

**Present:**

**Mr. Justice M. Enayetur Rahim**

**And**

**Mr. Justice Shahidul Karim**

**Criminal Miscellaneous Case No.3858 of 2017**

Fazlus Sobhan

----- Petitioner

**-Vs-**

The State and another

--- Opposite Parties

Mr. Rokanuddin Mahmud, Advocate with

Mr. Md. Harun-Ur-Rashid, Advocate

----For the Petitioner

Mr. Syed Mamun Mahbub, Advocate

---For the Anti-Corruption

Commission opposite party no.2

**Heard & Judgment on 31.05.2018**

**M. Enayetur Rahim, J:**

This Rule was issued calling upon the opposite parties to show cause as to why the accused petitioner should not be enlarged on bail in Motijheel Police Station Case No.39(09)2015 dated 21.09.2015 corresponding to ACC G.R. Case No.583 of 2015 under sections 409/109 of the Penal Code read with section 5(2) of the Prevention of Corruption Act,1947, now pending the in the Court of Chief Metropolitan Magistrate, Dhaka and/ or pass such other or further order or orders passed as to this Court may seem fit and proper.

Heard Mr. Rokanuddin Mahmud, the learned Advocate for the accused petitioner, perused the First Information Report and other materials placed before us.

Mr. Syed Mamun Mahbub, the learned Advocate for the opposite party Anti-Corruption Commission opposes the Rule.

It is alleged in the FIR that accused nos. 1 and 2, the Chairman and Managing Director of M/S Barsa Agro Industries Ltd. respectively, in between 28.06.2012 and 30.06.2015 managed to get a loan of Taka 44,31,68,000/- from Basic Bank, Principal Branch in an usual manner and ultimately they misappropriated the said money. The other accused named in the FIR including the present accused petitioner, who was the Chairman of 'প্রধান কার্যালয়ের খন যাচাই কমিটি ও ডিসবার্সমেন্ট কমিটি', actively aided the above accused persons to get the loan sanctioned as well as to misappropriate the loan money.

The accused petitioner was shown arrested in this case on 24.01.2016 and since then he is in jail hajat. The investigating agency till date did not file any report under section 173 of the Code of Criminal Procedure and the accused petitioner has submitted a supplementary affidavit to that effect.

Mr. Rokanuddin Mahmud, the learned Advocate for the accused petitioner has drawn our attention to a interview made by the Chairman, Anti Corruption Commission published in Dainik 'Prothom Alo' on 26.02.2018 wherein he has made the following statements with regard to the investigation of BASIC Bank loan scam cases:

“বেসিক ব্যাংকের তদন্তে সময় লাগবেঃ

এক প্রশ্নের জবাবে দুদক চেয়ারম্যান বলেন, বেসিক ব্যাংকের টাকাটা অনেকের হাত হয়ে বিভিন্ন স্তরে যেভাবে হাতবদল হয়েছে, সেটা খুঁজে বের করতে হবে। টাকাটা কোথায় গেছে, সেটা খুঁজে বের করার আগ পর্যন্ত কোনো চার্জশিট বা কোনো প্রতিবেদন দেওয়া হবে না। এটা বের করতে সময় লাগবে।” [underlines supplied]

In the event of delay in concluding the investigation of the BASIC Bank loan scam cases we directed the concerned investigating officers of the cases to appear before the court with relevant case documents and pursuant to that they have appeared before this court today following which we have heard some of them while they gave assurance that they would submit the charge sheet very soon.

Having considered the submissions of the learned Advocate for the accused petitioner that till date the investigating agency has failed to submit its report under section 173 of the Code of

Criminal Procedure though the FIR was lodged on 21.09.2015 and that the present accused was shown arrested in the case on 24.01.2016 and, that the accused petitioner has been languishing in jail *hajat* for more than 02(two) years without trial and, that in a similar nature of cases, the accused has been granted bail by this Bench and the said orders of bail have been maintained by the Appellate Division in several Criminal Leave Petitions and, that most of the FIR named accused are at large within the knowledge of the investigating agency, we are inclined to enlarge the accused petitioner on bail.

It would not be out of place to recall some of the observations which this Bench has made earlier on different occasions while dealing with Basic Bank loan scam cases.

**In Criminal Revision No.2582 of 2016, arising out of Paltan Police Station Case No.51 dated 23.09.2015, (The Chairman Durnity Daman Commission Vs. Md. Shajahan Ali and another)** this Division has observed:

“In view of the above assertions made in the FIR we are constrained to hold that *prima facie* the members of the board of directors, its Chairman and Managing

director of the Bank actively aided and facilitated the other accused in misappropriating the huge amount of public money and as such in the interest of fair investigation and justice they should be brought to book.

Thus, we direct the Anti Corruption Commission to bring the members of the board of directors, it's Chairman and Managing director, who approved the alleged loan despite the objection raised by the credit committee in sanctioning loan in favour of the lonees, to book. And also directed to complete the investigation within a period of 60(sixty) working days from the date of receipt of this order."

**In Criminal Miscellaneous Case No.10818 of 2017, arising out of Gulshan Police Station Case No.59 dated 23.09.2015, (Sipar Ahmed Vs. the State and another) it has been observed:**

"However, it is deplorable to note that no tangible action has yet been launched against the then Chairman of BASIC Bank namely, Sheikh Abdul Hye Bacchu and his other companions who were responsible for

looking after the affairs of the concerned bank in spite of making such direct allegation against them by a petty officer like the accused petitioner. As such, for the sake of fair play as well as for securing ends of justice we direct the Anti-Corruption Commission take appropriate measures to bring the real culprits to book who made a profitable bank into a losing concern."

**And in Criminal Miscellaneous Case No.26290 of 2017, arising out of Palton Model Police Station Case No.53 dated 23.09.2015, (Md. Salim Vs. The anti Corruption Commission) it has also been observed:**

"Thus, the conduct of Anti-Corruption Commission raises serious question as to its neutrality, fairness and sincerity in dealing with the Basic Bank loan scam."

Despite above observations of this court, we still do not find any tangible progress in the investigation of the cases regarding the loan scam of Basic Bank. Thus, we are constrained to hold that the Anti-Corruption Commission being a statutory body has utterly failed to comply with and to pay due regard to the observations made by

the Highest Court of the country which tantamount to demeaning and flouting the orders of the Court.

With the above notes, the Rule is made absolute.

Let accused petitioner **Fazlus Sobhan** be enlarged on bail in the above mentioned case on furnishing bail bond subject to the satisfaction of the learned **Chief Metropolitan Magistrate, Dhaka.**

However, the court below is at liberty to cancel the bail of the accused petitioner at any stage of the case, if he misuses the privilege of bail in any manner in accordance with law.

The accused petitioner will not be allowed to go abroad without the permission of the concerned Court.

Communicate the judgment and order to the court concerned as well the Chairman, Anti-Corruption Commission, Segunbagicha, Dhaka at once.

**Shahidul Karim, J:**

I agree.