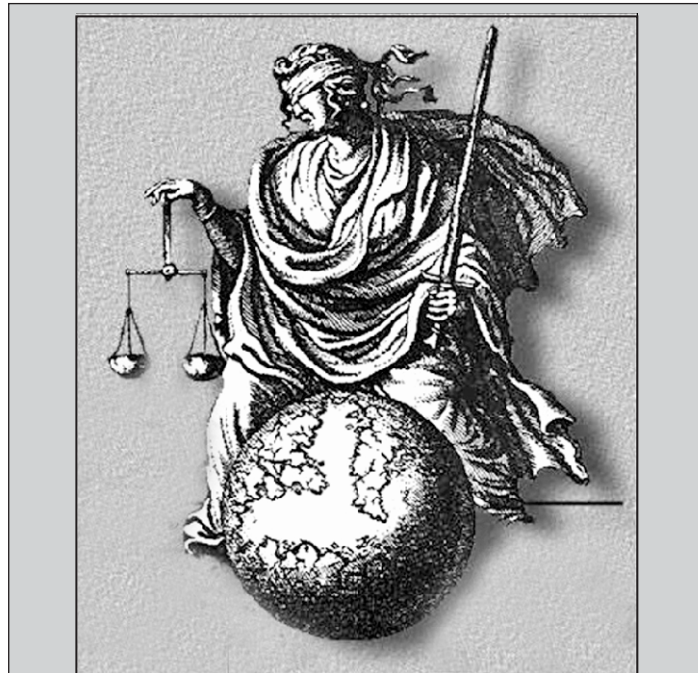




READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: My father was a Bangladesh railway employee. He purchased a house at H/9, Block-E, Zakir Hossain Road, Mohammadpur, Dhaka on 22.09.1961, vide registered deed 9775, in my mother's name. Since then we had been living there peacefully. During the was of liberation, moved to our present address for the sake of our lives keeping the house under lock. After the end of war, we found our house occupied by some persons. My father tried hard to get back possession of the house through proper channel, but failed. In the meantime, the government constituted court of settlement for releasing the properties declared as abandoned properties to their original owners, who are Bangladeshi national. Accordingly we filed our case before the said court of settlement. The court found our claim to be genuine and allowed the case in our favour by its judgement and order dated 8.1.1994 and ordered for exclusion of our house from the list of abandoned properties and to hand over possession of the house to us. The government being aggrieved by the judgement, filed a writ petition before the High Court. The High Court vide judgement dated 4.8.1998 of writ petition No. 1749 of 1994 upheld judgement of the court of settlement. The government again filed leave petition before the Appellate Division against the High Court's judgement. The Appellate Division dismissed the government's petition. In the meantime the persons who occupied our house sensing the judgement of the Appellate Division in favour of us, filed a miscellaneous case and title suit against us before the Court of Sub Judge, Dhaka. In this circumstances, please advice us what step should we take to get back our house peacefully.

Zhedda Sultana,
28/1, Nabin Chandra Goswami Road,
Faridabad, Dhaka.

Your Advocate: You have very nicely articulated your grievances. Thank you for your eloquent expressions in appropriate legal phraseologies. Your case is very unfortunate and lingering sense of deprivation has seemingly carried you beyond the bounds of legal technicality and to seek redress in the pages of news paper. I wish it would not have happened.

I have gone through your problem. You are lucky in the sense that you have won the battle against the Government up to the Supreme Court on the question whether the house should be treated as abandoned property or not. Now just before your turn to reap the harvest the actual occupier of the house has filed a title suit and, as you say, a miscellaneous case against you in respect of the property got by you after such a long battle of attrition. In view of the present position of law and procedure in our country I find it really difficult to show you a short-cut. Court of settlement can not determine the question of title of the parties. Its jurisdiction is circumscribed by law to be confined to the question of abandonment. Therefore, the occupier has taken the opportunity of law and designedly filed the title suit so as to continue with the possession at least as long as the suit continues. You have no other alternative but to fight through and find means how to end up the ordeal as quickly as possible.

