

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. 66181 of 2023**

**In the matter of:**

An application under Section 498 of the Code of  
Criminal Procedure

**In the matter of:**

**Md. Atahar Sarder and another**

... Accused-petitioners

-VERSUS-

The State

----- Opposite Party

Mr. Aviram Mallick, with  
Ms. Masuma Jamil, Advocates

--For the Petitioners

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: 04.02.2024**

**Md. Riaz Uddin Khan, J:**

On an application filed under Section 498 of the Code of Criminal Procedure rule was issued at the instance of the accused-petitioners as to why they shall not be enlarged on bail in Sessions Case No. 1404 of 2023 arising out of Shahjadpur Police Station Case No.38 dated 20.05.2023 corresponding to G.R. Case No. 211 of 2023 (Shah:) under sections 302 and 34 of the Penal Code, pending in the Court of Additional Sessions Judge,

3<sup>rd</sup> Court, Sirajgonj 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 Md. Nazrul Islam lodged the instant FIR alleging *inter alia* that the accused persons named in the FIR (including the present petitioners) in a pre-planned manner entering in the house of his sister Narju Khatun dragged her to a nearby field and killed her by stepping sharp cutting weapons at her stomach and throat. After the occurrence his nephew Sabuj Sardar (son of accused petitioner No.1) lodged an FIR before the Shahjadpur Police Station against 13 (thirteen) accused persons under section 302/34 of the Penal Code and after investigation, police submitted final report on the finding that though the facts are true but could not find the accused who have committed the murder. Thereafter the instant informant knowing from various sources and witnesses about the commission of murder by the instant FIR named accused lodged the present FIR.

The police arrested Md. Sarowar Hossain Prang @ Sanju Molla who appears to make a judicial confession before the learned Magistrate. After investigation police submitted charge sheet against the FIR named accused (including the present petitioners).

Mr. Aviram Mallick, the learned Advocate for the accused-petitioners at the very outset submits

that he does not want to press the Rule on behalf of accused-petitioner No. 1, Md. Atahar Sarder, son of late Ismail Sarder. Hence, the Rule is discharged as being non-prosecuted so far it relates to accused-petitioner No.1, Md. Atahar Sarder son of late Ismail Sarder.

The learned advocate then submits that earlier a case was filed wherein the name of the petitioner No.2 was not there and the police submitted final report. The instant FIR has been lodged long after 2½ years of occurrence. He further submits that the confessional statement of accused-petitioner No.2, Md. Sarowar Hossain Prang @ Sanju Molla, is exculpatory in nature wherein he mentioned that when accused Alim brought the deceased, this petitioner went a bit far away as he could not tolerate to see such killing. He did not actively take part in the commission of offence. The petitioner was arrested on 15.07.2022 and is in the custody for more than 1½ years. In such circumstance he prays for bail of the petitioner No.2.

The learned Deputy Attorney General appearing for the state opposes the rule on the ground that it is a case of murder and he made a confessional statement describing how the occurrence took place.

We have heard the submissions of learned Advocates of both the parties, perused the

application and materials on record available before us.

It appears from the confession of the petitioner No.2 that he stated that: “ঘটনার দিন আনুমানিক রাত ১১.০০-১১.৩০ ঘটিকার দিকে আমরা সবাই নারজুদের বাড়ির পূর্ব পাশে উপস্থিত হই। তখন আমীল নারজুকে বাড়ি থেকে ডেকে নিয়ে ঘটনাস্থলে আসে। ঘরের কোনায় একটি বাল্ব লাগানো ছিল। তার আলোতে আমি দেখি আলীম নারজুকে নিয়ে আসছে। তবে আমি এ হত্যাকাণ্ড নিজ চোখে দেখতে পারব না বলে ঘটনাস্থল হতে একটু দূরে সরে গিয়ে দাড়িয়ে থাকি। আনুমানিক ২০ মিনিট পর সবাই এসে আমাকে বলে যে কাজ হয়ে গেছে। তখন আমি ও আতাহার সোজা পথে ঢাকা না এসে ঘুরে পাবনা দিয়ে ঢাকা চলে আসি।”

It further appears that the petitioner No.2 was arrested on 15.07.2022 and since then is in prison for more than 1½ years. Charge sheet has been submitted on 20.05 2023 but yet to frame charge and it is uncertain when trial will be concluded. In such circumstances we are inclined to enlarge the petitioner No.2 on bail.

In the result, the Rule is made **absolute-in-part** so far it relates to petitioner No.2.

Let the accused-petitioner Md. Sarowar Hossain Prang @ Sanju Molla son of Md. Abdullah Molla be enlarged on bail in in Sessions Case No. 1404 of 2023 arising out of Shahjadpur Police Station Case No.38 dated 20.05.2023 corresponding to G.R. Case No. 211 of 2023 (Shah:) under sections 302 and 34 of the Penal Code, 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.