

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

Present:

**Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice Kazi Ebadoth Hossain**

Criminal Miscellaneous Case No.61472 of 2023

Shanur Mia

..... Accused-Petitioner.

-Versus-

The State

..... Opposite party.

Mr. Md. Mahbub Ali, Senior Advocate with

Mr. Shyam Sundor Sinha, Advocate

..... For the Accused-petitioner.

Mr. Md. Saiefuddin Khaled, D.A.G with

Mr. Md. Asaduzzaman, A.A.G with

Mrs. Afifa Begum Swapna, A.A.G and

Mr. Sarwar Akhtar Masud, A.A.G,

..... For the State-opposite-party.

Heard and Judgment on: 25.02.2024.

Md. Nazrul Islam Talukder, J:

On an application under Section 498 of the Code of Criminal Procedure, this Rule, at the instance of the accused-petitioner, was issued calling upon the opposite-parties to show cause as to

why the accused-petitioner should not be enlarged on bail in G.R No.199 of 2023 (Kulaura) corresponding to Kulaura Police Station Case No.19 dated 24.07.2023 under Sections 143 / 326 / 307 / 302 / 34 of the Penal Code, 1860, now pending in the Court of learned Chief Judicial Magistrate, Moulvibazar and/or pass such other or further order or orders should not pass as to this Court may seem fit and proper.

The prosecution case, in a nutshell, is that one Suhel Ahmed being informant lodged an FIR on 24.07.2023 with O.C Kulaura Police Station against 7 accused alleging, inter-alia, that on 23.07.2023 at about 11.00 am, the miscreants entered his house and attacked his brother and other witnesses; the accused No.1 dealt sharp dao blow indiscriminately

on his brother namely Rubel Ahmed's left shoulder; accused No.2 also dealt ram dao blows on the victim's abdomen; accused Nos.3 and 4 dealt dao blows on the victim's right knee of the leg; accused No.6 dealt ram dao blow on the middle of the head; the injured persons were taken to Thana Health Complex, Kulaura where victim Rubel Ahmed succumbed to his injuries, which gave rise to Kulaura Police Station Case No.19 dated 24.07.2023 under Sections 143/326/302/34 of the Penal Code. Hence, the F.I.R.

The investigation of the case is underway.

The accused-petitioner was rounded up by the police on 24.7.2023 and since that time he is in jail custody.

During pendency of the case, the accused-petitioner submitted an application for bail before the learned Sessions Judge who upon hearing the parties rejected the application for bail.

Being aggrieved by the same, the accused-petitioner approached this court with an application for bail under Section 498 of the Code of Criminal Procedure and obtained this Rule.

At the very outset, Mr. Md. Mahbub Ali, the learned Senior Advocate taking us through the FIR and other prosecution materials on record very emphatically submits that the victim actually died out of the blows and inflictions of ram dao made by FIR named accused No.2 and that though the allegation against the accused-petitioner is that he inflicted ram dao blows on the head of the victim

but the same is not supported and corroborated by the post mortem report and under such circumstances, the accused-petitioner may be enlarged on bail.

Mr. Md. Mahbub Ali, the learned Advocate for the accused-petitioner with reference to post mortem report has pointed out that as per F.I.R story the present accused-petitioner inflicted ram dao blow on the middle place of the head of the victim but it appears from the post mortem report that the victim received lacerated wound on occipital region of scalp measuring 3 cm × 0.5 cm × 0.5 cm, upto muscle and no sharp cutting injury was found on the head of the victim though it is stated in the F.I.R that the present accused-petitioner inflicted ram dao blow on the middle place of the head of the victim

which tends to show that the occurrence as disclosed in the F.I.R has not happened in the way that has been narrated in the F.I.R and that being the reason, the accused-petitioner may be enlarged on bail.

He then submits that the informant is not the eye witness of the occurrence rather he lodged the FIR hearing from other persons and that there are many disputes between the parties originated from land dispute which is evident from the FIR itself and on that landscape, the accused-petitioner may be enlarged on bail.