Yours is a matter of sub justice and as such no more comments on it from outside are warranted. It is not possible either to advice you just on the wording of your query. Since you have come through prolonged litigation up to the Supreme Court you must have come across senior and experienced lawyers. It would be advisable for you to approach any one of them with all your papers if you have not engaged one by this time. In the peculiar background of your case I hope victory is yours.

LAW letter



Speedy trial in higher courts

In recent time, cases, particularly sensational murder cases are being disposed off in very short time. Sony murder case, Sutrapur double murder case are example of it. As a result a good number of people have been sentenced to death over the last couple of month. This is a great achievement for the countries legal arena. This will certainly have an impact in overall law and order situation of the country. Because now people starts believe in that trial of a case can be completed within short period, if all parties concerned are sincere. In fact the decision of the government to make a list of sensational cases for their quick disposal is proving to be a positive decision. It is at least playing a role to restore the eroding people's confidence on the judiciary. But this is not enough. It is now expected of the government that they will not remain confined within the selected cases, but expand the experience to other cases too. Another important matter is execution of the verdicts. The capital punishments handed down by the Special Tribunals and other courts need approval of the High Court Division of the Supreme Court. So it is very important that these cases are settled in the higher courts in similar pace. We have seen that the Bangabandhu murder case is pending for two years in the higher court. This trend should change. The government should make necessary action to this end. They must consider increasing number of death reference in the High Court Division to dispose of the cases.

Hahizur Rahman,
Mohammadpur, Dhaka.

Star LAW report

Undue delay in trial is good ground for bail in non-bailable offence

Appellate Division (Criminal)
Captain (Rtd) Nurul Huda (Appellant)
Vs
State (Respondent)
Before Mr. Justice M Reza Chowdhury, CJ,
Mr. Justice Md Fazlul Karim, Mr. Justice
SJR Mudassar Hussain and Mr. Justice
Abu Sayeed Ahammed.
Date of judgement: December 1st, 2002.

Background

Mohammad Fazlul Karim J: This appeal by leave is to consider as to whether the appellant could be enlarged on bail being in custody for almost six years without any trial. As the further proceeding of the case has been stayed by the High Court Division in Criminal Revision No. 123 of 2000 on an application filed by another co-accused, and there is no chance of early disposal of the said Revision inasmuch as the trial of the case being not concluded within the specified time of 360 days from the date on which the case was received for trial, the appellant may not be kept in custody for an indefinite period as under section 339C(4) of the Code of Criminal Procedure. The appellant is entitled to be released on bail and that the High Court Division failed to consider while refusing the prayer for bail that the appellant has been suffering from enlarged prostate gland and problems in his urinary track and also suffering from mental tension and depression for being in custody for such an inordinate long time without trial.

This appeal is directed against the judgment and order dated 4-6-2001 rejecting the prayer for bail of the appellant passed by the High Court Division in Criminal Miscellaneous Case No. 1965 of 1997 arising out of Ramna PS Case No.93 dated 21-10-1996 under sections 149/448/326/307/302/34 of the Penal Code.

Deliberation

Though the respondent State has not filed any concise statement, for end

of justice we have heard Mr. Abu Kowser Dabirushan, the learned Deputy Attorney-General who appeared for the State. He has submitted that the allegations of serious nature of commission of non-cognizable offence having been made out against the appellant he is not entitled to bail as the same is restricted under the provision of section 497 of the Criminal Procedure Code. The learned Deputy Attorney-General has further submitted that the provision of section 339C(4) of the Code of Criminal Procedure do not confer any right upon the accused to be enlarged on bail for non-completion of the trial within the specified time. As the trial has been held up because of the stay order from the High Court Division there is no fault of the prosecution.

