29-10-08, 29-10-08, 29-10-08, 02-11-08, 02-11-08

In the Supreme Court of Bangladesh

High Court Division

(Special Original Jurisdiction)

Writ Petition No. 5359 of 2006.

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 Jatiyo Mahila Ainjibi Samity (BJMAS).

..... the petitioner

Versus

Ministry of Home Affairs and Others

..... the respondents

Mrs. Fawzia Karim Firoze with
Mrs. Rebaka Sultan and Mrs. Sathi Shajahan

..... for the petitioner.

Mr. M. Sajawar Hossain

..... for respondent Nos.4 and 6.

Mr. Md. Asaduzzaman

..... for respondent No.5

Mr. Mahmudul Islam

.... Amicus Curiae

Present:
Mr. Justice Syed Mahmud Hossain
And
Mr. Justice Farid Ahmed

Heard on 23.4.2008 .
Judgment on 14.8.2008.

Syed Mahmud Hossain J.

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why respondent No. 4 should not be directed to hand over the seven children described in paragraph No. 3 of the supplementary affidavit dated 18.6.2006, to the custody of the Bangladesh Jatiyo Mahila Ainjibi Samity (the petitioner herein) till submission of the report after D.N.A test of respondent No. 4 and his wife including the said seven minor children.

At the hearing, it was detected that the Rule was not issued upon Mrs. Anwara Rahman, the alleged mother of seven children. Consequently, the Rule was treated as not heard. Subsequently, the petitioner filed an application for addition of party and for issuance of supplementary Rule. Accordingly, supplementary Rule was issued on Mrs. Anwara Rahman, added respondent No. 6 who also appeared by filing a vokalatnama and affidavit-in-opposition before this Court. After that, the Rule Nisi was heard on merit.

The facts leading to the issuance of the Rule, in brief, are:

The Bangladesh Jatiyo Mohila Ainjibi Samity (in short, BJMAS) is a group of lawyers providing legal aid to women and children. In 1979, BJMAS started trafficking research, advocacy, providing shelter to victims of violence, repatriating

victims of trafficking and illegal immigration. BJMAS is well known to the judiciary. The Courts holding trial frequently sent the victims of violence to stay in the shelter home of BJMAS. After reading the news item of seven children's delivery of the wife of a former Deputy Inspector General of Police (DIG) in a single instance of pregnancy a serious doubt was created about their parenthood in the mind of the general public. It was alleged that the DIG's wife used to procure children of various ages in order to traffic them out of the country as gathered from various news papers. Meanwhile, the news regarding the paternity of the seven children created suspicion amongst the people and different organization moved the Court for an order of DNA test of the 7 children of respondent No. 4. To date, DNA test could not be performed and there was news item that the office of respondent No. 2-3 was providing support to respondent No. 4. The petitioner believed that the children were being unlawfully detained by respondent No. 4 for unlawful gain. The petitioner apprehended that respondent No. 4 would traffic the children outside the country. As a result, the petitioner was constrained to file the instant Writ Petition and obtained the present Rule Nisi.

On the date of issuance of the Rule, respondent No. 4 was directed not to remove the children without the prior permission of the Court. It was further directed that respondent No. 4 would allow a visit by the petitioner to the seven children, through its representatives composed of two members once in a week. Another interim order relating to DNA test was passed on that date, which we will consider in the body of the judgment.

Respondent No. 4 filed an affidavit-in-opposition controverting all the material allegations made in the Writ Petition. The case of this respondent, in short, is that all news items regarding the septuplet are extorted news without any basis. At the behest of the petitioner and added respondent No. 5, the baseless stories were published in news papers and the news items were misleading and contrary to the actual state of affairs. The stories as regards trafficking the children outside the country are absolutely baseless and have been made to harass respondent No. 4 and his wife. Prior to filing of this Writ Petition, no allegation was made against respondent No. 4 or his wife concerning the parenthood of the seven children. Even none claimed the parenthood of the children except respondent No. 4 and his wife (respondent No. 6) who are the parents. When the Writ Petition was being heard as a motion by their Lordships Mr. Nazrul Islam Chowdhury and Mr. Justice Zubayer Rahman Chowdhury, respondent No. 4 instantly filed vokalatnama as soon as he came to know about the filing of that Writ Petition. His learned Advocate prayed for accepting the vokalatnama and verbally prayed for an adjournment for filing affidavit-in-opposition. The Court asked respondent No. 4, who was present in the Court through his learned Advocate Mr. Sajawar Hossain as to whether he was ready to conduct DNA test or not. Respondent No. 4 disclosed that he was not interested in DNA test at all and that if the Court so desired, such a test could be done in a developed country like Singapore but not in Bangladesh. Respondent No. 4 could not guess the costs of such test at Mount Elizabeth Hospital including air fair of seven children and two representatives of the petitioner's samity. Owing to

bonafide misunderstanding, respondent No. 1 gave consent for DNA test at his cost without knowing the actual costs for such test. Having gone through the Writ Petition, it is found that the petitioner did not pray for DNA test and as such, the order of the Court was uncalled for and made on misconception of law and fact. Neither respondent No. 4 nor his wife was at all interested in such DNA test and there was no reason for any DNA test. The present Writ Petition is not for DNA test by the High Court Division. The High Court Division should recall and vacate its order so far as it relates to DNA test in Singapore. There is no allegation that the children were brought from any other place or from any person and as such the question of trafficking or keeping those children illegally for immoral purpose was absolutely without any basis. The application for DNA test in the specific case initiated by the Advocate Alina Khan was rejected by the Chief Metropolitan Magistrate as well as by the Nari-O-Shishu Nirjatan Damon Adalat No. 4, Dhaka. Mrs. Anowara Rahman, wife of respondent No. 4, gave birth to seven children at a time in absence of any doctor and the news was published in different papers and electronic media. Those news reports did not reflect the actual state of affairs. The Medical Board constituted for DNA test directed respondent Nos. 4 and 6 to appear before the Board for test on 15.6.2006 but they did not appear before the Board owing to illness. Respondent No. 4 filed an application stating that he and his wife were not interested in any DNA test. Therefore, the DNA Test could not be conducted. G.D. Entry No. 78 dated 2.6.2006 and G.D. Entry No. 396 dated 7.6.2006 were disposed of and as a result, there is no scope for DNA test.

