

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

WRIT PETITION NO. 4191 of 1998

IN THE MATTER OF:

An application under Article 102 (2) (i) of the
Constitution of the People's Republic of Bangladesh.

-And -

IN THE MATTER OF:

Bangladesh Legal Aid and Services Trust

.....Petitioner

-VS -

Bangladesh and others

....Respondents

MK Rahman with
Idrisur Rahman,

....Advocates-For the Petitioner.

Obaidur Rahman Mostafa, Deputy Attorney-General
with

Mushfiqur Rahman Khan, Assistant Attorney-General

....For respondent No.1.

Syed Khalequzzaman, Advocates

....For Respondent No.4.

Present:

Mr. Justice Md. Fazlul Karim

And

Mr. Justice Md. Ali Asgar Khan

Judgment on 18.04.1999.

Md Fazlul Karim J:

This Rule was issued calling upon the respondents to show cause as to why the detenu Md Zaved now being detained in Dhaka Central jail, Dhaka vide Memo No. Miscellaneous Case No. 1586 of 1998 dated 22-12-98 (Annexure-B to the petition) issued under the signature of respondent No.2 should not be brought before this Court so that it may satisfy itself that the detenu is not being held in custody without any lawful authority and in an unlawful manner. Respondent No.4 was further directed to show cause as to why appropriate legal action should not be taken against him.

In an application under Article 102(2)(i) of the Constitution of the People's Republic of Bangladesh, the petitioner, Bangladesh Legal Aid and Services Trust (BLAST) represented by its Staff Lawyer Mr Md Abdul Mannan Khan has stated, *inter alia*, that the petitioner is registered under the Companies Act, 1913 as a non profit making Trust with the object, *inter alia*, to provide legal aid to people to enforce their human rights guaranteed by the Constitution and to uphold the supremacy of the Constitution and rule of law including taking action in the public interest to protect public property and rights, as envisaged by the law and the Constitution. Meanwhile during last three years BLAST has provided legal aid in more that 3000 cases, including more than 220 cases in the Supreme Court of Bangladesh and has invoked the jurisdiction of this Court undertaking a public interest litigation programme in this Court which is the guardian of the Constitution and of the rights and to protect public property and safeguard the public interest and uphold rule of law. In the said application the petitioner has further stated that one Md Zaved, a law abiding and peace citizen of Bangladesh aged about 10 years coming from a respectable aged about 10 years coming from a respectable Muslim poor hawker family, was arrested by the Sutrapur PS Police on 16-12-1998 at about 2-00 PM and was produced before the Metropolitan Magistrate on 17-12-98 and thereafter he was sent to Dhaka Central Jil [sic] and an order of detention under section 3(2) of the Special Powers Act directing the detention of the detenu for a period of 30 days from the date of service thereof was issued as appeared from the newspaper report published in 'Mukta Kantha' dated 28-12-98. The said report mentioned about grounds of detention which are vague, indefinite and lack in material particulars as to time, place and manner preventing the detenu from making an effective representation. Besides that, the grounds do not attract the mischief of ingredients enumerated under section 2(f) of the Special

Powers Act and, as such, the order of detention and grounds thereof are illegal and without lawful authority. It has been further asserted that the detenu has been detained at the behest of the interested quarters which is nothing but colourable exercise of power. It further appears from the newspaper report that a specific criminal case under section 25 B of the Special Powers Act is pending against him which can by no means be a ground for detaining the detenu under the Special Powers Act. It has further been asserted that the detaining authority has detained the detenu in contravention of the provisions of Articles 31, 32, 33, 35 and 36 of the Constitution.

By way of a supplementary affidavit the petitioner has further asserted that after the affirmation of the writ petition, a lawyers' team of the petitioner visited the place of occurrence, contracted the detenu's parents Abdur Rashid alias Kausar and Shakila Begum of 83/1/A RK Mission Road, Police Station Sutrapur, District-Dhaka in order to collect further information regarding the arrest and detention of the detenu. It has been gathered that Taher, the elder brother of the detenu, was killed on 20-6-96 by a miscreant named Polash and his accomplices for which Sutrapur PS Case No.61(6) 96 dated 20-6-96 was lodged and one Md Alauddin, respondent No.4, Sub-Inspector of Police of the Police Station was made the Investigating Officer who demanded illegal gratification from the parents of the detenu Zaved but on refusal the accused Polash was excluded from the charge sheet of the said murder case whereupon a Naraji petition was filed and the Magistrate directed CID to undertake further investigation which has incensed the said investigating officer, and on 16-12-98 one Aliul Islam Akhi and Ranjit from the neighbouring house of the detenu were arrested but quickly released and instead arrested the detenu from his house out of enmity and grudge and implicated in a false and fabricated case. On 27-12-98 the said sub-inspector Alauddin Miah came to the residence of the father of the detenu and threatened him of implication in several cases if he filed any complaint against the said sub-inspector. On 22-12-98 detenu was served with the order of detention whereupon Abdur Rashid, the father of the detenu, wrote a letter to the Police Commissioner, DMP Headquarters on 27-12-98 narrating the police Harassment and illegal activities of Sub-inspector Allauddin Miah and prayed for action against the latter and to release the detenu Zaved. It further revealed that Zaved was arrested on 16-12-98 in Sutrapur PS Case No.63(12)98 under section 25B of the Special Powers Act and the Investigating Officer prayed for remand of 5 days on 17-12-98. Meanwhile the District Magistrate, Dhaka on 22-12-98 issued the order of detention which indicates malafide as regards arrest and detention. It has been asserted that the detenu is a minor boy who helps his father in his hawker business and the issuance of the order of detention was done without any thought or

