

## বিশেষ সংখ্যা ডিসেম্বর, ২০০৮

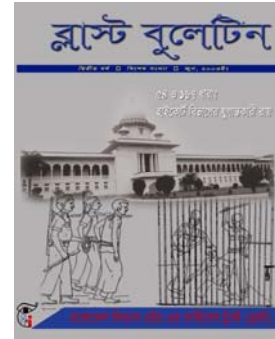
*mP*

cZte` b: 54 I 167 aviv mstkratb nvBtKvUf hMŠKvix ivq

Section 54 and 167 of Code of Criminal Procedure

tdSR`vix Kvhewai 54 I 167 aviv

Judgement on 54 and 167 Cr.PC



# মহুঁ Kxq

cj k Kv÷wZ wbfZtbi dtj gZi gvbewaKvtii Pig jsNbKvix NUbv| t`tk G chS-  
 cj wk wbfZtbi dtj gZi ntqtQ eü tj vtKi | ni nvtgkvB NUtQ Ggb gvbewaKvi NUbv|  
 hw`l msweavtbi 35 (5) Abt`Qt` ewYZ AvtQ, 00tKvb e`w³tK hšYv t`l qv hvBte bv wKsev  
 wboi, Agvbyl K ev j vAbvKi `Ü t`l qv hvBte bv wKsev Kvnvi l mnZ Abjfc e`envi Kiv  
 hvBte bv|00 54 avivq tMdzvi l ntqtQ eü tj vK| AtbK t`ttB Zv ivR%wZK D`tk`  
 Pwi Zvt\_P nwwZqi | Ah\_v nqi wbi wkKvi ntqtQb AtbtKB| i`tej, Rvgj, Ai`Y  
 PmeZmn AtbtKiB gZi ntqtQ cj wk wbfZtbi hvi wei`tx tmv`Pvi ntqtQ t`tki mvavi Y  
 gvby | GwMtq GtmtQ gvbewaKvi msMVb,tj vl |

Dtj E, 1998 mvtj XvKvi wWwe cj k imt`xkix Gj vKv t`tk wekte`vj tqi QvT kvxg ti Rv  
 i`tej tK tdsR`vix Kvhewa 54 avivq tMdzvi Kti Ges cj k tndvRtZ wbfZtbi dtj  
 i`tej gviv hvq| G NUbvq mviv t`tk Zxe`cöZevt`i So ltv Ges 54 aviv l 167 aviv  
 ewZj Kivi `we ltv| ZrKvjxb miKvi i`tej nZ`v Z`št Rb` wePvicwZ nweej ingvb  
 Lvftbi mgstq GKwU wePvi wefvMxq Z`š-KwguU MVb Kti | Z`š-KwguU Z`š-tktl  
 tdsR`vix Kvhewa 54 l 167 aviv mstkrab Kivi Rb` KwZcq mpcwik cövb Kiti l Zv  
 ev`ewqZ nqvb| GiB cwitctttZ 1998 mvtj evsj vt`k wj M`vj GBW GÜ mwrffmm U÷-  
 (ev÷) mn Avil KtqKwU gvbewaKvi msMVb gnvqvb` mpcg tKvtUP nvBtKvUwefvM GKwU  
 wi U wcuUkb `vtqi Kti | `xN`i bvbxtktl gnvqvb` nvBtKvU`MZ 7B Gwçj, 2003 tdsR`vix  
 Kvhewa 54 l 167 aviv mstkratbi Rb` GK hMvšKvix ivq cövb Kiti b| miKvtii Zid  
 t`tk mpcg tKvtUP Avcxj wefvM D³ ivtqi wei`tx Avcxj `vtqi Kiv ntqtQ| miKvi  
 BwZgta` Avcxj `ibvxi Rb` 2 evi mgq wbtqtQ| cieZtZ 4W AvM÷, 2003 nvBtKvU`  
 wefvM wePvicwZ Rbve Gm tK imbnv Ges wePvicwZ Rbve kwi dDwi b PvKjv`vi Aci  
 GKwU gvqj vq tdsR`vix Kvhewa 54 l 167 avivi Dci Ab` GKwU ivtqi gva`tg Avil wKQy  
 wbt`Rbv cövb Kiti b|

cvtKi Pwn`v Abhvqx Avgiv tdsR`vix Kvhewa 54 aviv wbtq ev÷ etj wbtbi GKwU wetkl  
 msL`v cKvk KivQ| hv cvKtK DcKZ Kite etj Avgvt`i wekym| ☐

mhu` KgÜj xi mfvcit dRjj nK ☐ Dct`öv mhü`Kt dwi`v Bqvmgxb, kvnwi qvi cvi fxb, gvnæpv Av³vi  
 cöQ` l KivüDUvi wWRvBbt Gg. Gm. tKvtikx ☐ cKvkKt evsj vt`k wj M`vj GBW GÜ mwrffmm U÷- (ev÷)  
 141/1, tm`bewMPv (3-5g Zj v), Xiv-1000 ☐ tlvbt 9349126, 8317185 ☐ d`v. t +88-02-9347107  
 B-tgBj t [mail@blast.org.bd](mailto:mail@blast.org.bd) ☐ l tpe t [www.blast.org.bd](http://www.blast.org.bd)

# 54 I 167 aviv mstkvatb nvBtKvU<sup>®</sup> hMvŠKvi x ivq

BbWfctU<sup>®</sup> BDmbfvm<sup>®</sup> i tgavex Qvl kvxg tiRv i<sup>tej</sup> | 21 eQi eqmx GB tgavex Qvl 1998 mrtj i 23 tk RjvB XvKvi wgtUv tivtWi tMvq<sup>v</sup> cvj k Kvh<sup>®</sup> t<sup>g</sup> gZeiY Kti | wWe cvj k w<sup>t</sup>xkix GjvKv t<sup>t</sup>k vek<sup>te</sup> v<sup>j</sup> t<sup>q</sup>i Qvl kvxg tiRv i<sup>tej</sup> tK 54 avivq tMvZvi Kti cieZ<sup>®</sup> mg<sup>t</sup>q wgtU v<sup>t</sup>q Agvbyl K v<sup>h</sup>zB Kti | cvj k tndvRtZ i<sup>tej</sup> Am<sup>v</sup> n<sup>t</sup>q cotj ZvtK XvKv t<sup>g</sup>w<sup>t</sup>Kj Ktj<sup>r</sup> t<sup>q</sup>vi ci W<sup>3</sup>vi ZvtK gZ tNvYv Kti | G Lei t<sup>t</sup>ki w<sup>e</sup>f<sup>b</sup>e c<sup>l</sup> c<sup>w</sup>l Kvq e<sup>v</sup>cKf<sup>v</sup>te Avtj wPZ nq<sup>l</sup> m<sup>v</sup>aviY RbMY, AvBbR<sup>x</sup>ex, w<sup>k</sup>q<sup>l</sup>K, e<sup>p</sup>xR<sup>x</sup>ex, Gb<sup>v</sup>RI Kg<sup>®</sup>, g<sup>v</sup>b<sup>w</sup>iaKvi Kg<sup>®</sup>mn A<sup>t</sup>b<sup>t</sup>KB G Nubvi c<sup>l</sup>Zer<sup>v</sup> Rv<sup>b</sup>iq Ges w<sup>e</sup>Pvi v<sup>e</sup>x Kti | cieZ<sup>®</sup> mi Kvi G Nubv Z<sup>š</sup>-Kivi Rb<sup>v</sup> w<sup>e</sup>Pvi c<sup>l</sup>Z n<sup>w</sup>eej ing<sup>v</sup>b Lv<sup>t</sup>bi t<sup>b</sup>Z<sup>t</sup>Zi GKw Kugkb MvB Kti | Z<sup>š</sup>-w<sup>i</sup>ctvU<sup>®</sup> cvj k th AZ<sup>v</sup>Pvi Kti<sup>q</sup> Zv c<sup>l</sup>w<sup>g</sup>Kf<sup>v</sup>te c<sup>h</sup>wiYZ nq Ges t<sup>d</sup>SR<sup>w</sup> w<sup>i</sup> Kvh<sup>®</sup>wai 54 aviv Acc<sup>l</sup>q<sup>m</sup> etUi Rb<sup>v</sup> w<sup>k</sup>Qy m<sup>v</sup>mi k t<sup>q</sup>v nq | w<sup>k</sup>S<sup>v</sup> Gi c<sup>t</sup>il cvj t<sup>k</sup>i v<sup>h</sup>z<sup>b</sup> t<sup>g</sup> v<sup>t</sup>Kv<sup>b</sup> | m<sup>x</sup>gv t<sup>p</sup>Sajx b<sup>v</sup>t<sup>g</sup> AvV<sup>t</sup>iv eQ<sup>t</sup>ii GK Zi<sup>Y</sup>x P<sup>A</sup>M<sup>t</sup>gi ivDR<sup>v</sup>t<sup>b</sup> cvj k tndvRtZ c<sup>l</sup>t<sup>g</sup> a<sup>w</sup>l Z<sup>l</sup> cieZ<sup>®</sup> mg<sup>t</sup>q gZeiY Kti | Ab<sup>w</sup> t<sup>k</sup> XvKvi j<sup>v</sup>j ev<sup>t</sup>M Ai<sup>Y</sup> P<sup>l</sup>eZ<sup>®</sup> cvj k tndvRtZ v<sup>h</sup>z<sup>b</sup> t<sup>b</sup>i dtj AK<sup>v</sup>tj gZeiY Kti<sup>b</sup> | Gi c<sup>w</sup>i t<sup>c</sup>q<sup>t</sup>Z w<sup>e</sup>f<sup>b</sup>e m<sup>s</sup>Mv<sup>b</sup>, iR<sup>%</sup>w<sup>i</sup>Z<sup>k</sup>j, g<sup>v</sup>b<sup>w</sup>iaKvi Kg<sup>®</sup> Ges w<sup>e</sup>f<sup>b</sup>etj<sup>v</sup>t<sup>k</sup>i c<sup>l</sup>Zer<sup>v</sup> Ges v<sup>e</sup>x<sup>i</sup> g<sup>t</sup>l ev<sup>s</sup>j<sup>v</sup>t<sup>k</sup> w<sup>j</sup> M<sup>v</sup>j GBW GU n<sup>w</sup>f<sup>t</sup>mm U<sup>t</sup>÷ (ev<sup>+</sup>) mn Avil KtqKw g<sup>v</sup>b<sup>w</sup>iaKvi m<sup>s</sup>Mv<sup>b</sup> cvj t<sup>k</sup>i t<sup>g</sup>ZvtK P<sup>v</sup>tj<sup>A</sup> Kti g<sup>n</sup>v<sup>g</sup>v<sup>b</sup> nvBtKvU<sup>®</sup> w<sup>e</sup>f<sup>t</sup>M GKw w<sup>i</sup>U w<sup>c</sup>lUk<sup>b</sup> v<sup>t</sup>q<sup>i</sup> Kti | t<sup>d</sup>SR<sup>v</sup>ix Kvh<sup>®</sup>wa 54 aviv g<sup>t</sup>Z m<sup>t</sup>nekZt KvD<sup>t</sup>K tMvZvi Ges D<sup>3</sup> Kvh<sup>®</sup>wai 167 aviv g<sup>t</sup>Z Z<sup>t</sup>š<sup>t</sup> b<sup>v</sup>t<sup>g</sup> Avm<sup>v</sup>g<sup>t</sup>K w<sup>i</sup>g<sup>t</sup>U G<sup>t</sup>b Av<sup>t</sup>bi Acc<sup>l</sup>q<sup>t</sup>Mi g<sup>v</sup>a<sup>t</sup>g k<sup>v</sup>i w<sup>i</sup>K AZ<sup>v</sup>Pvi l al<sup>Y</sup>i g<sup>v</sup>a<sup>t</sup>g cvj k tndvRtZ gZi

NUv<sup>t</sup>bi Kg<sup>®</sup>v<sup>t</sup>Ui m<sup>s</sup>w<sup>e</sup>aw<sup>b</sup>K eaZv P<sup>v</sup>tj<sup>A</sup> Kti w<sup>i</sup>U g<sup>v</sup>g<sup>v</sup>v v<sup>t</sup>q<sup>i</sup> Kiv nq<sup>l</sup> w<sup>i</sup>U w<sup>c</sup>lUk<sup>b</sup> tMvZvi l Z<sup>š</sup>-m<sup>s</sup>u<sup>v</sup>s- c<sup>p</sup>uj Z AvBb Ges m<sup>s</sup>w<sup>e</sup>aw<sup>b</sup>K w<sup>e</sup>wa w<sup>e</sup>av<sup>b</sup> (Ab<sup>t</sup>Q<sup>0</sup> 27, 31, 32, 33 l 35) h<sup>v</sup>h<sup>v</sup> f<sup>v</sup>te cvj b Ges tMvZv<sup>t</sup>i ci c<sup>i</sup>B Avm<sup>v</sup>g<sup>t</sup>K AvBbR<sup>x</sup>exi m<sup>t</sup>z<sup>l</sup> thvM<sup>t</sup>h<sup>v</sup>M Kivi m<sup>t</sup>h<sup>v</sup>M v<sup>t</sup>bi Rb<sup>v</sup> Ar<sup>t</sup>e<sup>b</sup> Kiv nq<sup>l</sup> w<sup>i</sup>U w<sup>c</sup>lUk<sup>b</sup> i<sup>tej</sup> nZ<sup>v</sup>i g<sup>g</sup>ŠK NUB<sup>v</sup>q w<sup>e</sup>Pvi w<sup>e</sup>f<sup>v</sup>M<sup>q</sup> Z<sup>š</sup>-w<sup>i</sup>ctvU<sup>®</sup> c<sup>k</sup>KZ 11w<sup>l</sup> m<sup>v</sup>c<sup>w</sup>i k<sup>g</sup>v<sup>j</sup> vi w<sup>f</sup>v<sup>E</sup>tZ Av<sup>v</sup>j t<sup>z</sup>i Kv<sup>t</sup>Q w<sup>k</sup> v<sup>t</sup> R<sup>b</sup>vi Ar<sup>t</sup>e<sup>b</sup> R<sup>v</sup>bt<sup>b</sup>v nq<sup>l</sup> AvBb g<sup>s</sup>Š<sup>v</sup>j<sup>q</sup>, t<sup>v</sup>o<sup>a</sup> g<sup>s</sup>Š<sup>v</sup>j<sup>q</sup>, cvj t<sup>k</sup>i AvB<sup>w</sup>R, w<sup>v</sup>AvB<sup>w</sup>R, G<sup>m</sup>ic mn 5 Rb<sup>t</sup>K w<sup>e</sup>ev<sup>x</sup>

