IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT

Mr. Justice Md. Ruhul Amin,
Chief Justice
Mr. Justice Mohammad Fazlul Karim
Mr. Justice M. M. Ruhul Amin
Mr. Justice Md. Tafazzul Islam
Mr. Justice Md. Joynul Abedin
Mr. Justice Md. Hassan Ameen
Mr. Justice Md. Abdul Matin

CRIMINAL APPEAL NO.65 of 2007

(From the judgment and order dated 22.04.2007 passed by the High Court Division in Criminal Miscellaneous Case No.3875 of 2007.)

The State .....Appellant

=Versus=

Moyez Uddin Sikder and others .....Respondents

For the Appellant : Mr. Fida M. Kamal, Attorney General, (Mr. Zahirul Islam Mukul, Deputy Attorney General with him) instructed by Mr. A.S.M. Khalequzzaman, Advocate-on-Record.

For Respondent No.1 : Mr. Rafique-ul Huq, Senior Advocate (Mr. Ahsanul Karim, Advocate with him) instructed by Mrs. Sufia Khatun, Advocate-on-Record.

Respondent Nos.2-5 : Not represented.

Date of hearing : 13.04.2008 and 15.04.2008.

J U D G M E N T

Md. Abdul Matin, J.- This criminal appeal on leave arises out of the judgment and order dated 22.04.2007 passed by the High Court Division in Criminal Miscellaneous Case No.3875 of 2007 in respect of entertaining the

plications under Section 498 of the Code of Criminal Procedure.

The case of the respondents in short, is that they are permanent and law abiding citizens of Bangladesh and come of respectable families of their locality who surrendered before the High Court Division on an application for anticipatory bail. The respondent No.1 is a businessman and deals in fuel business having trade licence under the name and style "M/S. Mofiz Fuel Supply" and is a regular income tax payee. The respondent Nos.2 and 3 are full brothers and they are also businessmen, the former is a first class contractor and an enlisted contractor of L.G.E.D. Khulna having firm named "M/S. Bhairab Traders" and a regular income tax paye having TIN being No.415-100-3036, folio-6455. The respondent No.3 is also a contractor and a builder and supplier of wooden goods having his firm named "M/S. Polash Enterprise" and an income tax paye having TIN being No.416-108-3028 and folio No.3845. The respondent No.4 is an elected member of Ward No.7 of Dighalia Union Parishad, Upazila-Dighalia, District-Khulna and the respondent No.5 is a businessman and resides at Dhaka. The respondent No.1 is a furnace oil businessman and in course of his business he used to buy fuel from M/S. Joint Fuel Suppliers of Kashipur, Daulatpur, Khulna and M/S. Salma Fuel Supply and other suppliers of the District. On 16.01.2007 M/S. Salma Fuel Supply sent a voucher of Tk.4,20,000.00 for 39,000 liters of fuel to his firm and the respondent No.2 sold fuel accordingly. On 31.01.2007 the informant party on the basis of a G.D. Entry No.1025 dated 31.01.2007 raided the compound of the respondent No.1

and recovered 50,000 liters of fuel and lodged the FIR with Dighalia Police Station alleging that the respondents in collusion with each other stored the fuel to create fuel crisis.

On 25.02.2007 police raided the respective houses of the respondents to secure their arrest but as they were not available at home the police could not secure their arrest but the police was able to arrest accused Sumon Sheikh who is in custody now. The respondents after returning home came to know about the raiding and then sent their tadbirker to the local police station who managed a photocopy of the FIR.

The High Court Division upon an application under Section 498 of the Code of Criminal Procedure for anticipatory bail held that it can entertain an application for bail under Section 498 of the Code of Criminal Procedure despite Rule 19(Gha) of the Jaruri Khamata Bidhimala, 2007.

Being aggrieved by the judgment and order of the High Court Division the appellants filed petition for leave to appeal and after hearing the parties this court granted leave to consider the submission that during the subsistence of Emergency period the High Court Division could not entertain the application for bail far less passing any ad-interim order as there is a complete bar under Rule 19(gha) of the Jaruri Khamota Bidhimala, 2007 which has curtailed the power and jurisdiction of the High Court Division to grant bail and as such, the impugned order is liable to be set aside.

