

FEDERAL COURT CRIMINAL APPEAL 05(HC)–140–10–2024(D
Noor Kayes Hashim Ullah @ Noor Kayes Binti Hasimullah
v Timbalan Menteri Dalam Negeri, Malaysia

- (1) This application for *habeas corpus* is made pursuant, *inter alia*, to **Article 5(2) of the Federal Constitution** and **section 365 of the Criminal Procedure Code**.
- (2) This is our unanimous decision. We order that *habeas corpus* be issued for the following reasons:-
 - (i.) The court in hearing a *habeas corpus* application has a duty of inquiry which is heightened due to its constitutionally mandated nature and the present subject matter of personal liberty. Relatedly, the court has a duty not to condone illegality where an applicant's personal liberty is implicated.
 - (ii.) There was insufficient consideration of the UNHCR's designation of the Appellant as a refugee at risk of serious human rights violations upon her return to her country of origin as well as her possible status as a minor. This is particularly troublesome in light of the weighty nature of the UNHCR's evidence.
 - (iii.) The detention violates **section 34 of the Immigration Act**, which permits detention only for the period '*necessary for the purpose of making arrangements for [the detainee's] removal*'. The detention in the present case goes far beyond what is necessary to achieve this purpose.
 - (iv.) Further, the detention violates the constitutionally enshrined need for the detention to be '*in accordance with law*' and the attendant requirement that the detention be proportionate to its objective. In particular, the detention is disproportionate due to the objective of removing the appellant not actually existing and due to the excessive length of the detention.

(3) Keeping in mind the court's wide discretion to mould relief premised, *inter alia*, upon the **Federal Constitution**, the **Courts of Judicature Act 1964**, the relevant caselaw, and the Appellant's possible status as a minor, we also grant the following orders:

- (i.) An order of habeas corpus to issue;
- (ii.) An order that the Appellant not be rearrested and detained immediately upon release on the grounds that she is to be deported, until a full consideration of the specific circumstances of her case is undertaken by the relevant authorities, meaning the Immigration Department as well as UNHCR.
- (iii.) To be clear, this does not exclude the Appellant from being detained for an entirely different reason, such as if she commits a theft. Further, this does not exclude her possible eventual detention, provided it is lawful in the manner stipulated above, once the Respondent has considered her case in full. The above order is not to be equated with a right to remain in the country.
- (iv.) An order that the Appellant should be placed in Yayasan Chow Kit or any equivalent shelter until full consideration of her case is complete.
- (v.) To produce the Appellant in this court by 12 pm tomorrow, i.e. 10 April 2025.
- (vi.) To invite UNHCR to attend.