application of judicial mind of the District Magistrate. The petitioner has further submitted that for the infringement of the fundamental right of the detenu by the respondent, the detaining authority needs to be saddled with compensation for illegal and wrongful confinement under the garb of an order of detention. Upon the said application and the supplementary affidavit treating the same as part of the main application the Rule was issued on 3rd January, 1999. On 22nd February 1999 the petitioner filed another supplementary affidavit stating that the detenu was a student of Class-two of Shahid Nabi Model Government Primary School and according to his school register the date of birth is 13-3-1988. The Commissioner of Ward No. 75, Dhaka City Corporation also certified the boy to be of good moral character never having participated in any activity subversive of the State. On 24th January, 1999 Inspector General of Police was informed that after the issuance of the Rule respondent No.4 along with some goondas visited the house of the detenu and threatened him to withdraw the case or to face dire consequences and on 30th January, 1999 they again went with deadly weapons and stabbed the detenu's mother Shakila Begum. After her treatment she met the Home Minister and narrated the occurrence whereupon the respondent No.4 was suspended. The aforesaid incidents were published in Daily 'Mukta Kantha' and 'Manob Jamin' on 1-2-99 and 2-2-1999 respectively. Said Shakila Begum also sworn an affidavit to that effect. The petitioner thereupon prayed for payment of compensation and costs to the victim and his family.

The Rule has been contested by respondent No.1 Government, represented by the Secretary, Ministry of Home Affairs denying the allegation made in the application stating, *inter alia*, that the age of the detenu shown as aged 10 years is not correct as the same is not supported by any certificate. The news item speaks about the grounds of detention but, in fact, no grounds were served as he was released from custody within stipulated time. The detenu was detained for specific reason. The detenu was detained for the interest of law and order situation as per section 2(f)(v) of the Special Powers Act. The District Magistrate, Dhaka on 22-12-98 passed an order of detention but the government being satisfied was pleased to withdraw the order of detention on 29-12-98. Prior to the issuance of the grounds of detention the detenu was released. The detaining authority passed the order legally and the detenu has not been detained due to specific criminal case No.63(12)98 under section 25B of the Special Powers Act and the passing of the order of detention has not violated the fundamental right guaranteed under Articles 31, 32, 33, 35 and 36 of the Constitution. The alleged grounds mentioned in the newspaper are all concocted and, as such, are no grounds in the case.

The respondent No.4 Md Alauddin Miah, Sub-inspector of Sutrapur Police Station has contested the Rule by filing affidavit-in-opposition denying the allegations made in the original application stating, *inter alia*, that at the instance of some interested persons with a view to feed fat their personal grudge this respondent No.4 has been implicated upon some misrepresentation of fact for the purpose of issuance of a Rule to show cause as to why appropriate legal action should not be taken against respondent No.4. That no public interest is involved in the detention of the detenu as the order of detention has been passed by the appropriate authority in due process of law. The detenu Zaved, however, is not a law abiding and peace loving citizen. He along with his parents and another brother Nader are all veteran criminal of the locality involved in criminal case being Sutrapur PS Case No.63(12)98 dated 16-12-98 under section 25 B of the Special Powers Act, Demra PS Case No.10-2-96 under sections 323/379/411 of the Penal Code, Sutrapur PS Case No.107 dated 19-12-96 under section 25B of the Special Powers Act in which the mother of the detenu is also an accused. Sutrapur PS Case No.13 dated 6-1-96 under Section 19A & (f) of the Arms Act in which Nader, the brother of the detenu, is an accused, Motijheel PS Case No.90 dated 15-10-96 under Section 25B of the Special Powers Act in which the detenu along with his brother Nader are accused, Demra PS Case No.133(3)97 under section 3/4 of the Explosive Substance Act in which the said brother Nader is an accused, Demra PS Case No.154(3)97 under section 19(f) of the Arms Act in which the said Nader is an accused. Motijheel PS Case No.3(5)96 under section 19(a) and (f) of the Arms Act in which said Nader is an accused, Motijheel PS Case No.20 dated 8-2-92 under section 365 of the Penal Code in which Shakila, mother of the detenu, Kawsar, father of the detenu are accused and Sabujbagh PS Case No.21 dated 18-2-92 under sections 6/9 of the Nari-O-Shishu Nirjaton Damon Ain 1995 is pending against the detenu. The detenu is not a minor nor comes of a respectable Muslim Hawker family, he rather comes of a notorious criminal family and poses a threat to the law and order situation in the locality. It has further been asserted that the detenu was a student of Shaheed Nabi Govt Primary School at 11, Murad Sarak, Tikatoli where he was admitted on 22-1-89 showing his date of birth as 5-4-82 in the admission register. It has further been stated that on getting secret information the respondent No.4 along with his attending forces raided the house of detenu and caught him red handed with 50 bottles of Phensidyl and he was arrested. A regular case was started against the detenu and charge sheet was submitted against all 3 accused persons under section 25B of the Special Powers Act. The respondent No.4 is not in any way concerned with the order of detention passed against the detenu under section 3(2) of the Special Powers Act as this respondent has no manner of control or authority over the proceeding of detention case which was originated by an order passed by the District Magistrate, Dhaka