g<sup>n</sup>v<sup>g</sup>v<sup>b</sup> nvBtKvU<sup>®</sup> i<sup>v</sup>t<sup>q</sup> Av<sup>v</sup>j Z 54 avivi 2 D<sup>c</sup>aviv m<sup>s</sup>t<sup>k</sup>va<sup>t</sup>bi Rb<sup>v</sup> mi K<sup>v</sup>i<sup>t</sup>K K<sup>t</sup>q<sup>K</sup>U v<sup>t</sup> R<sup>b</sup>v c<sup>l</sup>v<sup>b</sup> K<sup>t</sup>i<sup>b</sup> | v<sup>t</sup> R<sup>b</sup>v t<sup>j</sup>v n<sup>t</sup>j<sup>v</sup>: K. w<sup>t</sup>U<sup>b</sup>k<sup>b</sup> t<sup>q</sup>i Rb<sup>v</sup> cvj k KvD<sup>t</sup>K 54 avivq tMvZvi K<sup>t</sup>z<sup>v</sup> c<sup>v</sup>ite<sup>b</sup> v<sup>v</sup> L. KvD<sup>t</sup>K tMvZv<sup>t</sup>i mg<sup>q</sup> cvj k Zvi c<sup>w</sup>i P<sup>q</sup>c<sup>l</sup> t<sup>l</sup>v<sup>t</sup>Z eva<sup>v</sup> v<sup>k</sup>te M. tMvZv<sup>t</sup>i K<sup>v</sup>i Y GKw c<sup>u</sup>-K b<sup>w</sup> t<sup>z</sup> cvj k<sup>t</sup> w<sup>j</sup> L<sup>t</sup>Z n<sup>t</sup>e<sup>l</sup> | N. tMvZv<sup>t</sup>i K<sup>z</sup>i k<sup>i</sup>x<sup>t</sup>i AvN<sup>v</sup>t<sup>z</sup>i w<sup>p</sup>Y v<sup>k</sup>t<sup>j</sup> Zvi K<sup>v</sup>i Y w<sup>j</sup> t<sup>l</sup> ZvtK n<sup>v</sup>m<sup>c</sup>v<sup>t</sup>z<sup>v</sup>t<sup>j</sup> w<sup>p</sup>u<sup>k</sup>r<sup>m</sup>i Rb<sup>v</sup> v<sup>t</sup>q<sup>l</sup> W<sup>3</sup>w<sup>i</sup> m<sup>b</sup> Av<sup>t</sup>e<sup>b</sup> cvj k<sup>l</sup> | O. tMvZv<sup>t</sup>i w<sup>z</sup>b N<sup>v</sup>Uvi g<sup>t</sup>a<sup>v</sup> tMvZv<sup>t</sup>i K<sup>z</sup>i K<sup>t</sup>K Gi K<sup>v</sup>i Y R<sup>v</sup>bt<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | P. ev<sup>m</sup> ev e<sup>v</sup>emv c<sup>l</sup>Z<sup>o</sup>v<sup>b</sup> Q<sup>v</sup>ov Ab<sup>v</sup> v<sup>t</sup> t<sup>t</sup>k tMvZv<sup>t</sup>i K<sup>z</sup>i w<sup>b</sup>KUvZ<sup>q</sup>t<sup>k</sup> GK N<sup>v</sup>Uvi g<sup>t</sup>a<sup>v</sup> t<sup>l</sup>U<sup>v</sup>j t<sup>d</sup>v<sup>b</sup> ev w<sup>e</sup>t<sup>k</sup>l evZ<sup>®</sup>ev<sup>n</sup>K g<sup>v</sup>i d<sup>z</sup> w<sup>e</sup>l q<sup>l</sup>U R<sup>v</sup>bt<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | Q. tMvZv<sup>t</sup>i K<sup>z</sup>i K<sup>t</sup> Zvi c<sup>l</sup>o<sup>v</sup> m<sup>b</sup> AvBbR<sup>x</sup>ex l w<sup>b</sup>KUvZ<sup>q</sup>t<sup>q</sup>i m<sup>t</sup>z<sup>l</sup> c<sup>v</sup>ig<sup>k</sup>q<sup>k</sup>i t<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | R. tMvZv<sup>t</sup>i K<sup>z</sup> e<sup>w</sup>Š<sup>t</sup>K c<sup>p</sup>i<sup>v</sup>q w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup>i c<sup>l</sup>q<sup>v</sup>Rb n<sup>t</sup>j g<sup>w</sup>R<sup>t</sup>÷t<sup>l</sup>U Av<sup>t</sup> k<sup>u</sup>t<sup>g</sup> K<sup>v</sup>i w<sup>v</sup>t<sup>i</sup> Af<sup>š</sup>t<sup>i</sup> K<sup>u</sup>p w<sup>b</sup>g<sup>z</sup> w<sup>e</sup>t<sup>k</sup>l K<sup>t</sup>q<sup>l</sup> ZvtK w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> K<sup>t</sup>z<sup>v</sup> n<sup>t</sup>e<sup>l</sup> | K<sup>t</sup>q<sup>l</sup>i ev<sup>t</sup>i Zvi AvBbR<sup>x</sup>ex l w<sup>b</sup>KUvZ<sup>q</sup> v<sup>k</sup>t<sup>z</sup> c<sup>v</sup>ite<sup>b</sup> | S. K<sup>v</sup>i w<sup>v</sup>t<sup>i</sup> w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> c<sup>l</sup>q<sup>v</sup>R<sup>b</sup>q Z<sup>v</sup> b<sup>v</sup> c<sup>v</sup>l q<sup>v</sup> t<sup>m</sup>t<sup>j</sup> Z<sup>š</sup>K<sup>v</sup>i x Kg<sup>®</sup>Z<sup>®</sup> g<sup>w</sup>R<sup>t</sup>÷t<sup>l</sup>U Av<sup>t</sup> k<sup>u</sup>t<sup>g</sup> m<sup>t</sup>e<sup>p</sup> w<sup>z</sup>b<sup>v</sup> b<sup>v</sup> cvj k tndvRtZ w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> K<sup>t</sup>z<sup>v</sup> c<sup>v</sup>ite<sup>l</sup> | Z<sup>e</sup> G<sup>t</sup>q<sup>t</sup>l D<sup>ch</sup>Š<sup>3</sup> K<sup>v</sup>i Y v<sup>k</sup>t<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | T. w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> Av<sup>t</sup>M l c<sup>t</sup>i l B e<sup>w</sup>Š<sup>i</sup> W<sup>3</sup>v<sup>i</sup>x c<sup>v</sup>l q<sup>v</sup> K<sup>v</sup>i t<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | U. cvj k tndvRtZ v<sup>h</sup>z<sup>b</sup> t<sup>b</sup>i Av<sup>f</sup>th<sup>v</sup>M DV<sup>t</sup>j g<sup>w</sup>R<sup>t</sup>÷t<sup>l</sup>U m<sup>t</sup>z<sup>l</sup> m<sup>t</sup>z<sup>l</sup> t<sup>g</sup>w<sup>k</sup>v<sup>j</sup> t<sup>e</sup>w<sup>w</sup>Mv<sup>b</sup> K<sup>i</sup>te<sup>b</sup> | t<sup>e</sup>w<sup>w</sup> h<sup>w</sup> etj l B e<sup>w</sup>Š<sup>i</sup> l c<sup>i</sup> v<sup>h</sup>z<sup>b</sup>

eZ<sup>®</sup>v<sup>b</sup> Ae<sup>v</sup>  
54 I 167 aviv mstkvatb nvBtKvU<sup>®</sup> i<sup>v</sup>t<sup>q</sup>i w<sup>e</sup>i<sup>t</sup>x mi K<sup>v</sup>i Av<sup>c</sup>xj w<sup>e</sup>f<sup>t</sup>M Av<sup>c</sup>xj v<sup>t</sup>q<sup>i</sup> K<sup>t</sup>i Ges i<sup>v</sup>t<sup>q</sup>i K<sup>v</sup>h<sup>®</sup>mi Z<sup>v</sup> w<sup>m</sup>t<sup>z</sup>i Ar<sup>t</sup>e<sup>b</sup> K<sup>t</sup>i | mi K<sup>v</sup>i c<sup>t</sup>q<sup>l</sup>i Ar<sup>t</sup>e<sup>b</sup> t<sup>b</sup> e<sup>v</sup> nq, m<sup>w</sup>Kf<sup>v</sup>te c<sup>v</sup>l q<sup>v</sup> v<sup>b</sup> K<sup>t</sup>i B 54 I 167 aviv m<sup>s</sup>u<sup>v</sup>s<sup>l</sup> nvBtKvU<sup>®</sup> v<sup>t</sup> R<sup>b</sup>v w<sup>i</sup> t<sup>q</sup>t<sup>l</sup> | K<sup>v</sup>i Y G<sup>v</sup> w<sup>j</sup> aviv m<sup>s</sup>u<sup>v</sup>s<sup>l</sup> AvBb i<sup>t</sup>q<sup>t</sup> Z<sup>v</sup> h<sup>t</sup>o<sup>v</sup> Ges m<sup>w</sup>K; Gi Rb<sup>v</sup> AvBb c<sup>l</sup>q<sup>v</sup> er AvBb m<sup>s</sup>t<sup>k</sup>va<sup>t</sup>bi t<sup>k</sup>v<sup>b</sup> c<sup>l</sup>q<sup>v</sup>Rb t<sup>b</sup>b<sup>l</sup> | Z<sup>v</sup>Q<sup>v</sup>ov m<sup>s</sup>w<sup>e</sup>av<sup>t</sup>bi 102 Ab<sup>t</sup>Q<sup>0</sup> Ab<sup>h</sup>v<sup>q</sup>x nvBtKvU<sup>®</sup> AvBb m<sup>s</sup>t<sup>k</sup>va<sup>t</sup>bi t<sup>k</sup>v<sup>b</sup> v<sup>t</sup> R<sup>w</sup> t<sup>z</sup> c<sup>v</sup>ite<sup>b</sup> v<sup>v</sup> | mi K<sup>v</sup>t<sup>i</sup> w<sup>j</sup> f<sup>g</sup> Aj<sup>v</sup> Kiv n<sup>t</sup>j<sup>l</sup> nvBtKvU<sup>®</sup> v<sup>t</sup> R<sup>b</sup>vi l c<sup>i</sup> Av<sup>c</sup>xj w<sup>e</sup>f<sup>v</sup>M t<sup>k</sup>v<sup>b</sup> w<sup>m</sup>Z<sup>v</sup> k c<sup>l</sup>v<sup>b</sup> K<sup>t</sup>i<sup>b</sup> w<sup>b</sup> | nvBtKvU<sup>®</sup> i<sup>v</sup>t<sup>q</sup>i 15<sup>v</sup> d<sup>v</sup> K<sup>v</sup>h<sup>®</sup>i t<sup>i</sup>l<sup>l</sup> i<sup>ay</sup> AvBb m<sup>s</sup>t<sup>k</sup>va<sup>b</sup> Kivi Rb<sup>v</sup> nvBtKvU<sup>®</sup> v<sup>t</sup> R<sup>w</sup> t<sup>z</sup> c<sup>v</sup>ite<sup>b</sup> w<sup>k</sup>v<sup>b</sup> t<sup>m</sup> w<sup>e</sup>l q<sup>l</sup>U i<sup>b</sup>v<sup>b</sup>xi Rb<sup>v</sup> At<sup>c</sup>q<sup>l</sup>g<sup>v</sup>Y i<sup>t</sup>q<sup>t</sup> | mi K<sup>v</sup>i B<sup>v</sup>Zg<sup>t</sup>a<sup>v</sup> Av<sup>c</sup>xj i<sup>b</sup>v<sup>b</sup>xi Rb<sup>v</sup> 2 evi mg<sup>q</sup> v<sup>t</sup>q<sup>t</sup> | ▲

K<sup>t</sup>i G<sup>v</sup> w<sup>c</sup>lUk<sup>b</sup> v<sup>t</sup>q<sup>i</sup> Kiv nq<sup>l</sup> g<sup>v</sup>b<sup>b</sup>x<sup>q</sup> nvBtKvU<sup>®</sup> 1998 m<sup>r</sup>t<sup>j</sup>i 29<sup>t</sup>k b<sup>t</sup>f<sup>o</sup>t G<sup>v</sup>g<sup>v</sup>j v<sup>i</sup> b<sup>v</sup>lx M<sup>h</sup>Y K<sup>t</sup>i<sup>b</sup> Ges m<sup>t</sup>nekZt KvD<sup>t</sup>K tMvZvi Ges Z<sup>t</sup>š<sup>t</sup> b<sup>v</sup>t<sup>g</sup> w<sup>i</sup>g<sup>t</sup>U G<sup>t</sup>b Avm<sup>v</sup>g<sup>t</sup>K k<sup>v</sup>i w<sup>i</sup>K v<sup>h</sup>z<sup>b</sup> Kiv t<sup>t</sup>k w<sup>e</sup>f<sup>e</sup> Kivi Rb<sup>v</sup> AvBb c<sup>l</sup>q<sup>m</sup>K<sup>v</sup>i x m<sup>s</sup>t<sup>k</sup> t<sup>k</sup>b v<sup>t</sup> R<sup>w</sup> t<sup>q</sup>v n<sup>t</sup>e<sup>b</sup> v<sup>t</sup> m<sup>e</sup>v<sup>c</sup>ti mi K<sup>v</sup>t<sup>i</sup> D<sup>c</sup>i i<sup>j</sup> w<sup>b</sup>w<sup>k</sup> R<sup>v</sup>i x K<sup>t</sup>i<sup>b</sup> | m<sup>s</sup>c<sup>l</sup>Z i<sup>t</sup> t<sup>j</sup>i D<sup>c</sup>i i<sup>b</sup>w<sup>b</sup> t<sup>k</sup>t<sup>l</sup> MZ 7 B G<sup>v</sup>ic<sup>q</sup>, 2003 t<sup>d</sup>SR<sup>v</sup>ix Kvh<sup>®</sup>wa 54 I 167 aviv m<sup>s</sup>t<sup>k</sup>va<sup>t</sup>bi Rb<sup>v</sup> GK h<sup>M</sup>ŠK<sup>v</sup>i x ivq c<sup>l</sup>v<sup>b</sup> Kiv nq<sup>l</sup> w<sup>e</sup>P<sup>v</sup>i c<sup>l</sup>Z t<sup>g</sup>v<sup>t</sup> n<sup>w</sup>g<sup>j</sup> n<sup>k</sup> Ges w<sup>e</sup>P<sup>v</sup>i c<sup>l</sup>Z m<sup>v</sup>j g<sup>v</sup> g<sup>v</sup>m<sup>y</sup> t<sup>p</sup>Saj<sup>x</sup>i mg<sup>š</sup>t<sup>q</sup> M<sup>w</sup>Z t<sup>e</sup>A GB ivq c<sup>l</sup>v<sup>b</sup> K<sup>t</sup>i<sup>b</sup> | i<sup>v</sup>t<sup>q</sup> t<sup>d</sup>SR<sup>w</sup> w<sup>i</sup> Kvh<sup>®</sup>wai 54 avivq tMvZvi l w<sup>i</sup>g<sup>t</sup>U v<sup>t</sup>q<sup>i</sup> w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> i c<sup>p</sup>uj Z w<sup>e</sup>av<sup>b</sup> Av<sup>m</sup>g<sup>x</sup> 6 g<sup>v</sup>t<sup>m</sup>i g<sup>t</sup>a<sup>v</sup> m<sup>s</sup>t<sup>k</sup>va<sup>b</sup> Kivi Rb<sup>v</sup> mi K<sup>v</sup>t<sup>i</sup> c<sup>l</sup>Z v<sup>t</sup> R<sup>w</sup> t<sup>q</sup>t<sup>l</sup> nvBtKvU<sup>®</sup> G<sup>k</sup>B m<sup>t</sup>z<sup>l</sup> nvBtKvU<sup>®</sup> m<sup>s</sup>u<sup>v</sup>s<sup>l</sup> aviv m<sup>s</sup>t<sup>k</sup>va<sup>t</sup>bi c<sup>o</sup> K<sup>t</sup>q<sup>k</sup> d<sup>v</sup> v<sup>t</sup> R<sup>b</sup>v GL<sup>b</sup> t<sup>t</sup>KB mi K<sup>v</sup>i<sup>t</sup>K t<sup>g</sup>t<sup>b</sup> P<sup>j</sup> t<sup>z</sup> etj t<sup>l</sup>q<sup>b</sup> |

Q. tMvZv<sup>t</sup>i K<sup>z</sup>i K<sup>t</sup> Zvi c<sup>l</sup>o<sup>v</sup> m<sup>b</sup> AvBbR<sup>x</sup>ex l w<sup>b</sup>KUvZ<sup>q</sup>t<sup>q</sup>i m<sup>t</sup>z<sup>l</sup> c<sup>v</sup>ig<sup>k</sup>q<sup>k</sup>i t<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | R. tMvZv<sup>t</sup>i K<sup>z</sup> e<sup>w</sup>Š<sup>t</sup>K c<sup>p</sup>i<sup>v</sup>q w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> i c<sup>l</sup>q<sup>v</sup>Rb n<sup>t</sup>j g<sup>w</sup>R<sup>t</sup>÷t<sup>l</sup>U Av<sup>t</sup> k<sup>u</sup>t<sup>g</sup> K<sup>v</sup>i w<sup>v</sup>t<sup>i</sup> Af<sup>š</sup>t<sup>i</sup> K<sup>u</sup>p w<sup>b</sup>g<sup>z</sup> w<sup>e</sup>t<sup>k</sup>l K<sup>t</sup>q<sup>l</sup> ZvtK w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> K<sup>t</sup>z<sup>v</sup> n<sup>t</sup>e<sup>l</sup> | K<sup>t</sup>q<sup>l</sup>i ev<sup>t</sup>i Zvi AvBbR<sup>x</sup>ex l w<sup>b</sup>KUvZ<sup>q</sup> v<sup>k</sup>t<sup>z</sup> c<sup>v</sup>ite<sup>b</sup> | S. K<sup>v</sup>i w<sup>v</sup>t<sup>i</sup> w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> c<sup>l</sup>q<sup>v</sup>R<sup>b</sup>q Z<sup>v</sup> b<sup>v</sup> c<sup>v</sup>l q<sup>v</sup> t<sup>m</sup>t<sup>j</sup> Z<sup>š</sup>K<sup>v</sup>i x Kg<sup>®</sup>Z<sup>®</sup> g<sup>w</sup>R<sup>t</sup>÷t<sup>l</sup>U Av<sup>t</sup> k<sup>u</sup>t<sup>g</sup> m<sup>t</sup>e<sup>p</sup> w<sup>z</sup>b<sup>v</sup> b<sup>v</sup> cvj k tndvRtZ w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> K<sup>t</sup>z<sup>v</sup> c<sup>v</sup>ite<sup>l</sup> | Z<sup>e</sup> G<sup>t</sup>q<sup>t</sup>l D<sup>ch</sup>Š<sup>3</sup> K<sup>v</sup>i Y v<sup>k</sup>t<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | T. w<sup>R</sup>Av<sup>m</sup>ve<sup>t</sup> Av<sup>t</sup>M l c<sup>t</sup>i l B e<sup>w</sup>Š<sup>i</sup> W<sup>3</sup>v<sup>i</sup>x c<sup>v</sup>l q<sup>v</sup> K<sup>v</sup>i t<sup>z</sup> n<sup>t</sup>e<sup>l</sup> | U. cvj k tndvRtZ v<sup>h</sup>z<sup>b</sup> t<sup>b</sup>i Av<sup>f</sup>th<sup>v</sup>M DV<sup>t</sup>j g<sup>w</sup>R<sup>t</sup>÷t<sup>l</sup>U m<sup>t</sup>z<sup>l</sup> m<sup>t</sup>z<sup>l</sup> t<sup>g</sup>w<sup>k</sup>v<sup>j</sup> t<sup>e</sup>w<sup>w</sup>Mv<sup>b</sup> K<sup>i</sup>te<sup>b</sup> | t<sup>e</sup>w<sup>w</sup> h<sup>w</sup> etj l B e<sup>w</sup>Š<sup>i</sup> l c<sup>i</sup> v<sup>h</sup>z<sup>b</sup>



## Section 54: Code of Criminal Procedure - 1898

### When police may arrest without warrant

Section 54. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest-

**first**, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exist of his having been so concerned;

**secondly**, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

**thirdly**, any person who has been proclaimed as an offender either under this code or by order of the Government;

**fourthly**, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

**fifthly**, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

**sixthly**, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

**seventhly**, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

**eighthly**, any released convict committing a breach of any rule

made under section 565, sub-section (3);

**ninthly**, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

### Section 167: Code of Criminal Procedure - 1898

#### Procedure when investigation cannot be completed in twenty-four hours

Sec 167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation if he is not below the rank of sub inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, if he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction;

provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorise detention in the custody of the police.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

(5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation.