The basic idea of bail is release of a person from the custody of police and to deliver him into the hand of surety, who undertakes to produce him in court whenever ordered to do so. In the case of an offence punishable with death or imprisonment for life the mere heinousness/grievousness of the offence is not by itself a circumstance sufficient to take away the discretion of a court to grant bail in deprivation of the accused's fundamental right to be freed. But in addition thereto, there must also exist reasonable grounds for believing that the person seeking bail has been guilty of such an offence.

When the court is called upon to exercise its judicial discretion it should not proceed upon any prior assumption that in all cases where an offence punishable with death or imprisonment for life is alleged, bail must, as a matter of course, be refused, nor can there be any Rule of practice on the basis of which such a discretion can be judicially exercised. Thus the discretion to enlarge on bail has to be exercised in a judicial manner with due regard to the circumstances of each case, without any tendency of unnecessarily affecting the liberty of the persons accused of criminal offences.

Section 497 of the Code of Criminal Procedure provides in a positive sense of allowing bail to any person arrested being accused of any non-bailable offence with a rider clause in a negative sense not to allow bail with qualifying words that "if there appears reasonable ground of believing that the accused has been guilty of an offence punishable with death or imprisonment for life". But the proviso to sub-section (1) of section 497 makes an exception that bail in the later case could be allowed on the ground of tenderness of age, womanhood, sickness of infirmity.

Thus under section 497 of the Code of Criminal Procedure the court would enlarge an accused of non-bailable offence unless it appears to it that there is reasonable ground of believing that the accused is guilty and even then the proviso makes certain exception in certain specified cases.

However, the Rule of general law laid down in section 497 of the Code of Criminal Procedure is not strictly binding on the High Court. The question of granting or refusing bail depends upon the particular circumstances of each case and the mere fact that an offence is punishable with death or life imprisonment is not by itself sufficient to refuse bail under section 498 of the Code of Criminal Procedure.

The powers to release an accused person on bail under section 498 of CrPC are virtually unlimited and the question is entirely one of discretion bearing in mind the general principle that in refusing bail it is generally necessary to see whether there are reasonable grounds for believing that the accused has committed the offence and whether he is likely to tamper with evidence during his enlargement on bail.

As regards the submission of the learned Deputy Attorney-General regarding the scope of section 497 of CrPC on an application for bail, it appears from the above discussion that the power conferred under section 498 of the CrPC on the High Court Division or the Court of Sessions are not controlled by limitation contained in section 497 CrPC. There is nothing in section 496 and 497 CrPC to show that these sections were intended to apply only to the investigating police or the court holding enquiry or trial. The wording of those sections makes it clear that it is intended to contain the entire law relating to the granting or refusal of bail to an accused which had to be applied by all courts alike.

Section 339C(4) of the Code of Criminal Procedure as amended reads as under:

(4) If a trial cannot be concluded within the specified time, the accused in the case if he is accused of a non-bailable offence, may be released on bail to the satisfaction of the court, unless for reasons to be recorded in writing, the court otherwise directs.

Interpreting of the imperative or directory nature of any enactment remains to be considered what intention is to be attributed to the same on question necessarily arising out of its enactment and on which it has remained silent. Thus when a statute requires that something shall be done in a particular manner or form expressly declaring what shall be the consequence of non-compliance the requirement is regarded as imperative or mandatory.

On perusal of the provision of section 339C(4) of the Code of Criminal Procedure it appears that if the trial has not been concluded within the specified time i.e. 360 days from the date on which the case was received for trial the accused of non-bailable offence may be released on bail to the satisfaction of the court unless the court otherwise direct in writing. Thus the section provides that for failure to complete the trial within the specified time a right is accrued to the accused of a non-bailable offence which has mandatory effect to be released on bail. The sub-section provides for the consequence of release on bail if the trial is not concluded within specified period but the words "Unless for reasons to be recorded in writing the court otherwise directs" are designed to be exercised in exceptional circumstances to deprive the right to be enlarged on bail on very cogent reasons, the reasons including the strong possibility of absconding or tampering with witnesses or hindering the prosecution of the trial etc.

