



**Scope for Bail of the Convict-Appellant Sentenced to Death in Bangladesh**

**Black & White Law Issue**

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**Black & White Law Issue**

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## Scope for Bail of the Convict-Appellant Sentenced to Death in Bangladesh

### Background to the study

It has been a legal question for a long period of time that whether there is any scope in our jurisdiction to consider bail for the death sentenced convict-appellant. The practice is hopeless. Not a single positive instance has been found in independent Bangladesh on this issue.



Recently, in a media sensitive case death sentence was given to some convicts. For one of the convicts, we preferred criminal appeal before the High Court Division. We filed an application for bail in pending appeal. While hearing the memo of appeal for admission and stay of the realization of fine, we pleaded for hearing of the bail application but we faced a prompt legal challenge raised by the learned counsels of the State side that a death sentenced convict cannot be considered for bail. The prayer for bail on behalf of the convict-appellant and the State-side Counsel's vehement opposition to the bail prayer put the High Court Division under serious ponder.

This legal question is yet to be settled in Bangladesh which now has become a call of time to be addressed by the Higher Courts. There should not be anymore shut-down of the gate to entertain this prayer in fit cases. Though there is no law or judicial precedent debarring the High Court Division to grant bail to such convict-appellant during pendency of appeal in exercise of jurisdiction under Section 426 of the Code of Criminal Procedure, 1898 (shortly as 'the Code'); however, there is no precedent either of granting bail in such case.

**'Is there any scope in Bangladesh to grant bail to a convict-appellant sentenced to death'** - is the question to be explored in this research with references from India and Pakistan who almost share similar kinds of legal provisions to Bangladesh. The purpose of this write-up is to do advocacy in its favor by drawing the kind attention of the authority concerned having power and jurisdiction to do so.

## Introduction

Death sentence – a form of capital punishment is exercised in serious nature crimes. Life imprisonment is also one of the highest forms of punishment. These kinds of punishment and sentences are exercised in exceptional cases. However, cases, punishment of which are death sentence or life imprisonment are many in Bangladesh; few examples are: murder under Section 302 of Penal Code, 1860, dacoity with murder under Section 396 of Penal Code, 1860, murder for dowry under Section 11(Ka) of the Nari O Shishu Nirjatan Daman Ain, 2000, causing murder through acid under Section 4 of Acid Oporadh Daman Ain, 2002, and some other laws. The numbers of offences are also many in our country, which is unfortunate though. Death sentence takes away of life of an individual, and life imprisonment curtails freedom through the process of law though for his/her own fault.



However, it is the most severe form of punishment which should be given in extra-ordinary situation involving heinous offences<sup>1</sup> and the allegation meets with all proofs beyond reasonable doubt. But in our country, rates of these kinds of crimes are also alarming, which is perhaps still justifying of not abolishing death sentence from Bangladesh though she is a signatory of Rome Statute. Death sentence and life imprisonment are the ultimate punishments under law. And it is the general practice in our country that a convicted person with death penalty is not considered for bail though the sentence is not to be executed during pendency of appeal and death reference. The moot question is that whether there is any legal bar upon granting bail to the death penalized convict under legal provision of Bangladesh!

## Nature of bail

### Bail defined

Bail is not defined under any statute of Bangladesh. Bail is not defined under the Code and the dictionary as well as the Law Lexicon defines the same as security for the appearance of prisoner on giving which the accused is released pending trial or investigation.<sup>2</sup> The dictionary meaning of the word 'bail', is to set free or liberate a person arrested or imprisoned on taking security for his appearance.<sup>3</sup>

The word "bail" is derived from the old French verb "Baillier" which means "to give or deliver". The word is, also, related to Latin word "Bajulare" meaning "to bear a burden". "Bail" stated in

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<sup>1</sup> Section 4(1)(o) of the Code of Criminal Procedure, 1898 provides that "'offence" means any act or omission made punishable by any law for the time being in force".

<sup>2</sup> *Govind Prasad v The State of West Bengal* [1975] 79 CWN 474, CriLJ 1249, [1975] ILR 2 Cal 16.

<sup>3</sup> *Kali Dass v S.H.O. Police Station* [1979] Cr LJ 345.