Leave was also granted to consider the submission that the restriction on applying for bail contained in Rule 19(gha) of the Emergency Power Rules, 2007 applies also to the Supreme Court as defined in Article 152 of the Constitution providing "Court" means any "Court of law including Supreme Court" and therefore, the High Court Division erred in holding that "Court" did not include "the Supreme Court."

It was submitted on behalf of the respondents that by the expression namely, "কোন আদালত বা ট্রাইব্যুনাল" as in 19Ka and 19Kha no other reference is possible other than "the Court or the tribunal" where the trial is supposed to take place. How then the same expression can disclose a different meaning in the same legislation in a different provision namely "19Gha" thereof. It was submitted that the expression "the Court" in the concerned law intended to mean only "the Court or Tribunal" in Rule "19Ga" and not the Supreme Court though the definition of Court/Tribunal intended to include the Supreme Court as in Article 152 of the Constitution.

We have heard Mr. Fida M. Kamal, learned Attorney General appearing for the appellant and Mr. Rafique-ul Huq, learned Counsel appearing for the respondents and perused the petition and the impugned judgment and order of the High Court Division and other papers on record.

The learned Attorney General submits that during the subsistence of Emergency period the High Court Division could not entertain an application for bail far less passing any ad-interim order as there is a complete bar under Rule 19(Gha) of the Jaruri Khamota Bidhimala, 2007 which has curtailed the power and jurisdiction of the High

Court Division to grant bail and as such, the impugned order is liable to be set aside.

He further submits that the restriction on applying for bail contained in Rule 19Gha of the Emergency Power Rules 2007, applies also to the Supreme Court and therefore the High Court Division erred in holding that "Court" did not include the Supreme Court and as such the appeal should be allowed.

Mr. Rafique-Ul Huq, the learned Counsel submits that the terminologies "কোন আদালত বা ট্রাইব্যুনাল" as employed in Rule 19(Gha) of the Emergency Power Rules, 2007 does not include Supreme Court and as such there is no embargo on the Supreme Court to grant bail during the period of emergency nor can a subordinate legislation impose such restriction on Supreme Court which is a creature of Constitution, moreso, without the sanction of the parent law, i.e. the Emergency Power Ordinance, 2007 and as such the appeal is liable to be dismissed.

He further submits that the jurisdiction of the Supreme Court cannot be ousted without express words of a legislation whereas nowhere in the said Rules including Rule 19(Gha) which is not even a statute that has expressly excluded the jurisdiction of Supreme Court to grant bail and as such the appeal is liable to be dismissed.

The precise question before us is, therefore, to consider whether the High Court Division was authorized to entertain the application of the respondent filed under Section 498 of the Code of Criminal Procedure praying for anticipatory bail, in view of the bar in granting bail under Rule 19(Gha) of the Emergency Power Rules, 2007 and

to consider whether the bar is equally applicable to the High Court Division.

It appears that the application was filed under Section 498 of the Code of Criminal Procedure for anticipatory bail. In the petition in para-6 it was stated that the instant case is under the Special Powers Act, 1974 and the case is still pending in the Court of learned Magistrate, Khulna who has no jurisdiction to entertain the application for bail. The respondents surrendered before the High Court Division and prayed for anticipatory bail and in papra-7 it was stated that co-accused Sumon Sheikh (accused No.4) had been arrested by police and till then he was in custody and his prayer for bail was rejected and as such the respondents reasonably apprehended that if they surrendered before the concerned Court they would not get bail and would be remanded to custody and as such the respondents surrendered before the High Court Division and prayed for anticipatory bail.

In view of such statements the High Court Division was required to decide first whether the prayer for anticipatory bail under Section 498 is entertainable at all even if the jurisdiction of the High Court Division has not been ousted.

In this case the police after raiding the compound of the respondents recovered 50,000 litters of fuel and lodged the F.I.R. with Dighalia Police Station alleging that the respondents in collusion with each other stored the fuel to create fuel crisis and the case is under Section 25 of the Special Powers Act. The scope of entertaining an application under Section 498 for anticipatory bail has

been authoritatively decided in the case of State Vs. Abdul Wahab Shah Chowdhury reported in 51 DLR(AD) 242.