In the instant case admittedly the period of completion of trial expired long back but the High Court Division in its impugned judgment has ventured to lay down certain general assumptions by way of exception to law by holding that "A speedy trial in all circumstances, however, is not a hard and fast Rule. Nowadays trial cannot be expedited due to varieties of reasons, such as, increasing number of cases, seeking of adjournments, collection of witnesses for production before court and other procedural hurdles. Delay in holding trials in all cases and circumstances is no good ground for granting bail to an accused person specially when he stands arraigned of a crime punishable with death or imprisonment for life." The said assumption we are constrained to hold, are not only contrary to the provision of law but also to the established principle of law in granting bail and the High Court Division has not assigned any reason refusing bail which is germane to the fact of the case.

On perusal of section 339C(4) we are of the view that even in a non-bailable offence accused is entitled to be enlarged on bail unless the court decides otherwise assigning reasons which are relevant to the fact of the case. In that view of the matter the High Court Division acted illegally in incorporating certain extraneous assumptions foreign to the concept of the sections 339C(4) and 497 of CrPC and the same as well could not be contemplated thereunder in the facts of the instant case in order to limit the exercise of discretion in granting bail to an accused.

Section 497 also provides for illness as a ground for enlarging on bail



and the appellant has asserted that he was suffering from enlarged prostate gland and problems in his urinary track and he is also suffering from mental tension and depression being an accused languishing in jail custody for over 6 years since 22nd October 1996 but the same has not been denied by the prosecution in this appeal.

In the instant case, the charges has been framed on 4th October 1999 on the basis of a chargesheet submitted in the case on 30th July 1997 and first information report was lodged on 21-6-1996 over an occurrence dated 14th August 1975. It may be mentioned here that it appears from the certified copy of the order sheet of the court below that on the basis of order of stay in criminal revision No. 123 of 2000 all further proceeding of the case has been stayed pursuant to an order of High Court Division dated 10-5-2000. Although the learned Deputy Attorney-General submits that there is no stay of further proceeding of the case against the appellant but since 10-5-2000 no step has been taken by the prosecution either to get the said criminal revision disposed of or to make the case of the appellant separated in order to continue with the trial of the case. Undue delay in holding trial, in the facts and circumstances, due to the prosecution's pre-constituted may be considered as valid ground for granting bail. Over and above, the prosecution could not give plausible reason for such inordinate delay in proceeding with the case and these circumstance can be considered as a ground for granting bail to an accused even in the instant case.

Besides inordinate delay in prosecuting the trial of the case and the provision of section 339C(4) of the Code of Criminal Procedure the fact that the appellant has been suffering from enlarged prostate gland and problems in his urinary track and from the illness for long as well attracts the provision of proviso to section 497 CrPC for consideration to enlarge the accused on bail pending trial of the case.

Decision

In view of the above, we are inclined to enlarge the accused appellant on bail till disposal of the Metropolitan Sessions Case No 8 of 1999 pending in the Court of Metropolitan Additional Sessions Judge, First Court, Dhaka. The trial court, however, may cancel the bail on any tested ground as to misuse of bail as it may deem fit and proper. The accused appellant shall, however, take permission of the trial court in the event of any compelling occasion/circumstances necessitating to leave the country.

Accordingly, the impugned order of the High Court Division is set aside and it is ordered that let the accused appellant Capt. (Retd) Nurul Huda be enlarged on bail to the satisfaction of the Deputy Commissioner, Dhaka, if not wanted in connection with any other case.

In the result this appeal is allowed.

Khandakar Mahbub Hossain, Senior Advocate instructed by Md. Aftab Hossain, Advocate on Record for the appellant. Abu Kowser Dabirushan, deputy Attorney General, instructed by Sufia Khatun, Advocate on Record for the respondent.