He vigorously submits that, the 02 (two) co-accused namely 1) Abdus Salam and 2) Abdul Mannan had been enlarged on bail by this court in Criminal Miscellaneous Case No.9146 of 2024 and

that the present accused-petitioner remaining on similar footing may be enlarged on bail.

He candidly submits that the investigation of the case is under way and that if the accused-petitioner is enlarged on bail, the accused-petitioner being law abiding citizen will not abscond or tamper with any evidence and materials of the prosecution and he is ready to provide all sorts of assistance and co-operation to the investigating agencies if required and in that view of the mater, the accused-petitioner may be enlarged on bail.

Mr. Md. Saiefuddin Khaled, the learned Deputy Attorney-General appearing for the State very strongly opposes the prayer for enlarging the accused-petitioner on bail and submits that the accused-petitioner is involved in the commission of

murder by inflicting ram dao blows on the scalp of the victim so considering the gravity of the offence, this accused-petitioner should not be enlarged on bail.

He next submits that the investigation of the case is under way and if the accused-petitioner is enlarged on bail at this moment, there is a huge chance to tamper with the evidence and other materials of the prosecution to be collected by the police and hence the accused-petitioner should be kept in custody until the investigation report is submitted.

We have gone through the application for bail and perused the prosecution materials annexed therewith. We have also heard the learned advocates

for the respective parties and considered their submissions to the best of our wit and wisdom.

As per submissions of the learned Advocate for the accused-petitioner, the victim actually died out of the blows and inflictions of ram dao made by FIR named accused No.2 and that though the allegation against the accused-petitioner is that he inflicted ram dao blows on the head of the victims but the same is not supported and corroborated by the post mortem report. As per F.I.R story, the present accused-petitioner inflicted ram dao blow on the middle place of the head of the victim but it appears from the post mortem report that the victim received lacerated wound on occipital region of scalp measuring 3 cm × 0.5 cm × 0.5 cm, upto muscle and no sharp cutting injury was found on the head of the victim though it is stated in the F.I.R that the present

accused-petitioner inflicted ram dao blow on the middle place of the head of the victim which tends to show that the occurrence as disclosed in the F.I.R has not happened in the way that has been narrated in the F.I.R. The record of the case also shows that the informant is not the eye witness of the occurrence rather he lodged the FIR hearing from other persons and that there are many disputes between the parties originated from land dispute which is evident from the FIR itself. It is noteworthy to mention that the 02 (two) co-accused namely 1) Abdus Salam and 2) Abdul Mannan had been enlarged on bail by this court in Criminal Miscellaneous Case No.9146 of 2024. It is submitted that the investigation of the case is under way and that if the accused-petitioner is enlarged on bail, the accused-petitioner being law abiding citizen

will not abscond or tamper with any evidence and materials of the prosecution and he is ready to provide all sorts of assistance and co-operation to the investigating agencies if required. Furthermore, It will take a long time to conclude the trial of the case following the investigation report if any.

Having considered all the facts and circumstances of the case, and the submissions advanced by the respective parties, we find merit in this Rule and accordingly, we are inclined to enlarge the accused-petitioner on bail making the Rule absolute.

Consequently, the Rule is made absolute.

In consequence thereof, let the accused petitioner **Shanur Mia son of late Hekim Mia** be enlarged on bail in above mentioned case till

conclusion of trial of the case if any following the investigation if any on furnishing adequate bail bond to the satisfaction of the learned Chief Judicial Magistrate, Moulvibazar.

However, the learned judge of the court below shall be at liberty to cancel the bail of the accused-petitioner if he misuses the privilege of bail in any manner.

The accused-petitioner is directed to provide all sorts of co-operation and assistance to the Investigating Officer if required and he is also directed not to leave the country without the permission of the learned Judge of the concerned court below.

Let a copy of this judgment and order be communicated to the learned judge of the concerned court below, forthwith.

Kazi Ebadoth Hossain, J:

I agree