

**IN THE SUPREME COURT OF BANGLADESH  
APPELLATE DIVISION**

**Present:**

Mr. Justice Obaidul Hassan, *Chief Justice*

Mr. Justice M. Enayetur Rahim

Mr. Justice Md. Abu Zafor Siddique

**CRIMINAL PETITION FOR LEAVE TO APPEAL NO.2835 OF 2023**

*(From the order dated 08.11.2023 passed by the High Court Division in Criminal Miscellaneous Case No.64691 of 2023)*

The State .....**Petitioner**

**-Versus-**

Zainul Abedin @ Advocate Zainul Abedin .....**Respondents**  
and another

For the petitioner : Mr. A.M. Amin Uddin, Attorney General, with  
Mr. Mohammad Saiful Islam, Assistant  
Attorney General, instructed by Mr. Md. Helal  
Amin, Advocate-on-Record.

For respondent : Mr. Sagir Hossain, Advocate, instructed by Mr.  
No.1 Md. Zahirul Islam, Advocate-on-Record.

For respondent : Not represented.  
No.2

**Date of hearing : The 06<sup>th</sup> day of March, 2024.**

**ORDER**

The petitioner has filed the instant Criminal Petition for Leave to Appeal against the impugned order dated 08.11.2023 passed by the High Court Division in Criminal Miscellaneous Case No.64691 of 2023.

It appears from the order dated 08.11.2023 passed by the High Court Division that the respondents have been enlarged on anticipatory bail till submission of the police report subject to furnishing bail bond to the satisfaction of the learned Chief Metropolitan Magistrate, Dhaka.

Mr. A.M. Amin Uddin, learned Attorney General appearing on behalf of the petitioner-State submits that the anticipatory bail granted by the High Court Division till filling of the police report is against the principle as enunciated in the case of Durnity Daman Commission and another vs. Dr. Khandaker Mosharraf Hossain and another reported in 66 DLR (AD) 92.

We have gone through the petition and the decision cited by the learned Attorney General reported in 66 DLR (AD) 92. We have also taken into consideration of the judgment and order given in the case of *State vs. Md. Kabir Biswas* reported in 75 DLR (AD) 60, wherein it has been held that *"It is pertinent to mention here that the latitude given to the High Court Division while exercising the discretionary power of granting anticipatory bail must be guided by the principles laid down by the Appellate Division. But the High Court Division passed the impugned orders overstepping its limits. We have given our anxious consideration to such unwarranted attitude of the High Court Division. Such derogatory trend of the High Court Division shall leave an adverse impression upon the criminal to get an upper hand through the hands of law. In such backdrop, our considered view is that the High Court Division and all other courts are bound to follow the law and propositions enunciated by this Division in the case of State vs. Professor Dr. Morshed Hasan Khan and others (supra). We also direct the High Court Division to refrain from unscrupulous exercise of the power of granting anticipatory bail."* and at the same time, we are not unaware about the decision given in the case of *State vs. Abdul Wahad Shah Chowdhury* reported in 51 DLR (AD)242. The principle as

enunciated in all the cases mentioned above is that the person/persons should not be allowed to remain on anticipatory bail for an indefinite period. Thus, the High Court Division failed to consider the principle as enunciated in the aforesaid decisions while enlarging the respondents on anticipatory bail till filing of the police report. Because sometime investigating agencies require more time to submit their report for the purpose of proper investigation. In the circumstances, the accused is not entitled to enjoy the privilege of anticipatory bail till filing of the police report. Considering the above, we are inclined to modify the order dated 08.11.2023 passed by the High Court Division.

Accordingly, the order dated 08.11.2023 passed by the High Court Division is modified as under:

“The respondents shall remain on bail for a period of 8(eight) weeks from date; and, thereafter, they shall surrender before the Court of Chief Metropolitan Magistrate, Dhaka and in case of surrender the concerned Court below shall consider the prayer for bail, if any, considering that they did not misuse the privilege of bail.”

With the above, the Criminal Petition for Leave to Appeal is **disposed of.**

C.J.

J.

J.