After her addition as respondent No. 6, she filed an affidavit-in-opposition adopting the stand taken by her husband, respondent No. 4. She also stated that when the interim order dated 13.8.2006 so far as it related to the DNA test was passed, she was not even a party to the Writ Petition and as such, she was not bound by that order. Added respondent No. 5, Advocate Alena khan, filed Badda P.S. Case No. 14 dated 16.6.2006 under section 6(1) (2) of Nari-O-Shishu Nirjatan Damon Ain as amended upto 2003 for the trafficking of seven children. On 6.7.2006, she filed an application for DNA test before the Chief Metropolitan Magistrate but the application was rejected. Therefore, the present Writ Petition must fail as it was filed on some vague allegations.

Added respondent No. 5 filed an application for vacating the order of stay. In that application, the case made out by respondent No. 5, in short, is that on 8.6.2006, respondent No. 5 applied to the Chief Metropolitan Magistrate, Dhaka praying for a direction to form a Medical Board for conducting the DNA test. The Court directed the Dhaka Medical College Hospital (DMCH) authority to form a Medical Board to conduct the DNA test of those seven children and their alleged parents. On 11.6.2006, the DMCH authority formed a 4-member Medical Board headed by Professor. Akhtaruzzaman. On 15.6.2006, Mr. Anisur Rahman (respondent No. 4) made an application to the DMCH authority refusing to appear for DNA test. Meanwhile, respondent No. 5 lodged an ejahar with the Badda Police Station against Mr. Anisur Rahman and his wife Anowara Rahman on 15.6.2006 alleging that the seven children were kept by them for trafficking and as a result, Badda P.S. Case

No. 14 dated 16.6.2006 under section 6(1)(2) of the Nari-O-Shishu Nirjaton Daman Ain, 2000, was initiated. Meanwhile, the Medical Board summoned the respective parties to appear before the Board for DNA test but Mr. Anisur Rahman and his wife did not appear. As a result, the DNA test could not be conducted. On 16.6.2006, the head of the Board was run over by a car and he succumbed to his injuries.

The petitioner filed a supplementary affidavit for giving custody of seven children (septuplet) to the petitioner and respondent No. 5. With the supplementary affidavit, the petitioner annexed the certificate showing the health condition of the seven children. Those reports revealed that the septuplet were suffering from moderate to severe malnutrition with psychosocial deprivation. The report was given by Dr. Naila Zaman Khan, Professor of Pediatrics, and Dr. Mustafa Mahbub, Junior Consultant, both from Child Development and Neurology Unit, Dhaka Shishu Hospital.

Mrs. Faujia Karim, learned Advocate for the petitioner submits as under:

(1) The present Writ Petition has been filed in the form of *habeas corpus* and as such the power of this Court is wide enough to determine the custody of the 7(seven) children.

(2) As regards custody, the learned Advocate relies upon the cases of Abdul Jalil and Others Vs. Sharon Laily Begum Jalil, 1998 BLD (AD) 21=50 DLR (AD) 55 and Farhana Azad Vs. Samudra Ejazul Haque and others, (2008) 60 DLR 12.

(3) In such a writ petition, the welfare of the children is of paramount consideration and the children must be kept in a custody where their welfare is well safeguarded.

(4) The dispute as to the legal custody of the septuplet cannot be resolved unless there is a DNA test of them and their alleged parents.

Mr. Md. Asaduzzaman, learned Advocate for respondent No. 5 submits as follows:

(1) Respondent No. 5 tried her level best to have a DNA test of Mr. and Mrs. Anisur Rahman (respondent Nos. 4 and 6) and their alleged seven children and all her efforts were in vain because of non co-operation of respondent Nos. 4 and 6.

(2) The life of the seven children is in great danger unless their legal custody is determined by the Court exercising constitutional powers and the septuplet may be trafficked outside the country from the illegal custody of respondent Nos. 4 and 6.

Mr. M. Sajawar Hossain, learned Advocate for respondent Nos. 4 and 6, on the other hand, submits as under:

(1) Respondent Nos. 4 and 6, are, in fact, the parents of the septuplet and as such there is no scope for DNA test of the children with their admitted parents.

(2) The question of DNA test comes when paternity is under challenge.

(3) The case initiated at the instance of the petitioner was disposed of in which the order of DNA test was passed and as soon as the G.D. Entries were disposed of there is no scope for any DNA test.

(4) The seven children are, in fact, septuplet, that is, they were born at the same time and that the media extorted the birth of seven children resulting in the initiation of frivolous litigations.

(5) Respondent Nos. 4 and 6 are taking all-out care of seven children and as such, no question arises of giving their custody to the petitioner and added respondent No. 5.