(a) The magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

(b) the Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such court;

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the court of session shall record the reasons for it;

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section. ☐

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aviv 54

aviv 54 | hLb cɯj k webv ctiwqvbvq tMēdZvi KwitZ cvti :

(1) th tKvb cɯj k Awdmvi g`wRt÷tUi Avt`k A\_ev ctiwqvbv e`ZiZ wbaēij wLZ e`w³MYtK tMēdZvi KwitZ cwitēb-cōgZ, tKvb Avgj thvM` Acivtai mwnZ RwoZ tKvb e`w³ A\_ev GBifc RwoZ ewj qv hwnvi wei`t× hɯ³m½Z AwfthvM Kiv nBqvQ A\_ev weklmthvM` Lei cvlqv wMqvQ, A\_ev hɯ³m½Z mḥ`n iwnqvQ |

wōZxqZ, AvBbm½Z KviY e`ZiZ hwnvi woku Ni fivzi tKvb miAvg iwnqvQ tmBifc e`w³, GB AvBbm½Z KviY cōgvY Kwievi `wqZj Zvni ;

ZZxqZ, GB Kvhiēwa Abjviti A\_ev miKviti Avt`k ōviv hwnvK Acivax tNvI Yv Kiv nBqvQ ;

PZLē, tPviviB ewj qv hɯ³m½Z fivte mḥ`n Kiv hvBtZ cvti, GBifc gvj hwnvi woku iwnqvQ Ges th GBifc gvj mēutK` tKvb Aciva KwitZ ewj qv hɯ³m½Z fivte mḥ`n Kiv hvBtZ cvti ;

cAgZ, cɯj k Awdmvi tK Zvni Kvth` evav`vbKvix e`w³ A\_ev th e`w³ AvBbm½Z tndvRZ nBtZ cjqv KwitZ A\_ev cjqv tPōv Kti ;

lōZ, evsjv`k mk`i ewnbn nBtZ cjqv Kwix ewj qv hwnvK hɯ³m½Z fivte mḥ`n Kiv hvBtZ cvti ;

mBgz, evsjv`k Kiv nBtj Aciva wnmvte kw`thvM` nBZ, evsjv`ki ewnti KZ GBifc tKvb KvthP mwnZ RwoZ e`w³ A\_ev GBifc RwoZ ewj qv hwnvi wei`t× hɯ³m½Z AwfthvM Kiv nBqvQ, A\_ev weklmthvM` Lei cvlqv wMqvQ, A\_ev hɯ³m½Z mḥ`n iwnqvQ Ges hwnvi Rb` tm cōcō mēumKē tKvb AvBb A\_ev 1881 mḥbi cqvZK Acivax AvBb Abjviti A\_ev Ab` tKvb fivte evsjv`k tMēdZvi nBtZ A\_ev tndvRtZ AvUK `wktZ eva` ;

AōgZ, tKvb gɯ³cōB Avmvgx th 565 avivi (3) Dcaviv Abjviti cōxZ tKvb wbgg j sNb Kti ;

begZ, hwnvK tMēdZviti Rb` Ab` tKvb cɯj k Awdmviti woku nBtZ Abtjiva cvlqv wMqvQ | hɯ` hwnvK tMēdZvi Kiv nBte Zvni Ges th Aciva ev Ab` th tKvb Kvity tMēdZvi Kiv nBte tmB e`vcti Abtjiva tōY KwitZ, tmB Awdmvi D³ e`w³ tK AvBbm½Z fivte webv ctiwqvbvq tMēdZvi KwitZ cwitēb |

aviv 167 - 1898 PweYk Nōlvi gta` Z`š-mēubakiv bv tMēj ZLbKvi c×wZ :

167 | (1) hLb tKvb e`w³ tK tMēdZvi KwitZ tndvRtZ AvUK ivLv nq Ges Bnv cōxqgvb nq th, 61 avivq wbaēi Z 24 Nōlv mgtqi gta` Z`š-mgvB Kiv hvBte bv Ges GBifc weklm Kwievi KviY iwnqvQ th, AwfthvM ev msev` p wfvEK, ZLb `vbwq fvicōB KgRZP A\_ev Z`šKvix cɯj k KgRZP wZwb hɯ` mve Bbmct±i ct`i wbaē chēqi bv nb Zvni nBtj mstM mstM AZtci wbaēi Z WtqixZ wj wLZ NUbv mēumKē bKj woku eZP g`wRt÷tUi woku tōY Kwitēb, Ges GKB mgtq AvmvgxK D³ g`wRt÷tUi woku tōY Kwitēb |

(2) GB avivi Aaxb AvmvgxK th g`wRt÷tUi woku tōY Kiv nq, mskē-gvgj vi wPvi Kwievi GLwZqvi `vKk ev bv `vKk, wZwb DchP gtb Kwitj AvmvgxK tndvRtZ AvUK iwlēvi Rb` mgtq mgtq ŋgZv cōvb Kwitēb, Zte GBifc AvBtbi tgqv` mēumKē cḥtḥv w`tbi Awak nBte bv | Zvni hɯ` gvgj wj wPvi Kwievi ev wPviti Rb` cvVvBvi GLwZqvi bv `vK Ges wZwb hɯ` Avil AvUK ivLv AcōqvRbxq gtb Ktib Zvni nBtj wZwb AvmvgxK GBifc GLwZqvi evb g`wRt÷tUi woku tōYi Avt`k w`Z cwitēb ; Zte kZ`GB th, ZZxq tkYxi tKvb g`wRt÷tUi Ges miKvi KZP wētkl fivte ŋgZv cōB btbn GBifc tKvb wōZxq

tkYxi g`wRt÷tUi AvmvgxK cɯj k tndvRtZ AvUK iwlēvi Avt`k w`tēb bv |

(3) GB avivi Aaxb AvmvgxK cɯj k tndvRtZ AvUK iwlēvi ŋgZv`vbKvix g`wRt÷tUi Zvni GBifc Kwievi KviY wj wce× Kwitēb |

(4) Pxd tgtUcɯj Uvb g`wRt÷tUi, tRjv g`wRt÷tUi ev gnKgv g`wRt÷tUi e`ZiZ Ab` tKvb g`wRt÷tUi GBifc Avt`k w`tj wZwb Avt`k w`evi KviY mn Avt`tki GKwU bKj g`wRt÷tUi woku tōY Kwitēb, wZwb hwnvi Ae`wvZ Aat`b |

(5) Aciva msNub mēumKē msev` cōBi ZwiL A\_ev GBifc Z`št` Rb` g`wRt÷tUi Avt`k cōBi ZwiL nBtZ GKkZ wek`tbi gta` hɯ` Z`š-mgvB bv nq Zvni nBtj N

(K) Acivaw Avgtj j BtZ ŋgZvmēubē ev Z`št` Avt`k`vbKvix g`wRt÷tUi, Z`š-mēumKē Acivaw hɯ` gZi`tU, hve`xēb Kvi`tU ev `k ermti Awak tgqv`i Kvi`tU `Ūbxq Aciva bv nq Zte Zvni mšō mvtctŋ AvmvgxK Rwggtb gɯ³ w`Z cwitēb ; Ges

(L) Z`š- mēumKē Acivaw hɯ` gZi`tU, hve`xēb Kvi`tU ev `k ermti Awak tgqv`i Kvi`tU `Ūbxq Aciva bv nq Zte `vqv Av`vj Z Bvni mšō mvtctŋ AvmvgxK Rwggtb gɯ³ w`Z cwitēb ;

Zte kZ`GB th, AvmvgxK hɯ` GB Dcavivi Aaxb Rwggtb gɯ³ t`lqv bv nq Zvni nBtj g`wRt÷tUi A\_ev tŋt wētkl `vqv Av`vj Z Bvni KviY wj wce× Kwitēb ;

Avil kZ`GB th, thtŋt AwfhP e`w³ tK wPviti tmvc` Kwievi Rb` mskē- AvBtbi weavb Abjvix DchP KZēŋi Abtgv`b MōY Kiv cōqvRb, tmBtŋt Abtgv`b MōY KwitZ th mgq j wMte GB Dcaviv wbaēi Z mgq nBtZ Zvni ev` w`Z nBte | ☞

## **JUDGEMENT**

IN THE SUPREME COURT  
OF BANGLADESH

HIGH COURT DIVISION  
(SPECIAL ORIGINAL  
JURISDICTION)

WRIT PETITION NO. 3806 OF  
1998

**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  
(BLAST) and others**

..... Petitioner

- VS -

Bangladesh and others

..... Respondents

Dr. Kamal Hossain with  
Mr. M. Amirul Islam

Mr. Md. Idrisur  
Rahman

Mr. M. A. Mannan  
Khan

Mr. Tanzibul Alam

Mr. Abu Obaidur  
Rahman and

Mr. Kowsan Ahmed

..... for the petitioner

Mr. A. F. Hassan Ariff,  
Attorney General with

Mr. Abdur Razaque  
Khan, Additional

Attorney General

Mr. Zaman Akhter,  
A.A.G and

Ms. Kumrunnesa,  
A.A.G.

.... for the respondents

Heard on 24<sup>th</sup>, 30<sup>th</sup> March &  
2<sup>nd</sup> April, 2003 Judgement  
on 7<sup>th</sup> April, 2003.

**Present:**

Mr. Justice Md. Hamidul  
Haque

And

Ms. Justice Salma Masud  
Chowdhury

**Md. Hamidul Haque, J:**

This Rule was issued calling upon the respondents to show cause as to why they shall not be directed to refrain from an abusive exercise of powers under section 54 of the Code of Criminal Procedure or to seek unreasonable remand under section 167 of the Code of Criminal Procedure and to strictly exercise powers of arrest and investigation within the limits established by the law and in view of the safeguards contained in Articles 27, 31, 32, 33 and 35 of the constitution.

This writ petition has been filed by the petitioners including Bangladesh Legal Aid and Services Trust (BLAST), Ain-O-Salish Kendra, Sammilita Samajik Andolon and some other individuals. The subject matter involves a burning question of the day which is now hotly debated by the intellectual quarters, lawyers and even the general

public. It has been alleged in this writ petition that the police, by abusing the power given under section 54 of the Code of Criminal Procedure, has been curtailing the liberty of the citizens and that by misuse and abuse of the power of taking an accused into police custody as given in section 167, has been violating the fundamental rights guaranteed under different Articles of the constitution. In this writ petition, several instances of such abusive exercise of power and violation of fundamental rights have been narrated.

We are conscious that the question raised in this Rule is a very important question touching liberty and fundamental rights of the citizens of the country. The above two provisions of the code of Criminal Procedure are in force from the time of coming into force of the Code itself in the year 1898. The question of abusive exercise of power under these two sections were also debated in the past. This Code of Criminal procedure is being followed in Pakistan, India and Bangladesh. In India section 54 was amended and substituted and the present section 41 of the Code of Criminal Procedure of India corresponds to section 54 of the Code of Criminal Procedure now in force in this country.

Even after amendment of the section in India, the debate on the question was not stopped. This question also came up for consideration before the Law Commission of India and the Law Commission of Bangladesh and some serious deliberations were made by the Law Commission of both the countries. So, we think that it is a great responsibility to examine such an important question. We also think that full proof remedies may not be found but we shall try to find out some solutions.

The writ petitioners in prayer A (ii) prayed for issuing a direction upon the respondents to comply with the guidelines as set out in paragraph 21 of the petition. The guidelines as set out in that paragraph, are based on the guidelines as given by the Supreme Court of India in the cases of D.K. Basu vs. State of West Bengal reported in (1997) Supreme Court cases, page 416 and the guidelines which were suggested by an one man Inquiry Commission constituted with Mr. Justice Habibur Rahman Khan to inquire into the death of a student named Rubel who was arrested by police under section 54 and who died in the police custody due to the alleged torture by the police.

Dr. Kamal Hossain along with Mr. Md. Idrisur Rahman and Mr. Tanzibul Alam addressed the court on behalf of the petitioners and Mr. M. Amir-ul Islam was also allowed to address the Court on the question raised in this writ petition because of the

special importance of the question. However, at the time of hearing, Dr. Kamal Hossain has conceded that the suggestions and recommendations as mentioned in paragraph 21 are not exhaustive and he has submitted that there is scope of making some other clear and specific recommendations to safeguard the life and liberty of the citizen and to put some restrictions over the power given to the police and Magistrate under the above two sections. Dr. Kamal Hossain thereafter has taken us through the writ petition and has submitted that the police officers, in abusive exercise of the power are acting against the specific provisions of the Constitution under which the liberty and fundamental rights of the citizens are guaranteed. He also pointed out that due to the abuse of the power given to the magistrate under section 167 of the code for allowing a person to be taken into police custody, hundreds of incidents of custodial death and cases of torture and inhuman treatment took place during last several years. He has further submitted that there must be safeguards in the law itself so that neither the police can abuse the power given to it by the law nor the magistrate can exercise such power without applying judicial mind. So, he has made a prayer to this court to suggest proper measures and safeguards so that the powers as given under sections 54 and 167 of the Code cannot be exercised in an abusive manner.

Dr. Kamal Hossain, next has also argued with reference to two cases of Indian Jurisdiction specially the case reported in AIR 1977 SC that while fundamental rights to life and liberty is curtailed or infringed, this Court in exercise of its power given under Article 102 of the Constitution may also give compensation to the victim if it is found that the confinement or detention of the victim is not lawful and that the victim was subjected to torture, cruel, inhuman and degrading treatment. He has further submitted that the victim should not be asked to seek relief in any other civil court for damages and compensation. Mr. Amir-ul Islam also referred to some decisions of Indian Jurisdiction. (1991) 2 Supreme Court Cases 373 and a case reported in AIR 1990 SC 513 and some other cases to show that compensation may be given to the victim in cases where detention and confinement is found to be unlawful and the victim is subjected to torture, cruel and degrading treatment. Mr. Amir-ul Islam has also invited our attention to the fact that the police in colorable exercise of power given under section 54 of the Code arrests a person without warrant with a view to give detention under section 3 of the Special Powers Act, 1974. Such arrest without warrant under section 54 of the Code according to him, is totally unwarranted. He submitted that arrest of a person under section 54 of the Code without warrant for the purpose of giving him detention for a

specific period under the Special Powers Act, 1974 is totally unlawful.

The learned Attorney General Mr. A.F. Hasan Ariff and Additional Attorney General Mr. Abdur Razaque Khan appeared on behalf of the respondents. With reference to the recommendations in paragraph 21 of the writ petition, they have submitted that it will not be possible to implement some of the suggestions because of some practical difficulties. In this connection they referred to the difficulties mentioned in the affidavit-in-opposition.

However, both of them are of the opinion that some restrictions may be there to check the abuse of the power given under the two sections.

We have considered the submissions of the learned Advocates, perused the writ petition including the Annexures. Let us first consider whether the power given to the police to arrest a person without warrant is exercised abusively and whether there is scope of exercising the power in such manner under the provisions of the section itself. For proper appreciation, section 54 of the Code is reproduced below.

54- (1) Any police-officer may, without an order from a Magistrate and without a warrant arrest-

First, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a

reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a Police Officer while in the execution of his duty, or who has escaped, or attempts to escape from lawful custody;

Sixthly, any person reasonably suspected or being a deserter from the armed forces of Bangladesh;

Seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881 or otherwise liable to be apprehended or detained in custody in Bangladesh;

Eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3):

Ninthly, any person for show arrest a requisition has been received from another police-officer provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

From the above section, we find that under eight conditions a person may be arrested by a police-officer without warrant but from the first condition we find that this condition actually includes four conditions under which a police officer may arrest without warrant and these four conditions are couched in such words that there is scope of abusive and colorable exercise of power. Following are the four conditions which are included in the first condition. The police officer may arrest -

- (a) any person who has been concerned in any cognizable offence;
- (b) against whom a reasonable complaint has been made;
- (c) a credible information has been received; and
- (d) against whom a reasonable suspicion exists of his having been so concerned in any cognizable offence

We may say that the word 'concerned' used in first condition is a vague word

which gives unhindered power to a police officer to arrest any person stating that the person arrested by him is concerned in a cognizable offence. So, to safeguard the life and liberty of the citizen and to limit the power of the police, in our view, the word concerned is to be substituted by any other appropriate word or words. It is true that the other words used in the first condition such as reasonable credible have been interpreted in many cases both by the Indian Courts and our Courts. But in spite of specific interpretation given to these words, the abusive exercise of power by the police officers could not be checked. So, we are of the view that only interpretation of words is not sufficient. The provision itself shall be amended in such a manner that the safeguard will be found in the provision itself. Similar words like reasonable, credible etc. have been used in other seven conditions. So, we are of the view that there should be some restrictions so that the police officers will be bound to exercise the power within some limits and the police officers will not be able to justify the arrest without warrant by saying "I thought that the person was concerned in any cognizable offence". Thinking is different from guess work. A thinking must have some reasons behind it but guess work is not backed by any reasons. A police officer can exercise the power if he has definite knowledge of the existence of some facts and such knowledge shall be the basis of arrest without warrant.

There can be knowledge of a thing only if the thing exists.

If a person is arrested on the basis of credible information nature of the information source of information must be disclosed by the police officer and also the reason why he believed the information, 'Credible' means believable. Belief does not mean make belief. An ordinary layman may believe any information without any scrutiny but a police officer who is supposed to possess knowledge about criminal activities in the society, nature and character of the criminals etc. cannot believe any vague information received from any person. If the police officer receives any information from a person who works as source of the police, even in that case also the police officer before arresting the person named by the source should try to verify the information by perusal of the diary kept in the police station about the criminals to ascertain whether there is any record of any past criminal activities against the person named by the source.

If a person is arrested on reasonable suspicion the police officer must record the reasons on which his suspicion is based. If the police officer justifies the arrest only by saying that the person is suspected to be involved in a cognizable offence, such general statement can not justify the arrest. Use of the expression reasonable suspicion implies that the suspicion must be based on reasons are based on existence of some facts which is within

the knowledge of the person. So, when the police officer arrests a person without warrant, he must have some knowledge of some definite facts on the basis of which he can have reasonable suspicion.

