

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTION)  
**CRIMINAL MISCELLANEOUS CASE NO. 19323 of 2020.**

IN THE MATTER OF:

An application for bail under section  
498 of the Code of Criminal Procedure.

-AND-

IN THE MATTER OF :

**Ramjan Dhali**

...Accused-Petitioner.

-Versus-

The State.

... Opposite party.

Mr. Md. Motaher Hossain, Senior  
Advocate with

Mr. Md. Billal Hossain Advocate

... For the Petitioner.

Mr. Apurba Kumar Bhattacharjee,  
D.A.G with

Mr. Md. Mizanur Rahman, A.A.G

...For the Opposite party.

**Judgment on: 30.03.2023**

Present:

Mr. Justice Md. Badruzzaman

And

Mr. Justice S.M Masud Hossain Dolon

**Md. Badruzzaman, J:**

On an application under section 498 of the Code of Criminal Procedure, this Rule was issued calling upon the opposite party to show cause as to why the accused-petitioner should not be enlarged on bail in Metro Sessions Case No. 10052 of 2021 corresponding to G.R. No. 192 of 2020 arising out of Khilgaon Police Station Case No. 69 dated 23.3.2020 under

sections 302 of the Penal Code, now pending before the learned Metropolitan Additional Sessions Judge, 2<sup>nd</sup> Court, Dhaka.

The prosecution case, in brief, is that informant Md. Ayub, brother of the victim, lodged FIR with Khilgaon Police Station implicating the accused petitioner alleging, inter alia, that the victim Amena was his sister who had a minor boy namely, Aminul Islam Nayan aged about 13 years and she was divorced by her husband, Kalam two and half month back and after divorce, she was residing with her minor son in a separate flat at 6<sup>th</sup> floor of 459/A, Road No. 09, Tilpara Khilgaon, Dhaka and she fell in love with the accused petitioner and on 21.3.2021 at 23.55 hours the accused petitioner came to his sister's flat and lodged there and on 22.3.2021 at 10.00 am said Nayan found his mother lying on the bed while the accused was playing with the mobile and he went outside the flat and while he was returning to the flat after playing at 13.00 hours he found the accused on the staircase who was hurriedly went away without responding his call and thereafter, the boy went inside the flat and found his mother lying on the floor and thereafter, he hurriedly informed the neighbours who rushed there and found the Amena died but they found no injury in the body. Being informed, the police came, prepared inquest of the deceased and sent the body to Dhaka Medical College Morgue for post mortem. The informant suspected that the accused might killed his sister by throttling. Thereafter, the present case was registered on 23.3.2020 at 8.45 hours against the accused-petitioner under section 302 of the Penal Code.

During investigation, the accused petitioner was arrested by police on 23.3.2020 and he was produced before the concerned Magistrate on 24.3.2020 for recording confessional statement and he made confession. After conclusion of investigation, the police submitted report being charge sheet No. 58 dated 28.1.2021 against the accused-petitioner under section 302 of the Penal Code. Being ready, the case was transferred to learned Metropolitan Additional Sessions Judge, 2<sup>nd</sup> Court, Dhaka for trial.

The accused petitioner made prayer for bail on several occasions but his prayer was rejected. His prayer for bail was lastly rejected on 13.1.2022 and thereafter, the accused petitioner has filed this application under section 498 of the Code of Criminal Procedure (the Cr.P.C) and obtained the instant Rule.

Mr. Md. Motaher Hossain, learned Senior Counsel appearing for the accused-petitioner by taking us to the FIR, charge sheet, post mortem report, inquest report, confessional statement of the accused and other documents mainly submits that the accused petitioner has falsely implicated in this case and the confession was extracted by police by torture and duress which was retracted by the accused-petitioner; that even if the confession is taken to be as voluntary and true, the accused had no intention or pre-plan to kill the victim lady and the occurrence took place on a sudden provocation; that though the charge sheet was submitted on 28.1.2021 and charge was framed on 13.1.2022 but the prosecution could not produce

any witness before the Court to prove the allegation and when the trial will be concluded is most uncertain but the accused petitioner has been in the jail since 23.3.2020; that due to his prolonged custody, his family members are starving for want of proper food and caring. Learned Advocate finally submits that, the accused petitioner is willing to pay Tk. 4,00,000/- for the maintenance of the minor child of the victim and in the meantime, he purchased a PAYMENT ORDER (being No. ABA 2918807 dated 9.3.2023 from Islami Bank Limited, Sadarghat Branch, Dhaka) in the name of Md. Nayan, minor son of victim and the accused petitioner will not demand the amount if, upon trial, he is acquitted from the charge.

Mr. Apurba Kumar Bhattacharjee, learned Deputy Attorney General appearing on behalf of the State opposes the Rule and submits that there is specific allegation in the FIR against the accused petitioner in the commission of murder of the victim and as such, he does not deserve the privilege of bail.