(6) The present Writ Petition is not maintainable as the question of welfare of the children will be taken care of by the Judge of Nari-O-Shishu Nirjatan Daman Court where a case of trafficking is pending and as such the petitioner does not have any locus standi to file the present Writ Petition.

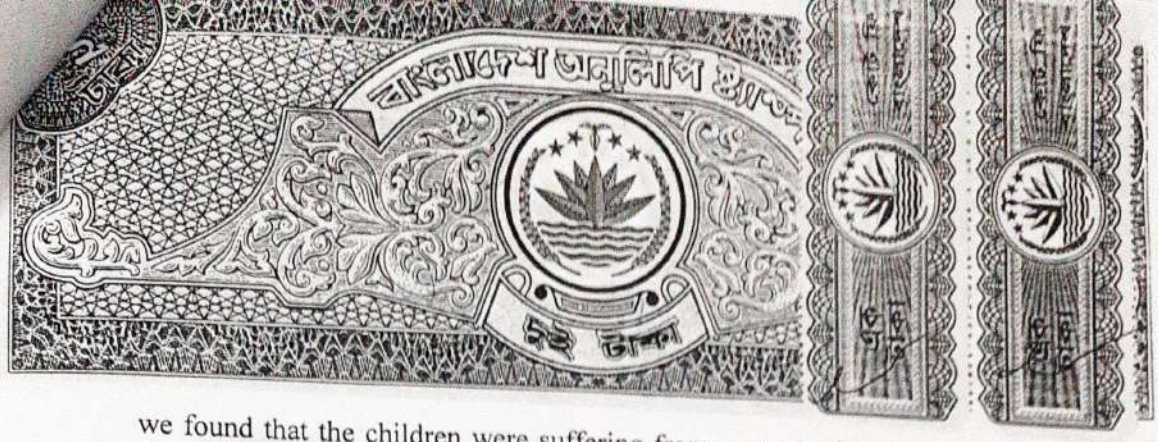
(7) Added respondent No. 5 stated before the Appellate Division that the present Writ Petition is not maintainable.

We have perused the Writ Petition, the affidavit-in-opposition the supplementary affidavit and the application for vacating the ad-interim order and the Annexures thereto.

As soon as the petitioner came to know of the news item about the septuplet, it went to the Court for an order of DNA test of the seven children of respondent No. 4. To date DNA test could not be performed. According to the petitioner, the seven children are being unlawfully detained by respondent No. 4 for immoral purpose.

The petitioner apprehends that respondent No. 4 will traffic the children out of the country. Respondent No. 5 filed Badda P.S. G.D. Entry No. 78 dated 2.6.2006 informing the police about the seven children and requesting them to take appropriate steps for DNA test of the seven children and their so-called parents. On 5.6.2006, Badda Police sought permission from the Court of Metropolitan Magistrate to allow them to investigate into the matter in connection with G.D. Entry No. 78 dated 2.6.2006. On 7.6.2006, respondent No. 5 filed G.D. Entry No. 396 with Badda Police Station requesting the police to prevent Anisur Rahman from leaving the country. On the same day, Badda police moved the Court of Metropolitan Magistrate for an order to conduct DNA test. The learned Magistrate by his order dated 7.6.2006 directed the Dhaka Medical College Hospital to conduct DNA test. We do not like to go into the detail of the DNA test because ultimately, the test could not be done and both the G.D. entries were disposed of. At the instance of respondent No. 5, an ejahar was made with Badda Police Station resulting in the initiation of Badda P.S. Case No. 14 dated 16.6.2006 under section 6(1)(2) of the Nari-O-Shishu Nirjatan Damon Ain, 2000 which has been pending before that Court.

After the hearing of the Rule was concluded, we decided to see the seven children in our chamber. Therefore, we verbally directed Mr. Kazi M. Sajawar Hossain, learned Advocate for respondent Nos. 4 and 6 to produce seven children before this Court on 27.7.2008. Accordingly, all the seven children were produced on 27.7.2008 and both of us examined them in our chamber. To our utter surprise,



we found that the children were suffering from severe malnutrition. On our query, one of the children burst into tears stating that till 2-20 p. m, she was not given any food. Later, we directed to take the children back. But the physical condition of the children led us to give another direction to Mr. Kazi M. Sajawar Hossain, learned Advocate for respondent Nos. 4 and 6, to again produce the seven children before this Court on 30.7.2006.

Mr. Mahmudul Islam, a learned Senior Advocate of this Court assisted us in this matter as *amicus curiae.* After hearing him, we directed the Chairman, Forensic Medicine, Dhaka Medical College to form a 3-member team to conduct 'Sibling DNA Test' of seven children to ascertain whether or not they are full brothers and sisters. We also directed the Chairman to ensure collection of samples from the seven children for 'Sibling DNA' Test and 'DNA Paternity Test' in the course of the day. We would like to quote the entire order dated 6.8.2008 as under:

"In this matter we sought the assistance of Mr. Mahmudul Islam, a Senior Advocate of this Hon'ble Court. He submits that DNA test is a must to decide the custody of the seven children. The learned Advocate then submits that the custody of the seven children should be temporarily given to an organization which will be able to ensure the safety and welfare of the children.

On 27.7.2008, we examined the seven children in our chamber instead of pronouncing judgment. The physical examination of the children led us to shift the judgment to 30.7.2008 .On that date, we again directed the learned Advocate for respondent Nos. 4 and 6 to produce the seven children today.

In order to arrive at a correct decision as to the custody of the seven children, we are of the opinion that prior to pronouncement of the judgment there should be a DNA test.

