

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

WRIT PETITION NO. 7578 of 2003.

IN THE MATTER OF:

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

- And -

IN THE MATTER OF:

Bangladesh Legal Aid and Services Trust.

- VS -

Bangladesh and others

Mr. Md. Nizamul Haque..... For the Petitioner.

Mr. Adilur Rahman Khan, D. A. G. with

Mr. Razik-Al-Jalil, A. A. G. .... For the Respondents.

Present:

Mr. Justice Md. Abdul Matin

And

Mr. Justice Tariq Ul-Hakim.

Heard on 26.7.2004, 2.8.2004 and  
Judgment on 3.8.2004.

Md. Abdul Matin, J:

This Rule was issued calling upon the respondents to show cause as to why they should not be directed to conduct an immediate review of the cases of the prisoners and other 155 'under trial' prisoners held in Dhaka Central Jail for periods over 360 days and to submit the report of the result of the review to this court within 4(four) weeks from date and furnish a list of such 'under trial' prisoners in the Dhaka Central Jail and other

Jails in this country and or pass such other or further order or orders as to this court may seem fit and proper.

It has been asserted that the petitioner is a National Legal Aid and Services Organization, which has been providing legal advice, assistance and representation to the poor and marginalized sectors of society for over ten years. The Daily Star, a reputed national newspaper published a front page news report dated 23 Dec. 2003 entitled 'behind bars, sans trial for years: 155 Dhaka Central Jail inmates languish with no witnesses to "pin them down"'. The news report stated that one Mohammad Jahangir, son of Abdul Rahman of Dholairpar, PS. Demra ("the prisoner") Dhaka has been remanded in custody from 12.9.92 to date. Despite having been in custody for over 11 years, and having been produced on over 78 occasions before the Court of the Second Additional Metropolitan Sessions Judge, Dhaka, he remains under trial due to the prosecutions failure to produce witnesses. The report further states that up to another 155 prisoner remain under trial in Dhaka Central Jail for periods of five or more years due to the prosecution's failure to produce witnesses. The report further alleges that many other such 'under trial' prisoners languish in other prisons across the country for the same reason. The news report as published in the Daily Star, dated 23.12.2003 and an editorial published therein dated 24.12.2003 has been annexed as Annexure-A.

It has been further asserted that the continued incarceration of the under trial prisoner and an alleged 155 further under trial prisoners by the respondents is without lawful authority inasmuch as it is ultra vires section 167 and section 339C of the Cr. PC.

The case, as has been made out by the petitioner is that the impugned action of the respondents is without lawful authority inasmuch as it is in violation of the prisoner's

fundamental rights to personal liberty and to a speedy trial as guaranteed by Articles 31, 32 and 35(3) of the Constitution and it is also violative of the Government's obligations under International Human Rights treaties in particular Article 14 of the International Covenant on Civil and Political Rights to a speedy trial, as ratified by Bangladesh in the Year 2000.

In a Supplementary Affidavit on behalf of the petitioner another list of 7402 persons who are under trial prisoners has been furnished by the petitioner to show that these persons are also languishing in the custody without trial for indefinite period. The respondents appeared and furnished a list of under trial women prisoners who have been in custody for more than 360 days. It has further been stated in the supplementary affidavit of the petitioner as contained in Annexure- 1(c) that the respondents admitted that 104 female and 51 children are languishing in different district jails for more than 1 year and 16 under trial prisoners are languishing in custody for more than 11 years. 10 for more than 10 years, 29 for more than 9 years, 51 for more than 8 years and 111 for more than 7 years, 238 for more than 6 years. 502 for more than 5 years, 917 for more than 4 years, 1592 for more than 3 years, 3673 for more than 2 years and 270 for more than 1 year. It has been further asserted that respondents government is committed to provide legal aid to such under trial prisoners under government Legal Aid Scheme under the Legal Aid Services Act 2000 and as such these 7409 under trial prisoners are entitled to receive the State Legal Aid. It has further been asserted that under trial prisoners have been in different jails for periods longer than the maximum term which they could have been sentenced if convicted at all.

Respondents have furnished list of women prisoners in the Dhaka Central Jail who have been languishing there for more than 360 days and another list of children in the Dhaka Central Jail who have been languishing for more than 360 days with the number

of the cases and the period of confinement. Respondents have also furnished other list of total 7409 prisoners.

Thus it appears that there is no dispute about the allegation made in the petition about continued custody of the under trial prisoners including the women and the children. There is also no dispute that such action is a total denial of the fundamental rights of the prisoners as guaranteed by the Constitution, specially Articles 31, 32 and 35(3) of the Constitution.

The learned Deputy Attorney General filed a report from the Additional Inspector General of Prison dated 31.7.2004 which admits that out of 7402 under trial prisoners 118 women and 214 are children below the age of 18 years which also supports the contention made in the petition. The learned Deputy Attorney General submits that of these listed prisoners there are also prisoners who have been already convicted but facts remain that they have the right to file appeal. It has been submitted that some Jail Appeals are awaiting disposal and it is appreciated that this court has arranged for disposal of those Jail Appeals expeditiously.

It appears that a Suo Moto Order No. 248 of 2003 after hearing the petitioner and the learned Attorney General was passed with the following directions:

- (1) Trial, if any, of all Juvenile accused to be completed with utmost expedition by the Juvenile Courts and the concerned Law enforcing agencies. Prosecuting agencies and legal Aid Committees be directed to take immediate steps in the matter.

- (2) Taking into consideration of the provisions of Sections 82 and 83 of the Penal Code. It is directed that the Government do consider making prayers to the Courts concerned for discharging the Juvenile accused in appropriate cases. Order of discharge may also be sought for pursuant to section 53 of the Children Act, 1974.
- (3) The Government also do consider withdrawal of Juveniles accused from Prosecution under section 494 of the Code of Criminal Procedure in appropriate cases specially from the cases charged under ordinary penal laws.
- (4) The Local Legal Aid Committees formed by the Government be instructed to move the Courts for bail of the Juvenile accused.
- (5) Juvenile accused in Jail must be kept apart from other prisoners.
- (6) Non-Official Jail Visitors should include Human Rights Activists specially the representatives of Children Organization of the Country.
- (7) Juvenile accused are to be transferred to correction house and other Approved Homes with utmost expedition.”

It has been asserted by the petitioner that despite such direction there is no meaningful implementation by the respondents. On the other hand the learned Deputy Attorney General submits that the present petitioner being the largest legal Aid Organization of Bangladesh and also the member of National Legal Aid Trust may take step for implementation of the order but from the facts as we have stated above it appears that no meaningful step has been taken to improve the overall situation despite such direction. It is expected that this petitioner and the National Legal Aid and others will come forward to solve the problem with maximum promptitude and expedition by

implementing the aforesaid directions to make fundamental right of the prisoners meaningful. It is noted that children are entitled to trial before the juvenile courts and positive step should have been made to make their trial in accordance with law of Juvenile Court and not to be tried jointly with the adults. The learned Deputy Attorney General submits that there is no other under trial accused in the Dhaka Central Jail but the learned advocate for the petitioner disputes this submission. In such circumstances, the petitioner should also collaborate with the government to implement the directions of this court about the under trial prisoners.

In such view of the matter, this rule is disposed of with the aforesaid direction upon the respondents to comply with the direction in Suo Moto Rule 248 of 2003 and report compliance within 6 (six) months from date.

Let a copy of this judgment be communicated (1) to the Office of the Attorney General and (2) the Secretary, Prime Minister's Office for necessary action.

M.A. Matin.

Tariq Ul Hakim, J:

I agree.

Tariq Ul Haqim.