In that case the cases of Crown Vs. Khushi Muhammad, 5 DLR(FC) 143; Sadiq Ali Vs. State, 18 DLR(SC) 393; Muhammad Ayub Vs. Mohd. Yaqub, 19 DLR(SC) 38; Zahoor Ahmed Vs. State, PLD 1974 Lahore 254 were considered. This Court also considered and endorsed the caution given by SA Rahman, J. in the case of Sadiq Ali which runs as under:-

> "Indiscriminate grant of bail, however, merely on the request of a person, who appears in Court, and thereby surrenders himself to that Court, without the other conditions for such bail being satisfied, would amount to an act of judicial extravagance which cannot be countenanced."

This Court further held:-

> "Now we come to the real point at issue as to the conditions and circumstances under which an application for pre-arrest or anticipatory bail can be considered under Section 498 of the Code of Criminal Procedure. We wish to lay down as a first proposition that it is an extraordinary remedy, and an exception to the general law of bail which can be granted only in extraordinary and exceptional circumstances upon a proper and intelligent exercise of discretion. The ordinary law is that a person accused of a non-bailable offence must appear before the Court taking cognizance for making a prayer for bail. The prayer can be made when he is arrested or detained with or without warrant and is brought before the said Court. Pre-arrest bail is an exception to the general law and the Court will always bear in mind the caution of SA Rahamn J. as quoted above."

Generally speaking the main circumstances as would entitle an order for extraordinary remedy of pre-arrest bail is the perception of the Court upon the facts and materials disclosed by the petitioner before it that the criminal proceeding which is being or has been launched against him is being or has been taken with an ulterior motive, political or otherwise, for harassing the accused and not for securing justice, in a particular case. The formulation of the said circumstance as made by Cornelius J in the case of Hidayet Ullah Khan Vs. Crown PLD 1949 Lahore 21 is more expressive and we would like to reproduce it for better guidance of the Court:-

> "The exercise of this power should, however, be confined to cases in which, not only is good prima facie ground made out for the grant of bail in respect of the offence alleged, but also, it should be shown that if the petitioner were to be arrested and refused bail, such an order would, in all probability be made not from motives of furthering the ends of justice in relation to the case but from some ulterior motives and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer an irreparable harm."

The only other case where the prayer may also be considered may occur if it is proved that on account of some local public commotion or other circumstances it is not possible for the petitioner to appear before the lower court for seeking bail.

This Court considered the facts of that case and held:-

> "As for the present appeals, the learned Attorney General has submitted that the facts

disclosed in the petitions for bail are absolutely no grounds for even entertaining an application for anticipatory bail. The allegation that the case is false or that the case has been instituted out of political rivalry or the omnibus allegation that the Magistrates are being controlled by the ruling party and the petitioner being a member of the opposition party has apprehension that his prayer for bail will not be justly and judicially dealt with are at all no grounds for granting the extraordinary relief of pre-arrest bail. He submits that having regard to the gravity of the offences and the allegations made against the petitioners the High Court Division should have rejected their applications in limine."

This Court set aside the judgment of the High Court Division granting anticipatory bail and allowed the appeals.

In the present case no case has been made out that the criminal proceeding launched against them is being or has been taken with an ulterior motive, political or otherwise, for harassing the appellants and not for securing justice in this case. No case of local public commotion has been made out justifying their not moving the Court of the learned Magistrate or the Court of the learned Sessions Judge and as such the application should have been decided on the merit of the case without going into the debate on the bar under Rule 19(Gha) of the Emergency Power Rules in the light of the case of State Vs. A. Wahab mentioned above.

In such view of the matter the High Court Division without deciding first whether or not the very application

der Section 498 of the Code of Criminal Procedure was entertainable or not for anticipatory bail misdirected itself in entertaining the objection raised by the State that in view of the provisions of Rule 19(Gha) of the Emergency Power Rules such application was not maintainable and deciding the issue in the way it has been done assuming a general issue divorced from the facts of the case, whether the jurisdiction of the High Court Division to entertain applications under Sections 498 of the Code of Criminal Procedure has been ousted by the provision of Rule 19(Gha) of the Emergency Power Rules and by impugned judgment the High Court Division has decided the academic question without reference to the case in hand and declaring a general proposition divorced and detached from any particular case before the High Court Division.

