

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

**Writ Petition No. 21658 of 2025**

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Mst. Umme Habiba

.....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. Muha. Noman Hossain, 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. Motasin Billah Parvez, A.A.G and

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

.... For the respondents

Heard on 19.02.2026 and

Judgment on 22.02.2026

**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 calling upon the respondents to show cause in the  
following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the order of detention dated 18.11.2025 issued by the respondent No. 5, pursuant to under Section 3(1) of the Special Powers Act, 1974 detaining the detenu with a view to preventing him from doing any prejudicial act for a period of 90(ninety) days should not be declared to have been done without lawful authority and is of no legal effect and as to why the detenu should not be brought before this Hon’ble Court may satisfy itself that the detenu is not being held without lawful authority and is of no legal effect and also as to why the respondents should not be directed to set him at liberty and /or such other or further order or orders passed as to this Court may seem fit and proper.”*

The relevant facts for disposal of the instant Rule, in brief, are that, the detenu Sirajul Monir Bashar, elder brother of the petitioner, and seven others were arrested on 21.10.2025 by the law enforcing agency and in connection thereto Mohammadpur Police Station Case No 84 dated 22.10.2025 corresponding to G.R. No. 1037 of 2025 was filed under Sections 8/9(1)(2)/10/11/12/13 of The Anti-Terrorism Act 2009 (Amended in 2013), along with Sections 3/4/5/6 of the Explosive Substances Act, 1908 and thereafter, police duly forwarded him before the Metropolitan Magistrate Court, Dhaka on 22.10.2025 and the learned Magistrate was pleased to reject the bail petition and sent him to jail custody. The respondent No. 5, the Senior Assistant Secretary, Ministry of Home Affairs, political wing-02 being satisfied, issued an order of detention on 18.11.2025 under Section 3(1) of the Special Powers Act, 1974

with a view to preventing the detenu from doing any prejudicial act to the public security and law and order situation, detaining him for a period of 90 (ninety) days.

The detenu was in Keraniganj Jail in the above-mentioned case and thereafter he was further sent to Kashimpur Jail, Gazipur and he was communicated by the jail authority that the respondent No. 5 issued an order of detention for a period of 90 (ninety) days on 18.11.2025.

Mr. Muha. Noman Hossain, Advocate appearing on behalf of the petitioner at the very outset submitted that, the grounds taken in the impugned order of detention are unspecific, indefinite and vague and as such is liable to be declared without lawful authority. He also submits that the respondent No. 5 detained the brother of the petitioner for 90 days by the order of detention without any approval of the Government, and as such same is liable to be declared illegal, without lawful authority and is of no legal effect.

He also submits that the impugned order is illegal, without lawful authority and passed in an unlawful manner because it was passed by showing no lawful grounds and particulars in violation of the statutory provision of law.

He next submits that pendency of a specific criminal case against the detenu cannot be the ground for detaining him under Section 3 of the Special Powers Act, 1974. The respondent No.5

with mala-fide and colorful exercise of power issued the above-mentioned detention order which is liable to be set aside.

By filing a supplementary affidavit the learned Advocate for the petitioner submits that the Deputy Secretary, Ministry of Home Affairs, Political wing-2 by the order dated 10.02.2026 extended the previous order of detention for a period of 20 (twenty) more days, which is due to expire on 01.03.2026.

Learned Advocate finally submits that the respondent No. 5 issued the impugned order in violation of the fundamental rights of the detenu guaranteed under the Constitution and as such the impugned order is liable to be declared to have been made without any lawful authority.

In support of his submission the learned Advocate for the petitioner relied on the decision made in the case of *Abdul Latif Mirza Vs. Government of Bangladesh and others* reported in 31 DLR (AD) 1 and *Abdul Hakim Miah Vs. The Secretary, Ministry of Home Affairs and others* reported in 42 DLR (1990) 219.

The Rule was opposed by the Learned Deputy Attorney General, however, without filing any affidavit in opposition.