We have heard the learned Advocate for the accused-petitioner and the learned Deputy Attorney General and perused the FIR, charge sheet, inquest report, post mortem report, confession of the accused and other materials on record. As per FIR story, the victim Amena got married with one Kalam and Md. Nayan was born from their wedlock. The victim was divorced three months from the date of occurrence and thereafter, she was living in a separate flat with his minor son, then aged about 13 years. Allegedly she had love affairs with the accused-petitioner and after divorce the accused-petitioner

frequently cohabited with the victim and it is suspected that he killed her on 22.3.2020. Admittedly, there is no eye witness of the occurrence and the whole prosecution case depends on the confessional statement of the accused and circumstantial evidence. In his confession, the accused petitioner stated that he was a married man having two children and he had love affairs with the victim for two and half months and on the date of occurrence she forced him to marry her and there was an altercation and scuffling between them and at that stage he pressed her mouth by a pillow and suddenly, the victim died. Initially, the Forensic Doctor, after holding post mortem, could not detect the cause of death and after receiving the chemical analysis report opined that “ the death was due to asphyxia as a result of throttling and smothering”. The confessional statement suggests that there was no pre-plan or premeditation to kill the victim. In such situation, whether the accused petitioner was responsible for the commission of murder of the victim as per FIR version is a factor to be decided during trial upon taking evidence; but the prosecution could not adduce any evidence to support its case. Thus, it appears that the conclusion of trial of the case has become most uncertain. The accused petitioner has been suffering in the jail hajat since 23.3.2020 without knowing when the trial of the case will be concluded. It could not be explained from the prosecution as to why the trial of the case could not be concluded during such a long period.

Section 339C(2) of the Cr.P.C stipulates that a Sessions Judge, an Additional Sessions Judge or Assistant Sessions Judge shall conclude the trial of a case within three hundred and sixty days from the date on which the case is received by him for trial. Section 339C(4) of the Code also provides that if a trial cannot be concluded within the said specified time, the accused of a non-bailable offence may be released on bail. Moreover, it is settled principle that an accused cannot be detained in jail for an indefinite period without any trial.

In this case, more than three hundred and sixty working days have elapsed from the date of receipt of the case by the trial Court. The accused petitioner has been in custody for more than 3 (three) years and inevitably, the conclusion of the trial of the case is going to be delayed. Considering the long custody of the accused petitioner and the uncertainty of the conclusion of the trial, we are of the view that the accused petitioner should get the benefit of section 339C (4) of the Cr.P.C in getting bail.

Moreover, the accused petitioner is willing to pay Tk. 4,00,000/- to the minor child of the victim namely, Md. Nayan for his wellbeing and in the meantime, he purchased a PAYMENT ORDER (being No. ABA 2918807 dated 9.3.2023) from Islami Bank Limited, Sadarghat Branch, Dhaka in the name of Md. Nayan and the learned Advocate for the accused petitioner undertakes that the accused-petitioner will not claim the money if, upon trial, he is acquitted from the charge.

It appears from record that after divorce, the minor child was residing with his mother until her death. Considering the

wellbeing of the child we accept the proposal of the accused-petitioner.

Considering the facts and circumstances of the case we are inclined to enlarge the accused petitioner to go on bail till conclusion of trial.

In the result, the Rule is made absolute.

Let the accused-petitioner Romjan Dhali son of Siraj Dhali be enlarged on bail in the aforesaid case on furnishing bail bonds to be furnished to the satisfaction of the learned Metropolitan Additional Sessions Judge, 2<sup>nd</sup> Court, Dhaka till conclusion of trial of the case.

The Court below, however, would be at liberty to cancel his bail in the event of misuse of the privilege of bail.

It is also directed as follows:

- i. Mr. Md. Mizanur Rahman, learned Assistant Attorney General is appointed as *guardian ad litem* (GAL) of the minor boy Md. Nayan son of Md. Kalam.
- ii. The GAL will deposit the PAYMENT ORDER amounting to Tk. 4,00,000/- (being No. ABA 2918807 dated 9.3.2023 of Islami Bank Limited, Sadarghat Branch, Dhaka) for encashment by opening a savings account in the name of Md. Nayan in Sonali Bank Limited, Supreme Court Branch and he will operate the account on behalf of the account holder, invest the amount in a profitable fixed deposit scheme for 3 (three) years

and after maturity, the account holder Md. Nayan himself will receive the amount with all interests.

- iii. The concerned Branch Manager of Sonali Bank Limited, Supreme Court Branch is directed to cooperate the GAL in doing his business, as stated above.
- iv. Payment of Tk. 4,00,000/- by the accused petitioner to Md. Nayan will not affect the merit of the case in any way.
- v. The accused-petitioner will not claim the amount paid by him if, upon trial, he is acquitted from the charge.

Communicate this judgment to the Court below and Manager, Sonali Bank Limited, Supreme Court Branch at once.

**(S.M Masud Hossain Dolon, J)**

**I agree**