and the respondent No.4 has no scope either to advise the District Magistrate to pass any detention order nor any opportunity to know about any detention proceeding but has been impleaded in the case with malafide intention. The contents of the newspaper statement dated 28-12-98 are absolutely false and motivated. The detenu is not aged about 10 years rather his age is 19 years and he has not been implicated in the false phensidyl case and he is the real phensidyl businessman. The allegation of enmity of the respondent No.4 with the detenu's family as published in the daily newspapers are baseless and unfounded having no material basis. The respondent No.4 is an Investigating Officer of the murder case where the brother of the detenu was murdered and in the charge-sheet one Omar Chisti @ Santo was an accused of the murder case who was not sent in charge-sheet as he was not involved in the said murder case, and said Omar Chisti @ Santo was arrested by the Police in an injured condition on the date of occurrence of murder of the detenu's brother which occurred on 19-6-96 and the said Omar Chisti @ Santo was granted bail on 23-6-96. The story of enmity as published in the news paper was with an oblique motive with a malafide intention. A representation was filed to the Home Minister by the inhabitants of the detenu's area on 13-12-1998 alleging that the parents of the detenu and the detenu himself and 3 other neighbours are directly involved in selling phensidyl and prayed for legal action and accordingly, an investigation was made at the instance of the Police Commissioner and a report was submitted to the office of DC North DMP by the investigating officer on 4-2-99 and subsequently a massive drive was undertaken to apprehend the persons engaged in phensidyl business as per investigation report and accordingly, the detenu was caught red handed with 50 bottles of phensidyl and hence a criminal case has been started on the basis of FIR lodged by respondent No.4 dated 16-12-98 being Sutrapur PS No.63 dated 16-12-98 under section 25B of the Special Powers Act. The alleged certificate given by the Head Mistress dated 9-1-99 and the local Commissioner dated 11-1-99, the newspaper reports dated 1-2-99 and 2-2-99, affidavit sworn by the mother of the detenu dated 17-2-99 containing allegation against the respondent No.4 are all subsequently manufactured, managed and prepared by the petitioner in order to harass and undermine the dignity and prestige of the respondent No.4 who is serving in the department for the last 27 years with reputation and the statements made in the supplementary affidavit filed before this Court on 22-2-99 were made for the purpose of the Rule and are strongly denied by the respondents. After the filing of the writ petition the Commissioner, Dhaka Metropolitan Police gave a show cause notice on 3-2-99 to the respondent No.4 regarding the allegations under Police Officers (Special Provisions) Ordinance No.84/76 as amended by Ordinance No.22/82 and 7/94 and the respondent No.4 in reply filed a written statement on 11-02-99, but the said Police Commissioner by his order dated 17-2-