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

It appears from the impugned order of detention annexed as Annexure-B to the writ petition dated 18.11.2025 issued by the Respondent no. 5, the Senior Assistant Secretary of Ministry of Home Affairs, Political Wing-2 stating that:

“সিটি স্পেশাল ব্রাঞ্চ, ঢাকা হতে প্রাপ্ত প্রতিবেদন ও সংযুক্ত কাগজপত্র পর্যালোচনান্তে এ মর্মে সন্তুষ্ট হওয়া গেল যে, জনাব সিরাজুল মনির বাশার (৪৫), পিতা-মাওলানা বশির আহম্মেদ, মাতা-মৃত সলেয়া বেগম, স্থায়ী সাং-খেরকাটি, ধর্মপাড়া ইউপি, থানা-জলঢাকা, জেলা-নীলফামারী, বর্তমানে ধাপ শ্যামলী লেন, থানা-কোতয়ালী, জেলা-রংপুরকে ১৯৭৪ সনের বিশেষ ক্ষমতা আইনের ২(এফ) ধারার জননিরাপত্তা ও আইনশৃঙ্খলা পরিপন্থী ক্ষতিকর কার্য হতে নিবৃত্ত করার জন্য অন্তরীণ রাখা প্রয়োজন।

আইন-শৃঙ্খলা বজায় রাখার স্বার্থে আবশ্যিক অনুভূত হওয়ায়, ১৯৭৪ সনের বিশেষ ক্ষমতা আইনের ৩(১) ধারায় অর্পিত ক্ষমতাবলে জনাব সিরাজুল মনির বাশার (৪৫), পিতা-মাওলানা বশির আহম্মেদ, মাতা-মৃত সলেয়া বেগম, স্থায়ী সাং-খেরকাটি, ধর্মপাড়া ইউপি, থানা-জলঢাকা, জেলা-নীলফামারী, বর্তমানে ধাপ শ্যামলীলেন, থানা-কোতয়ালী, জেলা-রংপুরকে কর্তৃপক্ষের অনুমোদনক্রমে এই আটকাদেশ জারির তারিখ হতে ৯০ (নব্বই) দিন কারাগারে আটক রাখার আদেশ প্রদান করা হলো।”

By filing a supplementary affidavit, learned Advocate for the petitioner submits that this order of detention was further extended for a period of 20 (twenty) days from 16.02.2026(Annexure-D).

From the Annexure-A-1 to the writ petition it appears that the detenu was arrested on 21.10.2025 and in connection thereto a

criminal case was filed on the following day under Sections 8/9 (1) (2)/10/11/12/13 of the Anti-Terrorism Act, 2003 and also under Sections 3/4/5/6 of the Explosive Substances Act, 1908 and he has been in custody since then. The application for bail filed by the accused in relation to this case was said to have been rejected by the Metropolitan Sessions Judge.

In the instant matter the detenu is already in custody in reference to a specific criminal case. The authority subsequently extended the detention order for 20 more days although the petitioner was never enlarged on bail. When an accused is arrested in relation to a specific criminal case and very much is in custody, it is nothing but colorable use of power to issue a preventive detention order under the Special Powers Act, 1974.

The power of preventive detention is a precautionary power exercised in reasonable anticipation but in the instant case it appears that it has been issued for punitive purposes instead of preventive. The grounds specified in the detention order are not definite and specific to make it justifiable under the provision of Section 3 (1) of the Special Powers Act, 1974.

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

and in such a case such detention order should be declared without lawful authority.”

Considering the principles of law and in the given context of the present case, we find that the impugned detention order and the extension thereto have been issued without any lawful authority and of no legal effect.

With these findings and observations, the Rule issued in the instant writ petition is made absolute.

However, without any order as to cost.

The order of detention and the extension thereto are hereby set aside and the authorities are directed to set the detenu free at once so far as the order of detention under Section 3 of the Special Powers Act, 1974 is concerned. Since the detenu is still in custody in relation to Mohammadpur Police Station Case No. 84 dated 22.10.2025 corresponding to GR case No. 1037 of 2025 u/s 8/9 (1) (2)/ 10/ 11/ 12/ 13 of the Anti-Terrorism Act 2003 along with Sections 3/ 4/ 5/ 6 of the Explosive Substances Act 1908, this order obviously will have no effect on this case or any other case pending against the detenu, which is to be disposed of by the Court concerned on its own merit including the question of granting of bail to the detenu Sirajul Monir Bashar.

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

**Sashanka Shekhar Sarkar, J:**

I agree.