

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)**

Present:

Mr. Justice Md. Khairul Alam
And
Mr. Justice Md. Sagir Hossain

Criminal Miscellaneous Case No. 72112 of 2025.

Justice ABM Khairul Haque.

.....Petitioner.

-Versus-

The State.

..... Opposite party.

Mr. Mansurul Haque Chowdhury, with

Ms. Sara Hossain,

Mr. Sayed Ahmed Raza,

Mr. Md. Jahangir Hossain, Advocates

..... For the petitioner.

Ms. Nahid Hossain, with

Mr. Md. Akhtaruzzaman

Mr. Md. Zahirul Islam Sumon and

Mr. Abdullah Al Mahmud, DAGs

..... For the State.

Heard on : 04.03.2026 and

Judgment on: 08.03.2026.

Md. Khairul Alam, J:

This Rule was issued under section 498 of the Code of Criminal Procedure at the instance of the petitioner, Justice ABM Khairul Haque, calling upon the opposite party to show cause as to why the petitioner should not be enlarged on bail in Fatullah Police Station Case No. 25 dated 25.08.2024 corresponding to

G.R. Case No. 442 of 2024 under sections 124A/406/420/468/471 of the Penal Code, 1860, now pending in the Court of the learned Chief Judicial Magistrate, Cognizance Court (Fatullah), Narayangonj.

Relevant facts, as it transpired from the record, for the disposal of the Rule are that on 25.08.2024 one Md. Abdul Bari Bhuiyan, an Advocate and former President of the Narayangonj District Bar Association, lodged a First Information Report (F.I.R.) with Fatullah Police Station alleging, inter alia, that the present petitioner, while serving as the Chief Justice of Bangladesh, delivered a judgment declaring the Thirteenth Amendment to the Constitution ultra vires and thereby declaring the same void prospectively. Although a short order was passed on 10.05.2011, the detailed judgment was delivered after about 16 months and the said detailed judgment materially deviated from the short order earlier passed by the Court. According to the informant, such alleged deviation was made with mala fide intention and corrupt motive, which, according to him, tantamounts to sedition, criminal breach of trust, cheating and forgery. On the basis of the aforesaid allegations, the said F.I.R. was registered as Fatullah Police Station Case No. 25 dated

25.08.2024 under sections 124A/406/420/468/471 of the Penal Code, 1860. The said case subsequently gave rise to G.R. Case No. 442 of 2024, which is now pending in the Court of the learned Chief Judicial Magistrate, Cognizance Court (Fatullah), Narayanganj.

The petitioner had already been in custody since 24.07.2025 in connection with another case and was subsequently shown arrested in the present case on 29.07.2025. Thereafter, he moved for bail before the learned Chief Judicial Magistrate, Narayanganj, but the said prayer was rejected. Subsequently, he preferred a bail application before the learned Sessions Judge, Narayanganj; however, that prayer was also rejected by order dated 08.09.2025 passed in Criminal Miscellaneous Case No. 3287 of 2025.

Being aggrieved thereby, the petitioner moved this Court and obtained the present Rule.

Mr. Mansurul Haque Chowdhury, the learned Senior Advocate appearing on behalf of the petitioner, submits that the judgment in respect of which the instant criminal proceeding has been initiated was, in fact, a majority judgment concurred in by the other learned Judges of the Appellate Division, however, for reasons unknown the present petitioner alone has been singled out

and made the subject of the present proceeding. He further submits that a difference, if any, between a short order and the detailed judgment of the apex Court is not unknown in our judicial practice and such difference, by itself, cannot constitute an offence under sections 124A/406/420/468/471 of the Penal Code. Drawing our attention to the advanced age of the petitioner, who is now about 81 years old, the learned Advocate submits that the petitioner is suffering from various serious ailments including ischaemic heart disease with a recent heart attack, chronic kidney disease, bronchial asthma, dementia, cervical spondylosis, and other age-related complications, and that his continued detention may seriously jeopardize his health condition. He lastly submits that there is no likelihood of the petitioner absconding or interfering with the course of investigation.

On the other hand, Ms. Nahid Hossain, the learned Deputy Attorney-General, opposes the Rule contending that the allegations brought against the petitioner are grave in nature and relate to alleged abuse of judicial authority. He next submits that the investigation is still in progress and that enlargement of the petitioner on bail at this stage may impede the investigation.

We have heard the learned Advocates for the respective parties and have perused the application, the F.I.R., and the materials available on record.

Having considered the submissions advanced before us and the materials on record, we are of the view that since the matter is still under investigation, any detailed discussion touching upon the merit of the allegations may not be appropriate at this stage.

It appears from the record that the petitioner, Justice ABM Khairul Haque, is an elderly person aged about 81 years. Since 24.07.2025, the petitioner has been in custody and on perusal of the case diary, we do not find any clear indication as to when the investigation is likely to be concluded. Although the learned Deputy Attorney-General submits that the investigation may be completed within a short period, no definite material has been placed before us in support of such submission.

It is well settled that while considering a prayer for bail under section 498 of the Code of Criminal Procedure, the Court is required to take into account, among other considerations, the nature and gravity of the allegations, the possibility of absconding, the likelihood of interference with the investigation or tampering

with evidence, the age and health condition of the accused, as well as the overall ends of justice.

Upon a prima facie consideration of the materials placed before us, it appears that the prosecution's case is primarily founded upon an alleged inconsistency between the short order dated 10.05.2011 and the detailed judgment delivered 16 months thereafter in the Thirteenth Amendment case. It is not disputed that the judgment in question was delivered by a Bench of the Appellate Division and that it was a majority decision.

Prima facie, the allegations, even if taken at their face value, appear to arise out of judicial acts performed in the exercise of constitutional jurisdiction by a Bench of the apex Court. Whether such acts attract the ingredients of the offences alleged under sections 219/466/120B/420 of the Penal Code is a question which necessarily requires careful examination upon evidence at the appropriate stage of the proceeding.

It further appears that the petitioner is an elderly person aged about 81 years and is suffering from various age-related health complications and that his continued detention may further aggravate such condition. Moreover, no material has been placed before us indicating that the petitioner is likely to abscond or that

his release on bail would in any manner impede the course of investigation.

In the case of Shafik Rahman vs. State, reported in 68 DLR (AD) 372 our apex Court held that bail should not be withheld, as a measure of punishment and that the age and the health condition should be considered to release on bail as per the proviso to sub-section (1) of section 497 of the Code of Criminal Procedure.

In the facts and circumstances of the case, particularly considering the nature of the allegations, the age of the petitioner and the health considerations associated with advanced age, coupled with the absence of any specific allegation regarding tampering with evidence or influencing the investigation, we are inclined to enlarge the petitioner on bail.

Accordingly, the Rule is made absolute.

Let the petitioner, Justice ABM Khairul Haque, son of late Rafiqul Haque, be enlarged on bail to the satisfaction of the learned Chief Judicial Magistrate, Cognizance Court, (Fatullah), Narayanganj, till disposal of the trial of the case.

The learned Court below shall, however, be at liberty to cancel the bail if the petitioner misuses the privilege of bail in any manner whatsoever.

Let a copy of this judgment be communicated to the Court concerned at once.

Md. Sagir Hossain, J.

I agree

Kashem, B.O