99 exonerated the respondent No.4 of all charges since nothing could be established beyond reasonable doubt in the departmental proceeding whereupon his suspension was withdrawn treating the same to be in his normal duty. There was no violation of any fundamental right in the instant case and the petitioner BLAST does not have any locus standi to defend a criminal and to shield him from the application of law and the petitioner (BLAST) ought not to have been so much over zealous or interested to protect a criminal from the lawful trial. The detenu is not a minor and in the writ petition no date of birth of the detenu Zaved has been mentioned and the basis of the writ petition is a motivated false report published in the newspaper which cannot be legally relied upon. The respondent No.4 never demanded illegal gratification from the parents of the detenu and it is denied vehemently that on refusal of the father to pay any such illegal gratification the respondent No.4 who was the Investigating Officer in Taher murder case excluded the main accused from the charge sheet. It has been asserted that the accused Omar Chisty @ Shanto @ Polash was under treatment in Suhrawardy Hospital with bullet injury from before the date of murder of Taher in connection with the Sutrapur PS Case No.93(5)96 under section 19A and (f) of the Arms Act. The alleged threat to implicate is false, motivated and denied. The story of Sub-inspector Alauddin arresting one Aliul Islam Akhi and Ranjit on 16-12-98 from the neighbouring house of the detenu and taking them to Sutrapur Police Station and releasing them by taking bribe and the allegation of arresting the detenu on the very same day from his house out of enmity and grudge and of implicating him in a false case is malafide, concocted and denied by respondent No.4. The statement that on 27-12-98 Sub-inspector Alauddin Miah came to the residence of Abdur Rashid and threatened him that if he dares to file any complaint against him the father of the detenu would be implicated in other false cases are [sic] also denied. The allegation that the respondents are jointly liable to pay monetary compensation to the detenu for the violation of his constitutional fundamental rights are illegal, malafide and false and not tenable in the eye of law. Respondent No.4 never exercised his authority in the alleged arrest of the detenu in connection with Sutrapur PS Case No.62(12)98 dated 16-12-98 and upon lawful investigation charge sheet has been submitted and the case is sub judice. The respondent No.4 in his due and lawful discharge of duties and responsibilities arrested the detenu with 50 bottles of phensidyl and instituted the case as per law and the case is pending for trial and the matter is sub judice and no further comment is warranted.

Mr MK Rahman along with Mr Idrisur Rahman, the learned Advocates appearing for the petitioner, have submitted that in view of the newspaper report appearing on 28-12-98 in daily 'Mukta Kantha' publishing a news item that a boy of 10 (ten) years has been put under detention showing him aged about 19 years,

the petitioner as a non profit making Trust being a voluntary organisation with a view to protecting the human and fundamental right of a citizen guaranteed under Article 33 of the Constitution i.e. safeguard the public interest and uphold rule of law, has volunteered to move this Court with the application as a public interest Litigation Programme over threatening and to safeguard the violation of fundamental right by the authority concerned is committed to protect the right and interest and, as such, has been aiding the helpless victims of fundamental rights/human right for redress of their violations. The learned Advocate has further submitted that the respondent No.4 has not only implicated the minor detenu, his parents and brother in false cases but also caused the issuance of the order of detention through respondent No.2 with ulterior motive in order to harass the detenu and his family members as they refused to satisfy the respondent No.4's demand for illegal gratification in order to feed fat the grudge of the complaint petition filed by the mother of the detenu before the Police Commissioner of Dhaka Metropolitan Police. The learned Advocate has further submitted with reference to Annexure-E to the Supplementary Affidavit dated 1-1-99 that the respondent No.4 while praying for 5 days remand has malafide stated on 17-12-98 submitting the proposal for detention in Memo No.6779 dated 17-12-98 under the provision of Special Powers Act that in order to prevent him from eroding value of the young generation and from preventing him from illegal selling of phensidyl which go to show the pendency of the criminal case and also malafide action of the said investigating officer, respondent No.4 in recommending an order of detention consequent upon which the order of detention has been passed by respondent No.2 on 22-12-98 and considering the representation of the mother of the detenu dated 27-12-98 containing allegation against respondent No.4 to the Police Commissioner, the detenu was released on 29-12-98 withdrawing the order of detention which is malafide on the face of it and, as such, respondent No.4 should be saddled with compensatory cost for his proposal for detaining the detenu on the self same allegation for which a specific criminal case is pending.

Mr MK Rahman has further submitted that this Court having a constitutional obligation to protect the citizen and to oversee the action of the legal functionaries and having power of judicial review of the action of the authorities could pass appropriate order or direction upon the respondent in spite of the fact that the detenu has been released on an application under Article 102 of the Constitution as aforesaid inasmuch as excess of authority and an abuse of power by the law enforcing authority including the Police being rampant an appropriate direction is called for from this Court with a view to arresting checking such abuses or excess by law enforcing agency under the garb of police action, as the judiciary was duty bound under the Constitution to protect the people from any

wrong and arbitrary exercise of power by the authorities including the Police. The learned Advocate has further submitted that it is high time that a guideline is required to be given by this Court in the matter of protection of human right/fundamental right of the citizen by formulating a code of conduct of the law enforcing agency within the framework of law in order to check the erosion of values in the society as now-a-days the person in authority is obliged to protect/defend the right to life and property which are being violated by the selfsame agency demolishing the value as to sanctity of life or liberty and has urged this Court to rise up to the occasion to provide an effective guideline.

Mr Obaidur Rahman Mostafa, the learned Deputy Attorney-General appearing for respondent No.1, has however submitted that the authority-respondent No.2 on being satisfied issued the order of detention on 22-12-98 and the government on perusal of the grounds thereof forwarded it for approval under sub-section 3(3) of the Special Powers Act did not approve the order thereby withdrawing the order of detention and, as such, there was no malafide on the part of the respondent Nos.1 and 2 in the matter of detention of the detenu.