Corresponding Law Desk

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8124966; fax 8125155, 8126154; email
dslawdesk@yahoo.co.uk

LAW week



Gram Sarkar Act challenged

The High Court has issued a rule asking the government to explain in a week why the formation of Gram Sarkar should not be declared unconstitutional. The rule came following a writ filed by the Bangladesh Legal Aid and Services Trust (BLAST) in the form of public interest litigation. A High Court bench comprising Justice ABM Khairul Huq and Justice Syed Shahidur Rahman set July 14 for hearing of the rule. The government enacted Gram Sarkar Act on 27 February 27 this year providing for Gram Sarkar, the lowest tier of local government. The government has decided to start formation of Gram Sarkar which was scheduled to start from July. The petition challenged two Sections of the Gram Sarkar Act, 2003 namely section 3 and 4(4) as inconsistent with article 7,9,11,27,28,59 and 60 of the constitution. - *Prothom Alo*, 07 July.

Independent anti-graft body bill introduced

Law, Justice and Parliamentary Affairs Minister Moudud Ahmed has introduced in the Jatiya Sangsad a bill seeking to form an independent anti-corruption commission. Earlier on Monday, the cabinet approved the Anti-Corruption Commission Bill, 2003. The commission will impartially investigate the offences of corruption and grant sanction for trial. The bill proposed that the commission would consist of three commissioners, among whom one would be nominated as its chairman by the president. The president will appoint the three commissioners from among six choices to be made by a selection committee. The selection committee will be composed of the finance minister, the law minister, two judges each from the Appellate Division and the High Court Division of the Supreme Court as nominated by the chief justice, the comptroller and auditor general and the chairman of the Public Service Commission. The commissioners of the proposed commission will be drawn from among people having at least 20 years' experience in the fields of law, education, administration, judiciary or disciplined forces. They will be appointed on a four-year term. The commission, to be headquartered in Dhaka, will be able to open its branches at any other places, if need be. The bill also proposed abolition of the Bureau of Anti-corruption (BAC) from the day the new law comes into effect. The proposed commission will investigate graft charges, lodge and conduct cases, recommend the president on relevant legal issues, carry out research on curbing corruption and build awareness against corruption. Later the Bill has been sent to the parliamentary standing committee concerned for scrutiny within 10 days. - *Daily Star*, 12 July.

Two to die for killing Ratna

The Speedy Trial Tribunal-1, Dhaka, has sentenced two persons to death and two others to life imprisonment in the baby Ratna murder case. Mohammad Rubel and Mohammad Yunus were awarded the death penalty and the tribunal also fined them Tk 50,000 each. The convicts sentenced to life imprisonment are Mohammad Ibrahim and Zakir Hossain. Zakir has been absconding since the murder of Ratna inside an under construction building at south Manda under Sabujbagh thana on August 8, 2002. The accused killed richshaw-puller Enamul Khan's daughter Ratna to take revenge on the family, following an enmity that developed over a quarrel between two minor playmates. Ratna's mother slapped her playmate Imon triggering a strife between the two families. Imon's brother Rubel along with Yunus, Ibrahim and Zakir killed Ratna by cutting her throat. The tribunal announced the verdict after examining 19 out of the 39 prosecution witnesses. - *Law Desk*.

Bill to form RAB passed in JS

The parliament has passed an amendment bill to form a special force, Rapid Action Battalion (RAB), to improve law and order. The bill will give the Rapid Action Team (RAT) an institutional shape and rename it as the RAB under the existing Armed Police Battalion (APB). The RAB members will be drawn from the army, navy, air force and police. All Rapid Action Battalions will be under the direct control and superintendence of an officer not below the rank of deputy inspector general (DIG) of police or its equivalent in any disciplined force. The amendment bill says the government will have the authority to direct the RAB to investigate any offence at any time. - *Law Desk*.

CrPC amendment bill passed

The Jatiya Sangsad has passed the Code of Criminal Procedure (Amendment) Bill, 2003. The bill amending section 35 provides for deduction of the period an accused serves in jail custody from the term of imprisonment given by the court. The law also provides that if the total period of custody before conviction is longer than the term of imprisonment, the accused will be considered to have served out the punishment and will be released immediately. - *Prothom Alo*, 07 July.

