

Writ-Part Question No-03 (Writ-Habeas Corpus):

Badul was arrested from his house on 04.05.2010/04.05.2020 by the police under section 54 of the Code of Criminal Procedure and was produced before the Chief Metropolitan Magistrate, Dhaka on the following day, Le. 05.05.2010/05.05.2020. Meanwhile he was served with an order of detention issued by the District Magistrate, Dhaka purporting to act under section 3(2) of the Special Powers Act, 1974 ordering his detention in Dhaka Central Jail for a period of 30 days. In the grounds of detention served on Badul, it was stated that he was a gangster and a notorious extortionist and a man of bad character in the locality and was wanted in connection with a number of criminal cases.

Draft an appropriate application for presentation before the High Court Division under the relevant provisions of the Constitution challenging the legality of the impugned order of detention. (25th June, 2010, 9th January 2016).

(প্রশ্নটি বাংলায় (রিট পিটিশন) : বাদল ০৪.০৫/২০১০/০৪.০৫.২০২০ইং তারিখে তার নিজ বাড়ী হইতে পুলিশ কর্তৃক ফৌজদারী কার্যবিধি আইনের ৫৪ ধারায় গ্রেফতার হন এবং পরের দিন অর্থাৎ ০৫.০৫.২০১০/০৫.০৫.২০২০ইং তারিখে তাহাকে মুখ্য মহানগর হাকিম, ঢাকার আদালতে হাজির করা হয়। ইতিমধ্যে ঢাকার জেলা ম্যাজিস্ট্রেট আদালত কর্তৃক বিশেষ ক্ষমতা আইন, ১৯৭৪ এর ৩(২) নং ধারার বিধান মতে আটকাদেশ জারী করিয়া তাহাকে ঢাকার কেন্দ্রীয় কারাগারে ৩০ (ত্রিশ) দিন আটক রাখার জন্য আদেশ দেওয়া হয়। উক্ত বাদলের উপর জারীকৃত আটকাদেশে আটকের কারণ হিসাবে উল্লেখ করা হয় যে, সে ছিল একজন গুন্ডা ও কুখ্যাত ছিনতাইকারী এবং এলাকার একজন দুশ্চরিত্র ব্যক্তি এবং বেশ কিছু ফৌজদারী মামলায় সে একজন সন্দেহভাজন আসামী। সংবিধানের সংশ্লিষ্ট বিধান উল্লেখপূর্বক উক্ত তর্কিত আটকাদেশের আইনগত বৈধতা চ্যালেঞ্জ করিয়া বা প্রতিদ্বন্দ্বিতা করিয়া মহামান্য হাইকোর্ট বিভাগে উপস্থাপনের জন্য একটি যথোপযুক্ত দরখাস্তের খসড়া প্রস্তুত কর।

Answer to the question No. 03(writ)

DISTRICT: DHAKA.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. OF 2022

THE MATTER OF:

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

AND

IN THE MATTER OF:

Mr. 'X' / Abdur Rahman, Son of
Abdul Karim Miha, of - 66/7

Bijoy Nagar; Police
Station-Bijoy Nagar, District- Dhaka.
--- petitioner

AND

IN THE MATTER OF:

Badul, Son of Abdul Karim Miha, of
66/7 Bijoy Nagar, Police Station:
Bijoy Nagar, District- Dhaka.

.....Detenu.

(Now detained in Dhaka Central
Jail)

- VERSUS -

1. Government of the People's
Republic of Bangladesh,
represented by the Secretary,
Ministry of Home Affairs, Secretariat
Building, Ramna, Dhaka.
2. District Magistrate, Dhaka.
3. Jailor, Central Jail, Dhaka.

..... Respondents.

AND

IN THE MATTER OF:

Order of detention dated 05.05.2020
passed by the respondent No. 2.
The District Magistrate, Dhaka
under section 3(2) of the Special
Powers Act, 1974 for a period of 30
days (Annexure-B).

To

Mr. Justice Hasan Foez Siddique, the Hon'ble Chief Justice of Bangladesh
and his Companion Justices of the said Hon'ble Court.

The humble petition of the petitioner
above named most respectfully-

SHEWETH:

1. That the petitioner and the detenu both are loyal, peace loving, law
abiding and permanent citizens of Bangladesh. The petitioner is full brother
of the detenu, for and on behalf of the detenu, the petitioner preferred this
writ petition.
2. That the detenu was arrested on 04.05.2020 from his house under
section 54 of the Code of Criminal Procedure and was produced before the
Chief Metropolitan Magistrate, Dhaka on 05.05.2020.

Certified copy of the said Police
forwarding report is annexed herewith
and marked as ANNEXURE-"A".