It has been brought to our notice that the alleged mother (respondent No. 6) has been in jail custody on the charge that she claimed subscription. The learned Advocate for respondent Nos. 4 and 6 submits that the alleged father (respondent No. 4) has been serving in Chittagong. Therefore, both the parents are not instantly available.

As a result, we are of the opinion that at the first instance there should be a 'sibling DNA test' to ascertain whether or not the seven children are full brothers and sisters. When we examined the children on 27.7.2008, we found that they had been suffering from severe malnutrition. On our query, one of the children burst into tears and stated that till 2-30 p.m. she was not given any food.

Therefore, we have decided that till completion of the DAN test, the seven children shall remain in the interim custody of Bangladesh National Women Lawyers Association and Bangladesh Society for Enforcement of Human Rights represented by Mrs. Fauzia Karim Feroz and Ms. Alina Khan respectively until further order. The new custodians are directed to take utmost care of the children who must be kept under the constant watch of a child specialist.

The Chairman, Forensic Medicine, Dhaka Medical College is directed to form a 3-member team to perform 'sibling DNA test' of seven children to ascertain whether or not they are full brothers and sisters. The Chairman is also directed to

ensure collection of samples from the seven children for 'sibling DNA test' and 'DNA paternity test' in course of the day without wasting even a single moment so that the children may not be detained in Dhaka Medical College.

The Chairman will take step for DNA paternity test when we direct the alleged parents to go to Dhaka Medical College.

If possible, the Chairman, Forensic Medicine, Dhaka Medical College will ensure collection of samples from the children for 'sibling DNA test' and paternity test for sending those samples abroad. The Chairman is directed to send the report of 'sibling DNA test' as soon as possible.

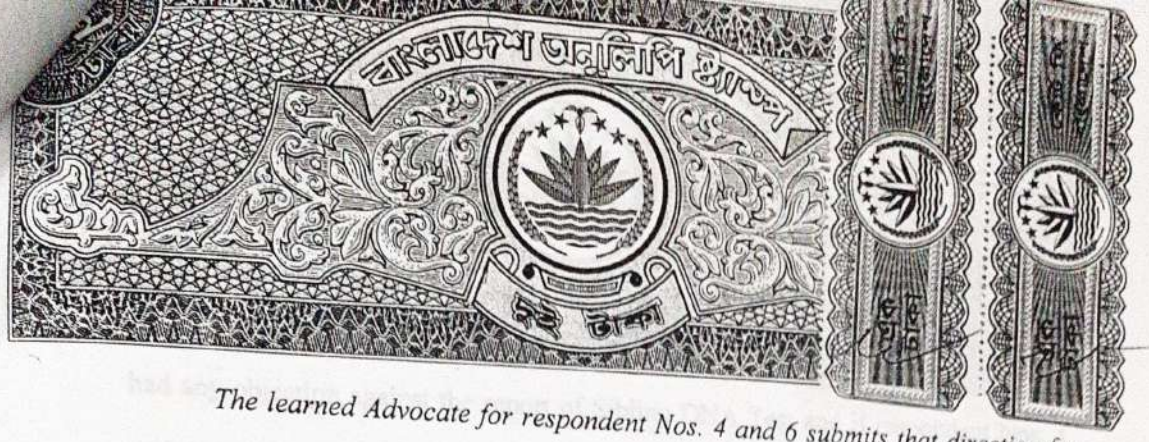
In order to facilitate the sibling DNA test, the Deputy Registrar, the Court Keeper of the Supreme Court and the Police Officer ensuring security of the Supreme Court are directed to accompany the seven children to Dhaka Medical College.

The Police Commissioner, Dhaka is also directed to ensure the safe journey of the seven children to Dhaka Medical College and then to their temporary new abode at Prasanti, Agargaon.

The next date has been fixed for 12.8.2008 for sibling DNA report.

Let a copy of this order be communicated to the Chairman Forensic Medicine Dhaka Medical College and the Police Commissioner by 2 P.M. (today) without fail.

After collection of samples for DNA test, the Deputy Registrar shall handover the seven children to Mrs. Fawzia Karim and Ms. Alina Khan in writing.



The learned Advocate for respondent Nos. 4 and 6 submits that direction for DNA test should not be given as nobody claimed the children and that the children are in the constant care at Bashundhara. We do not find any substance in this submission.

The costs of the test will be borne by Ms. Alina Khan, Advocate Supreme Court and Executive Director, Bangladesh Society for the Enforcement of Human Rights".

It is important to note that the Sibling DNA Test was done under the supervision of this Court. All the seven children were sent to Dhaka Medical College under the custody of Mr. Md. Golam Sarwar, Deputy Registrar with the help of three court keepers using microbus of this Court. The Deputy Registrar produced all the seven children in the Forensic Medicine Department of Dhaka Medical College and samples were taken from them for Sibling DNA Test and DNA Paternity Test. As soon as taking of samples for DNA test of the seven children was over, the Deputy Registrar under whose custody the children were sent to the Dhaka Medical College handed them over to Mrs. Fawzia Karim and Ms. Alina Khan as their temporary custodians until further order. We fixed the next date for Sibling DNA Test report on 12.8.2008. The report of the Sibling DNA Test was sent to this Court through the Registrar of this Court on 12.8.2008. On that date, having gone through the Sibling DNA Test report, we fixed the following day for acceptance thereof. We directed Mr. Kazi M. Sajawar Hossain, learned Advocate for respondent Nos. 4 and 6 to be present before the Court on 13.8.2008 to submit if he

had any objection against the report of Sibling DNA Test and if respondent Nos. 4 and 6 were agreeable to DNA Paternity Test. On 13.8.2006 Mr. Sajawar Hossain, learned Advocate for respondent Nos. 4 and 6 submitted that the DNA Paternity Test was beyond the scope of the present Rule. Therefore, we are of the opinion that respondent Nos. 4 and 6 were not willing to undergo DNA test. In such a state of affairs, we accepted Sibling DNA Test report.

