

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

Present:

Mr. Justice Md. Khairul Alam
And
Mr. Justice Md. Rafizul Islam

Criminal Miscellaneous Case No. 51964 of 2026

Rubel Kotwal

.....Accused-petitioner

-Versus-

The State

..... Opposite party

Mr. Md. Samsul Alam, Advocate

..... For the accused-petitioner

Mr. Md. Masudul Alam Doha, D.A.G. with

Mr. Md. Nasimul Hasan, A.A.G

Mr. Md. Husni Mubarak (Rocky), A.A.G and

Mr. Syed Akhtarul Islam, A.A.G and

Mr. Khan Mahfuzun Noor, A.A.G

..... For the opposite party

Heard & Judgment on: 10.09.2026

Md. Khairul Alam, J:

This Rule, issued under section 498 of the Code of Criminal Procedure, 1898, at the instance of the accused-petitioner, Rubel Kotwal, calling upon the opposite party to show cause as to why the accused-petitioner should not be enlarged on bail in Zajira Police Station Case No. 02 dated 02.09.2025, corresponding to G.R. No. 180 of 2025 (Zajira), under sections 143/341/302/379/201/114/34 of the Penal Code,

now pending before the Court of the learned Chief Judicial Magistrate, Shariatpur, and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts relevant for the disposal of this Rule are that on 02.09.2025, one Lipi Begum, as informant, lodged a First Information Report with Zajira Police Station against 25 (twenty-five) named accused persons and 10/15 unknown accused persons, including the present petitioner, alleging, inter alia, that due to a long-standing land dispute, on 26.08.2025 at about 8:30 a.m., all the accused persons, being armed with various deadly weapons, acting under the leadership of accused No. 1, Md. Danesh Sarder, formed an unlawful assembly and attacked the victim, Almas, the brother of the informant, in front of the homestead of accused No. 3, Sakhawat Sarder. It has been alleged that, at the direction of accused No. 1, accused No. 2, Zahirul Islam @ Suman Sarder, dealt a blow with a Chinese axe on the head of the victim, causing a grievous incised bleeding injury on the left side of his forehead. Accused No. 21, Rubel Kotwal, struck the victim on the head with a ramda, but the blow hit the victim's left shoulder, causing another grievous bleeding injury. Thereafter, accused Nos. 3, 4, 5, 6, 7, 18 and 19 indiscriminately assaulted

the victim. During the occurrence, accused No. 10 allegedly snatched away a gold chain weighing about one vori, valued at Tk. 1,60,000/-, from the victim's neck. It is further alleged that accused Nos. 8, 9, 10, 19 and 24 forcibly held the victim under water until they ensured his death by drowning. Hearing the hue and cry, the informant and other witnesses rushed to the place of occurrence and witnessed the incident. Thereafter, accused Nos. 1, 2, 3, 12, 13 and 19 allegedly lifted the dead body from the pond, wrapped it in a white plastic sack and, with the assistance of accused Nos. 16 and 17, buried the body in a vacant land behind the homestead of accused No. 3 to disappear the evidence. On 28.08.2025 at about 10:45 p.m., acting upon secret information, the police of Zajira Police Station recovered the concealed dead body, prepared the inquest report and sent the same to Shariatpur Sadar Hospital for post-mortem examination. Thereafter, on 02.09.2025, the informant lodged the aforesaid First Information Report, giving rise to the instant case. On 29.12.2024, the accused-petitioner was arrested by the police and was produced before the Court of the learned Chief Judicial Magistrate, Shariatpur, who, rejecting the prayer for bail, sent the accused in custody. Thereafter, the petitioner was enlarged on bail by this Division,

but subsequently, the operation of the said order was stayed by the Appellate Division and the petitioner was directed to surrender before the trial Court in Criminal Petition for Leave to Appeal No. 1998 of 2026. Thereafter, the Rule was discharged for non-prosecution, and pursuant to the said order, the petitioner surrendered before the trial Court on 25.06.2025. The prayer for bail of the petitioner was lastly rejected by the learned Additional Sessions Judge, Shariatpur, on 07.07.2026 vide Criminal Miscellaneous Case No. 1099 of 2026.

Being aggrieved by and dissatisfied with the said order, the accused-petitioner moved this Court and obtained the present Rule.

