

Criminal Appeal No. 2401 of 2025

28.04.2025

Present:

Mr. Justice Md. Shohrwardi

Mr. Md. Ruhul Quddus, Senior Advocate with
Mr. Md. Akter Rasul, Advocate
....For the convict-appellant
Ms. Chowdhury Nasima, Advocate
....for the respondent No. 2 ACC
Mr. Sultan Mahmood Banna, AAG with
Mr. Md. Kaium. AAG
..... For the State

Let the records be called for.

This appeal will be heard and issue usual notices upon the respondents.

The preparation of the paper book is hereby dispensed with.

The realization of fine be stayed.

The learned Senior Advocate Mr. Md. Ruhul Quddus appearing on behalf of the appellant petitioner having placed the application for bail submits that the valid income amounting to Tk. 1,24,50,989 derived from fishery business found by P.Ws. 8 and 9 at the time of inquiry and admitted by P.W. 1 was not considered by the trial court. The trial court also did not consider the other legal income of the appellant petitioner mentioned in the income tax return and accepted by the income tax authority. He further submits that the income assessed by the income tax authority should not be re-opened by the Anti-Corruption Commission. He also submits that the appellant petitioner has been languishing in custody since 31.01.2025. He prayed for the bail of the appellant petitioner.

The learned Advocate Ms. Chowdhury Nasima appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that the appellant petitioner concealed total assets of Tk. 20,00,000 in his statement of assets and acquired total assets of Tk. 1,58,57,981 beyond his known source of income and the trial court considering the evidence legally passed the impugned judgment and order. She prayed for the rejecting the bail application.

I have considered the submission of the learned Senior Advocate Mr. Md. Ruhul Quddus who appeared on behalf of the appellant petitioner and the learned Advocate Ms. Chowdhury Nasima who appeared on behalf of respondent No.2, Anti-Corruption Commission, perused the evidence, the impugned judgment and order passed by the trial court, the application for bail and the records.

On perusal of the evidence, it appears that P.W. 8 Sheikh Nurul Islam stated that following the instruction of the authority, he visited the fishery of Arifuzzaman and the caretaker of the fishery informed him that Md. Mizanur Rahman is the owner of the fishery measuring an area of 80 bighas and accordingly, he submitted the inquiry report (exhibit-10). P.W. 9 Pabitro Kumar Das, Senior Upazilla Fishery Officer, Madhukhali, Faridpur stated that on 10.07.2019 following the letter issued by the Anti-Corruption Commission he along with the District Fishery Officer on 23.07.2019 visited the fishery situated at village- Luxmikhula of Paikgacha Thana and submitted report on 01.08.2019. P.W. 1 also admitted that during the investigation, he found the lease agreement executed between Arifuzzaman and the appellant petitioner. The evidence of P.Ws. 1, 8 and 9 depicts that the accused appellant petitioner Mohammad Mizanur Rahman had valid business of fishery on 80 bighas of land. It is found that the appellant petitioner filed an income tax return as a contractor which was also accepted by the income tax authority.

In the case of Hafiz Ibrahim vs the State reported in 7CLR 27 judgment dated 06.02.2018 considering the earlier decision made in the case of the State vs. Faisal Morshed Khan reported in 66 DLR(AD) 236 para 19 judgment dated 05.05.2014 the High Court Division has held that:

“There are so many businessmen and professionals who legally earn a lot of money, but do not show it in their tax files just to evade tax. Such evasion, if detected, he/she may be liable to be prosecuted under the penal provisions of the Income Tax Ordinance,

1984, but it does not constitute any offence of corruption or that under section 27 of Act V of 2004."

Considering the said decision this court in Criminal Appeal No. 8511 of 2019 in the case of A.K.M Alamgir Hossain vs the state and another has held that;

"Since the income tax return filed by the accused has been assessed and accepted by the income tax authority under the Income Tax Ordinance, 1984, if any evasion of tax is detected only the income tax authority is legally empowered to take action against the accused under the Income Tax Ordinance, 1984. The Anti-Corruption Commission is not legally empowered to raise any objection as regards the assets acquired by any private individual whose assets and income tax return has been assessed by the income tax authority."

The income and assets acquired by the appellant petitioner have been assessed and income tax was accepted by the income tax department without any objection. Considering the submission of the learned Advocates of both the parties, evidence, facts and circumstances of the case, judgments mentioned herein above and the custody of the appellant petitioner, I am of the view that ends of justice would be best served, if the appellant petitioner is enlarged on bail.

Let the convict-appellant Muhammad Mizanur Rahman son of late Muhammad Shamsur Rahman be enlarged on bail for 6(six) months from the date subject to the satisfaction of the Special Judge, Court No. 03, Dhaka.