In the case in hand on the very date of issuance of the Rule Nisi this Court passed an interim order as regards DNA test as under:

> *"It may be mentioned that Mr. Sajawar Hossain, learned Advocate appeared on behalf of respondent No. 4 upon filing power. Having heard him at length, it transpires that respondent No. 4 is not willing to have the DNA test within this country; rather he is interested to have the test done in any advanced country like Singapore. Mr. Hossain has also given an undertaking that respondent No. 4 is ready and willing to take two members team of the petitioner's Samity to Mount Elizabeth Hospital, Singapore at his own cost. In such view of the matter, we direct respondent No. 2 to undertake the DNA test at Mount Elizabeth Hospital in Singapore in respect of the said seven children and their alleged mother, the wife of respondent No. 4, escorted by a two member team of the petitioner-samity (to be selected by the Samity). The entire cost shall be borne by respondent No. 4. It is also directed that the said DNA test be completed within 4(four) months from date as*

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prayed for by the learned Advocate for the respondent No. 4. The seven children be brought back to Bangladesh immediately after completion of the said DNA test".

The interim order referred to above, however, was stayed by the Appellate Division at the instance of respondent No. 5. But as regards the interim order about DNA test respondent No. 4 has taken serious exception in the affidavit-in-opposition by stating that he could not bear the huge expenditure to have DNA test at Mount Elizabeth Hospital in Singapore. Respondent No. 4 further stated that neither respondent No. 4 nor his wife was at all interested in DNA test as there was no reason for such test. He then stated that the present Writ Petition was not for the DNA test and hence the order of DNA test passed by the High Court Division was misconceived. He also stated that the order so far as it related to DNA test of this Court should be recalled and vacated in the interest of justice.

We have so far stated about DNA test. But we should have an idea of what DNA means. DNA stands for **'Deoxyribonucleic Acid'**, a molecule that contains all of our genetic information. By examining DNA molecule and its genetic code, the differences among individual can be scientifically and accurately determined. It is also necessary to have an idea about **DNA Paternity Test**. A paternity test works by comparing a child's DNA profile with that of an alleged father (and often the mother as well). Because a child inherits half of his or her DNA from each biological parent, such a comparison reveals whether the child could have inherited DNA from

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the alleged father. When individuals are biologically related as parent and child, their DNA profiles show predictable pattern of genetic inheritance.

In the case in hand, DNA Paternity Test could not be done because of the total non-cooperation of respondent Nos. 4 and 6, the alleged father and mother respectively.

We should have a brief idea about **'Sibling DNA Test'.**

This type of test is often performed when an alleged father is unavailable for DNA Paternity Test' and it is necessary to know if the siblings have one or both parents in common.

Of the seven children, 4 were male and as much, the Medical Board had the advantage to perform another test known as **Y-Chromosome Analysis.** Y-Chromosome DNA Test has two possible result:

1) Tested males are paternally related.

2) The tested males are not paternally related.

The result of such test is taken to be infallible.

Because of unique nature of this case, we would like to extract the DNA test report as under:

"National Forensic DNA Profiling Laboratory NFDPL

Department of Forensic Medicine, Dhaka Medical College

Multi-Sectoral Programme on Violence Against Women (2nd Phase)

Ministry of Women and Children Affairs Government of the People's Republic of Bangladesh".

DNA ANALYSIS REPORT ON SIBLING TESTING

Case No.	Writ Petition No. 5359 of 2006
Police station/Hon'ble Court	High Court Division, The Supreme Court of Bangladesh.
Under section	
Lab ID No.	NFDPL-08-0167
Date Received	August 06, 2008
Date Prepared	August 11, 2008.
DNA Profiling Report No.	NFDPL/DNA/08/167
Forensic Medicine Ref No.	Fm/DMC/08/81