Mr. Md. Samsul Alam, the learned Advocate appearing on behalf of the accused-petitioner, submits that the First Information Report suffers from an inordinate and unexplained delay. Elaborating his submissions, he contends that had the informant actually witnessed the occurrence, as alleged in the First Information Report, she would have promptly approached the police instead of waiting until the recovery of the dead body. According to the learned Advocate, such unexplained delay casts a serious doubt on the veracity of the prosecution case.

He next submits that, according to the prosecution case, the victim was forcibly held under water until his death by drowning; however, the post-mortem report discloses that the cause of death was "CNS depression due to head injury", which renders the prosecution story highly doubtful. The learned Advocate further submits that although the petitioner's previous prayer for bail was summarily rejected by the Appellate Division, a considerable period has elapsed thereafter, and several co-accused persons, who stand on the same footing as the present petitioner, have subsequently been enlarged on bail by this Division, therefore, the petitioner is entitled to the benefit of parity. Lastly, he submits that though a police report under section 173 of the Code of Criminal Procedure has been submitted, but there is no immediate likelihood of the commencement of the trial and the continued detention of the petitioner would serve no useful purpose, and he therefore prays for making the Rule absolute and for enlarging the petitioner on bail.

On the other hand, Mr. Md. Masudul Alam Doha, the learned Deputy Attorney-General appearing for the State, opposes the Rule and submits that if enlarged on bail, the petitioner may abscond, tamper with the evidence or otherwise

impede the course of justice, and therefore, the petitioner does not deserve the privilege of bail at this stage.

We have heard the learned Advocates for the respective parties, perused the application for bail, the impugned order and the other materials on record.

It appears from the impugned order that the learned Sessions Judge rejected the petitioner's prayer for bail mainly on the ground that his earlier prayer for bail had already been rejected by this Court. The learned Deputy Attorney-General has opposed the prayer for bail on the grounds that there is a likelihood of the petitioner's absconding and that, if enlarged on bail, he may tamper with the evidence.

From the record, it further appears that the accused-petitioner was earlier enlarged on bail by this Division; however, the said order of bail was stayed by the Appellate Division. Subsequently, the Rule issued in that regard was dismissed as being not pressed. Therefore, there remains no legal bar to the reconsideration of the petitioner's prayer for bail if any fresh or new ground has subsequently arisen. It is now well settled that an order rejecting a prayer for bail does not operate as a perpetual bar to the maintainability of a subsequent application for bail where fresh circumstances or subsequent events

warrant reconsideration of the petitioner's prayer. We do not find any tangible material on record to substantiate the apprehension that, if enlarged on bail, the petitioner is likely to tamper with the evidence, interfere with the administration of justice or abscond.

The learned Advocate for the petitioner submits that, subsequent to the rejection of the petitioner's earlier bail application, several co-accused persons, including Jahangir Bepari (F.I.R serial No. 7) and Ripon Sarder (F.I.R serial No. 4) who stand on the same footing as the present petitioner, have been enlarged on bail by the competent Court. According to the learned Advocate, such subsequent grant of bail to similarly situated co-accused constitutes a fresh circumstance, thereby entitling the petitioner to seek bail afresh on the well-recognised principle of parity.

In *Shafik Rahman vs. The State*, the Appellate Division reiterated that bail should not be withheld by way of punishment and that pre-trial detention should not be permitted to assume a punitive character.

Having considered the submissions advanced by the learned Advocates for the respective parties, the nature of the allegations, the period of detention already undergone by the

petitioner, the fact that similarly situated co-accused have been enlarged on bail, the absence of any tangible material suggesting that the petitioner is likely to abscond or tamper with the evidence, and the principle laid down by the Appellate Division in the decision referred to above, we are of the view that the petitioner has succeeded in making out a case for bail.

In the result, the Rule is made absolute.

Let the accused-petitioner, **Rubel Kotwal, son of Nurul Islam Kotowal**, be enlarged on bail till the conclusion of the trial upon furnishing bail bonds to the satisfaction of the learned Chief Judicial Magistrate, Shariatpur.

The learned Chief Judicial Magistrate, Shariatpur, shall, however, be at liberty to cancel the bail of the accused-petitioner if he misuses the privilege of bail in any manner whatsoever.

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

Md. Rafizul Islam, J.

I agree.

Kashem, B.O