

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

Present:

Mr Justice Md Atoar Rahman
and
Mr Justice Md Ali Reza

Criminal Miscellaneous Case No 8971 of 2025

Chandan Kumar Dhar alias Chinmoy Krishna Das
Brahmachari

.... petitioner

-versus-

The state

.... opposite party

Mr Zahirur Islam (ZI) Khan, advocate with
Mr Prabir Halder, advocate with
Mr Apurba Kumar Bhattacharjee, advocate

.... for the petitioner

Mr Aneek R Haque, Additional Attorney General
Mr Mohammed Abdul Baset, DAG
Mr Farid Uddin Khan, DAG

.... for the state

Heard and judgment on 30.04.2025

Md Atoar Rahman, J:

This rule was issued upon an application under section 498 of the Code of Criminal Procedure, 1898 calling upon the opposite party to show cause as to why the accused-petitioner Chandan Kumar Dhar @ Chinmoy Krishna Das Brahmachari should not be enlarged on bail in Kotwali Police Station Case No 52 dated 31.10.2024, corresponding

to GR No 462 of 2024 under sections 120B/124A/153A/109/34 of the Penal Code, now pending in the Court of Chief Metropolitan Magistrate, Chattogram, and/or pass such other or further order(s) as to this court may seem fit and proper.

The relevant facts are that one Md Firoz Khan as an informant lodged a first information report (FIR) with the Kotwali Police Station, Chattogram Metropolitan Police (CMP) on 31.10.2024 against the accused-petitioner and other eighteen persons and 15/20 unknown persons under sections 120B/124A/153A/109/34 of the Penal Code alleging *inter alia* that after the mass uprising in Bangladesh on 05.08.2024, an anti-discrimination group of activists hoisted the National Flag of Bangladesh on a pillar located at the Zero Point near New Market Intersection under Kotwali Police Station, CMP. The National Flag was remained hoisted there till the date of occurrence. On 25.10.2024 at about 3:00 pm a rally was organized by the Bangladesh Sanatan Jagaran Mancha, held at Laldighi Maidan under the same police station and thousands of people gathered thereto. At about 4:10 pm on the same day at the instigation of the accused-petitioner (accused No 1 in the FIR) and the co-accused numbers 2 to 9, the accused numbers 10 to 19 along with 15/20 unknown accomplices defying the sovereignty of Bangladesh hoisted a saffron-coloured

religious flag of International Society for Krishna Consciousness (ISKCON), a communal religious group, over the National Flag with a view to demean the same that had been previously hoisted by the anti-discrimination group of activists. Their act offended the sovereignty of Bangladesh. As a result, widespread anger and resentment arose among the general citizens of the country leading to community-based division in the society. Their action thus amounts to sedition and prompting enmity between different classes of the citizens punishable under the above law.

On the basis of the FIR, the above mentioned case was started and Sub-Inspector of police Mr Sajib Kumar Acharja has been assigned the task of investigation. The accused-petitioner was apprehended on 25.11.2024 and on the following day he was forwarded to the concerned magistrate who sent him to the jail custody. After rejection of prayer for bail by the learned Metropolitan Magistrate, Chattogram the accused-petitioner prayed for bail before the learned Metropolitan Sessions Judge, Chattogram who rejected the same by his order dated 02.01.2025.

Having been refused the accused-petitioner moved this division with an application under section 498 of the Code of Criminal Procedure and obtained the present rule.

Mr Zahirur Islam (ZI) Khan, Mr Prabir Halder and Mr Apurba Kumar Bhattacharjee learned counsels appearing on behalf of the accused-petitioner support of the rule.

Mr Apurba Kumar Bhattacharjee submits that the accused-petitioner is such a citizen of Bangladesh who is law-abiding as well as loyal, well-affected and respectful to the sovereignty, dignity and solemnity of Bangladesh and its National Flag. He is a hindu monk, former Organizing Secretary of the International Society for Krishna Consciousness (ISKCON), Chattogram Division and spokesperson of Bangladesh Sanatan Jagaran Mancha and Bangladesh Somnilito Sonatan Jagaran Jote. He is innocent and has not committed any offence as alleged. He has falsely been implicated in this case out of grudge and mala-fide intention. There is neither any evidence in support of hoisting religious flag above the National Flag of Bangladesh nor any such flag has been seized from the place of occurrence. When and how the accused-petitioner and eight others instigated the other co-accused persons to hoist the flag has not been mentioned in the FIR. It is also not clear in the FIR that if the religious flag was hoisted at 4:10 pm at the New Market Intersection, how the accused petitioner instigated the others to do the same while he was present at a rally venue at Laldighi Maidan, three kilometers away from

the alleged place of occurrence. Mr Bhattacharjee further submits that if the allegation is taken to be true, even then it may come under the act of violation of paragraph VII under rule 7 of the People's Republic of Bangladesh Flag Rules, 1972 which is punishable offence under Bangladesh National Anthem, Flag and Emblem Order, 1972 and highest sentence of such offence is punishable with imprisonment for a term of one year and the offence is bailable one. He vehemently submits that there is no ingredient of offence under section 120B or 124A or 153A of the Penal Code, but with an ulterior motive these sections have been inserted in the FIR only for the purpose of harassment of the accused-petitioner.