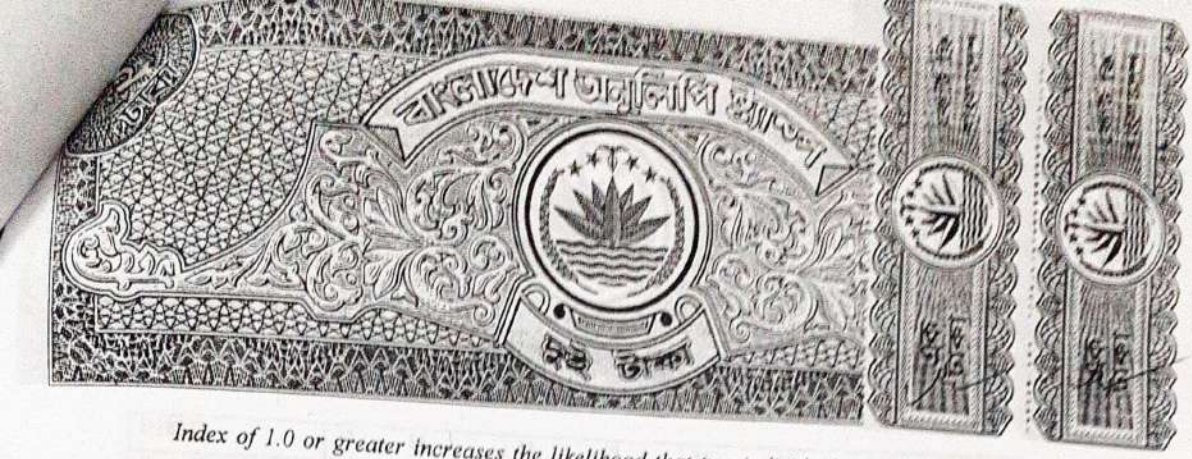
SUMMARY OF THE SAMPLE RECEIVED

Sample Name	Donor	Exhibit	Sample No.	Collected on.
Blood samples collected on FTA Card	Child 1: (Zannatul Marium Nafiza)	A	p62-08-BI-01	06/08/2008
Blood samples collected on FTA Card	Child-2: (Zannatul Marium Nazifa)	B	p62-08-BI-02	06/08/2008
Blood samples collected on FTA Card	Child-3: (Zannatul Tanisa Rahman Nadiba)	C	p62-08-BI-03	06/08/2008
Blood samples collected on FTA Card	Child-4: (Daiyan Rahman Ushad)	D	p62-08-BI-04	06/08/2008
Blood samples collected on FTA Card	Child-5: (Nafes Akon Anis Usham)	E	p62-08-BI-05	06/08/2008
Blood samples collected on FTA Card	Child-6: (Aiman Rahman Anis)	F	p62-08-BI-06	06/08/2008
Blood samples collected on FTA Card	Child-7: (Anas Akon Anis)	G	p62-08-BI-07	06/08/2008

SIBLING DNA TESTING

Sibling DNA testing is conducted in order to determine if two or more children share one or both biological parents in common. Full siblings will have both parents in common, whereas half-sibling will have one parent in common, either their mother or father. While conducting sibling DNA testing, the laboratory determines the genetic profile of the alleged siblings and, based on the number of shared alleles a Sibling Index (SI) is calculated. Sibling Index is a statistical probability of whether brothers and sisters share the same two parents or not. If a Sibling Index is less than 1.0, it is unlikely that the individuals are biological siblings. A Siblings

1.8
a



Index of 1.0 or greater increases the likelihood that two individuals are biological siblings. The higher the value of the index, the more likely the individuals share the same parents.

Sibling DNA test unlike parentage tests do not provide a conclusive result. However, the tests provide an indication of whether tested individuals are more likely to be biological siblings of each other or not.

RESULTS OF DNA ANALYSIS

We have undertaken sibling test using DNA profiling method on samples presented to use as those from source of exhibit A (blood sample of Zannatul Marium Nafiza), source of exhibit B (blood sample of Zannatul Marium Nazifa), source of exhibit C (blood sample of Zannatul Tanisa Rahman Nadiba), source of exhibit D (blood sample of Daiyan Rahman Ushad), source of exhibit E (blood sample of Nafes Akon Anis Usham), source of exhibit F (blood sample of Aiman Rahman Anis) and source of exhibit G (blood sample of Anas Akon Anis). DNA from the sources of the above exhibits was extracted. PowerPlex TM-16 PCR amplification kit was used for DNA profiling of the samples. Fifteen microsatellite or STR regions (e.g. D3S1358, TH01, D21S11, D18S51 Penta E, D5S818, D13S317, D7S820, D16S539, CSF1PO, Penta D, vWA, D8S1179, TPOX and FGA) were amplified using specific oligonucleotide primers. One additional locus Amelogenin was also used for determination of sex (Male=XY; Female=XX.) DNA analysis was carried out on a 3100 avant Genetic Analyzer. Data were analyzed by Genescan and Genotyper software. The result of the analysis is presented in Table 1 and 2.

Table 1. DNA profiles of Zannatul Marium Nafiza (Child-1), Zannatul Marium Nazifa (Child-2), Zannatul Tanisa Rahman Diba (Child-3) and Daiyan Rahman Ushad (Child-4).

Locus	Exhibit A Zannatul Marium Nafiza (Child-1)	Exhibit B Zannatul Marium Nazifa (Child-2)	Exhibit C Zannatul Tanisa Rahman Nadiba (Child-3)	Exhibit D Daiyan Rahman Ushad (Child-4)
D3S1358	15 18	15 16	16 17	16 17
TH01	8 9	7 9	7 9.3	9.3 9.3
D21S11	30 32.2	31 32.2	30 32.2	30 32.2

D18S51	13	16	13	17	14	16	14	19
Penta E	11	12	7	9	12	15	7	17
D5S818	10	12	12	14	11	12	11	12
D13S317	10	13	8	12	8	11	9	11
D7S820	10	11	10	11	8	11	8	10
D16S539	11	11	10	14	11	13	8	9
CSF1PO	10	11	10	11	11	12	10	12
Penta D	14	14	10	12	9	10	13	13
vWA	16	17	17	17	14	19	15	16
D8S1179	11	12	10	14	10	16	10	16
TPOX	8	11	8	10	8	10	8	11
FGA	25	25	22	23	23	23	19	25
Amelogenin	X	X	X	X	X	X	X	Y

Table 2. DNA profiles Nafes Akon Usham (Child-5), Aiman Rahman Anis (Child-6) and Anas Akon Anis (Child-7).