3 That while the detenu is in custody an order of detention vide memo No K2K999/2020 dated 05.05.2020 was issued upon him by the District Magistrate, Dhaka in purporting exercise of power under section 3(2) of the Special Powers Act, 1974 detaining the detenu in Central Jail for a period of 30 days.

Certified copy of the said order of detention is annexed hereto and marked as ANNEXURE. 'B'.

4. That the grounds for detention was also served upon the detenu on 15.05.2020 and wherein it was stated that the detenu (he) was a gangster, and a notorious extortionist and a man of bad character in the locality and was wanted in connection with a number of criminal cases.

Copy of the said grounds is annexed herewith and marked as ANNEXURE-"C".

5. That it is humbly submitted that the detenu is an innocent person and he did not commit any prejudicial act but the respondents malafidely issued detention order upon the detenu for political and social harassment and as such his detention order is illegal and not tenable in law.

6. That it is humbly submitted that the grounds contained in Annexure 'C' do not come under the provision of section 2(f) of the Special Powers Act, 1974.

7. That it is submitted that the Respondent No. 2 passed the impugned order of detention violating the fundamental rights of the detenu as provided in Article 27, 31 & 33 of the constitution of the people's republic of Bangladesh.

8. That the detenu has no other equally efficacious and speedy remedy except by way of this petition which is made bonafide and there is no laches on the part of the petitioner in moving this petition before this Hon'ble Court.

9. That the impugned orders having been passed without lawful authority are void, illegal, inoperative and are of no legal effect and the detenu is entitled to be set at liberty by this Hon'ble Court.

10. That it is submitted that the detaining authority did not apply its judicial mind properly in detaining the detenu and the said detention order is malafide with the collateral purpose. Hence, the detenu is entitled to be set at liberty by this Hon'ble Court.

11. That being aggrieved by and dissatisfied with the order of detention of the detenu, the petitioner begs to move this writ petition on the following amongst others.

GROUND

- I. For that the detenu is an innocent person and he did not commit any prejudicial act but the respondents malafidely issued detention order upon the detenu for political and social harassment and as such his detention order is illegal and not tenable in law.
- II. For that the impugned order having been passed without lawful authority are void, illegal, inoperative and are of no legal effect and the detenu is entitled to be set at liberty by this Hon'ble Court.
- III. For that the detaining authority did not apply its judicial mind properly in detaining the detenu and the said detention order is malafide with the collateral purpose. Hence, the detenu is entitled to be set at liberty by this Hon'ble Court.
- IV. For that there is nothing against the detenu which can warrant his detention under section 3(2) of the Special Powers Act, and as such his detention order is illegal and he is entitled to be released forthwith.
- V. For that the Respondent No. 2 passed the impugned order of detention violating the fundamental rights of the detenu as provided in Article 27, 31 & 33 of the constitution of the people's republic of Bangladesh.
- VI. For that the grounds contained in Annexure-C do not come under the provision of section 2(f) of the Special Power Act, 1974.
- VII. For that the detaining authority had no materials before them to make the order of detention.
- VIII. For the detenu has no other equally efficacious and speedy remedy except by way of this petition which is made bonafide and there is no fault on the part of the petitioner in moving this petition before the Hon'ble Court.
- IX. For that in the meantime the detenu obtained bail in all mentioning cases in the grounds.

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to:

(a) Issue a Rule Nisi calling upon the respondents to show cause as to why the detenu Mr. Babul should not be brought before this Hon'ble Court to satisfy that the detenu is not being illegally or improperly detained and should not be set at liberty;

- (b) After hearing the parties and perusing the cause shown, if any. make the Rule absolute;
- (c) Enlarge the detenu on bail till hearing of the Rule;
- (d) Pass an order for all costs of the case;
- (e) And or pass such other or further order or orders as your lordships may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.

AFFIDAVIT

1, Mr. 'X' / Abdur Rahman, Son of Abdul Karim Miha, and Mst: Hasina Begum, of village/of holding No. of 66/7 Bijohnagar, Police Station: Bijohnagar, District- Dhaka, aged about 32 years, by Faith- Muslim, by

Profession-Service, by Nationality- Bangladeshi by birth, ID No. 111222333444 do hereby solemnly affirm and say as follows:-

- 1. That I am the Petitioner in this writ petition and as such fully acquainted with the facts and circumstances of the case and as such I am competent to swear this affidavit.
- 2. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the rests are submissions before this Hon'ble Court.
- 3. that the statements made in paragraph are true my knowledge and belief.

(Md. WXYWXYXYY)
Advocate

EPONENT

The deponent is known to me and identified by me.

Solemnly affirmed before me by the said deponent on this the 07th day of July, 2022 at 11 AM.

Md. XYYXYYXY
Advocate
Membership No.
Room No

COMMISSIONER OF AFFIDAVIT
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.