

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

Mr. Justice Ashish Ranjan Das
And
Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 41806 of 2023

In the matter of:

An application under Section 498 of the Code of
Criminal Procedure

In the matter of:

Md. Badsha Mia alias Badshah

...Accused-Petitioner

-VERSUS-

The State

...Opposite Party

Ms. Aklima Parven, Advocate

...For the Petitioner

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Heard and Judgment on: 05.02.2024

Md. Riaz Uddin Khan, J:

On an application filed under Section 498 of the Code of Criminal Procedure rule was issued as to why the accused-petitioner should not be enlarged on bail in Sessions Trial Case No. 2024 of 2022 arising out of Cox's Bazar Model Police Station Case No.36 dated 17.09.2021 corresponding to G.R. Case No. 560 of 2021 under Table 10(Ga) of section 36(1)/38/41 of the Madok Drabya Niyontron Ain, 2018, now pending in the Court of Additional Sessions Judge, 2nd Court, Cox's Bazar and/or to

pass such other or further order or orders as to this Court may deem fit and appropriate.

Facts for disposal of the Rule is that one S.I. Md. Abu Sayed lodged the First Information Report (FIR) against 3 persons including the present petitioner alleging that acting on a tip off, the informant party after setup a check-post signaled a CNG to stop while three persons tried to escape whom they caught by chasing and on asking they admitted that they were carrying Yaba tablets and the informant party on searching recovered 52,000/ pieces of Yeaba tablets from the back of the passenger seat of the CNG and then after preparing a seizure list lodged the FIR.

The case was investigated by the Police and charge sheet was submitted on 22.01.2022 against the FIR named 3 accused-petitioners. In course of time the case was transmitted to the 2nd Court of Additional Sessions Judge for trial and on 25.09.2023 charge was framed against all the accused including the petitioner.

Ms. Aklima Parven, the learned Advocate for the accused-petitioner submits that the petitioner is a day-labourer who was traveling by the CNG allegedly where the yaba tablets were recovered. The petitioner had no knowledge or control over the said seized goods. She then submits that the petitioner is languishing in jail custody for about 2 ½ years. The petitioner has no the past criminal record. The petitioner is a law abiding

citizen of about 55 years of age having family and home at Cox's Bazar who is a poor day-labourer and in his absence his family members are in a miserable condition. He will not misuse the privilege of bail, if granted by this Court, the learned advocate submits.

On the other hand the learned Deputy Attorney General appearing for the State submits that huge quantity of Yaba tablets has been recovered from a CNG where the petitioner was present. Charge has been framed on 25.09.2023 and within a short period of time trial will be commenced and in such facts and circumstances he press for discharging the Rule.

We have heard the submissions of learned Advocates of both the parties, perused the application and materials on record available before us.

It appears that allegedly Yaba tablets were recovered from the back of the passenger seat of a CNG where 3 persons including the petitioner were present. The petitioner claimed that he was a mere passenger of the CNG having no knowledge, not to speak of control and possession over the recovered amount. Whether the petitioner had exclusive control or possession over the allegedly recovered yaba tablets is a matter of evidence to be proved by the prosecution at the time of trial. Be that as it may, no witness has yet been examined, the petitioner is in incarceration for about 2 ½ years

as under trial prisoner and the PCPR of the petitioner is nil.

In such view of the matter, we are inclined to enlarge the accused-petitioner on bail.

In the result, the Rule is made **absolute**.

Let the accused-petitioner **Md. Badsha Mia alias Badshah son of late Gura Miah** be enlarged on bail in Sessions Trial Case No. 2024 of 2022 arising out of Cox's Bazar Model Police Station Case No.36 dated 17.09.2021 corresponding to G.R. Case No. 560 of 2021 under Table 10(Ga) of section 36(1)/38/41 of the Madok Drabya Niyontron Ain, 2018, till conclusion of the trial on furnishing bail bond subject to the satisfaction of the trial court before whom the case is now pending.

However, the Court below is at liberty to cancel the bail of the accused-petitioner **following the due process of law, if he misuses its privilege.**

Communicate the Judgment and order at once.

Ashish Ranjan Das, J:

I agree.