It has been alleged, as we have mentioned earlier, that in police custody many deaths took place during last several years. In the writ petition in Annexure-D series and Annexure-K of the supplementary affidavit we find that a good number of people died in the police custody after their arrest under section 54. In 2002, number of custodial death is 38. This is absolutely shocking. Even the President of the country in a speech delivered in 8<sup>th</sup> National Conference on Human Rights, had to say that torture and inhuman treatment meted out to a person in custody and custodial death are against humanity and civilization. This speech was reported in the Daily Ittefaq on 27.12.02 and also in other national dailies. Obviously, such tragic deaths are resulted due to sweeping and unhindered power given to a police officer under section 54 of the Code. The power given to the police officer under this section in our view, to a large extent is inconsistent with the provisions of part III of the Constitution. In view of this position, according to us, such inconsistency is liable to be removed and this Court in exercise of the power given under Article 102, is empowered to give proper and necessary direction upon the Government to make

proper amendments in the provisions of section 54 of the Code to ensure the fundamental rights as guaranteed under Article 27, 31, 32, 33 and 35 of the Constitution. So, we would like to suggest or recommended the amendment of section 54. The suggestion will be given after we finish our discussion on the other question raised i.e. after discussing the question of remand now granted under section 167 of the Code.

Let us now consider the question of granting remand to the police custody. It has been alleged in this Writ Petition is also now common that once remand is granted the police tries to extort information or confession from the person arrested by physical or mental torture and in the process sometimes also cause death. So, the system of granting remand itself has been challenged. Such, remand is allowed under subsection (2) of section 167 of the Code of Criminal Procedure. Though the word remand is not there in that subsection however, the word remand is being used in the order passed by a Magistrate in the sense of authorizing detention of a person in police custody. By authorizing such custody, the person brought before the Magistrate under section 167 of the Code is sent back to police and perhaps for this reason the word remand has been used.

When a person is arrested under section 54 without a warrant, the provisions of section 61 of the Code applies in his case. Section 61 provides that no police officer shall

detain in custody a person arrested without warrant for a period exceeding 24 hours unless there is a special order of a Magistrate under section 167 of the Code. So, we find that there is reference of section 167 in section 61 of the Code. Section 61 implies that if there is a special order of a Magistrate under section 167, the police may keep a person in its custody for more then 24 hours.

Now, let us see what is provided in section 167. Relevant provisions of the section 167 are reproduced below up to sub-section (4):

“Procedure when investigation cannot be completed in twenty four hours-

167-(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty four hours fixed by section 61 and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police section or the police officer making the investigation if he is not below the rank of sub inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such

Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or send it for trail and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the chief Metropolitan Magistrate, District Magistrate, or Sub-divisional Magistrate he shall forward a copy of his order with his reasons, for making it, to the Magistrate to whom his immediately sub-ordinate”.

From the above, we find that heading of the section is “Procedure when investigation cannot be completed in twenty four hours”. So, the heading that investigation starts before producing the accused to the nearest Magistrate. The heading further indicates that there is scope of completing the investigation within 24 hours. Unfortunately, we have not come across any case where the police officer gave any importance to the above provision of the section.

Sub-section (1) of this section provides that under the following two circumstances a person arrested without warrant is to be produced before the Magistrate-

- (a) If the investigation cannot be completed within 24 hours; and
- (b) If there are grounds for believing that the accusation or information received against the person is well founded.

These are the mandatory provisions of the law. So, while producing a person arrested without warrant before the Magistrate the police officer must state that reasons as to why the investigation could not be completed within 24 hours and what are the grounds for believing that the accusation or the information received against the person is well-founded.

Besides the above two requirements there is another requirement which the police officer must fulfill at the time of producing the accused before the Magistrate. This sub-section provides that the police officer shall transmit to the nearest Magistrate copy of the entries in the diary hereinafter prescribed relating to the case. There is reference of diary in subsequent section 172 of the Code. However, it appears to us that by using the expression hereinafter prescribed in sub-section (1) of section 167, the case diary as mentioned in section 172 is meant because in section 167 (1) it is also mentioned as follows "the diary hereinafter prescribed relating to the case." So, it appears to us that the case diary is the diary which is meant in section 167(1). Thus, the police officer shall be bound to transmit copy of the entries

of the case diary to the Magistrate at the time when the accused is produced before him under that provision. This case diary is B.P. Form No. 38. In Police Regulation No. 264, details are given as to how this diary shall be maintained. Regulation No. 263 provides that in the diary, the police officer is to show that time at which the relevant information reached him, the time at which he began and closed his investigation the place or visited by him, and statement of the circumstances ascertained through his investigation. So, if copy of the entries of this diary is produced before the Magistrate and if there are materials before the Magistrate to decide whether the accusation against the person or the information against the person is well funded, he can decide the question whether the person shall be released at once or shall be detained further. If these three legal requirements are not fulfilled it will not be possible on the part of the Magistrate to apply his judicial mind. But unfortunately though these three legal requirement are not fulfilled the Magistrate as a routine matter passes his order on the forwarding letter of the police officer either for detaining the person for further period in jail or in police custody. The order for detaining in police custody is passed by a Magistrate in exercise of the power given to him under sub-section (2) of this section. If the requirement of sub-section (1) are not fulfilled, the Magistrate cannot

pass an order under sub-section (2) for detaining a person even not to speak of detention in police custody.

However, we find that in view of the provisions of sub-section (1) in view of the provisions of sub-section (3) of section 167, a Magistrate exercises the power to pass on order authorizing detention in the custody of the police. Though the above provisions empower the Magistrate to authorize the detention in police custody it is surprising to note that no guideline has been given in sub-section (2) and (3) as to the circumstances under which detention in police custody may be authorized. The Magistrate in the absence of any guideline, passes a parrot like order authorizing detention in police custody which ultimately results in so many custodial death and incidents of torture in police custody. Had the Magistrate exercised his power by applying judicial mind on fulfillment of the requirements as provided in sub-section (1) there would have been no such innumerable cases of custodian death or torture. In our view, the provisions of sub-section (1)(2) and (3) of section 167 of the Code shall be read together and considered together and if the magistrate before whom an accused is produced under sub-section 1 is satisfied that there are grounds for believing that the accusation is well founded and that there are materials for further detention on consideration of the entries of the dairy relating to the case, the Magistrate may pass and

order for further detention. Otherwise, the Magistrate shall be bound to release the person forthwith. We also like to mention here that if the police officer fails to explain that, there are grounds for believing that the accusation or information is well founded and also to produce copy of the entries relating to the case the Magistrate shall release the accused forthwith.

Now let us see how the prayer for remand is made by the police officer and how such an order is passed by the Magistrate. A police officer makes a prayer for remand stating that the accused is involved in a cognizable offence and for the purpose of interrogation remand is necessary. In sub-section (2) of section 167 though it is not mentioned that remand can be allowed for the purpose of interrogation at present the practice is that an accused is taken on remand only for the purpose of interrogation or for extorting information from the accused through interrogation.

We shall now consider whether such detention in police custody is at all necessary and is permissible. One view is that it is an evil necessity, if some force is not applied, no clue can be found out from hard nut criminals. Obviously, this is view of the police but we can not shut our eyes to the fact that this view is contrary to the constitutional provisions as we find in part III of the Constitution specially Articles 27, 30, 31, 32, 33 and 35. If the purpose of interrogation of an accused is to extort information from him, in view

of the provisions of Article 35 (4), information which is extorted from him cannot be used against him. Clause (4) of the Article 35 clearly provides that no person accused of an offence shall be compelled to be a witness against himself. So, any information which may be obtained or extorted by taking an accused on remand and by applying physical torture or torture through any other means, the same information cannot be considered as evidence and cannot be used against him. Clause (4) of Article 35 is so clear that the information obtained from the accused carries no evidentiary value against the accused person and cannot be used against him at the time of trial. Under section 163 of the Code, a police officer is barred from offering any inducement or from making any threat or promise to any accused while recording his statement under section 161 of the Code. So, we do not understand how a police officer or a Magistrate allowing remand can act in violation of the Constitution and provisions of other laws including this Code and can legalize the practice of remand. Through judicial pronouncement, it is also established that any statement made by any accused before a police officer in course of his interrogation cannot be used against any other accused. In view of the provisions of section 27 of the Evidence Act, if any information is received from the accused while he is in custody of a police officer so much of such information, whether it amounts to confession or not as it relates

distinctly to the fact discovered by such confession or information may be proved by the police against that person. So, any statement of an accused made to a police officer relating to discovery of any fact or alibi may be used against him at the time of trial. If the purpose of interrogation is so limited as we have found in the above, we do not understand why there will be any necessity of taking the accused in the custody of the police. Such interrogation may be made while the accused is in jail custody if interrogation is necessary.

Next, the use of force to extort information can never be justified. Use of force is totally prohibited by the constitution. In this connection, we may refer to clause (5) of Article 35 of the constitution which provides that no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. This clause is preceded by clause (4) where it is provided that no person accused of any offence shall be compelled to be a witness against himself. Due to the use of the word "compelled" in clause (4), we may presume that the framers of the constitution were apprehensive of use of force upon an accused and as such in clause (5) of Article 35 it has been clearly provided that no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. So, we find that even if the accused is taken in police custody for the purpose of interrogation for extortion of information from him, neither

any law of the country nor the constitution gives an any authority to the police to torture that person or to subject him to cruel, inhuman and degrading treatment. Thus, it is clear to us that the very system of taking an accused on remand for the purpose of interrogation and extortion of information by application of force on such person is totally against the spirit and explicit provisions of the constitution. So, the practice is also inconsistent with the provisions of the constitution.

Now, we like to discuss what safeguards may be suggested for ensuring the liberty of the citizen and enforcement of the fundamental rights as guaranteed under the constitution. In section 54 of the Code we have found from the language used, the police exercise the power abusively. There is nothing in this section which provides that the accused be furnished with the grounds for his arrest. It is the basic human right that whenever a person is arrested he must know the reasons for his arrest. As the section 54 now stands, a police officer is not required to disclose the reasons for the arrest to the person whom he has arrested. Clause (1) of the Article 33 provides that the person who is arrested shall be informed of the grounds for such arrest. It is true that no time that limit has been mentioned in this Article but the expression as soon as may be is used. This expression as soon as may be does not mean that furnishing of grounds may be delayed for an

indefinite period. According to us, as soon as may be implies that the grounds shall be furnished after the person is brought to the police station after his arrest and entries are made in the diary about his arrest. Unfortunately, this provision of the constitution is not followed by the police officers. It is strange that they are very much over jealous in exercising the powers given under section 54 but their reluctant to act in accordance with the provisions of the constitution itself. Constitution is the supreme law of the country and shall prevail over any other law. It is the duty of every one in the country to adhere to the provisions of the constitution. It is unfortunate that instead of adhering to the provisions of the constitution, the police officers are interested in exercising the powers given to them under the Code without any hindrance.

The constitution not only provides that the person arrested shall be informed of the grounds for his arrest, the constitution also provides that the person arrested shall not be denied the right to consult and to defend himself by a legal practitioner of his choice. We are of the view that immediately after furnishing the grounds for arrest to the person, the police shall be bound to provide the facility to the person to consult his lawyer if he desires. So, here, again we like to mention that the persons arrested by the police under section 54 are not allowed to enjoy this constitutional right. Not only this right is denied,

even the police refuses to inform the nearest or close relation of the person arrested. We are of the view that the person arrested shall be allowed to enjoy these rights immediately after he is brought to the police station from the place of arrest and before he is produced to the nearest Magistrate. We like to give emphasis on this point that the accused should be allowed to enjoy these rights before he is produced to the Magistrate because this will help him to defend himself before the Magistrate properly, he will be aware of the grounds for his arrest and he will also get the help of his lawyer by consulting him. If these two rights are denied, this will amount to confining him in custody beyond the authority of the constitution. So, we like to suggest some amendments in section 54 so that the provisions of this section are made consistent with the provisions of part III the constitution. Similarly, we have also noticed that some provisions of section 167 are inconsistent to some extent with the provisions of the Constitution such as clause (4) and (5) of Article 35 and in general provides of Article 27, 31 and 32. So, we shall also suggested some amendments in section 167 of the Code. To give full affect to the proposed amendments, we are also of the view that some other related sections are also to be amended for example, section 167 of the Code, Section 44 of the Police Act, Section 220, 330 and 348 of the Penal Code. Before we like

to set out our recommendations for the amendment of those sections, we like to give our consideration about the other points raised by the learned Advocates.

Mr. Amir-ul Islam has pointed that now a days in most of the cases different persons are arrested under section 54 of the Code on political grounds in order to detain him under the provisions of section 3 of the Special Powers Act, 1974. According to him, this is a concrete example of colorable and abusive exercise of power by the police. We accept the argument of Mr. Amir-ul Islam. Mr. Abdur Razzaque Khan, the learned Additional Attorney General conceded that arrest of a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Powers Act is not proper. As we have quoted the section 54 earlier, we have found that a police officer may arrest a person under that section, under certain conditions. Main condition is that the person arrested is to be concerned in a cognizable offence. So, first requirement to arrest a person under section 54 is that the same person is concerned in any cognizable offence. The purpose of detention is totally different. A person is detained under the preventive detention law not for his involvement in any offence but for the purpose of preventing him from doing any prejudicial act. So, there is no doubt in our mind that a police officer cannot arrest a person under section 54 of the Code with a view to detain him

under section 3 of the Special Powers Act, 1974. Such arrest is neither lawful nor permissible under section 54. If the authority has any reason to detain a person under section 3 of the Special Powers Act, the detention can be made by making an order under the provisions of that section and when such order is made and handed over to the police for detaining the person, the order shall be treated as warrant of arrest and on the basis of that order, the police may arrest a person for the purpose of detention. But a person cannot be arrested under section 54 of the Code for detaining him under section 3 of the Special Power Act.

Now, as regards the custodial death and torture we have already mentioned about the provisions of the constitution that is clause (4) and (5) of Article 35 of the constitution. Torture or cruel, inhuman or degrading treatment in police custody or jail custody are not permissible under the constitution. So, any such act is unconstitutional and unlawful. Now, a question is raised whether this court is competent to award compensation to a victim of torture or to the relation of a person whose death is caused in police custody or jail custody. We have considered the principle laid down in the case reported in AIR 1977 (SC) 610. According to us, this Court, in exercise of its power of judicial review when finds that fundamental rights of an individual has been infringed by colourable exercise of power by the police under section 54

of the Code or under section 167 of the Code the Court is competent to award compensation for the wrong done to the person concerned. Indian Supreme Court held the view in the above case that compensatory relief under the public law jurisdiction may be given for the wrong done due to breach of public duty by the state of not protecting the fundamental right to the life of citizen. So, we accept the argument of the learned Advocate for the petitioner that compensation may be given by this Court when it is found that confinement is not legal and death resulted due to failure of the state to protect the life but at the same time we like to emphasize that it will depend upon the facts and circumstances of each case. If the question of custodial death becomes a disputed question of fact, in that case under the writ jurisdiction it will not be possible to give compensation but where it is found that the arrest was unlawful and that the person was subjected to torture while he was in police custody or in jail, in that case, there is scope of awarding compensation to the victim and in case of death of a person to his nearest relation. As regards the occurrence of death which are mentioned in this writ petition it appears that specific cases were filed and trial of those cases were completed in accordance with law and appeals are now pending. In those cases, the Writ Petition has not given any decision as to whether the arrest or detention were unlawful. In view of this position we do not think it

proper to award any provisions of these sections are like to make some compensation in this writ to extent inconsistent with the recommendations which are as petition. provisions of the constitution follows:

In the above we have and requires some scrutinised two sections of the amendments. To remove the Code and have found that the inconsistencies now we would

**Existing Section**

54(1) Any police officer may, without an order from a Magistrate and without any Warrant, arrest- first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned.

**Recommendation-A**

(1) The first condition may be amended as follows:

first, any person against whom there is a definite knowledge about his involvement in any cognizable offence or against whom a reasonable complain has been made or credible information has been received or a reasonable suspicion exists of his having been so involved;

(2) The seventh condition may be also amended like the first condition.

(3) A sub-section (2) shall be added which shall contain the following provisions:

(a) Whenever a person is arrested by a police officer under sub-section (1) be shall disclose his identity to that person and if the person arrested from any place of residence or place of business. He shall disclose his identity to the inmates or the persons present and shall how his official identity card if so demanded.

(b) Immediately after bringing the person arrested to the police station, the police officer shall record the reasons for the arrest including the knowledge which he has about the involvement of the person in a cognizable offence, particulars of the offence, circumstances under which arrest was made, the source of information and the reasons for believing the information description of the place note the date and time of arrest, name and address of the persons, if any, present at the time of arrest in a diary kept in the police station for that purpose.

(c) The particulars as referred to in clause (b) shall be recorded in a special diary kept in the police station for recording such particulars in respect of persons arrested under this section.

(d) If at the time of arrest, the police officer finds any marks of injury on the body of the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or to a Government doctor for treatment and shall obtain a certificate from the attending doctor about the injuries.

(e) When the person arrested is brought to the police station, after recording the reasons for the arrest and other particulars as mentioned in clause (b), the police officer shall furnish a copy of the entries made by him relating to the grounds of the arrest to the person arrested by him. Such grounds shall be furnished not later than three hours from the time of bringing him in the police station.

(f) If the person is not arrested from his residence and not from his place of business or not in presence of any person known to the accused, the police officer shall inform the nearest relation of the person over phone if any, or through a messenger within one hour of bringing him in the police station.

(g) The police officer shall allow the person arrested to consult a lawyer, if the person so desires. Such consultation shall be allowed before the person is produced to the nearest Magistrate under section 61 of the Code.

**Existing Section**

167-(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty four hours fixed by section 61 and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police section or the police officer making the investigation if he is not below the rank of sub inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate

**Recommendation B**

(1) Existing sub-section (2) be re-numbered as sub-section (3) and a new sub-section (2) may be added with the following provisions:

Sub-section (2) - (a) If the Magistrate after considering the forwarding of the Investigating officer and the entries in the diary relating to the case is satisfied that there are grounds for believing that the accusation or information about the accused is well founded, he shall pass an order for detaining the accused in the jail. If the Magistrate is not so satisfied, he shall forthwith release the accused. If in the forwarding of the Investigating Officer the grounds for believing that the accusation or information is well founded are not mentioned and if the copy of the entries in the diary is not produced the Magistrate shall also release the accused forthwith.

thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or send it for trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police record his reasons for so doing.

(4) If such order is given by a Magistrate other than the chief Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom his immediately subordinate.

