

Present

Mr. Justice Md. Rezaul Hasan

And

Mrs. Justice Fahmida Quader.

Criminal Misc. Case No. 26531 of 2023.

Md. Arafat Hossain.

.....Accused-petitioner.

-Versus-

The State..... Opposite-party.

Mrs. Hamida Chowdhury, Advocate

.....for the petitioner.

Mr. A.KM Amin Uddin, D.A.G.

Mr. Md. Shahabuddin Ahammad, A.A.G.

Mr. Md. Mujibur Rahman, A.A.G

Mr. Md. Shaifour Rahman Siddique, A.A.G.

....For the State.

**Heard on 16.01.2024 and
judgment on 18.01.2024.****Md. Rezaul Hasan, J.**

Let the supplementary affidavit do form part of the substantive petitioner.

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 G.R. Case No. 515 of 2022, arising out of Banani Police Station Case No. 03 dated 02.12.2022, under sections 8/9(3) of the Santrash Birodhi Ain, 2009 (as amended 2013), now pending in the

Court of Chief Metropolitan Magistrate, Dhaka, and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The prosecution case, in brief, is that, one Md. Anowar Hossain, RAB-3, CPC-2, Mogbazar, Dhaka, as informant, lodged an F.I.R. on 02.12.2022 with the Banani Police Station, alleging *inter alia* that, on 01.12.2022, at about 7.10 hours, had received a secret information that some members of the banded Jamatul Ansar Fil Hil Al Sharqiya had assembled near TB Gate, at Mohakhali area, under Banani Police Station. Accordingly, he and other members of his team had proceeded towards the spot and, at about 9.15 a.m., they found this accused-petitioner and other members of the banded 'Jamatul Ansar Fil Hil Al Sharqiya' at the said spot. Then, having seen the law enforcing agency, the accused-petitioner and other suspects tried to flee away. However, they were able to arrest Md. Arafat Hossain. The police have seized from him an old tropical green colour Redmi Note 9 Pro Android Mobile Phone and two sim-cards No. 01770-195692 and 01859-167580 and his passport No. A03224184, from a bag carried on his back.

The accused-petitioner was taken on remand for two days, however, nothing could be extracted from him, nor he has made any confessional statement under section 164 of the Code of Criminal Procedure.

3. Learned Advocate Mrs. Hamida Chowdhury appeared on behalf of the accused-petitioner. Having drawn out attention to the materials on record, she first of all submits that, the accused-petitioner is innocent and nothing was recovered from him to substantiate the allegations made in the F.I.R. She next submits that, the Mobile Phone, Sim-cards have nothing to with the alleged offence. Moreover, she also submits that, the petitioner was taken on remand for two days, but the prosecution could get nothing to connect him with any offence. Besides, in the police forwarding report dated 14.12.2022, no other allegation could be recorded against him, she also adds. She then points out that, another Bench of the High Court Division, by an order dated 29.08.2023, had directed the police to submit the police report preferably within 2(two) months. The said period has expired long before, but the investigating officer could not submit any report. Thereafter, this matter was heard afresh

and was fixed on 29.11.2023 for judgment before this Bench, but on that date, on the prayer of the State, this matter was withdrawn from delivery of judgment and was fixed after vacation on 08.01.2024, for further hearing and to felicitate submitting a police report by that date. But, the police could not submit any report, as yet, by completing the investigation, and this Bench had again fixed the next date on 14.02.2024 for police report, but no report could be submitted by police, inspite of extension of time repeatedly. She also submits that, it is uncertain as to when the investigation will be completed and the petitioner cannot be made to suffer for no fault of the accused. She prayed for making the Rule absolute.

4. Learned D.A.G. Mr. AKM Amin Uddin opposes the prayer for bail submitting that, this accused is a member of banded Jamatul Ansar Fil Hil Al Sharqiya, who is a threat to the public safety and security. He also submits that, in the police forwarding it has been stated that important information was received from the petitioner and his custody is not long. Therefore, he vehemently opposes the prayer for bail.

5. We have heard the learned Advocate for the accused-petitioner, the learned D.A.G. and perused the materials on record.
6. We find that, nothing was recovered from him, by the police, to substantiate the allegations made in the F.I.R. The Mobile Phone, sim-card and the passport are not banned items and nothing was found to show complicity of this accused with any other offence, whatsoever, or with the act of terrorism.
7. The police could not submit any report by completing their investigation, though the time to submit the report was extended more than twice. Hence, it is uncertain as to when the investigation will be completed and the petitioner cannot be made suffer for no fault of him.
8. We are of the view that, an application for bail in an allegation of this kind always demands extra care, whether it comes for consideration at the stage of investigation, inquiry or trial.
9. Here, sub-section (2) of section 497 provides clear guidelines in considering a petition for bail at the stage of investigation, inquiry or trial.

Sub-section (2) of section 497 reads as follows:-

“497(1).....

...

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, 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, the accused shall, pending such inquiry, be released on bail, or, at the direction of such officer of Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided” (emphasis added).

10. From the materials on record, it appears to us that, there are no reasonable grounds for believing that the petitioner has committed the offences he is accused of.
11. **In view of the provisions of sub-section (2) of section 497 of the Code of Criminal Procedure, 1898, the nature or the heinousness of an offence alleged is not relevant for considering a bail petition by a court. It is, rather, the ‘reasonable grounds for believing’ as to whether the accused has committed a non-bailable offence, is all, that should matter with the court in deciding a petition for bail.**
12. **If the court does not have any reasonable ground to believe that the accused-petitioner has committed the**

offence alleged, then it should not withhold the bail, simply because the case requires further enquiry or investigation.

- 13. It is also relevant to record here that, the court has an onerous duty to strike a balance between the accused's fundamental right of personal liberty, guaranteed by Article 32 of the Constitution, and the interest of the 'Government' in maintaining internal security of the State. However, in respect of the habitual offenders or criminals with the track record of committing crimes repeatedly after going on bail, the courts should be loath in considering their bail applications.**
- 14. Besides, it has to be kept in mind that, the considerations for bail under section 497 are different from those in pending appeals or in other post-conviction proceedings, while the considerations for anticipatory bail is wholly based on a separate jurisprudence.**
- 15. In the facts and circumstances of this case, the petitioner is entitled to get the benefit of doubt and is entitled to get bail on this ground alone.**

16. Hence, we consider this a fit case to exercise our discretionary jurisdiction in favour of the petitioner.

17. We find merit in this Rule and the same should be made absolute.

In the result, the Rule is made absolute.

Let the accused-petitioner Md. Arafat Hossain, son of Md. Arif Hossain, be enlarged on bail subject to satisfaction of the Chief Metropolitan Magistrate, Dhaka.

In case of any misuse, the Court below will be at liberty to cancel the bail assigning reasons thereto.

Communicate this order at once.

Fahmida Quader, J:

I agree.

Jashim:B.O.