Locus	Exhibit E Nafes Akon Usham (Child-5)		Exhibit F Aiman Rahman Anis (Child-6)		Exhibit G Anas Akon Anis (Child-7)	
D3S1358	15	15	15	16	15	17
TH01	9	9.3	9	9.3	6	7
D21S11	28	29	30	32.2	31	31
D18S51	14	18	14	16	14	15
Penta E	14	15	11	13	20	23
D5S818	11	12	11	12	12	12
D13S317	8	12	7	8	8	9
D7S820	10	11	11	12	10	11
D16S539	12	13	11	12	9	12
CSF1PO	10	12	9	10	11	14
Penta D	11	13	11	14	11	12
vWA	16	18	16	17	14	17
D8S1179	10	15	14	14	11	12
TPOX	9	10	11	11	10	11
FGA	21	23	22	22	19	24
Amelogenin	X	Y	X	Y	X	Y

From the above DNA analysis result we calculated a Sibling Index of all the seven children based on the shared alleles by a pair-wise comparison. The result is presented below (Table-3).

Table 3. Sibling Index (SI) of seven children by a pair-wise comparison.

Sibling pair	Sibling Index (SI)	Sibling pair	Sibling Index (SI)
Child 1 vs Child 2	0.000728	Child 3 vs Child 4	0.164995
Child 1 vs Child 3	0.000129	Child 3 vs Child 5	0.010136
Child 1 vs Child 4	0.000107	Child 3 vs Child 6	0.000982
Child 1 vs Child 5	0.000003	Child 3 vs Child 7	0.000025
Child 1 vs Child 6	0.333333	Child 4 vs Child 5	0.000808
Child 1 vs Child 7	0.000173	Child 4 vs Child 6	0.000359
Child 2 vs Child 3	0.005193	Child 4 vs Child 7	0.000071
Child 2 vs Child 4	0.000018	Child 5 vs Child 6	0.000119
Child 2vs Child 5	0.001399	Child 5 vs Child 7	0.000111
Child 2 vs Child 6	0.002091	Child 6 vs Child 7	0.000027
Child 2 vs Child 7	0.019042		

A Sibling Index less than 1.0 indicates that, the children are less likely to be biologically related. When the Sibling index is 1.0 or greater than 1.0, it favours that two children are biological siblings.

Y-CHROMOSOME ANALYSIS

The genetic material in humans is arranged into 46 chromosomes, grouped themselves into 23 pairs. In 22 pairs, both members are essentially identical, known as authosomes. The 23rd pair is different. In females this pair has two like chromosomes in the form of XX, while in males it comprise one X and one Y, two very dissimilar chromosomes. A male child's Y-chromosome thus represents a unique a unique record of his paternal inheritance. A male child will therefore share the same Y- chromosome haplotype with his biological father. If Y-chromosome haplotype of all the male children are exactly the same, they share a common father. If the Y-chromosome haplotypes are different their biological father's are different.

We therefore, carried out the Y-chromosome analysis of four male children as those from Daiyan Rahman Ushad (Child-4), Nafes Akon Anis Usham (Child-5), Aiman Rahman Anis (Child-6) and Anas Akon Anis (Child-7). Yfiler TM PCR amplification kit was used to obtain their Y-chromosome haplotype. Sixteen Y-chromosome specific microsatelite loci (DYS456, DYS389I, DYS390, DYS38911, DYS458, DYS19, DYS385, DYS393, DYS391, DYS439, DYS635, DYS392, Y GATA H4, DYS437, DYS438 and DYS448) were amplified by using specific oligonucleotide

primers. DNA analysis was carried out on a 3100 avant Genetic Analyzer. Data were analyzed by Genescan and Genotyper software. The result of the analysis is presented in Table-4.

Table 4. Y-chromosome haplotype of Daiyan Rahman Ushad (Child-4), Nafes Akon Usham (Child-5), Aiman Rahman Anis (Child-6) and Anas Akon Anis (Child-7).

Locus	Daiyan Rahman Ushad (Child-4)	Nafes Akon Anis Usham (Child-5)	Aiman Rahman Anis (Child-6)	Anas Akon Anis (Child-7)
DYS456	16	16	17	16
DYS3891	14	14	13	13
DYS390	25	25	25	24
DYS38911	32	32	30	31
DYS458	15	16	16	18
DYS19	16	16	16	16
DYS385	11, 14	11, 14	12, 14	11, 14
DYS393	13	14	13	13
DYS391	10	11	11	10
DYS439	10	10	10	10
DYS635	24	23	23	23
DYS392	11	11	11	11
Y GATA H4	13	12	12	12
DYS437	14	14	14	14
DYS438	11	11	11	11
DYS448	19	20	20	20

The Y-chromosome haplotype obtained from the source of exhibit D (Daiyan Rahman Ushad), exhibit E (Nafes Akon Usham), exhibit F (Aiman Rahman Anis) and exhibit G (Anas Akon Anis) do not match each other.

CONCLUSION

Sibling DNA Testing.

The DNA profiles obtained from seven children, as those from Zannatul Marium Nafiza (CHild-1), Zannatul Marium Nazifa (Child-2), Zannatul Tanisa Rahman Nadiba (Child-3), Daiyan Rahman Ushad (Child-4), Nafes Akon Anis Usham (Child-5), Aiman Rahman Anis (Child-6) and Anas Akon Anis (Child-7) are listed in Table 1 and 2.

In order to carry out a sibling test, a Sibling Index (SI) was calculated by a pair-wise comparison of all the children, based on the shared alleles present in their DNA profiles (Table 3). The Sibling Index ranges from 0.000003 to 0.333333 in all possible sib-pairs tested.