(b) If the Investigation Officer prays for time to complete the investigation the Magistrate may allow time out exceeding seven days and if so specific case about the involvement of the accused in a cognizable offence can be filed within that period the accused shall be released by the Magistrate after expiry of that period.

(c) If the accused is released under clause (a) and (b) above, the Magistrate may period for committing offence under section 220 of the Penal Code sue motu against the police officer who arrested the person without warrant even if no petition of complaint is filed before him.

(2) Sub-section (2) be substituted by a new sub-section (3) with the following provisions:

(a) If a specific case has been filed against the accused by the Investigation officer within the time as specified in sub-section (2)(b) the Magistrate may authorize further detention of the accused in jail custody.

(b) If no order for police custody is made under clause (c), the Investigating Officer shall interrogate the accused, if necessary for the purpose of investigation in room specially made for the purpose with glass wall and grill in one side. within the view but not within hearing of a close relation or lawyer of the accused.

(c) If the Investigating officer files any application for taking any accused to custody for interrogation, he shall state in detail the grounds for taking the accused in custody and shall produce the case diary for consideration of the Magistrate if the Magistrate is satisfied that the accused be sent back to police custody for a period not exceeded three days, after recording reasons, he may authorize detention in police custody for that period.

(d) Before passing an order under clause (c) the Magistrate shall ascertain whether the grounds for the arrest was furnished to the accused and the accused was given opportunity to consult lawyer of his choice. The Magistrate shall also hear the accused or his lawyer.

- (3) Sub-section (4) be substituted as follows:
- (a) If the order under clause (c) is made by a Metropolitan Magistrate or any other Magistrate he shall forward a copy of the order to the Metropolitan Sessions Judge or the Sessions Judge as the case may be for approval. The Metropolitan Sessions Judge or the Sessions Judge shall pass order within fifteen days from the date of the receipt of the copy.
  - (b) If the order of the Magistrate is approved under clause (a), the accused before he is taken custody of the Investigating Officer, shall be examined by a doctor designated or by a Medical Board constituted for the purpose and the report shall be submitted to the Magistrate concerned.
  - (c) After taking the accused in custody, only the Investigating officer shall be entitled to interrogate the accused and after expiry of the period, the Investigation officer shall produce produce him before the Magistrate. If the accused makes any allegation of any torture, the Magistrate shall at once send the accused to the same doctor or Medical Board for examination.
  - (d) If the Magistrate finds from the report of the doctor or Medical Board that the accused sustained injury during the period under police custody, he shall proceed under section 190(1)(c) of the Code against the Investigating Officer for committing offence under section 330 of the Penal Code without filing of any petition of complaint by the accused.
  - (e) When any person dies in police officer or the Jailor shall at once inform the nearest Magistrate of such death.

If a person dies in custody either in Jail or in police custody the relations are reluctant to lodge any FIR or formal complaint due to apprehension of further harassment. The existing provisions of section 176 of the Code appears to us not sufficient enough to take appropriate and effective action about such custodial death. Under the existing provisions of this section, the Magistrate is not bound to hold inquiry. So, we like to emphasis that the duty of the Magistrate shall be made mandatory. For this following amendment in section 176 is recommended:-



**Existing Section**

176-(1) When any person dies while in the custody of the police, the nearest Magistrate, empowered to hold inquests shall, and in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1) any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death the Magistrate may, cause the body to be disinterred and examined.

**Recommendation - C**

(1) Existing sub-section (2) be renumbered as sub-section (3) and the following be added as sub-section (2).

(2) When any information of death of a person in the custody of the police or in jail is received by the Magistrate under section 167(4)(e) of the Code (as recommended by us), he shall proceed to the place, make an investigation, draw up a report of the cause of the death describing marks of injuries found on the body stating in what manner or by what weapon the injuries appear to have been inflicted. The Magistrate shall then send the body for post mortem examination. The report of such examination shall be forwarded to the same examination shall be forwarded to the same Magistrate immediately after such examination.

Under the existing provisions of section 202 of the Code, there is no scope on the part of the Magistrate to proceed suo moto he can act only when there is a petition of complaint. If it is evident from the post mortem report that the death is culpable homicide amounting to murder, the Magistrate shall be empowered by the law itself by adding an enabling provision to section 202 to proceed with the case by holding inquiry himself or by any other competent Magistrate. So, we also like to recommend amendment in section 202 of the code.

**Existing Section**

202(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint:

Provided that save where the complaint has been made by a Court no such direction shall be made unless the provisions of section 200 have been complied with:

**Recommendation - D**

(1) A new sub-section (3) be added with the following provisions:

(3) (i) The Magistrate on receipt of the post mortem report under section 176(2) of the Code (as recommended by us) shall hold inquiry into the case and if necessary may take evidence of witnesses on oath.

(b) After completion of the inquiry the Magistrate shall transmit the record of the case along with the report drawn up under section 176(2) (as recommended by us) the post mortem report his inquiry report and a list of the witnesses to the Sessions Judge or Metropolitan Sessions Judge, as the case may be and shall also send the accused to such judge.

(c) In case of death in police custody, after a person taken in such custody on the prayer of the Investigating Officer,

Provided further that where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of Session, the Magistrate may postpone the issue of process for compelling the attendance of the person complained against and may make or cause to be made an inquiry of investigation as mentioned in this sub-section for the purpose of ascertaining the truth or falsehood of the complaint.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may if he thinks fit, take evidence of witness on oath. Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(2B) Where the police submits the final report the Magistrate shall be competent to accept such report and discharge the accused.

the Magistrate may proceed against the Investigating Officer, without holding any inquiry as provided in clause (a) above and may send the Investigating Officer to the Sessions Judge of the Metropolitan Sessions as provided in clause (b) along with his own report under sub-section (2) of section 176 and post mortem report.

In the Penal Code the relevant section for causing hurt for the purpose of extorting confession or information from any person is provided in section 330 and for confinement to extort such confession or information is provided in section 348. But in neither of these sections, there is mention of causing such hurt to a person while he is in police custody or in jail. Punishment appears to be not adequate. So, we like to recommend that suitable provisions be added to those two sections by adding provision to those sections or by adding new sections by giving section Nos. 330 A and 348 A. Moreover, we are also of the view that causing death in police custody or in jail is more heinous than death caused by a private person. So, a separate penal section may be added after section 302 of the Penal Code.

**Existing section**

Section 330 of the Penal Code and section 302, 348.

**Recommendation - E**

(a) One provision be added in section 330 Providing enhanced punishment upto ten years imprisonment with minimum punishment of sentence of seven years if hurt is caused while in police custody or in jail including payment of compensation to the victim.

(b) 2<sup>nd</sup> proviso for causing grievous hurt while in such custody providing minimum punishment of sentence of ten years

imprisonment including payment of compensation to the victim.

(c) A new section be added as section 302A providing punishment for causing death in police custody or in jail including payment of compensation to the nearest relation of the victim.

(d) A new section be added after section 348 providing for punishment for unlawful confinement by police officer for extorting information etc. as provided in section 348 with minimum punishment imprisonment for three years and with imprisonment which may extend to seven years.

If death takes place in police custody or in jail it is difficult to prove by the relations of the victim as to who caused the death. In many cases, this court has decided that when a wife dies while in custody of the husband, the husband shall explain how the wife met her death. Similar principle may be applied when a person dies in police custody or in jail. To give a legal backing to the above principle, we like to recommend that a section in the Evidence Act (after section 106) or a clause may be added in section 114 of that Act incorporating the above principle.

**Recommendation-F**

The new section in the Evidence Act shall provide that when a person dies in police custody or in jail, the police officer who arrested the person or the police officer who has taken him in custody for the purpose of interrogation or the jail authority in which jail the death took place, shall explain the reasons for death and shall prove the relevant facts to substantiate the explanation.

In the Police Act of 1861, there is no provision for maintaining any diary for recording the reasons for arrest without warrant and other necessary particulars as have been mentioned in the recommended sub-section (2) of section 54 of the Code. So, we like to recommend that a new section be added after section 44 of the Police Act.

**Recommendation-G**

The new section in the Police Act shall provide that the officer in charge of a police station shall keep a special diary for recording the reasons and other particulars as required under recommended new sub-section (2) of section 54 of the Code.

We have already mentioned that the provisions of the existing sections 54 and 167 of the Code are to some extent inconsistent with the provisions of Article 27, 30, 31, 32, 33 and 35 of the Constitution and we have recommended that the above two sections may be amended for the purpose of safeguarding the liberty and fundamental rights of the citizens. We also like to emphasise that the respondents are to be directed to remove the inconsistency within the time fixed by us.

A question may be raised as to whether this Court has any power to make recommendation for amendment of any law. Our answer is that this Court has such power under Article 102. As we have found that some of the existing provisions of section 54 and 167 of the Code are inconsistent with the fundamental rights of the citizens, this Court can not only recommend amendment, it can even issue direction. In Mazdar Hossain's case the Appellate Division issued directions upon the Government to ensure separation of the Judiciary from the Executive and the Appellate Division modified the drafts and made those drafts as part of its order. It is expected that with the separation of judiciary from Executive, the Magistrate and the Courts may exercise powers free from any Executive pressure.

We are conscious that some of our recommendations can not be implemented without making necessary amendments in the relevant law at the same time we like to insist that some of the recommendations may be implemented immediately as these are in conformity with some of the

existing provisions of the Constitution and the Code itself. So, we would like to issue some directions to follows those immediately. The directions are as follows:

1. No police officer shall arrest a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Power Act, 1974.
2. A police officer shall disclose his identity and if demanded shall show his identity card to the person arrested and to the persons present at the time of arrest.
3. He shall record the reasons for the arrest and other particulars as mentioned in recommendation A (3)(b) in separate for the arrest and other particulars as mentioned in recommendation A (3)(b) in a separate register till a special diary is prescribed.
4. If he finds any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.
5. He shall furnish the reason for arrest to the person arrested within three hours of bringing him in the police station.
6. If the person is not arrested from his residence or place of business he shall inform the arrested relation of the person over phone, if any, or through a messenger within one hour of bringing him in the police station.
7. He shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relation.
8. When such person is produced before the nearest Magistrate under section 61, the police officer shall state in his forwarding letter under section 167 (1) of the Code as to why the investigation could not be completed within twenty four hours why he considers that the accusation or the information against that person is well-founded. He shall also transmit copy of the relevant entries in the case diary B.P. Form 38 to the same Magistrate.
9. If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter as to whether the accusation or the information is well-funded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in jail. Otherwise, he shall release the person forthwith.
10. If the Magistrate releases a person on the ground that the accusation or the information against the person produced before him is not well-founded and there are no materials in the case diary against that person, he shall proceed under section 190(1)(c) of the Code against that police officer who arrested the person without warrant for committing offence under section 220 of the Penal Code.
11. If the Magistrate passes an order for further detention in jail, the Investigating officer shall interrogate the accused if necessary for the purpose of investigation in a room in the jail till the room as mentioned in recommendation B(2)(b) is constructed.
12. In the application for taking the accused in police custody for interrogation, the investigating officer shall state reasons as mentioned in recommendation B(2)(c).
13. If the Magistrate authorizes detention in police custody he shall follow the recommendation contained in recommendation B(2)(c)(d) and B(3)(b)(c)(d).
14. The police officer of the police station who arrests a person under section 54 or the Investigating officer who takes a person in police custody or the jailor of the jail as the case may be shall at once inform the nearest Magistrate as recommended in recommendation B(3)(e) of the death of any person who dies in custody.
15. A Magistrate shall inquire into the death of a person in police custody or in jail as recommended and recommendation C(1) immediately after receiving information of such death.

In view of our discussion above, the Rule is disposed of with a direction upon the respondent Nos. 1 and 2 to implement the recommendations made above within six month. All the respondents are also directed to implement the directions made above immediately.

Salma Masud Chowdhury, J:

I agree

H. Haque,

S.Masud

Momen/  
Read by:  
Exd by:



**HIGH COURT DIVISION  
(Criminal Miscellaneous Jurisdiction)**

SK Sinha J  
Sharifuddin Chaklader J

Saifuzzaman (Md)..... Petitioner  
Vs  
State and others.....Opposite Parties\*

**Judgement:** August 4th, 2003

**Code of Criminal Procedure (V of 1898)  
Sections 54 & 167**

"State terrorism"-There are complaints of indiscriminate arrest of innocent persons who are subjected to third degree methods with a view to extracting confessions. This is termed by the Supreme Court of India as "state terrorism" which is no answer to combat terrorism ....(10)

**Section 54**

The "reasonable suspicion" and "credible information" must relate to definite averments considered by the police officer himself before arresting a person under this provision. What is a "reasonable suspicion" must depend upon the circumstances of each particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise. ...(12)

**Code of Criminal Procedure (v of 1898)  
Section 54**

A bare assertion without anything more cannot form the material for the exercise of an independent judgment and will not therefore amount to credible information.... (13)

**Section 167**

**Entries in the Diary - It is for the Magistrate to decide on certain materials placed before him such as the material contained in the diary relating to the case whether or not the detention of the accused was necessary. In coming to the conclusion the Magistrate has to exercise his judicial mind and only when the Magistrate did apply such a mind, it could**

\* Criminal Miscellaneous Case No. 9145 of 2002 with Criminal Miscellaneous Case No. 9146 of 2002.

be said that the order made for detention is a valid order .... (29)

**Section 344**

The custody spoken of is jail custody. The Magistrate can remand an accused person to custody for a term not exceeding 15 days at a time provided that sufficient evidence has been collected to raise a suspicion that the accused may have committed an offence.

Gouri Shanker Jha vs State of Bihar, AIR 1972 SC 711; SK Dey vs Officer-in-charge Sukchi PS, AIR 1974 SC 871; Natobar Parida and others vs State of Urishaw, AIR 1975 SC 1465 relied .....(32)

**Code of Criminal Procedure (v of 1898)  
Sections 4(1) & 167**

The provisions intend to prevent any possible abuse by the police officer of his power while trying to make discovery of crime by means of wrongful confinement and do not intend to protect illegal act of the police officer.

State of MP vs Mobarak Ali, AIR 1959 SC 707; Directorate of Enforcement vs Deepak Mahajan, AIR 1994 SC 1775 and Abhinandan Jha vs Dinesh Mishra, AIR 1968 SC 117 relied.....(34-35)

**Sections 154 & 157**

**Receipt of information is not a condition**

evsjv`k QvTjxMi mfvicwZ wj qvKZ wmk`vi Ges mn mfvicwZ tgvnv\$ iwdKj Bmjvg tKvtZvcvj tK MZ 25 tk tde`qvix 2002 avbgwU \_vbn cjj k avbgwU 5 bs ti`vWi mav m`tbi mvgtb t`tK tdsR`vix Kivhewa 54 avivq tMdtZvi Kti| H w`bB Zvt`i XvKv tgtUc`wjj Ub tgmRt`-U tKvtU` nwmRi Kiv nq Ges 7 w`tbi cjj k wi gvU Pvl qv nq| GOvovl 1974 mvTj i wekl qTgZv AvBtb AvUKvt` k c0vb Kivi Rb` Avte`b Kiv nq| Pxd tgtUc`wjj Ub tgmRt`-U 4Vv gvP`2002 Zwi tL Zvt`i Rmgb gAj Ktib Ges wvU`Ubkb AWf` bv t`qv ntj gP` Kivi wbt`R t`b| BtZvgta` Zvt`i tK tRj nvrTz tcdY Kiv nq| 27 tk tde`qvix 2002 Zviv GB AvUKvt` tki wei`tx grngvb` mpcdg tKvtU`P nvtKvU` wefvM GKvU tdsR`vix wewa gvgjv`vtqi Ktib, hvi baf 2400/2002 Ges 2405/2002| gvgjv`wU nvtKvU`P wePvi vaxb \_vKv Ae`vq Zvt`i tK ivgMA`\_vbvi gvgjv bs 13/23.9.2001 G tMdtZvi t`Lvtbv nq| Gi ci KtqK`clvq Zvt`i wevfbae gvgjvq tMdtZvi t`Lvtbv nq Ges Zviv wevfbaeAv`vj Z t`tK Rmgbcb`nb| BtZvgta` me`d`tg th wRwv gTj Zvt`i tK tMdtZvi Kiv nq Zv t`tK Zvt`i Ae`vnmZ t`qv nq| e`vii -vi Gg Awgi-Dj Bmjvg Ges Zvnbqv Awgi Zvt`i cTq gvgj wU cwi Pvj bv Ktib| cieZfZ 4Vv AvM`- 2003 wePvicwZ Rbve Gm tK wmbnv Ges wePvicwZ Rbve kwi dDwi`b Pvkjv`vi G gvgjvi ivq c0vb Ktib|

precedent for investigation-The officer-in-charge of a police station can start investigation either on "information" or "otherwise".

The difference between sections 154 and 157 is that the information covered by the former section must be reduced to writing which is a condition precedent but in case of the later section, it is only that information which raises a reasonable suspicion of the commission of a cognisable offence within the jurisdiction of the police officer to whom it is given ...<sup>(37)</sup>

Special Powers Act (XIV of 1974)

### Section 3

Code of Criminal Procedure (v of 1898)

### Section 54

The authority made the orders of detention the moment the police officer made proposal for detention after arrest under section 54 of the Code. This shows the report of the police officer replaced the "satisfaction" of the authority in making an order of detention. It is beyond the scheme of the law that an order of detention can be made in respect of a person on the basis of a report of the police officer after his arrest under section 54 of the Code.....<sup>(43)</sup>

Code of Criminal Procedure (V of 1898)

### Section 167

Remand order should be made in presence of the accused in view of the expression "forwarded" used in sub-section (2) of section 167 of the Code.

Aftabur Rahman @ Jongi vs State, 45 DLR 59;., Khandkar Mustaque Ahmed vs Bangladesh, 34 DLR (AD) 222, Lakshmanrao vs Judicial Magistrate, 1st Class, Parivati Puram, AIR 1978 SC 186. Gouri Shankar Jha (Supra) and Natbor Parida and others (Supra) ref.

