

Bench
Mr. Justice Bhishmadev Chakrabortty
and
Mr. Justice A.K.M. Zahirul Huq

Criminal Miscellaneous Case No.36779 of 2024

Didarul Islam accused-petitioner
-Versus-
The State opposite party

Mr. Shamsuddin Babul, Senior Advocate
with Mr. Kanai Lal Saha, Advocate
.... for the petitioner

Mr. Md. Hemaith Ullah, Deputy Attorney
General
.... for the opposite party

Judgment on 05.02.2025.

Bhishmadev Chakrabortty, J.

The Appellate Division has sent this matter to this Bench for speedy disposal.

In this Rule the opposite party was called upon to show cause as to why the accused-petitioner should not be enlarged on bail in Hatirjheel Police Station Case No.52 dated 27.03.2024 corresponding to GR No.138 of 2024 under sections 170, 406, 420 and 109 of the Penal Code now pending in the Court of Additional Chief Metropolitan Magistrate, Dhaka and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the Rule this Division granted *interim* bail to the petitioner till disposal of the Rule. Against the aforesaid *interim* order, the State went to the Appellate Division and the hon'ble Judge-in-Chamber stayed it. Subsequently, the Appellate Division disposed of Criminal Petition for Leave to Appeal No.1344 of 2024 and directed this Bench to dispose of the Rule on merit maintaining the order of stay passed by the hon'ble Judge-in-Chamber.

The material facts for disposal of the Rule, in brief, are that informant Md. Emad Uddin lodged a first information report (FIR) with Hatirjheel police station against 3 accused where this petitioner was made accused 2. In the FIR, the allegation has been brought against this petitioner that he along with other 2 accused jointly entrusted the informant of providing service for the post of Assistant Director of Bangladesh Bank for his daughter Aniza Kabir Nihan and sending the son Ahsan Kabir Anik to Australia and demanded Taka 25 lac and 20 lac respectively for the purposes. The informant agreed to pay Taka 43 lac. On different dates, he paid Taka 43 lac to the accused but subsequently he failed to provide service to daughter and sending his son abroad. In this way the

accused committed offence of criminal breach of trust and cheating. On the aforesaid allegation Hatirjheet Police Station Case No.52 dated 27.03.2024 under sections 170, 406, 420, 109 of the Penal Code was started against this petitioner and 2 others. The petitioner was arrested on 28.03.2024. He unsuccessfully moved for bail in the Courts below and thereafter, approached this Court below and obtained this Rule with an *interim* order of bail.

Mr. Shamsuddin Babul, learned Senior Advocate for the petitioner taking us through the materials on record submits that almost on the selfsame allegation Kishoreganj Sadar Police Station Case No.15 dated 07.06.2023 was started against this petitioner and accused 3 herein. One Md. Shafiqur Rahman lodged the aforesaid case under the selfsame sections who has been made accused 1 in this case. In that previous case, the petitioner obtained bail and police after investigation did not sent up therein accused 2 Taposhi Rabeya as accused. On *naraji* a further investigation was held where Taposhi was again not sent up. It is apparent in the FIR of this case and Annexure-E, that offence involved in both cases and allegations brought against this petitioner are almost same. This petitioner was

arrested on 28.03.2024 and since then he is in jail. Accused 1 and 3, the other 2 co-accused has already been granted bail and they are enjoy its privilege. In the premises above, this petitioner is also entitled to get bail in the aforesaid case. The Rule, therefore, would be made absolute.

Mr. Md. Hemaith Ullah, learned Deputy Attorney General, on the other hand opposes the Rule. Taking us through the materials on record he submits that the case filed in Kishoregonj Sadar police station are quite distinguishable to the present one. In the FIR, specific allegation against this petitioner of criminal breach of trust and cheating has been brought. This petitioner took money disclosing him as a Captain of Bangladesh Army for providing job to the daughter of the informant and sending his son abroad. The nature offence is very bad and as such he is not entitled to get bail in this case.

We have considered the submissions of the learned Advocate for the petitioner, the learned Deputy Attorney General, gone through the Rule petition and documents appended therewith. It appears that FIR of this case was lodged on 27.03.2024 showing the date of occurrence from 03.11.2022

to 24.05.2023. Accused 1 in this case as informant lodged the previous case with Kishoregonj Sadar police station against this petitioner and another. In the previous case offence of criminal breach of trust and cheating has been disclosed which is almost similar to the present case, although the time of occurrence has been shown on different dates. This petitioner obtained bail in the previous case and accused 2 of that case was not sent up as accused is the charge sheet. It further appears that other 2 co-accused in this case Md. Shafiqur Rahman and Taposhi Rabeya Bosri against whom specific allegation of criminal breach of trust and cheating has been brought have been granted bail and they are enjoying its privilege. The footing of those accused are almost similar to this petitioner. The petitioner is in jail for near about 11 months. The highest punishment provided in the sections of this case is 7 years. The police has not yet submitted the report. It is uncertain when the police would submit a report and trial would be commenced and concluded. It is now well settled by our apex Court that an accused shall not be detained in custody for indefinite period without holding trial.

In the premises above, we find merit in this Rule. Accordingly, the Rule is made absolute. The accused-petitioner

Didarul Islam, son of late Safur Uddin should be released on bail in the aforesaid case subject to the satisfaction of the Chief Metropolitan Magistrate, Dhaka.

However, the concerned Court will be at liberty to cancel the bail on any proven misuse.

Communicate this judgment and order to the Court concerned.

A.K.M. Zahirul Huq, J.

I agree.