BSTI (Amendment) Act 2003 introduced

A bill has been introduced in the Jatiya Sangsad styled 'The Bangladesh Standards and Testing Institution (Amendment) Act, 2003. Deputy Minister for Industries Abdu Salam Pintu introduced the bill proposing stringent rules for violators of product quality rules. The proposed law also provides for the legal framework for abolition of the Department of Agriculture Marketing and Grading and its eventual integration into the BSTI. - *Daily Star*, 07 July.

Verdict on brothers murder case

A court in Dhaka has sentenced Kamal Pasha, one of the 23 top criminals listed by police, to death for killing two brothers within 30 minutes of each other in Mohammadpur on 5 May, 2000. Pasha was also fined Tk 50,000. The court handed down the judgement in 38 workdays after examining 17 of 29 prosecution witnesses. Pasha called Ribel and Jewel out of their Mohammadpur Housing Estate residence with 30 minutes apart in the morning. He shot Ribel dead in front of Raju Homeo Hall on Tajmahal Road and Jewel at Line-K on Kazi Nazrul Islam Street, both in Moham-madpur. The father of the victims, Amzad Hossain, filed the case with the Mohammadpur Police Station on the day of the killings. The case was transferred to the Detective Branch (DB) of police the following day. The DB submitted the charge sheet to the court on 27 June 2001. The court indicted Pasha on August 19, 2002 and fixed the date for delivering the verdict on completion of cross-examination of witnesses on June 25. - *Law Desk*.

Bill to appoint PPs through 'PSC soon

The government has undertaken a plan to appoint public prosecutors (PPs) in different courts through Public Service Commission (PSC). This was said by Law, Justice and Parliamentary Affairs Minister Moudud Ahmed. He said a bill to this effect will be placed in the next session of the Jatiya Sangsad adding that the new cadre service has been named 'Permanent Legal Service'. Explaining the objectives of such a plan, Moudud Ahmed said public prosecutors were still being appointed on an ad-hoc basis. He also said that the government is very keen to finalise the process of their appointment through the Public Service Commission. - *Daily Star*, 05 July.

Licensed arms to be returned

The government has asked the deputy commissioners (DC) to return licensed firearms and ammunition deposited during Nov 5-21 last year to their owners. Specific guidelines to the DCs have been given to return the firearms, the handout added. Out of total 1,89,000 licensed firearms, 36,000 were deposited following a government order in November last year. - *Prothom Alo*, 02 July.

Charge framed in Rumi suicide case

The Speedy Trial Tribunal, Khulna has framed charge against four accused in the Rumi suicide case. The accused are Rony, Hasan, Taimur and Mizan. The accused molested Rumi at her residence on 4 April this year and gave her father death threat. Immediately after the incident, Rumi committed suicide by hanging herself from a ceiling fan in her bed room. Rumi's father filed a case with the Daulatpur police station accusing Rony, Hasan, Taimur and Mizan. The Investigation Officer (IO) submitted the charge sheet against the accused on 30 April. - *Daily Star*, 08 July.

Female workers to go abroad soon

The ban on sending female workers abroad is set to go with the government sorting out the details before giving permission to recruiting agencies. The ban in 1998 followed reports of misconduct and breach of job contract by foreign employers and recruiting agents. The government has prepared a policy guideline detailing various pre-conditions and criteria for getting permission to send female workers abroad, mainly to oil rich Middle Eastern countries, as domestic help or baby-sitters. The guideline would be published very soon, and applications would be formally sought then from qualified recruiting agents for the permission. As per the guideline, a recruiting agent has to have a training centre in Dhaka and maintain an office for 24 hours in the host country so that it can promptly take legal actions in case of any untoward incidents. Female workers will have to be above 35 years and the ones with spouses will get priority. The job contract has to be for more than two years covered with insurance. The employer shall also bear the first time home traveling cost of workers. Monthly salary of a worker must be above 400 Saudi riyals with free food and accommodation facilities. - *Daily Star*, 06 July.