### Section 344

Magistrate can make such order of remand in the absence of the accused if he is seriously ill and cannot be produced in Court. M Amirul Islam with Tania Amir, Advocates-For the Petitioner.

Md Abdur Rezaque Khan, Additional Attorney General with Fazilatunnessa, Assistant Attorney General—For the State.

Raj Narayan vs Superintendent of Central Jail, AIR 1971 SC 178 relied .....<sup>(47)</sup>

## Judgment

**SK Sinha J:** These two Rules arise out of the same proceedings and therefore, these Rules are disposed of by this judgment. These Rules were issued calling upon the opposite parties to show cause why the detenus Liakat Sikder and Md Rafiqul Islam Kotwal should not be brought before this Court to be dealt with in accordance with law or pass such other or further order or orders as to this Court may seem fit and proper.

2. It is stated in the petitions that the detenu Liakat Sikder is a student of Dhaka University and President of Bangladesh Chattra League and the detenu Md Rafiqul Islam Kotwal is also a student of Dhaka University and Vice President of Bangladesh Chattra League. They have long political background and are involved in active politics of Bangladesh Chattra League and played major role in all movements, serving the cause of liberty, democracy and in achieving those, they served their party with dedication. On 25-2-2002 while the detuns coming out of Sudha Sadan, of Road No. 5, Dhanmondi Residential Area, they were arrested by the Dhanmondi Police under section 54 of the Code of Criminal Procedure, shortly the Code, in connection with DB Office GD Entry No. 1356 dated 26-2-2002 along with other activists of Bangladesh Chattra League. The detenus were forwarded to the Chief Metropolitan Magistrate, Dhaka on the same day with a prayer for taking them on police remand for 7 days. It was stated in the police forwarding report that a proposal for their detention under the Special Powers Act, 1974, shortly the Act, had been made to the authority. The Chief Metropolitan Magistrate enlarged them on bail to be effective on 4-3-2002, if no detention order had been made in the meantime. They were, however, remanded to the judicial custody. In the meantime, the detenus were communicated with the order of detention on 27-2-2002, against which, they moved this Court in Criminal Miscellaneous Case Nos. 2400 of 2002 and 2405 of 2002 respectively. This Court declared the orders of detention illegal and directed for release of the detenus by judgment and order dated 23-3-2002. During the pendency of the said Rules, the detenus were shown arrested in Ramganj Police Station Case No. 13

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dated 23-9-2001 on the basis of a wireless message made by the officer-in-charge, Ramganj Police Station.

3. The detenus submitted their bail bonds before the Chief Metropolitan Magistrate on 5-3-2002. The learned Chief Metropolitan Magistrate subsequently discharged the petitioners of the GD Entry No. 1356 dated 26-2-2002 on the prayer of the Investigating Officer. Again, they were shown arrested in GR Case No. 343 of 2002 arising out of Ramna PS Case No. 26(2)/02 by an order the learned Chief Metropolitan Magistrate on 27-3-2002. The learned Sessions Judge enlarged them on bail in that case on 1-4-2002 on Criminal Miscellaneous Case No. 1484 of 2002. Before they were released from the jail custody, the Dhanmondi Police prayed for showing them arrested in Dhanmondi Police Station Case No. 71 dated 29-1-2001 before the learned Chief Metropolitan Magistrate. The learned Chief Metropolitan Magistrate by order dated 4-4-2002 allowed the prayer and showed the detenus arrested in that case. The detenus were thereafter enlarged on bail by an order dated 23-5-2002 of the learned Metropolitan Sessions Judge, Dhaka in Criminal Miscellaneous Case No. 1901 of 2002.

4. In the meantime, on the prayer of the Ramna Police, the learned Chief Metropolitan Magistrate showed the detenus arrested on 4-4-2002 in Ramna PS Case No. 57 dated 26-1-2002. The detenus obtained an ad-interim bail from this Court in Criminal Miscellaneous Case No. 6440 of 2002. Before the said order was communicated to the Court below, the Demra Police prayed for showing the detenus arrested on 3-7-2002 in Demra. PS Case No. 76 dated 22-2-2002 corresponding to GR Case No. 762 of 2002. The learned Magistrate allowed the prayer by order dated 6-7-2002. Thereafter, the detenus were enlarged on bail on 4-8-2002 by an order of the learned Metropolitan Sessions Judge in Metropolitan Criminal Miscellaneous Case No. 2953 of 2002. The Mohammadpur Police again prayed before the learned Chief Metropolitan Magistrate on 7-8-2002 for showing the detenus arrested in Mohammadpur PS Case No. 38 dated 12-2-2002 corresponding to GR Case No. 708 of 2002. The learned Chief Metropolitan Magistrate by order dated 7-8-2002 issued custody warrant

in the above case. The learned Metropolitan Sessions Judge by order dated 11-8-2002 in Metropolitan Criminal Miscellaneous Case No. 3395 of 2002 enlarged them on bail. Thereafter, the Tejgaon Police prayed before the learned Chief Metropolitan Magistrate for showing the detenus arrested in Tejgaon PS Case No. 98 dated 28-12-2001 on 12-8-2002 which prayer was allowed. The detenus thereafter, moved this Court and obtained the above Rules.

5. The GD Entry, with which, the detenus were initially arrested was dropped by an order of the learned Chief Metropolitan Magistrate on 30-3-2002 and there was no existence of the said GD Entry on and from that date but while the detenus were shown arrested in Dhanmondi PS Case No. 71 dated 29-11-2001, Ramna PS Case No. 57 dated 26-1-2002, and in Demra PS Case No. 76(2) of 2002, the learned Chief Metropolitan Magistrate observed in his orders dated 4-4-2002 and 6-7-2002 respectively that the detenus are in custody in connection with GD Entry No. 1356 dated 26-2-2002. This shows that the learned Magistrate did not at all apply his judicial mind in making orders for showing the detenus arrested in those cases and made mechanical orders on the mere asking by the police officers. In making those orders, the learned Magistrate did not assign any reason and made laconic orders observing "চৌকি গাজিওঁ No counter affidavit has been filed by the State controverting the statements made in the petitions. Learned Additional Attorney-General has not disputed the facts stated in the petitions.

6. Mrs Tania Amir, appearing on behalf of the detenus, contends that in the absence of any ground for believing that the detenus had been concerned in any cognisable offence, the use of section 54 of the Code as an instrument for putting them in detention and also showing them arrested in different cases are unauthorised and without jurisdiction. She further contends that the orders of the Magistrate remanding the detenus in the judicial custody on the prayer of the police that they have complicity in those cases without satisfying as to the prima facie materials on the basis of the entries in the diary are contrary to section 167 of the Code. Lastly, she contends that those orders were made mechanically without application of judicial

mind, which should be quashed for ends of justice.

7. Learned Counsel has taken us through section 54 of the Code and section 3 of the Act, and submits that a person cannot be put in preventive detention after arrest under section 54 of the Code, inasmuch as, a police officer has the power to arrest a person under this section on any of the grounds contained therein whereas, an order of detention of a person can only be made by the Government or a District Magistrate or Additional District Magistrate, as the case may be, if the said authority is satisfied that such person has indulged in prejudicial activities within the meaning of section 2(f) of the Act. In support of her contention, she has referred a decision in the case of Bangladesh Legal Aid and Services Trust (BLAST) and others vs Bangladesh and others, 55 DLR 363.

8. Mr M Amirul Islam, learned Counsel like Mrs Tania, stresses upon the police excesses and the violation of fundamental rights of the detenus in the hands of the police. He submits that no action detrimental to the life, liberty, body and reputation of a person shall be taken away except in accordance with law. He further contends that the detenus were denied to enjoy the protection of law, as they were not informed at any point of time the cause of their arrest by the police officer. He further contends that the police used section 54 of the Code and section 3 of the Act, as instruments to harass the detenus and that as soon as they had realised that those devices did not suit their purpose, they were shown arrested in series of cases one after another without being informed as to the accusations for which they were shown arrested and even the Magistrate did not know on what allegation he was making the order, which is not the intention of the law. He further contends that if such processes were allowed, there would be no end of harassment of detenus who would end up for rest of their lives incarceration. He submits that these actions of the law enforcing agencies are not only deprecatory but also contrary to Articles 27, 31, 32 and 33 of the Constitution.

9. In the aforesaid background a pertinent question arises whether the provisions of the

Code authorise a Magistrate to make such orders of custody in different cases on a mere asking by the police officers in the absence of the detenus. Another pertinent question is whether a police officer has power to apprehend any person under section 54 of the Code for the purpose of putting him in preventive detention and for showing him arrested in pending cases. In the alternative, whether a police officer can use section 54 of the Code for collateral purposes of detention and some other purposes as has been done in the present case.

10. Recently, in many cases we have noticed that the law-enforcing agency after making arrest of a person under section 54 of the Code produces him before the Magistrate with a report stating that a proposal for putting him in preventive detention has been made to the authority. The Magistrate under such circumstances sends him in judicial custody on rejecting his prayer for bail with the observation that a proposal has been made for his detention. Similar order has been made in respect of these detenus. This being a fundamental question, we would like to address this point since the right of a citizen is involved on this point. In a democratic society, where the rule of law prevails, it is an obligation of the State to ensure that there is no infringement of the rights of a citizen to liberty except in accordance with law. The horizon of human rights is expanding. Crime rate, at the same time is also increasing. There are complaints about violation of human rights because of indiscriminate arrest of innocent persons by law enforcing agency in exercise of powers under section 54 of the Code and put them in preventive detention on their prayer by the authority and sometimes they are remanded to the custody of the police under the orders of Magistrate under section 167 of the Code and they are subjected to third degree methods with a view to extracting confessions. This is what is termed by the Supreme Court of India as "state terrorism" which is no answer to combat terrorism.

11. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other: of weighing and

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balancing the rights, liberties and privileges of the single individual and those of the individuals collectively: of simply deciding what is wanted and where to put the weight and the emphasis: of deciding which comes first—the criminal or society, the law violator or the law abider. It is generally said that when the crime goes unpunished, the criminals are encouraged and the society suffers. Whenever a criminal offence is committed then, irrespective of whether it also involves a civil injury, the offender becomes liable to punishment by the State, not for the purpose of affording compensation or restitution to anyone who may have been injured but as a penalty for the offence and in order to deter the commission of similar offences and in some cases, for the reform of the offender. Here the matter is one of public law, the proceedings against the offender may be instituted by the State without the consent of any person who has been injured, and the State alone can remit the punishment.

12. Section 54 of the Code gives a police officer wide powers of arresting a person without warrant under certain conditions, i.e. if such person has been concerned in any cognisable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned or so on. There are nine circumstances which empower a police officer to apprehend a person without a warrant issued by a Magistrate, of them, the first clause gives a police officer unlimited power to exercise his discretion. This power being an encroachment on the liberty of the subject, an arrest purporting to be under this section would be illegal unless circumstances specified in the various clauses of the section exist. The expression "credible information" used in the section includes any information which, in the judgment of the officer, to whom it is given, appears entitled to credit in the particular instance. The word "reasonable" has reference to the mind of the person receiving the information. The "reasonable suspicion" and "credible information" must relate to definite averments, which must be considered by the police officer himself before he arrests a person under this provision. What is a "reasonable suspicion" must depend upon the circumstances of each

particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise.

13. The words "credible" and "reasonable" used in the first clause of section 54 must have reference to the mind of the person receiving the information which must afford sufficient materials for the exercise of an independent judgment at the time of making the arrest. In other words, the police officer upon receipt of such information must have definite and bonafide belief that an offence has been committed or is about to be committed, necessitating the arrest of the person concerned. A bare assertion without anything more cannot form the material for the exercise of an independent judgment and will not therefore amount to credible information. The abuse of police power is not only peculiar to our country but it is widespread. Section 60 of the Code contains a mandatory provision requiring the police officer making an arrest without warrant for producing the arrested person before a Magistrate without delay. The precautions as laid down in sections 60 and 61 of the Code seem to design to secure that within not more than twenty-four hours of arrest a Magistrate shall have seisin of what is going on to apprise him the nature of the charge against the arrestee. If the reasonableness in the complaint or suspicion and credibility of information is not found on investigation within the period of twenty-four hours of arrest, the arrested person must be released by the police officer under section 169 of the Code on taking a bond for his appearance before a Magistrate if and when required. Section 61 of the Code enjoins that no Police Officer shall detain in custody the person arrested under section 54 for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours. There are safeguards as to arrest and detention of a person under Article 33 of the Constitution, which reads:

"33(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest,

nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty- four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the period without the authority of a Magistrate.

(3) .....

(4) .....

(5) .....

(6).....

14. Article 33 embodies a rule, which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the rule of law prevails. There are two requirements in this Article, which are to be complied with to afford the earliest opportunity to the arrested person to remove any mistake and misapprehension in the minds of the arresting authority and also to know objectively what the accusation against him is, so that he can exercise the second right of consulting a legal practitioner. This Article provides the safeguard that the arrested person must be produced before a Magistrate within twenty-four hours of arrest, so that an independent authority exercising judicial powers may without delay apply his mind to his case. Though the Criminal Procedure Code contains analogous provision but our Constitution makers were anxious to make this safeguard an integral part of fundamental rights.

15. The requirements of this Article are meant to afford the earliest opportunity to the person arrested on suspicion to remove any mistake in the minds of the arresting authority, and also to know exactly what accusation against him is so that he can exercise his right of consulting a legal practitioner of his choice. It is now established that even where a person is convicted or is in custody on certain allegations of commission of a cognisable offence, he does not lose all the fundamental rights belonging to all the persons under the Constitution, excepting those which cannot possibly be enjoyed owing to the fact of incarceration. His fundamental right is subject to Article 32 i.e. before a person is

deprived of his personal liberty, the procedure established by law must be strictly followed and in conformity with the provisions of law. Section 61 of the Code echoes clause (2) of Article 33 of the Constitution. Despite such protections, there are reports of arrest of persons on suspicion, assaults and death in police custody. In the case of *Joginder Kumar vs State of UP and others*, AIR 1994 SC 1349 the Supreme Court of India voiced its concern regarding complaints of violations of human rights during and after arrest. It said:

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The jurisdiction for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps, in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafide of a complaint and a reasonable belief both as to person's complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter."

16. Article 33 of our Constitution is in pari materia with Article 22 of the Constitution of India. While inserting this Article in the draft bill of the Constitution of India, which corresponded to Article 15A in the draft bill, Dr BR Ambedkar said:

"Article 15A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the Criminal Procedure Code and thereby probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of Article 15A is to put a limitation upon the authority both of parliament as well as of the provincial legislature not to abrogate these two provisions, because they are now introduced in our Constitution itself".

17. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence with a view to solving the crime. The interrogation and investigation into a crime should be purposeful to make the investigation effective as per sanction of law. "The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society: but so is the effective prosecution of crime, an interest which at times seems to be forgotten. Perfection is impossible: Like other human institutions criminal proceedings must be a compromise." Observed by Judge learned Hand, in *Re Fried*, 161 F 2(1453, 465(2d Cir 1947).

18. In *People vs Defore*, (1926) 242 NY 13, 24: 150 NE 585, 589 Justice Cardozo observed: "The question is, whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall not be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. The rule of the *Adams* case (*People vs Adams* (1903) 176 NY 351: 68 NE 636) strikes a balance between opposing interest. We must hold it to be the law until those organs of government by which a change of public policy is normally effected shall give notice to the Courts that change has come to pass."

19. In the case of *Smt Nandini Satpathy vs PL Dhanni*, AIR 1978 SC 1025, quoting *Lewis Mayors*, stated:

"To strike the balance between needs of law enforcement, on the one hand, and the protection of the citizen from oppression and injustice at the hands of law-enforcement machinery, on the other, is a perennial problem of statecraft. The pendulum over the years has swung to the right. Even as long ago as the opening of the twentieth century, Justice Holmes declared that 'at the present time in this country there is more danger that criminals will escape justice than that they will be subject to tyranny'. As the century has unfolded, the danger has increased."

20. In England, the police powers of arrest, detention and interrogations has been streamlined by the Police and Criminal Evidence Act, 1984 based on the report of Sir Cyril Philips Committee. In general a police officer is free to put any question to any citizen, but no citizen has a duty to answer the question of the police or to remain where the police wish him or her to remain (*Rice vs Connely* (1966) 2 QB 414). Many citizens will answer questions and this may result in the police officer terminating the inquiry, or informing the suspect that a summons will be issued in respect of the offence, or deciding to arrest the suspect. Whether or not the person answers questions, a police officer is entitled to arrest any person whom he or she has reasonable grounds to suspect of having committed or being about to commit an arrestable offence. When the suspect is brought to the police station, the custody officer has to decide whether the suspect should be released without charge, charged or (if it is thought necessary to obtain further evidence by questioning) detained for questioning.

That detention may be for up to six hours in the first place and there are procedures for renewals. The custody officer must record these and other decisions on a custody sheet and the suspect must be informed of the right to free and confidential legal advice.

21. The Royal Commission Report on Criminal Procedure, Command Papers 8092 19811 at page 45 said:

"We recommend that detention upon arrest for an offence should contain only one or more of the following criteria:

- (a) the person's willingness to identify himself so that a summons may be served upon him.
- (b) the need to prevent the continuation or repetition of that offence.
- (c) the need to protect the arrested person himself or other persons or property.
- (d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him, and

(e) the likelihood of the person failing to appear at Court to answer any charge made against him."

22. Both in England & Wales and in the United States, the law relating to remand has developed in two distinct phases. The first phase in both countries focused chiefly on the problem of securing the attendance of the accused at the trial. In *Rose*, (1898) 78 LT 119, Lord Russell stated that "it cannot be too strongly impressed on the Magistracy that bail is not to be withheld as a punishment but that the requirements as to bail are merely to secure the attendance of the prisoner at his trial." Similar phase can be discerned in the American Law. Until 1960s the law and practice tended to concentrate on the problem of securing the attendance of accused at trial: Courts usually using financial bonds as the means to this end and that the result was the pretrial imprisonment of people too poor to raise the money for such a bond. Congress passed the Federal Bail Reform Act 1966, legislating for release on recognisance rather than financial bonds as the normal pretrial order. The relevant law for England and Wales is now contained in the Bail Act, 1976. In essence, a Court has four main alternatives, (a) release on unconditional bail, (b) release on conditional bail (c) release on bail subject to surety or security and (d) remand in custody.