The result of the Sibling Index therefore, indicates that all the seven children are highly unlikely to be related to each other. (When Sibling Index is less than 1.0, it is unlikely that the individuals are biological siblings. A Sibling Index of 1.0 or greater increases the likelihood that two individuals are biological siblings). (Emphasis ours)

Y-Chromosome Analysis

The Y-chromosome haplotypes of the four male children as those from Daiyan Rahman Ushad (Child-4), Nafes Akon Anis Usham (Child-5), Aiman Rahman Anis (Child-6) and Anas Akon Anis (Child-7), are listed in Table 4.

The result of Y- chromosome analysis shows that, the Y- chromosome haplotype of the four male children (Child 4 to Child 7) **do not match each other.**

"It is therefore, sufficient to conclude that all the male children (Children 4 to Child 7) do not share a common biological father. [A male child's Y-chromosome represents a unique record of his paternal inheritance. Male siblings therefore should share indentical Y-chromosome haplotype by decent"]. (Emphasis ours)

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We have already stated about the result of the sibling DNA test. The following points lead us to believe that respondent Nos. 4 and 6 are not the parents of the septuplet.

(1) Total non-cooperation of the respondent Nos. 4 and 6 to undergo DNA Paternity Test. Therefore, the presumption will be that had there been DNA paternity test, it would have been proved that respondent Nos. 4 and 6 are not the parents of the seven children.

(2) Respondent No. 6 gave birth to the septuplet, at home without the aid of any doctor, a story hardly believable to a man of ordinary prudence in the twenty first century.

(3) All the seven children are severely malnourished and were not immunized although respondent Nos. 4 and 6 are affluent and highly qualified.

(4) Respondent No. 4 was conspicuous by his absence in the Court even when the custody of the seven children was given to the petitioner and respondent No. 5. Such a behaviour is unusual for a biological father.

(5) Result of Sibling DNA Test shows that all the seven children are unlikely to be related to each other.

(6) Result of Y-Chromosome Analysis is always taken to be infallible and the result shows that the four male children do not share a common biological father.

The Rule was not issued in the terms of Article 102 (2) (b((i) of the Constitution, but this Court can exercise such power when somebody is detained without any lawful authority or in an unlawful manner. In the case in hand, the seven children are being illegally detained in the custody of respondent Nos. 4 and 6 and as a result, the life, safety and welfare of the seven children are at stake. In such a situation, this Court cannot but exercise its power under Article 102 (2) (b) (i) of the Constitution known as *habeas corpus* to do justice even if we are required to go beyond the Rule. This cannot operate to the prejudice of respondent Nos. 4 and 6 inasmuch as they were given adequate opportunity to prove their case that the seven children are of their biological parentage. Even such a Writ Petition is maintainable against private individuals like respondent Nos. 4 and 6. In this connection reliance may be made on the case of Abdul Jalil and Others Vs. Sharon Laily Begum Jalil 1998 BLD (AD) 22=50 DLR 55 and also in the case of Farhana Vs. Samudra Eiazul Haque and Others (2008) 60 DLR 12. The facts of those cases are different. But the principle enunciated in those cases that a Writ Petition in the form of *habeas corpus* is maintainable against a private individual when the question of illegal custody arises. We are conscious that our task, of course, is to resolve the issue involved in this case by constitutional measurement, free from emotion and predilection. It is worth mentioning that determination of legal or illegal custody is ingrained in Article (2) (b) (i) of the Constitution. The Sub-Article provides that this Court can direct that a person in custody be brought before it so that it may satisfy itself that he is not held in custody without lawful authority or in an unlawful manner. The DNA

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test clearly proves that the seven children involved in this case are not the offspring of respondent Nos. 4 and 6. Respondent Nos. 4 and 6 miserably failed to prove that the seven children were lawfully held in their custody, they being the biological parents of the children. Since we have found that respondent Nos. 4 and 6 are not the parents of the seven children, it is very unsafe to allow them to continue with the custody of respondent Nos. 4 and 6. Considering welfare of the children, we are of the opinion that they should remain in the custody of an organization, which can safeguard their life, welfare and safety.

In a proceeding like this, it is not the right of the parties but the rights of the children are at issue. The General Assembly of the United Nations adopted a proclamation on November 20, 1959 the **Declaration of the Rights of the Child** and among the principles proclaimed, it was said

> "The child shall enjoy special protection, and shall be given opportunities and facilities, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."

The General Assembly of the United Nations adopted the **International Convention of the Rights of the Child** on November 20, 1989. The documents is a binding treaty to which 176 nations including Bangladesh became "state parties",

"In using the writ of *habeas corpus* for the custody of infants the jurisdiction exercised by the court in deciding whether the custody should be entrusted with one or other of the contesting parties depends not on the legal right of one of those parties to the custody of the child but as to whether in the best interests and welfare of the child the custody should be entrusted with one or the other."

From the case referred to above, it appears that the custody of infants may b e decided in the writ of *habeas corpus.* The judgment also quoted a few paragraphs from American Jurisprudence Volume 25, a paragraph of those is quoted below:

"It should be observed that as a general rule, where the writ is prosecuted for the purpose of determining the right to the custody of a child, the inquiry extends far beyond the issues that ordinarily are involved in a habeas corpus proceeding. The controversy does not involve the question of personal freedom, because an infant, for humane and obvious reasons, is presumed to be in the custody of someone until it has attained its majority. The court, in passing upon the writ in a case involving the custody of a child, deals with a matter of an equitable nature; it is not bound by any mere legal right of parent or guardian, but is to give his or her claim to the custody of the child due