In the case of Basheshar Nath Vs. Commissioner of Income Tax, Delhi and Rajasthan and another reported in AIR 1959 (SC) 149 it was held that the Supreme Court should not give decision on any law which is not strictly necessary for disposal of the case before it. This Court in the case of Kudrat-E-Elahi Panir Vs. Bangladesh reported in 44 DLR(AD) 319 held:-

> "Therefore the broad decision that a law can be declared void in case of a conflict with any provision of Part II of the Constitution was uncalled for and made on hypothetical facts. This, as a rule, the Courts always abhor. The Court does not answer merely academic question but confines itself only to the point/points which are strictly necessary to be decided for the disposal of the matter before it. This should be moreso when Constitutional questions are

involved and the Court should be ever discreet in such matters. Unlike a civil suit, the practice in Constitutional cases has always been that if the matter can be decided by deciding one issue only no other point need be decided."

From the facts of the case in question we find that the case is under Section 25 of the Special Powers Act, 1974 and the respondents being fugitives were approaching the High Court Division for anticipatory bail and no ground was made in the petition so that such an application could be entertained under Section 498 of the Code of Criminal Procedure and the High Court Division was competent and required to dispose of the case on the facts of the case. But entertaining hypothetical questions raised and allowing them in the fashion as has been done is highly deprecated as the High Court Division ignored the settled principle that "general propositions do not decide concrete cases" as held by Justice Homes of U.S. Supreme Court in the case of Lochner Vs. New York 198 US 45(1905).

It appears that because the offences under Special Powers Act, 1974 have been included in Rule 14 of the Emergency Power Rules, 2007 the State raised the objection in the matter of entertainment of the application under Section 498 of the Code of Criminal Procedure on the ground that such application is not entertainable because of the bar imposed under Rule 19(Gha) of the Emergency Power Rules, 2007 (though the case could have been decided without such objection).

The High Court Division considered the provision of 19(Gha) and held:-

"Therefore, this Court can entertain applications under Section 498 of the Code of Criminal Procedure despite Rule 19Gha of the said Rules, even with a non-obstante expression."

In order to appreciate the submissions by the parties it is apposite to quote Rule 19(Gha) of the Emergency Power which runs as under:

"১৯ঘ। জামিন সংক্রান্ত বিধান।- জরুরী অবস্থা ঘোষণার কার্যকরতা-কালে ফৌজদারী কার্যবিধির ধার ৪৯৭ ও ৪৯৮ বা অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, এই বিধিমালা বা বিধি ১৪ ও ১৫ এ উল্লিখিত কোন আইনের অধীন কোন অপরাধ অনুসন্ধান, তদন্ত ও বিচার চলাকালীন কোন অভিযুক্ত ব্যক্তি কোন আদালত বা ট্রাইব্যুনালে জামিনের আবেদন করিতে পারিবে না " ;

"তবে শর্ত থাকে যে, কোন মামলায় মূল অভিযুক্ত (principal accused) হিসাবে কোন ব্যক্তির সহিত তাহার স্ত্রী, অনূর্ধ্ব ১৮ বছর বয়স্ক সন্তান, অবিবাহিত কন্যা, মা, শাশুড়ী বা কোন সহ-অভিযুক্ত (co-accused) হইবার ক্ষেত্রে, অনুরূপ সহ-অভিযুক্তের পক্ষে জামিনের আবেদন করা হইলে আদালত বা ক্ষেত্রমত, ট্রাইব্যুনাল, উপযুক্ত কারণ লিপিবদ্ধ করিয়া, জামিন মঞ্জুর করিতে পারিবে।"

The learned Attorney General has referred to the case of Solicitor, Government of Bangladesh Vs. Syed Sanwar Ali and others reported in 27 DLR(AD) 16.

In that case Article 10 of P.O.50 of 19972 put an embargo in granting bail by the Courts. Section 10 of the P.O.50 runs as follows:-

"Notwithstanding anything contained in the Code, no person who is in custody, accused or convicted of a scheduled offence shall be released on bail."

The question was whether such expression ousted the jurisdiction of the High Court Division in granting bail and this Court held:-

"The contention of Mr. Abdul Hye Choudhury and Mr. Serajul Huq that the restrictions in the

matter of bail to convicted persons as enjoined under Article 10 of P.O.50 and Article 14 of P.O.8 were intended to apply only to the trial court, therefore, cannot be sustained. The restrictions obviously apply and were intended to apply to the High Court Division to which appeal lies from convictions under these Orders..... that the provisions of the said two Articles are very extraordinary and they are likely to entail unnecessary hardships and injustice in some cases but such consideration should not deflect a Court from its duty to interpret law in the light of manifest intention of the legislature."