Syed Khalequzzaman, the learned Advocate appearing for the respondent No.4, has submitted that the respondent No.4 though filed the First Information Report on 16th December, 1998 under section 25B of the Special Powers Act against the detenu and others and prayed for remand in the interest of investigation about the detenu for 5 days but did not initiate the detention proceeding against the detenu inasmuch as the detenu having been found involved in a case under section 3 of the Explosive Substances Act, the respondent No.4 has lodged the First Information Report in Motijheel PS being case No.67(3)99 implicating the accused along with the detenu. The learned Advocate has further submitted that there was no malafide in the matter of implicating the accuseds [sic] or issuing of the detention order in accordance with law whereby the respondent No.4 could be saddled with any malafide intention.

It appears from the Annexure-D that the respondent No.4 has lodged an First Information Report dated 16-12-98 being Sutrapur PS Case No.63 dated 16-12-98 under section 25B of the Special Powers Act against the detenu and others upon alleged recovery of 50 bottles of Indian Phensidyl from the possession of the detenu Zaved and the absconding accused Abdur Rashid @ Kowsar [sic] and Shakila Begum. It further appears from Annexure-E to the Supplementary Affidavit on behalf of the petitioner that the said informant-respondent No.4 has undertaken the charge of investigation of the case and prayed for remand of the detenu for 5 days with a strong opposition for letting the accused on bail stating in

the said forwarding by Memo No.6779 dated 17-12-98 for issuance of an order of detention under the Special Powers Act. The said application has been signed by the Officer-in-Charge on 17-12-98 forwarding the same to the Court with a prayer for 3 days remand in the interest of investigation and thereafter it appears from the said forwarding that the Officer-in-Charge of Sutrapur PS has forwarded the said recommendation on 18-12-98 and the same was also endorsed by the Assistant Police Commissioner Demra Zone, DMP on 18-12-98 and by the Deputy Commissioner (East) Dhaka Metropolitan Police on 19-12-98 and sent to the authority concerned by memo No.671 dated 20-12-98. We have recorded this fact from the said memo appearing in the secret file produced by the learned Deputy Attorney-General before the Court. On receipt of the said memo, the Commissioner, Dhaka Metropolitan Police has forwarded the same to the Special Police Super vide Memo No. 'Aciva' 79-98/12081 dated 22-12-98 and on receipt of the same the District Magistrate vide Memo No. 'wewea' Case No.1586/98 issued the order of detention being satisfied with the proposal detaining the accused for 30 days. It further appears from Annexure-6 annexed by the respondent No.4 which go to show that the department issued show cause notice against him on the allegations that, Òm~Îvcyi _vbvi gvgjvi bs 63 Zvs-16/12/98 Bs i"Ry K#ib; AvjvDj ibwR#Zi #M^adZvi m^ac©#K wRwW#Z D#j-L bv Kwivq Zvni#i Qvwoqv #b Ges ciew©Z#Z wK#kvi Av#e#i [sic] eqm wg_`vfv#e 19 eQi wjwLqv Zvni#K 1974 mv#ji we#kl ¶gZv AvB#b AvUK Av# #ki c^a-Zve #c«i#bi K_v D#j-L d#ivqvw©Ws wi#cv©U Av`vj#Z #c«ib Kwivq Zvni Rvwgb eÜ K#ib Ges m~Gvcyi _vbvi fvic«vß K©gK©Zv#K I c«fvweZ Kwivq Zvni Øviv Av#e#i [sic] AvUK Av#`k #c«ib K#ib hvni d#j wK#kvi Av#e#i [sic] 30 (wGk) w`#bi AvUK Av#`k #`Iqv nq| NUBvwU RvZxq %o`wbK gz³KÚ cwÎKvq djvI Kwivq c«KvwkZ nIqvq Rb mg#¶ c-wjk wefv#ci [sic] fvegyw©Ë `vi`bfv#e ¶yb§ nBqv#Q|Ó It reply thereof the respondent No.4 stated that:

ÒRb wbivcË [sic] Ges D³ GjvKv#K gv`Kgy³ Kvibmn [sic] hye m^ac«`vq#K giY #bkvi nvZ nB#Z i¶v Kivi wbwg#Ë Rv#e`#K 1974 m#bi we#kl ¶gZv AvB#b Aš—ixb ivLvi c«-Zve `vwL#ji K_v fvic«vß K©gK©Zv g#nv`#qi wb©Ë#k [sic] Avmvgx Pvjvb c«wZ#e`#b D#j-L Kwij|Ó

Thus, from the above, it is clear that the proposal for initiating a detention proceeding was initiated by the respondent No.4 simultaneously while recording the First Information Report and taking the case for investigation by himself. It further appears from the secret file that the detention order was issued on 22nd December, 1998 but the same was withdrawn by the government on 29-12-98, vide memo No.4355 dated 29-12-98, that is, prior to the issuance of this Rule on 3rd January, 1999.

