

**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. 72110 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 Shahbag Police Station Case No. 13 dated 27.08.2024 corresponding to connection with G.R. Case No. 317 of 2024 under sections

219/466 and added sections 120B and 420 of the Penal Code, 1860, now pending in the Court of the learned Chief Metropolitan Magistrate, Dhaka.

Facts relevant for disposal of the Rule are that on 27.08.2024 one Md. Mujahidul Islam, an Advocate of the Supreme Court of Bangladesh, lodged a First Information Report (F.I.R.) with Shahbag Police Station alleging, inter alia, that the present petitioner, while serving as the Chief Justice of Bangladesh, delivered a judgment in Civil Appeal No. 596 of 2005 declaring the Constitution (Thirteenth Amendment) Act, 1996 to be ultra vires the Constitution and thereby declaring the same void prospectively. The detailed judgment delivered on 16.09.2012 materially deviated from the short order earlier passed on 10.05.2011 and that such deviation was made with mala fide intention and corrupt motive to favour the then Prime Minister in facilitating the holding of ex parte elections. On the aforesaid allegations, the said F.I.R. was registered as Shahbag Police Station Case No. 13 dated 27.08.2024 under sections 219/466/120B/420 of the Penal Code, 1860, which subsequently gave rise to G.R. Case No. 317 of 2024, now pending in the Court of the learned Chief Metropolitan Magistrate, Dhaka.

While the petitioner had already been in custody since 24.07.2025 in connection with another case, he was shown arrested in the present case on 30.07.2025. Subsequently, he moved for bail before the learned Chief Metropolitan Magistrate, Dhaka, which was rejected. Thereafter, he preferred a bail application before the learned Metropolitan Sessions Judge, Dhaka, but the said prayer was also rejected by order dated 16.09.2025 passed in Criminal Miscellaneous Case No. 12610 of 2025.

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

Mr. Mansurul Haque Chowdhury, the learned 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

219/466/120B/420 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 ischemic 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, Mr. Abdullah Al Mahmud, 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, 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 dated 16.09.2012

delivered in Civil Appeal No. 596 of 2005 by the Appellate Division of the Supreme Court of Bangladesh. 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 subsection (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 Metropolitan Magistrate, Dhaka, 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