In that case this Court further held:-

"The language used in Article 10 of P.O.50 and Article 14 of P.O.8 to the effect that "Notwithstanding anything contained in the Code no person who is in custody....shall be released on bail", indicate that the provisions of those Articles should be construed as mandatory. In support of the said view we may refer to the following passage occurring at page 96 of the book "Statutes and Statutory Construction" by J.G. Sutherland, Third Edition.

> "One of the strongest indications as to what construction should be given to a statutory provision may be found in the use of negative, prohibitory or exclusive words. Where statutory restrictions are couched in negative terms they are almost invariably held to be mandatory."

Similar view was expressed also by Crawford in "The Construction of Statutes" at page 108 where it was stated,-

> "And negative words generally create a mandatory statute."

The learned Attorney General Submits that similar language has been used in 19(Gha) and the language indicates that the provision should be construed as mandatory and applicable to courts including the High Court Division.

He has referred to Article 152 of the Constitution which defines the "Court" in the following language " Court means any Court of law including Supreme Court."

The High Court Division considered the case of Secretary of State Vs. Mask & Co. reported in AIR 1940 (PC) 105 (67 IA 222) but appears to have missed the ratio decidendi of that case.

In that case an order under Section 188 of the Sea Customs Act passed by the Assistant Collector was appealed against under Section 191 of the Act and thereafter a revision was preferred before the Governor General in Council and having lost Mask & Co. filed a suit in the Civil Court for recovery of taxes realised on imported betel-nuts and the trial court held that the suit was not maintainable in view of Section 188 of the Sea Customs Act.

Mask & Co. moved the High Court at Madras and the High Court set aside the judgment and decree of the trial court and then the matter was taken to the Privy Council and their Lordships held that the Civil Court had no jurisdiction to entertain the suit, in the facts and circumstances of that case and set aside the judgment and order of the Madras High Court. The main issue in that case in the language of their Lordships was:-

"Where the statute creates a liability not existing at common law, and gives also a

> particular remedy for enforcing it.....With respect to that class it has always been held, that the party must adopt the form of remedy given by the statute."

The Privy Council allowed the appeal but by way of obiter held:-

> "It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

There is no cavil on the principles of law laid down in that case.

In that case Section 188 the Sea Customs Act was considered which runs as under:

> "Every order passed in appeal under this Section shall subject to the power of revision conferred by S.191, be final."

In Section 188 there is no reference of the Civil Court in express words yet the Privy Council decided in favour of ouster of jurisdiction of the Civil Court in view of the facts and circumstances of that case considering the language of Section 188.

In view of the language used in Rule 19(Gha) with a non-obstante clause the ouster of jurisdiction is manifestly clear in entertaining application under Section 498 of the Code of Criminal Procedure.

The High Court Division also considered the case of Zafar-Ul-Ahsan Vs. The Republic of Pakistan reported in PLD 1960(SC) 113, but also missed the ratio decidendi of that case. The question was whether Section 10 of the Public Conduct (Scrutiny) Ordinance (III of 1959) ousted the jurisdiction of all Courts including the Supreme Court and it was held that the jurisdiction of the Supreme Court to call in question the proceedings of a Screening Committee is barred by Section 10 of the Public Conduct (Scrutiny) Ordinance, and an order made by the President under sub-clause (b) of Clause 5 of Article 6 of the Laws (Continuance in Force) Order cannot be called in question in any Court.

The language used was:-

> "(3) Notwithstanding anything in clause (1) a person in the service of Pakistan may, if he is found inefficient or guilty of subversive activities, corruption or misconduct, under rules made in that behalf by the President or a Governor be suspended, compulsorily retired (whether he has reached the age of retirement or not) reduced in rank, removed or dismissed in accordance with those rules by an authority not subordinate to that by which he was appointed.....
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> by an order of the authority mentioned in clause (3) made before the first day of July 1959, or in the case of a Chairman or member of a Provincial Public Service Commission the first day of January 1960, and no appeal shall lie against such order nor shall such order be called in question in any Court."

In that case the language was "in any court" and even then Pakistan Supreme Court held that the jurisdiction of

ırts was clearly ousted including the jurisdiction of the Supreme Court.