Initially, the petitioner filed that application under Article 102(2)(b)(i) of the Constitution basing upon Annexure-A, a report appearing in the Daily 'Muktakantha' dated 28-12-98. Subsequently, the petitioner filed through supplementary affidavit an order of detention, the representation of the mother of the detenu along with First Information Report and the photo copy of the prayer for remand by the respondent No.4 in respect of the detenu whereupon the Rule was issued on 3rd January, 1999. It would be profitable for us to quote the order of the District Magistrate which runs as under:

Ô22-12-98Ó fvic«vß K©gK©Zv m~Îvcyi _vbv Avmvgx †gvt Rv‡e‡i wei“‡× m~Îvcyi _vbv gvgjv bs 63 Zvs-16/12/98 aviv 25 (L) wet ¶t AvBb/74 (GRvnyi bvgvq) †gvZv‡eK Avmvgx‡K 1974 m‡bi we‡kl ¶gZv AvB‡b AvUK ivLvi Rb” mnKvix cywjk Kwgkbvi Ges Dc- cywjk Kwgkbvi wW,Gg, wc, XvKvi mycvwik mnKv‡I Av‡e`b K‡ib|

c«ZvewU Gm, Gg (wmwU) XvKv, XvKv K©Z...K mycvwikK...Z | ‡Ljvg| mbZyó n‡h [sic] 30 (wÎk) w`‡bi AvUKv‡k w`jvg| cieZ©x e`e`v ‡bqv ‡nvK|Ó

The said Rule was issued on 3rd January, 1999, at a time when the detention order was already withdrawn by the Government as aforesaid, apparently making the Rule infructuous, but Mr. MK Rahman, the learned Advocate appearing for the petitioner has submitted that this Court has jurisdiction conferred by the Constitution to see the malafide in issuing an order of detention in spite of the fact that the Rule challenging the order of detention was apparently made infructuous. The learned Deputy Attorney-General has, however, submitted that in view of the fact that the detenu was released from the detention the Rule has become absolutely infructuous and there was no element of any malafide that can be looked into by this Court as the detenu though put in detention on 22-12-98 was released by the Government on 29-12-98 and more so, prior to the issuance of any ground of detention. It appears from the Memo containing the short fact of the detention that on the confession of Md Zaved (19) a big polythene bag containing 50 bottles of phensidyl was recovered at the showing and admission of accused Zaved from his house and he is found to be engaged in the case of hijacking in different areas and nobody dares to make any complaint against him for fear of the detenu. He is also an extortionist and a toll collector and an active member of a terrorist group and with a view to preventing him from the aforesaid activities and in order to maintain law and order situation he should be detained under Special Powers Act.

Although there are many credit bright side of the Police in our country but their discredits in present days are overshadowing the image, dignity, efficiency and credibility of the Police as the involvement of the Police in the incidents of torture, coercion, terrorism, harassment, extortion and even some time looting by putting barricade and plundering pedestrians and vehicles passing through road are rampant. This is due to the fact that Police force is largely manned by untrained, ill-equipped and inadequately motivated personnel and due to their lack of proper training and motivation, in particular, a section of Police finding it convenient to collude and make worldly gains.

It has been reported in Daily Star dated 17-4-99 that a survey of eighty Police Officers has found them all to be corrupt, with accumulated illegal wealth worth over Taka 20 crore. Bangladesh Society for Enforcement of Human Rights conducted a survey in the last six months which revealed that the Police Officers earned 600 to 1000 times more than their salaries, mainly through bribes and extortion. Thus the present trend of Police activities have made the job of policing more complex task in our society. Instead of the duty of the Police to be responsible to public demands for service including the safeguard of their rights to life and property and protection against violence and oppression, etc., the people are ready and willing to put the Police on dock as an accused. Ever since the inception of the Police as an institution with its sole motto of betterment of the people, the Police stood on the dock as a prosecutor but presently the duty of serving the nation does not meet the expectation of the people at all as, instead of protecting the life and property of the people, they are indulging in activities detrimental to the people's right and mostly engaged in amassing wealth for themselves and in order to protect themselves they are ready and willing to satisfy the government whichever party comes to power. Consequently, the Police, mostly acted as a foe rather than a friend of the people, although our law and Code clothes the Police with a unique and important element in the administration of criminal justice.

Torture became a weapon of Police action and the ineffectiveness of Police force is mostly due to lack of training, motivation, not properly equipped or supervised and unusually used in jobs other than police duty. Rampant death, rape, assault and abuse in Police custody seem to be the go of the day with Police. Sometime process of law is being misused, ignored or hampered to arrest the accused, to extort ransom for release and physical torture. Sometimes it gives the impression that the Police is the highest organisation misusing the provisions of law by indulging in raping, sexual abuses, sexual harassment, sexual assault, molestation and also even domestic harassment, making the citizen victim in

police shelter and even foreigners were cautioned not to visit the police station without escort for fear of apprehension of rape or gang rape.

