invoking Article 103 of the Constitution.

Mr. Mohammad Saiful Alam, learned Assistant Attorney General appearing on behalf of the state submits that the accused-respondent is a FIR named accused and there is a strong prima-facie case against him. He also submits that

the accused persons in connivance with one other assembled at the place of occurrence to organize the activities of the militant group 'Ansar-Al-Islam' and tried to motivate the innocent school/college going students in the name of jihad and thus committed act of sabotage against the state which is an offence under sections 6/8/9/10/13 of the Santrash Birodhi Ain, 2009 (as amended in 2013). He further submits that after investigation police submitted charge sheet against the accused-respondent under the aforementioned sections.

On the other hand, Mr. Ruhul Quddus learned Advocate appearing for the accused-respondent supports the impugned judgment and order passed by the High Court Division.

Heard the learned Assistant Attorney General for the state and learned Advocate for the respondent. Perused the relevant papers/documents appended in the paper book.

The only question therefore we have to decide whether the High Court Division is justified in granting bail of the accused-respondent especially in a case where state's security is concern.

Whenever an application for bail is made to a court, the first question that it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. If the offence is bailable, bail will be granted under section 496 of the Code of Criminal Procedure without more ado, but if the offence is non-bailable further consideration will arise and the court will decide the question of bail in light of those considerations such as nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the state and similar other considerations. It is true that under section 498 of the Code of Criminal Procedure, the power of the High Court Division in the matter of granting bail is very wide, even though the offence is non-bailable, but various considerations as mentioned above have to be taken into consideration before bail is granted in a non-bailable offence.

On perusal of ejahar it appears that the accused-respondent is a FIR named accused and after the institution

of the case police arrested him on 31.07.2019 with incrementing articles. On perusal of seizure list it appears that police recovered some jihadi books and one SAMSUNG mobile phone model No.SMJ106H from him. Again, after investigation police submitted charge sheet against the accused-respondent under sections 6/8/9/10/13 of the Santrash Birodhi Ain, 2009 (as amended 2013) which shows that the accused-respondent is an active member of militant group named 'Ansar-Al-Islam'. On perusal of ejahar and charge sheet it is apparent that there is a specific allegation against the accused-respondent in connivance with other accused persons to organize a militant group using several facebook, whatsapp, messenger as well as radical militant combat and training video-manuals and also allegation that they tried to motivate the school/college going students for grouping so as to establish the Islamic Administration in the world by committing act of sabotage that could threatened the State's security, which is a non-bailable offence under section 39 of the Santrash Birodhi Ain, 2009 (as amended 2013).

Again, 'Ansar-Al-Islam' a militant group is currently trying to emerge jihadist activities in the country. A

local jihadist group like 'Ansar-Al-Islam' tried to link with transnational movements, conditions are ripe for new forms of militancy that could threatened the State's security and religious tolerance which is against the public interest.

In the case of *Thounaojam Shyamkumar Singh vs. State of NCT of Delhi*, reported at MANU/DE/0639/2007, the High Court of Delhi observed that:

"Liberty of a citizen is a cherished right; it should not be curtailed, ordinarily, except on consideration of public interest."

Again, the Supreme Court of India in the case of *The State vs. Jagjit Singh*, reported at AIR 1962 SC 253, held:

"Consideration, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering it's seriousness, the court should refuse bail even though it has very wide power under section 498 of the Code of Criminal Procedure."

From the above discussions and cited cases, it appears to us that the present case is not a case where discretion should have been exercised infavour of the

accused-respondent because of the seriousness and gravity of the offence which is obviously connected with the safety and security of the State, as such we are not inclined to allow the bail of the accused-respondent Md. Mir Ibrahim @ Md. Ibrahim @ Md. Ibrahim Mir.

The High Court Division without appreciating the facts and circumstances of the case as well as the security concern of the State granted bail to the accused-respondent which calls interference by this Division.

In the result, the criminal petition for leave to appeal is disposed of.

The impugned judgment and order of the High Court Division in Criminal Miscellaneous Case No.35188 of 2020 is hereby set-aside.

No order as to costs.

C.J.

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