In Rule 19(Gha) expression "কোন আদালত বা ট্রাইব্যুনাল" specifically refers to all courts and it is not necessary to name the Courts by specific names. Nothing can be more specific than "কোন আদালত বা ট্রাইব্যুনাল" to oust the jurisdiction of the High Court Division and therefore the ouster is by specific words and not by implications.

Apart from the words used the intention of law makers is clear to bar the jurisdiction of all courts in granting bail to the persons accused of offences mentioned in Rules 14 and 15 and the intention is manifestly clear when it mentioned specific provisions of granting bail under Sections 497 and 498 of the Code of Criminal Procedure.

It is pertinent to mention here that Section 498 provides for jurisdiction of the High Court Division and the Sessions Judge in granting bail under Section 498 and application under Section 498 cannot be entertained by any other Court, other than the High Court Division and the learned Sessions Judge and therefore when the law makers mentioned Section 498 they knew they were ousting the jurisdiction of the High Court Division and the learned Sessions Judge in entertaining applications under Section 498 and therefore the ouster has been deliberately done with manifest intention and by express words. Non-mention of the names of the Courts is irrelevant for the purpose.

It has been argued on behalf of the respondents that 19(Gha) has taken away citizen's right to liberty and as such the provision is unjust and oppressive and is in conflict with the Rule of law and the Constitution.

Our attention has also been drawn to the fact that people are being refused bail in cases under Section 16(2) of the Emergency Power Rules who are not yet accused within the meaning of Rule 19(Gha).

The vires of the law has not been challenged in this and therefore we are not called upon to decide the Constitutionality of the law. Every law has a presumption of its Constitutionality.

The question whether the law makers have disregarded justice and sound policy in framing 19(Gha) is not for the Court to decide. In this connection it is apposite to quote Thomas M. Cooley from his Treatise on the Constitutional Limitations:-

> "The moment a Court ventures to substitute its own judgment for that of the legislature, in any case where the constitution has vested the legislature with power over the subject, that moment it enters upon a field where it is impossible to set limits to its authority, and where its discretion alone will measure the extent of its interference.
>
> The rule of law upon this subject appears to be, that, except where the constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case. The courts are not the guardians of the rights of the people of the State, unless those rights are secured by some constitutional provision which comes within the judicial cognizance. The remedy for unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign

capacity can correct the evil; but courts cannot assume their rights."

In view of our discussions as above we some up our findings as under:-

(1) The High Court Division should have decided first whether the application under Section 498 of the Code of Criminal Procedure in the instant case was maintainable in the facts and circumstances of this case in the light of the decision reported in 51 DLR(AD) 242 State Vs. Abdul Wahab Shah Chowdhury and other cases.

(2) The High Court Division misdirected itself in entertaining the objection on the bar under Rule 19(Gha) of the Emergency Power Rules, 2007 and in embarking upon deciding the issue as a general proposition divorced from the facts of the case in view of the principle that "general propositions do not decide concrete cases."

(3) Regardless of the ouster of the jurisdiction there may be cases depending on the facts of each case making out a case of without jurisdiction, coram non-judice or malafide and finding of the Court to that effect upon final adjudication and determination and then in those cases the bar in Rule 19(Gha) in granting bail under Section 498 of the Code of Criminal Procedure will not apply.

(4) The said bar will not apply in cases of persons arrested on suspicion under Rule 16(2) of the Emergency Rules, 2007 who are not yet accused (অভিযুক্ত) within the meaning of Rule 19(Gha) of the Emergency Power Rule.

(5) There may be cases provided for under the proviso to Rule 19(Gha) and there may be cases under 19 ঞ(6) where also the said bar will not apply.

(6) আদালত বা ট্রাইব্যুনাল in 19(Gha) includes Supreme Court of Bangladesh so far the bar in granting bail under

Section 498 of the Code of Criminal Procedure is concerned.

(7) The High Court Division while deciding the applications for bail should not write lengthy judgments. The High Court Division is not to embark upon interpretation of law and scrutiny of intricate question of law far less Constitutional questions, while deciding bail petitions and should decide petitions expeditiously.

In the result this appeal is allowed. The impugned judgment and order is set aside. The parties are directed to take steps for disposal of the application in the light of our findings as above.

C.J.

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The 23rd April, 2008
/Sa/ *Words-5,135*
Approved for Reporting