Sometimes police killing led to a general hartal which was also opposed by police together with Government which go to demonstrate the condonation of police excesses. As a result civil administration have been trying to reap some advantage out of the police, which also lead to police high handedness. If the law and order situation is at its lowest, citizen's security is non-existent and only a willing, loyal, disciplined, efficient law enforcing agency is needed to suppress people's anger. The tragic deaths and (sic) in police custody has shocked the nation. The incidents speak of the brutality of certain elements of our police force. The conscious citizen of the country would look for a plausible explanation of illegal and inhuman behaviour of certain elements in the police force. Killings, disappearances and rampant misuse of power by police in recent years resulting in gross violation of the fundamental right of the citizen has not only affected the image of the Police institution but has shaken the confidence of the citizen in the institution. Our anxiety is for regaining the confidence of the public in the Police so that a question does not appear in the mind of the citizen as to who is to Police the Police. Democratic Government of the People and for the People is a form of administration by the people either directly or through elected representatives based on the acceptance and practice of the principles of equality of rights, opportunity and treatment. It is high time that the concerned authority in its wisdom should think as to how the image, honour, authority, dignity and prestige of the institution could be salvaged.

Since recent past the Police is frequently put on dock in their defence and the conscious citizens of the country are looking for a plausible explanation of illegal and inhuman behaviour of the Police. Police killing of students, public and women, tragic deaths in Police custody have shocked the nation and their foolish actions sometimes put the democratic government into embarrassment. The horrifying incidents speak of the brutality and heartlessness of certain elements of our police force. Sometimes the vested quarter in the civil administration try to reap some advantage out of the demoralised Police in lieu of the condemnation of Police excess for their selfish motive in repression over the rivals.

At a seminar held on 10-1-95 in observation of Police Week Mr Justice Mustafa Kamal as the chief guest and keynote speaker addressed the Police, *inter alia*, that, "I thought to myself, the Police stands as the main accused in the eyes of the people since the British days, what new accused shall I discover ? For many years past the Police force has been showered with many advice-change your

attitude, change your role as a servant and friend of the people, do not allow yourselves to be used in the interest of the political parties, be they in Government or in opposition, do not take the country to the bottom of the earth by playing the ruinous game of alliance, and sharing with the well organised gang of mastans, illegal subscription-collectors, drug dealers, illegal arms-holders, black marketers, terrorists and anti-social elements who flex their muscles in naughty arrogance outside the purview of civilian and military administration.”

In the case of *Bhim Singh, MLA, vs State of Jammu & Kashmir and others AIR 1986 (SC) 494*. It has been held that,

“We can only say that the Police officers acted in a most highhanded way. We do not wish to use stronger words to condemn the authoritarian acts of the Police. If the personal liberty of a Member of the legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals. Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Their duty is to protect not to abduct.”

In *Human Rights in Constitutional law* by Durga Das Basu as regards the scope of judicial review of executive act for infringement of Fundamental Rights, it has been stated that, “When a written Constitution guarantees Fundamental Rights along with judicial review to enforce them, special emphasis is added to the foregoing role of the judiciary, for the Courts are regarded as the ‘Custodian’ or guardian of the guaranteed rights or the ‘sentinel’ to guard them against violation by the organs of the State.”

In the Constitution 8th Amendment case judgment monogram 379, it has been held that,

“Judges are by their oath of office bound to preserve, defend and protect the Constitution and, in exercise of this power and function they shall act without any fear or favour and be guided by the dictate of conscience and the principle of self restraint. It is these principles which restrain them from exceeding the limits of their power.”

Article 3 of the Universal Declaration of Human Rights states that, “Everyone has the right to life, liberty and security of person.”

In Human Rights in India by RC Hingorani under the heading 'Freedom from Police Atrocities (Zulum)' stated, *inter alia*, that, "The right to life would mean right to peaceful life. There is no charm of life without it being peaceful. However, many are not able to lead a peaceful life. Poverty and illiteracy are predominant in the Indian society. Law-enforcing authorities take advantage of the poverty and illiteracy of people by harassing in several ways. They are sometimes fleeced merely on suspicion. At other times, they are fleeced by implication in false charges if they dare to challenge their authority or illegal activities. Women are molested. People are often known to have been killed in fake police encounters. Others have died while in Police custody due to third degree methods of torture used by the Police. It was rightly observed by the Court that Police should better depend on its wits than on fists for their investigation. It advised the Government to re-educate the constabulary, to wear them out of their sadistic tendencies, and inculcate in them respect for the human person and punish those who are found to have misconducted. The Court hoped that Police cruelty received Government's serious attention. Otherwise, who will Police the Police."

Constitutional obligation of the Court defend and protect the rights of the citizen Courts to see that illegalities are not being authorities in denying those rights.

Lord Diplock used the phrase (Illegality) to cover a number of different grounds which are frequently treated separately.