23. As regards our Code is concerned, a bail may be taken in case of non-bailable offence under section 497 of the Code. Sub-section (1) of section 497 applies to a stage where the accused is first brought before the Court. This provision says that when a person accused of a non-bailable offence is arrested or detained, he may be released on bail but he shall not be so released if there appear reasonable grounds (underlined by me) for believing that he has been guilty of an offence punishable with death or imprisonment for life. Sub-section (2) of section 497 provides that if the Court at any stage of investigation or trial finds that there are not reasonable grounds for believing that the accused has committed a non-bailable offence but that there are sufficient grounds for further inquiry into his guilt, pending such inquiry, he may be released on bail. This section speaks of "reasonable grounds"

for believing, that the accused is guilty of the offence is a question which must be decided by the Court judicially, that is to say, there should be some tangible evidence offered by the investigating officer on which, if unrebutted, the Court may come to the conclusion that the accused is not entitled to bail.

24. In India the third report of the national police commission referring to the quality of arrests by the police mentioned power of arrest as one of the chief sources of corruption in the police. In the said report the following suggestions made, inter alia, are; an arrest during the investigation of a cognisable case may be considered justified in cases which involve a grave offence like murder, robbery, rape, etc. or other circumstances, that the police officer making an arrest should also record in the case diary the reason for making the arrest, that a person is not liable to arrest merely on the suspicion of complicity in an offence, that there must be some reasonable justification in the opinion of the officer effecting the arrest, that such arrest is necessary and justified, that except in heinous offences, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not to leave the station without permission would do and that these rights are inherent in Article 22 of the Constitution and required to be recognised. The recommendations merely reflect the constitutional concomitant of the fundamental right to personal liberty and freedom. For effective enforcement of these fundamental rights, the Supreme Court of India in the case of *Joginder Kumar* issued the following guide lines:

"(1) An arrested person being held in custody is entitled, if he so requests, to have one friend, relative or other person who is known to him or likely to take an interest in his welfare, told as far as is practicable that he has been arrested and where is being detained.

(2) The police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power of arrest must be

*Judgment*

held to flow from Articles 21 and 22(1) and enforced strictly."

VR Krishna Iyer J. in the case of Srimati Nandini Satpathy observed:

"here we must remember, concerned as we are in expounding an aspect of the Constitution bearing on social defence and individual freedom, that humanism is the highest law which enlivens the printed legislative text with the life breath of civilised values. The Judge who forgets these rules of law any day regrets his nascent verdict some day."

25. In the case of BLAST Md Harnidul Haque J observed:

"As section 54 now stands, a police officer is not required to disclose the reasons for the arrest to the person whom he has arrested. Clause (I) of Article 33 provides that the person who is arrested shall be informed of the grounds for such arrest. It is true that no time limit has been mentioned in this Article but the expression "as soon as may be" is used. This expression "as soon as may be" does not mean that furnishing of grounds may be delayed for an indefinite period. According to us, "as soon as may be" implies that the grounds shall be furnished after the person is brought to the police station after his arrest and entries are made in the diary about his arrest. ... The power given to the police officer under this section, in our view, to a large extent is inconsistent with the provisions of Part III of the Constitution."

26. The aforesaid observation as regards the abusive exercise of power by the police, in our view, enunciates the legal position correctly.

27. In this case detenus were arrested under section 54 of the Code and they were remanded to the judicial custody. Now the vital question is, whether the Magistrate has power to pass an order of remand of a person arrested under section 54 of the Code either to the police or in the judicial custody without the registration of any case and also Without production of the entries in the diary relating to the case or whether the registration of a case is sine-qua-nor for a Magistrate authorising the detention of the accused in such custody as he thinks fit and that whether that person should be assimilated to the characteristic of an accused of an offence against

whom a Magistrate can pass an order under section 167 of the Code. If a Magistrate passes an order under section 167 of the Code on the basis of a police forwarding report, was it sufficient compliance of the constitutional direction contained in Article 33 of the Constitution? If a case is registered against the person arrested and a follow-up investigation is initiated or if an investigation has emanated qua the accusation levelled against him, the Magistrate can exercise his judicial discretion conferred on him under section 167(2) in making appropriate order authorising the person under judicial custody or under police custody, in case he is not inclined, to admit him to bail.

28. Section 167 of the Code requires the police officer who apprehends the person to forward him to the nearest Magistrate, if the investigation could not be completed within the period of twenty-four hours fixed by section 61 and if there are grounds for believing that the accusation or information is well founded with a report to such Magistrate. Section 167 reads.

"167. (1) Whenever investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forwards the accused to such Magistrate."

"(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days on the whole. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction."

- (3).....
- (4).....
- (5).....

29. Section 167 of the Code is aimed at affording procedural safeguard to a person arrested by the police. This section provides a provision that the accused person shall be forwarded to the Magistrate with a copy of the entries in the diary. This clearly indicates that the purpose of producing the accused before a Magistrate is to ensure that the arrest and the detention of the accused person is, at any rate, prima facie justified. Therefore, an obligation, the law placed on the Police who will produce the person for an order of the Magistrate under section 167 of the Code. It is for the Magistrate to decide prima facie on certain materials placed before him, namely, the material contained in the diary relating to the case, whether or not the detention of the accused either by the police or in prison was necessary. In coming to the conclusion the Magistrate has to exercise his judicial mind and only when the Magistrate could and did apply that mind, it could be said that the order made by the Magistrate for the detention of the accused is a valid order.

30. Sub-section (2) of section 167 shows that the Magistrate to whom the accused person is forwarded can remand him to police custody or jail custody for a term not exceeding 15 days on the whole. Even the Magistrate who has jurisdiction to try the case cannot remand the accused to any custody beyond the period of 15 days. There is no other provision in the Code which in clear or express language confers this power of remand on the Magistrate beyond the period of 15 days, during the pendency of the investigation and before the taking of cognisance on the submission of police report under section 173 of the Code. The second stage of remand begins when the police cannot complete the investigation within 15 days. It is then that under section 344 of the Code, if the police apply to the Court to postpone the commencement of the proceeding, giving its reason for such prayer and the Court, after examining those reasons and stating its own reason, can adjourn the Proceedings till such time as the investigation is completed. From this, it would be clear that in the first stage under section 167 of the Code that is usually called remand of the police or in the prison. The second stage comes when the investigation is not completed within 15 days

and more time is needed for collecting further evidence. The only limit on the exercise of the power of the remand under section 344 is that Court cannot give a remand for a term exceeding 15 days at a time.

31. Though section 344 of the Code falls in chapter XXIV of the Code dealing with general provisions as to "Inquiries And Trials" could be applied to a case which is at the stage of investigation and collection of evidence, for there is nothing therein that such provision is not applicable to cases in which the process of investigation is still going on. The explanation to section 344 makes it clear beyond doubt that the only provision under which the Magistrate can remand the accused in judicial custody if the investigation of the case could not be completed within 15 days. Explanation to section 344 reads as follows:

"Explanation-If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand."

32. The express language appears in subsection (1) in section 344 that if from the absence of the witness or any other reasonable cause (underlined by me), it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefore, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody. The language used therein and the explanation given mentioned above clearly refer to the stage prior to the commencement of the inquiry for obtaining further evidence during investigation by securing remand. Further the custody, which it speaks of; is not in such custody as the Magistrate thinks fit as in section 167 of the Code but only in jail custody. Under this section a Magistrate can remand an accused person to custody for a term not exceeding 15 days at a time provided that sufficient evidence has been collected to raise a suspicion that such an accused person may have committed an offence. Similar views are expressed in the case of Gouri Shanker Jha vs State of Bihar, AIR 1972 SC 711,

the case of SK Dey vs officer-in-charge Sukchi PS, AIR 1974 SC 871 and the case of Natobar Parida and others vs State of Orissa, AIR 1975 SC 1465.

33. Section 167 is one of the provisions falling under Chapter XIV of the Code under the heading "Information to the Police and their Powers to Investigate" commencing from the provisions falling under section 154 and ending under section 176. Though section 167 refers to the investigation by the police and the transmission of the case diary to the nearest Magistrate as prescribed by the Code, the main object is the production of the arrestee before a Magistrate within 24 hours as fixed by section 61 when the investigation cannot be completed within that period so that the Magistrate can take further action as contemplated under subsection (2) of section 167. After the deletion of Chapter XVIII by Ordinance No. XLIX of 1978, we are of the view that necessary amendments should be made to sections 167, 344 and chapter XX of the Code in order to remove inconsistency. In India there is legislative change in this section 167 of the Code with the object to eliminate the chronic malady of protracted investigation. A time limit with a provision for extension under certain circumstances is fixed by adding a proviso to subsection (2). This proviso makes it obligatory to produce the accused before the Magistrate at the time of making remand. These changes are made with a view to affording protection to the accused against unnecessary harassment at the hands of the investigating agency.

34. The expressions "investigation" and "accusation or information is well founded" and "entries in the diary" are used in sub-section (1), section 167 of the Code. The word investigation is defined in section 4(1) of the Code, which is an inclusive definition as including all the proceedings under the Code for the collection of evidence conducted by a police officer or any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. The first and foremost consideration of the Magistrate is when an accused person is forwarded on arrest by police on suspicion he was required to see whether "the accusation or information" relating to the said accused is well

founded or not. The Magistrate has to scrutinise the act of the police officer and see whether his act was proper and legal. This section is intended to prevent any possible abuse by the police officer of his power in trying to make discoveries of crime by means of wrongful confinement and not intended to protect the illegal act of the police officer. The said expression "investigation" runs through the entire fabric of the Code. There are decisions explaining in detail what the word "investigation" means and is? In *HN Rashbud vs State of Delhi*, AIR 1955 SC

196, it has been held that under the Code, investigation consists generally:

- "(1) Proceeding to the spot,
- (2) Ascertainment of the facts and circumstances of the case.
- (3) Discovery and arrest of the suspected offender,
- (4) Collection of evidence relating to the commission of the offence, which may consist of (a) the examination of various persons (including the accused) and the reduction of their statement into writing, if the officer thinks fit (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and,
- (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173."

Similar views are expressed in the case of *State of MP vs Mobarak Ali*, AIR 1959 SC 707 and *Directorate of enforcement vs Deepak Mahajan*. AIR 1994 SC 1775.

35. In this connection, we may refer to certain observations in the case of *Abhinandan Jha vs Dinesh Mehra*, AIR 1968 SC 117 quoted with approval from the earlier decision.

"Investigation usually starts on the information relating to the commission of an offence given to an officer-in-charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer-in-charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts

and circumstances of the case and if necessary to take measures, for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts. By definition it includes all the proceedings under the Code for the collection of evidence conducted by the police officer."

36. According to Hamlyn's Encyclopedic word dictionary (1972) page 836, the word "investigation" is a systematic, minute and thorough attempt to learn the facts about some thing complex or hidden: it is often formal and official. A full fledged criminal case is a drama in three acts (i) information; (ii) investigation or inquiry and (iii) trial. The first act has two scenes-information or complaint. Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer-in-charge of a police station in respect of a cognisable offence. Section 156 authorises such an officer to investigate it. This is the second scene. There are four different reports made by a police officer to a Magistrate, such as, (i) a preliminary report under section 157 (ii) a subordinate police officer's report under section 168 to the officer-in-charge of a police station (iii) the forwarding of the accused with a report to the Magistrate empowered to take cognisance if there is sufficient evidence or a reasonable ground to take cognisance of the offence, under section 170 and (iv) a final report under section 173.

37. This information under section 154 is one of the modes by which a person aggrieved may set the criminal law in motion. This information is the basis upon which the investigation is commenced. But the receipt of an information is not a condition precedent for investigation, inasmuch as, an officer in-charge of a police station can start investigation under section 157 either on "information" or "otherwise". The difference between sections 154 and 157 is that the information covered by the former section must be reduced to writing which is a condition precedent but in case of the later section, it is only that information which raises a reasonable suspicion of the commission of a cognisable offence within the jurisdiction of the police officer to whom it is given. Section 169 of the

Code authorises a police officer to release a person from custody on his executing a bond to appear, if and when so required before a Magistrate in cases when, on investigation under chapter XIV of the Code it appears to the officer-in-charge of a police station or to the police officer making the investigation, that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the person to a Magistrate. The terms of this section applies only to the case of an arrested person who has never been forwarded to a Magistrate.

38. Section 44 of the Police Act, 1861, lays down that "It shall be the duty of every officer-in-charge of a police station to keep a diary in such a form as shall, from time to time, be prescribed by the Government and to record therein all complaints and charges preferred, the names of persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of witnesses who shall have been examined". This diary is different from the one mentioned in section 172 of the Code. Where the police officer makes a false entry in the diary regarding any incident, it is an offence punishable under section 177 of the Penal Code. His duty is to record "all complaints" and "names of the complainants" in the diary.

39. The "diary" contemplated under section 172 of the Code and Police Regulations has really two parts, (1) relating to the steps taken during investigation by the police officer with particular reference to the time at which the police received information, the time at which the police officer began and closed the investigation, the place or places visited by him and (ii) the statement or the circumstances ascertained by the police officer through the investigation.

40. Edge, CJ in Mannu 19 All 390 expressed the object of the 'case diaries' under this section. "The early stages of investigation which follows on the commission of a crime must necessarily in the vast majority of cases be left to the police and until the honesty, the capacity, the discretion and judgment of the police can be thoroughly trusted, it is necessary for the protection of the

public against criminals, for the vindication of the law and for the protection of those who are charged with having committed a criminal offence that the Magistrate or the judge before whom the case is placed for investigation or for trial should have the means ascertain what was the information, true, false or misleading, which was obtained from day to day by the police officer who was investigating the case and what were the lines of investigation upon which the police officer acted." Same views were expressed in 16 CWN 145.

Regulation 263 of Police Regulations, chapter 1 speaks of case diary, which is in the verbatim language of section 172 of the Code. It is said that the police officer is bound by law to keep record of the proceedings in connection with the investigation of each case, (a) the time at which the information was reported to him, (b) the time at which he has closed his investigation, (c) the place or places visited by him and (d) a statement of the circumstances ascertained through his investigation. Nothing, which does not fall under the above heads, need be entered. It has been instructed that the diary shall mention every clue obtained and every step taken by the investigating officer. As regards house searches and arrest, particulars shall be noted in the diary. The diary shall contain full and unabridged statements of persons examined by the police officer so as to give the Magistrate on perusal of the said diary a satisfactory and complete source of information which would enable him to decide whether or not the accused should be detained in such custody as he thinks fit. This clearly indicates the purpose of production of an accused before a Magistrate to ensure that the arrest without warrant and the detention of the accused is at any rate prima facie justified.

41. From a combined reading of sections 54, 60, 61, 157, 167, 169 and 172 of the Code, it becomes clear that the police officer on examination of the person arrested on suspicion for commission of a cognisable offence, finds that there is no sufficient evidence or reasonable ground of suspicion to justify the sending up of accused to the Magistrate releases him taking a bond from him with or without sureties for his appearance before a Magistrate empowered to act on a police report under section 170 of the

Code. If, however, the police officer forwards an accused with a report before a Magistrate, the Magistrate shall determine, as he thinks fit, either to take no further steps or to take cognisance of the offence under section 190 (b) of the Code. If the police officer without order of a Magistrate, arrests a person and prays for remanding the arrestee such person has the constitutional right under Article 33 to consult a legal practitioner concerning his arrest. It is also clear that the arrested person has the constitutional right to be defended by a legal practitioner. Section 340 of the Code also provides that any person accused of any offence before any criminal Court may, as of right, be defended by a pleader. But, against what is he to be defended if the causes for such arrest are not reduced into writing? The word 'defended' clearly includes the exercise of the right so long as the effect of the arrest continues. Therefore, the registration of the case is *sine-qua-non* before making an order under section 167 of the Code by the Magistrate.

42. In the case of *Dr Mohiuddin Khan Alamgir vs Slate*, 7 BLC 249, it was observed that (a) alter deletion of the expressions "under this chapter" in sub-section ( I ) of section 167, the scope of subsection (1) in the exercise of powers by Magistrates has been "rendered much more wider"; (b) the expression "investigation" in section 4(1 ) is not confined to judicial proceeding, (c) whenever an investigation in respect of a person arrested under section 54 CrPC cannot be completed within twenty-four hours, the Magistrate can make an order for further investigation, (d) section 167 contemplates a remand during investigation of a case, while section 344 contemplates remand after initiation of the proceedings in the Court and (e) the Magistrate gives complete freedom to remand the accused to whatever custody he thinks who has even been arrested in pursuance of a General Diary Entry. These observations are made while disposing of a motion summarily without consideration of the relevant provisions of law as discussed above and, as such, the said decision is *per-incuriam*. We would only like to point out here that the expressions "under this chapter" in sub-section (1) of section 167 have been deleted by Act XVIII of 1923, following the decisions reported in 8 CWN 779, 13 CrLJ

65, 23 IC 496, 18 CrLJ 403, in which cases, some persons had been arrested by the police on the basis of warrants issued by the Magistrates under sections 107 and 112 of the Code and they were taken in judicial custody. The arrest had been made prior to the said amendment and the arrestees had challenged the authority of the Magistrates in remanding them in the judicial custody under section 167 in view of the expressions "under this Chapter" used in the section. The High Court quashed the orders of remand holding that the Magistrate had no power to remand the arrestees under section 167 of the Code.