Mr Zahirul Islam (ZI) Khan submits that the accused-petitioner was arrested on 25.11.2024 and since then he has been languishing in the jail custody wherein he has also been suffering from long-term illness, including stomach disorder, cardiovascular disease, diabetes and respiratory problems. As such, he may kindly be enlarged on bail on humanitarian ground also.

Mr Aneek R Haque, the learned Additional Attorney General, along with Mr Mohammed Ali and Mr Farid Uddin Khan, learned Deputy Attorneys General, appearing on behalf of the state submits that ingredients of the offences especially of sedition and prompting

enmity between different classes of the citizens punishable under sections 124A and 153A respectively of the Penal Code are present in the FIR. It has clearly been stated in the FIR that at the instigation of the accused-petitioner and his other accomplices having party to a criminal conspiracy with a view to defying the sovereignty of Bangladesh demeaning the dignity of the National Flag of Bangladesh hoisted saffron-coloured religious flag of ISKCON, a communal religious group, over the National Flag and by doing that the accused persons not only committed an offence of sedition, but also committed an offence of prompting animosity between the classes of hindu-muslim citizens of Bangladesh. Without instigation of the accused-petitioner, a key person of ISKCON, other accused persons could not hoist its religious flag over the National Flag. Mr Haque further submits that the investigation of the case is properly going on and at this stage if the accused petitioner is released on bail he may either hamper the investigation, since he is a very influential person in his community, or leave the country with a view to escape the trial. Accordingly, he prays for discharging the rule.

We have heard the submissions of the learned counsels for the accused-petitioner and learned Additional Attorney General for the state and perused the record along with relevant papers.

It has been stated in the FIR that following the mass uprising in the country on 08.05.2024, the National Flag of Bangladesh was hoisted on a stand located at the Zero Point near New Market Intersection, Chattogram. On 25.10.2024 a rally, organized by the Bangladesh Sanatan Jagaran Mancha, was held at Laldighi Maidan in the afternoon. On that day at about 4:10 pm at the instigation of the accused-petitioner and eight others, some other co-accused persons for the purpose of demeaning the dignity and honour of the National Flag hoisted a saffron-coloured religious flag of ISKCON over it. The accused persons having party to a criminal conspiracy committed offences of sedition and promoting enmity between different classes of the citizens of Bangladesh.

There is no allegation in the FIR that the accused-petitioner himself hoisted the religious flag over the National Flag or he was present at the place of occurrence. It has been alleged that he along with others instigated the accused numbers 10 to 19 and some others to hoist their religious flag over the National Flag. But it is nowhere spelt out that where, when and how he instigated the other accused persons who allegedly demeaning the dignity of the National Flag hoisted the religious flag above it. The allegation brought against him in

respect of instigation may be determined by proper investigation, but presently it appears to be vague and indistinct.

Apart from this, in pursuance of paragraph VII under rule 7 of the People's Republic of Bangladesh Flag Rules, 1972 for maintaining dignity of the National Flag no other flag or colour shall be flown above it. In view of the provisions of article 4A of the Bangladesh National Anthem, Flag and Emblem Order, 1972 contravention of any provision of the People's Republic of Bangladesh Flag Rules, 1972 is punishable with imprisonment for a term which may extend to one year or with fine which may extend to taka five thousand, or with both. Demeaning the dignity of our National Flag hoisting any other flag or colour above it is obviously punishable offence which has clearly been specified as mentioned above.

Whether the accused-petitioner and others by hoisting the religious flag of ISKCON above the National Flag committed offences of sedition and promoted enmity between classes of the citizens can be ascertained by holding proper investigation and trial, but presently it appears that the allegation as brought against the accused-petitioner falls within the purview of paragraph VII under rule 7 of the People's Republic of Bangladesh Flag Rules, 1972, punishable under article 4A of the Bangladesh National Anthem, Flag and Emblem Order, 1972,

but does not fall under any other penal law, specially sedition under section 124A of the Penal Code.

It is pertinent to mention that albeit on 31.10.2024 the FIR was lodged and on 25.11.2024 the accused-petitioner was apprehended but by this long time there is no mentionable progress of the investigation.

In such view of the matter we find substance in the rule, and accordingly, we are inclined to enlarge the accused-petitioner on bail.

Resultantly, the rule is made absolute.

Let the accused-petitioner namely Chandan Kumar Dhar alias Chinmoy Krishna Das Brahmachari, son of Ashutosh Dhar and Sandhya Rani Dhar, be enlarged on bail subject to deposition of his passport to the learned Chief Metropolitan Magistrate, Chattogram and furnishing bail bond to his satisfaction.

The learned magistrate/judge of the court below is at liberty to cancel the bail of the accused-petitioner if he misuses the privilege of bail in any manner whatsoever.

Communicate this judgment and order at once.

Md Ali Reza, J:

I agree.