The most important are:

- (1) An authority must not exceed its jurisdiction by purporting to exercise powers which it does not possess.
- (2) An authority must direct itself properly on the law.
- (3) An authority must not use its power for an improper purpose.
- (4) An authority must take into account all relevant consideration and disregard all irrelevant considerations.
- (5) An authority to which the exercise of a discretion has been entrusted cannot delegate the exercise of its discretion to another unless clearly authorised to do so.

(6) An authority must not fetter its discretion.

(7) Finally, an authority acts unlawfully if it fails to fulfill a statutory duty.

The General Assembly of the United Nations resolution 34/169 of 17 December 1979 has adopted a Code of conduct for law Enforcement officials.

Our Constitution has provisions protecting the fundamental right through the process of law.

Our attempt is not to belittle the image of the Police as an institution but our endeavour is to regenerate the goods and beneficial spirit in Police and to revive the confidence of the people in Police lost in coming years from their impressions, the people in the Society do not consider that the Police as an institution has outlived its utility and, as such, to regain and enhance its glory and prestige which they lost by the passage of time through persistent abuses and excesses, it is high time that the Police Act, Ordinance Code and Regulations should be strictly enforced, otherwise, it would go to demonstrate the condemnation of Police excesses.

Accordingly, we are urging the authorities to take appropriate step in framing a Code of Conduct for law enforcing agency immediately with the sole object of resuming the position of a shelter/support for citizen in times of need and to wash away the bad name it has acquired through passage of time, in the light of the Code of Conduct of law Enforcing Agency adopted by the General Assembly of United Nations by resolution 34/169 of 17 December, 1979.

In view of the above, it is hoped that the authorities should take immediate steps to establish a trustworthy, dignified and strong disciplined police force enjoying people's confidence.

The simultaneous issue of order of detention while recording an First Information Report in respect of a cognizable offence with apprehension that the accused may be enlarged on bail in the case, is certainly an abuse of the provision of detention under Special Powers Act and such move has not only tarnished the image of the Police but in effect minimising the gravity and utility of the detention law. In the instant case we find that the respondent No.4 is the initiator of the order of detention against the detenu which was subsequently processed to his higher officials leading to issuance of an order of detention. Such rampant misuse of

power by Police causes gross violation of fundamental rights of citizens as a result of which people's confidence in Police has decreased to a great extent, cannot be overlooked by the Court. We disapprove/deprecate the said practice and procedure for the aforesaid reasons and for the sake of good civil society where police is the defender and protector of law and order. The sanctity of life and liberty of citizen cannot be allowed to be abused through indiscriminate police action. We hope that the authority concerned, in the interest of the police as an institute, should take care against any such random and general abuse and excess.

As regards the submission of the learned Advocate for the petitioner for awarding cost/compensation against respondent No.4 it has been held in aforesaid *AIR 1986* that,

“However the two Police officers, the one who arrested him and one who obtained the order of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the highest echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is not in detention, there is no need to make any order to set him at liberty but suitably and adequately compensated he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decision of this Court is *Rendal Sah vs State of Bihar (1983) 3 SCR 508 (AIR 1983 (SC) 1086)* and *Sebastian M Hongony vs Union of India AIR 1984 (SC) 1026*. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous and malicious intent and that the constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation.”

The learned Advocate has also referred to the decision in the case of *Md Shahnewaz vs Govt of Bangladesh 18 BLD 337 = 50 DLR 633* in which case a cost of Taka 20,000.00 was awarded to the detenu as compensation to be realised from delinquent Police Officer due to dangerous dereliction of duty by a Police Servant (Police Officer) causing immense suffering to an innocent citizen.

As the government has taken timely step for revoking the detention order upon publication of newspaper report and that the criminal cases against the

detenu are pending, we take a lenient view in the matter, with the hope that the provision of law shall not be indiscriminately misused or abused in curtailing the fundamental right of the citizen in the matter of enjoyment of life and liberty.

In view of the above and that the criminal cases are *sub judice* against the detenu and others we do not concede to the submission of the learned Advocate for the petitioner to award any compensatory cost against the respondent No.4. Accordingly, this Rule is discharged without any order as to costs.

Before we part with the judgment, we record our assistance by Mr MK Rahman, Advocate along with Mr Idrisur Rahman, Advocate for the petitioner and Mr Obaidur Rahman Mostafa, Deputy Attorney-General with Mr Mushfiqur Rahman Khan, Assistant Attorney-General for the respondent.

Learned Advocate for the petitioner prays for transmission of a copy of the judgment to the Ministry of Home Affairs and the IGP for their information, which prayer is allowed. Send down a copy of this order to the home Ministry and IGP for their information and necessary action in the light of observations in the judgment.

Md Fazlul Karim

Mr. Justice Md. Ali Asgar Khan

I agree.

Md. Ali Asgar Khan