43. In this case the police officer apprehended the detenus under section 54 of the Code and they were taken in the judicial custody and on the following day they were communicated with the orders of preventive detention. This has become a practice developed now-a-days. The Magistrates should not accede to the request of the police officers and they should not make themselves subservient to the police officer. In our view, this sort of exercise of abuse of power by the police officers can be checked to a great extent if the Magistrates are conscious of their statutory responsibility of doing justice in accordance with law. As observed above, an arrest of a person under section 54 of the Code can only be made by a police officer under the circumstances specified therein without an order of a Magistrate. Whereas, an order of detention is made it the authority `satisfied' that the detenu has acted or is acting or is about to act in prejudicial activities within the meaning of "prejudicial act" under the Special Powers Act. This 'satisfaction' as referred to is that of the authority and its satisfaction cannot be replaced by that of a police officer. This 'satisfaction' of the authority is subject to judicial review and this Court can look into this subjective satisfaction of the authority objectively. In respect of these detenus, the authority made the orders of detention, the moment the police officer made proposal for detention after arrest under section 54 of the Code. This shows that the report of the police officer replaced the "satisfaction" of the authority in making an order of detention. Therefore, it is beyond the scheme of the detention law that an order of detention can be

made in respect of a person on the basis of a report of the police officer after he was arrested under section 54 of the Code.

44. In the case of Mokbul Hossain vs Government of Bangladesh and others, 54 DLR 118 Md Hamidul Haque, J speaking for the Division Bench observed: "In any case, we cannot accept the argument of Mr Islam that the arrest was made only with a view to detaining him under section 3(2) of the Special Powers Act. We are, further of the view that after arresting a person under section 54 of the Code of Criminal Procedure, there is no bar that the same person cannot be detained under "preventive detention." However, in a subsequent decision of another Division Bench presided over by the said Judge on the said point in the case of BLAST, different views were expressed which appear to be in conformity with the law than the views expressed in the case of Mokbul Hossain. In the case of BLAST said Bench opined: "So, there is no doubt in our mind that a police officer cannot arrest a person under section 54 of the Code with a view to detaining him under section 3 of the Special Powers Act, 1974. Such arrest is neither lawful nor permissible under section 54."

45. Mr M Amirul Islam has taken us to the order sheet of the cases and submits that at no point of time the detenus were produced in Court when the prayers for remanding in custody showing, them arrested in different cases were made. They were totally denied of their right to consult and he defended by a legal practitioner of their choice. He contends that the actions of the police seeking remand in custody of the detenus showing them arrested in different cases are nothing but devices to detain the detenus with malafide intention of malafide object to frustrate the orders of this Court directing for release of the detenus from the orders of detention which are contrary to the fundamental rights guaranteed in Part 111 of the Constitution. He further contends that such repeated exercise of abusive power amounts to subjecting the liberty of the individual to a never-ending game of "snakes and ladders" which cannot satisfy the test of procedural and substantive rule of law nor the "due process". He further contends that the

## *Judgment*

orders of the Chief Metropolitan Magistrate allowing the prayers for showing the detenus arrested in all cases are not only mechanical but also colourable exercise of power which are liable to be quashed.

46. The learned Additional Attorney-General, on the other hand, submits that the police officer has inalienable right to apprehend a person under section 54 of the Code if such person has been concerned in any cognisable offence. He further contends that if his complicity in any case is detected in course of the investigation of the case the investigating officer has the power to implicate him in that case, which has been done in respect of these detenus, whose complicity have been revealed in course of investigations made by the investigating officers and accordingly, they were shown arrested in accordance with law. He further contends that the learned Magistrate having satisfied that the detenus have complicity in those cases, allowed the prayers in exercise of powers under section 167 of the Code, which cannot be said to be illegal nor unlawful. He further contends that section 167 of the Code enjoins a Magistrate to make orders on the basis of the prayers made by the investigating, officers and in support of his contention; he has referred a decision in the case of Aftabur Rahman @ Jongi vs State, 45 DLR 593.

47. From the order-sheet of the cases, we have noticed that detenus were not produced in Court when they were shown arrested in those cases. They were shown arrested in their absence merely on the basis of prayers made by the police officers without producing any papers in support of their complicity in those cases. The Magistrate passed order relying upon the forwarding reports stating that their complicity in those are being collected. There is no dispute that the learned Magistrate made those orders under section 167 of the Code and he authorised the detention of the detenus in the judicial custody in those cases. Such remand order should be made in presence of the accused in view of the expression "forwarded" used in sub-section (2) of section 167 of the Code. References in the connection may be made to the cases of Aftabur Rahman @ Jongi vs State, 45 DLR 593, Khandkar Mustaque Ahmed vs

Bangladesh, 34 DLR (AD) 222, Lakshmanrao vs Judicial Magistrate, 1st Class. Parivati Puram, AIR 1978 SC 186. Gouri Shankar Jira (Supra) and Natbor Parida and others (Supra). Under section 344 of the Code the Magistrate can make such order of remand in the absence of the accused and this can be done if the accused is seriously ill that the trial has to be adjourned and he cannot be produced in Court or in other circumstances to which it was impossible to expect the production of the accused in Court, the Magistrate may extend the order of remand of the accused without producing him in Court and such order will not be invalid. Reference in this connection may be made to the case of Raj Naravan vs Superintendent of Central Jail, AIR 1971 SC 178, the case of Lakshmanrao and the case of SK Dey. In the case of SK Dey (supra) it was observed:

"Orders of remand ought not to be passed mechanically and even though this Court has ruled that the non-production of the accused will not vitiate an order of remand, the Magistrate, passing an order of remand, ought, as far as possible, to see that the accused is produced in the Court when the order of remand is passed."

In the case of Gori Sharrkar Jha it was observed:

"The object of the section is two-fold, one that the law does not favour detention in police custody except in special cases and that also for reasons to be stated by the Magistrate in writing, and secondly, to enable such a person to make a representation before a Magistrate. In cases falling, under section 167, a Magistrate undoubtedly call order custody for a period at the most of 15 days in the whole and such custody can be either police or jail custody. Section 344, on the other hand, appears in Chapter XXIV, which deals with inquiries and trials. Further, the custody which it speaks of is not such custody as the magistrate thinks fit as in section 167 but only jail custody, the object being that once on inquiry or a trial begins it is not exceeding 15 days at a time provided that sufficient evidence has been collected to raise a suspicion that such an accused person may have committed an offence and it appears likely that further evidence may be obtained by granting a remand."

48. In respect of an accused person who has been shown arrested in a case while in custody on the prayer of the police officer, a Magistrate does not assume jurisdiction to pass such an order unless the accused is produced before him. In the case of *Aftabur Rahman @ Jongi*, this Court observed that the whole purpose of production of the accused is to make the accused aware of the charge levelled against him, the place, the period, the purpose of remand and to see the physical condition of the accused. Once it is shown that the arrest of the accused is illegal, it was necessary for the State to establish that at the time of remand the Magistrate directed the judicial remand of the accused after applying his mind to all relevant matters. Mr Md Fazlul Karim, J in the above reported case observed:

"Under section 167 CrPC an accused is to be forwarded to the Magistrate whether he is in police custody or in jail custody and any deviation against this clear intention is likely to create an impression that the Magistrate has made himself subservient to the police in utter disregard to the determination of the question of liberty of the citizens."

In *Khandker Mustaque Ahmed's* case, the Appellate Division observed:

"The requirement of the law is that the accused must be produced before a Magistrate after his arrest but the appellant was not produced before any Magistrate. Section 167 of the Code of Criminal Procedure was holding the field and the Regulation 2(a) was promulgated on 28-12-1976, that is after a month. Section 167 CrPC required the production of the accused before a Magistrate whether he has jurisdiction to try the case or not. This was to check any highhandedness in the executive and as *Khandker Mushtaque Ahmed* was not produced before any such Magistrate, the circumstance adds to the dimension of the contention that the arrest and subsequent proceeding was malafide."

49. In this particular case, we find that the Magistrate merely passed mechanical orders, which do not conform to minimum requirements of law. The orders of remand are not such as

would cure the constitutional infirmities. The consistent views of the Supreme Court of India, our Appellate Division and the High Court Division are that before making an order of remand either to the police custody or in the judicial custody, the accused must be produced before the Magistrate and unless the Magistrate is satisfied, the orders should be made judicially on examination of the entries in the case diary. The underlying principle is that every person is entitled to be informed as to what the state commands or forbids and that the life and liberty of a person cannot be put in peril on an ambiguity. However, even in the domain of criminal law, the processes which can result in the taking away of life itself, no more than a reasonable degree of certainty has to be accepted as a fact. Neither the criminal law nor the Constitution requires the application of impossible standards. The facts of the given case lead us to believe that the Magistracy should be free from actual or apparent interference or dependence upon the executive arm of Government. The independence of judiciary is the only solution to check this sort of abuse and in our view the *Masdar Hossain's* case should be implemented without any further delay. Section 54 is a powerful weapon in the hands of police officers empowering them to arrest a person without a warrant and they always transgress their jurisdiction. Section 167 should be read as supplementary to those contained in section 61 of the Code and this provision is intended for the protection of the accused against unnecessary harassment.

50. From the record we have noticed that the cases, in which the detenus were shown arrested had been instituted prior to their arrest and the investigation of those cases started long before their arrest. The investigating officers did not find complicity of the detenus till 27-3-2002, on which date, they were shown arrested in the first case. Thereafter they were shown arrested in successive cases one after another. The orders show that the learned Magistrate had performed routine works and he made orders without satisfying as to the complicity of the detenus in those cases and also without affording them any opportunity to know the accusations made against them. The Magistrate has concomitant

responsibility to check the abuse of power exercised by the law enforcing agencies. We would like to reiterate the views consistently held by this Court that those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law. Whenever that is not done, the detenus would be entitled to a Writ of Habeas Corpus directing their release. We find that the detenus were detained improperly, unjustly and without sanction of law. Similarly, the orders of the learned Chief Metropolitan Magistrate are arbitrary, tnalafide and without jurisdiction. The manner, in which the detenus have been implicated in those cases are deprecatory and cannot be countenanced. Accordingly, in exercise of suo moto powers under section 439 of the Code, we are inclined to interfere with those orders.

51. The protection of the citizens from abuse in the exercise of power by the law enforcing agencies is a matter of deep concern in a democratic society. It is even committed in the police lock-up. In the case of *DK Basu vs Stale of WB*, AIR 1997 SC 610, the Supreme Court of India directed all the States' Governments and the police authorities to follow some requirements in all cases of arrest or detention to check police abusive power till legal provisions are made in that behalf as preventive measures. In the similar line of directives given in the case of *DK Basu and Joginder Kumar* as quoted above, *Md Hamidul Haque, J*, in the case of *BLAST* has given some directives for compliance till the proposed recommended amendments of the relevant sections of the Code are made for the purpose of safeguarding the liberty and fundamental rights of the citizens. In the case of *DK Basu*, the directions were given in accordance with sections 41, 42, 43, 46, 49, 50, 53, 54, 56 and 57 of the Code of Criminal Procedure, as recodified in 1973 and Articles 21 and 22 of the Constitution. Sections 50, 53 and 54 are new provisions inserted in the Code providing the person arrested to be informed the grounds of arrest and of his right of bail and the examination of the arrestee by a medical practitioner at the request of the police officer and the arrested person. These provisions are made in conformity with the provisions of

Article 22(2) of the Constitution and as per recommendations of the Law Commission of India. Sections 41, 42, 43, 46, 49, 56 and 57 as recodified closely followed sections 23, 24, 27, 15, 19, 25 and 28 respectively of the Malaysian Criminal Procedure Code. There is no corresponding section in our Code similar to sections 50, 53 and 54 of the Indian Code.

52. The old order has changed yielding place to new, and we must have new need for the new hour. Our procedural law is more than a century old, this piece of legislation has stood the test of time and it is felt that necessary amendments are required to be introduced to this law to bring it in line with India and Malaysia. We are told that amendments to sections 54 and 167 of the Code are under implementation as per recommendation of the Law Commission. Before such change is made, the Legislature should consider whether a new section similar to section 50 of the Indian Code might be inserted which will bring the law in conformity with the provisions of Article 33(1) of the Constitution. This change in the provisions of the Code is necessary to remove anomalies and ambiguities, brought to light by the extensive amendments of, 1978. We cannot direct the Government to make necessary amendments of the relevant provisions of the Code without declaring the relevant provisions of the Code as unconstitutional. The provisions of the Code are applicable in this country over a century and after lapse of decades, it would he improper if we declare those provisions as unconstitutional without having a comprehensive revision of the entire Code.

53. In the case of *Narmada Bachao Andolan vs Union of India*, AIR 2000 SC 3751, similar views are expressed. The said views are approved in a recent case, *BALCO Employees Union (Reed) us Union of India*. 2001 AIR SCW 5135. In the earlier case it was observed:

"While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's

jurisdiction. At the same time, in exercise of its enormous power the Court should not be called upon to undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court would not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.”

54. This is why in the case of Secretary, Ministry of Finance vs Masdar Hossain 52 DLR (AD) 82, the Appellate Division declared the creation of BCS (judicial) cadre along with other BCS executive and administrative cadres by Bangladesh Civil Service (Reorganisation) Order 1980 with amendment of 1986 is ultra vires the Constitution." Accordingly, it was directed, among others, that "either by legislation or by framing Rules under Article 115 or by executive order having the force of Rules a judicial Services Commission be established forthwith with majority of members from senior judiciary...."

55. In the light of the above discussion, we are of the view that if the Magistrates perform their responsibilities within their judicially permissible limit the abuse of police power can be checked to a great extent. The Magistrate are required to see whether any unnecessary harassment is committed to the accused but unfortunately, sometimes they forget their responsibilities. It is the duty of the Magistrate to ensure that the right and the guarantee of a citizen under section 167 of the Code and Article

33 of the Constitution are not rendered illusory and meaningless. There are decisions on the point but the Magistrate ignores them. In order to overcome this eventuality and to check the abuses, we are of the view that some binding guidelines should be given to the law enforcing agencies and the Magistrates. In the case of BLAST some directions were given in this regard but, in our view, some further directions are required to be given for protecting liberty of the citizens from police excesses as noticed in these rules.

56. Therefore, in accordance with sections 54, 60, 61 and 167 of the Code and Article 33 of the Constitution, we give the following guidelines to be followed in all cases of arrest. We hope that these guidelines would eliminate harassment of citizens to a great extent. In the light of the above views, the following guidelines are issued:

- (i) The police officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such officer shall obtain the signature of the arrestee with the date and time of arrest in the said memorandum.
- (ii) The police officer who arrested the person must intimate to a nearest relative of the arrestee and in the absence of the relative, to a friend to be suggested by the arrestee, as soon as practicable but not later than 6(six) hours of such arrest notifying the time and place of arrest and the place of custody.
- (iii) An entry must be made in the diary as to the ground of arrest and name of the person who informed the police to arrest the person or made the complaint along with his address and shall also disclose the names and particulars of the relative or the friend, as the case may be, to whom information is given about the arrest and the particulars of the police officer in whose custody the arrestee is staying.
- (iv) Copies of all the documents including the memorandum of arrest, a copy of the information or complaint relating to the commission of cognisable offence and a copy of the entries in the diary should be sent to the

Magistrate at the time of production of the arrestee for making the order of the Magistrate under section 167 of the Code.

(v) If the arrested person is taken on police remand, he must be produced before the Magistrate after the expiry of the period of such remand and in no case he shall be sent to the judicial custody after the period of such remand without producing him before the Magistrate.

(vi) Registration of a case against the arrested person is sine-qua-non for seeking the detention of the arrestee either to the police custody or in the judicial custody under section 167(2) of the Code.

(vii) If a person is produced before a Magistrate with a prayer for his detention in any custody, without producing a copy of the entries in the diary as per item No. (iv) above, the Magistrate shall release him in accordance with section 169 of the Code on taking a bond from him.

(viii) If a police officer seeks an arrested person to be shown arrested in a particular case who is already in custody, the Magistrate shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case.

(ix) On the fulfilments of the above conditions, if the investigation of the case cannot be concluded within 15 days of the detention of the accused under section 167(2), the Magistrate having jurisdiction to take cognisance of the case or with the prior permission of the Judge or Tribunal having such power can send such accused person on remand under section 344 of the Code for a term not exceeding 15 days at a time.

(x) The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report discloses that the arrest has been made for the purpose of putting the arrestee in the preventive detention

(xi) It shall be the duty of the Magistrate, before whom the accused person is produced, to satisfy that these requirements have been complied with before making any order relating to such accused under section 167 of the Code.

57. The requirement Nos. (i), (ii), (iii), (iv), (v) and (vi) be forwarded to the Secretary, Ministry of Home Affairs and it shall be his obligation to circulate and get the same notified to every police station for compliance within 3 months from date. The requirements No. (v), (vii), (viii), (ix), (x) and (xi) be forwarded to all Chief Metropolitan Magistrates and District Magistrates and it shall be their obligation to circulate the same to every Metropolitan Magistrate and the Magistrates who are authorised to take cognisance of offence for compliance within 3(three) months from date. The Registrar, Supreme Court of Bangladesh is directed to circulate the requirements as per direction made above. It is hoped that these requirements would curb the abusive power of the police and harassment of citizens to be apprehended by the police. If the police officers and the Magistrates fail to comply with above requirements, within the prescribed time as fixed herein, they would be rendered liable to be punished for contempt of Court, if any application is made by the aggrieved person in this Court. The police officers and the Magistrates shall follow the requirements strictly so that no citizen is harassed nor his fundamental right guaranteed in part III of the Constitution at any event is curtailed.

In the result, these Rules are made absolute with the above observations. The orders dated 27-3-2002 in GR Case No. 343 of 2002 arising out of Ramna PS Case No. 26 dated 7-2-2002, the order dated 4-4-2002 in GR Case No. 2889 of 2001 arising out of Dhanmondi PS Case No. 71 dated 29-11-2001, the order dated 4-4-2002 in GR Case No. 57 of 2002 arising out of Ramna PS Case No. 57 dated 16-1-2002, the order dated 6-7-2002 in GR Case No. 762 of 2002 arising out of Demra PS Case No. 76 dated 22-2-2002, the order dated 7-8-2002 in GR Case No. 708 of 2002 arising out of Mohammadpur PS Case No. 38 dated 12-2-2002 and the order dated 13-8-2002 in GR Case No. 4730 of 2001 arising out of Tejgaon PS Case No. 98 dated 28-12-2001 are hereby set aside. The detenus are released of their bail bonds.

