

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

Criminal Miscellaneous Case No. 15867 OF 2020

IN THE MATTER OF:

An application under section
498 of the Code of Criminal
Procedure.

And

IN THE MATTER OF:

Md.Khalilur Rahman

...Accused-Petitioner

-vs-

The State

...Opposite Party

And

Mr. Golam Abbas Chowdhury
Advocate

- for the Accused-Petitioner.

Mr. ABM.Abdullah Al Mahmud, DAG
..... For the State

Heard on: 07.10.2020
and Judgment on: 14.10.2020.

Present:

Mr. Justice F.R.M. Nazmul Ahasan

and

Mr. Justice Shahed Nuruddin

Shahed Nuruddin, J:

The instant Rule was issued calling upon the
opposite party to show cause as to why the accused
petitioner should not be enlarged on bail in Airport

Police Station Case No. 17 dated 18.01.2020 corresponding to G.R. No. 17 of 2020 under sections 143/323/307/302/109/34 of the Penal code, now pending in the Court of the learned Metropolitan Magistrate Court No.- 3, Barisal.

The prosecution case, in short, is that one Md. Faruk Mollik son of the deceased as informant lodged a first Information Report (FIR) with Airport Police Station, Barishal alleging inter-alia that the father of the informant is a farmer and the FIR named accused persons are closed neighbour of this informant. There was a long standing dispute with the FIR named accused persons and the informant's family in connection with the cultivating land. That on 12.01.2020 at about 6:30 P.M. The father of the informant went to the tea stall of FIR named accused No. 1 and requested him to give a cup of tea and biscuit but the FIR named accused instead of giving the same attacked the father of the informant with filthy

language. On that time the accused Nos.2-5 were present there and at one stage the accused No. 6 ordered the other accused to kill the father of the informant by getting the said order the FIR named accused attacked upon the father of the informant and beat him indiscriminately by using iron rod, charger light. The accused Nos. 2 and 4 inflicted on the both side of the head of the father of the informant by charger light. The informant and the other witnesses heard the incident and immediately rushed to the place of occurrence and rescued the victim from the FIR named accused and tried to take him to Barishal Sher-E-Bangla- Medical Hospital but the accused No. 6 obstructed the informant to admit the victim to the hospital and arranged treatment by village doctor and the father of the informant filling better by taking treatment of village doctor but on 16.012020 the health condition of the victim became deteriorated and the informant took the victim to the Sher-E-Bangla Medical College Hospital

on 17.01.2020 at about 2 A.M., doctor declared the father of the informant dead. Later the informant lodged the FIR.

The police took up the investigation over the matter. Prepared inquest report, collected the post Mortem report.

The accused petitioner was arrested by the police and subsequently he was forwarded before the learned Metropolitan Magistrate, Court No. 3, Barishal with a prayer for 5 days remand wherein the learned Magistrate granted 1 day police remand.

Mr. Golam Abbas Chowdhury, learned Advocate appearing on behalf of the accused petitioner submitted that there was a prolonged land dispute in between of this FIR named accused and the informants' family. Actually nothing was happened on the alleged date of occurrence. On 30.09.2020 the learned lawyer of the accused petitioner by filing a supplementary affidavit submitted that it is clear from the histopathology report

of the deceased that deceased A.Salam Mollik had two blocks in his heart and also in the brain as well. The histopathology report is annexed and marked as Annexure D earlier. So, it is crystal clear that the deceased died due to failure of the heart and malfunctioning of the brain. The learned lawyer also submitted that informant with an ill intentions to take the revenge of previous enmity lodged this false and fabricated case.

Mr. A.B.M. Abdullah Al Mahmud, the learned Deputy Attorney General appearing on behalf of the state opposed the prayer for bail of the accused petitioner. He also submitted that on perusal of the FIR . it reveals that the accused petitioner and another co-accused namely Jalil caused injury for commission of murder on the left and right side of head of the deceased with steal touch light in their hand. So that injuries which are transparent on left side of head and bottom of ear. Those injuries are mentioned in the post mortem

report also. under the circumstances made above the learned Deputy Attorney General vehemently opposed the prayer for bail of the accused petitioner before submission of police report.

We are very carefully heard the learned advocate for the accused petitioner and the learned Deputy Attorney General for the state and perused the application along with the records. From order No. 15 dated 21.09.2020 (Annexure-x) it appears that the informant prayed to transfer the case to CID and change the investigating officer of the same. A date is fixed for hearing the same petitioner. So, it is presumed that it may take time for submitting the police report and to conclude the trial also. On perusal of ejhar it reveals that the date of occurrence is on 12.01.2020 at 6.30 P.M. and deceased was not taken to Medical College hospital after receiving injuries on his head, chest and whole body. Accused No. 6 Md. Habibur Rahman Mintu resisted the deceased to bring him

hospital and told that matter would be compromised. So deceased was under treatment of local village doctor. Due to striking of the accused petitioners the deceased became sick on 16.01.2020 at 5:45 P.M. He was admitted to Share-E-Bangla Medical College, Barishal and doctor declared him dead. Learned lawyer of the accused petitioner submitted that accused petitioner did not meet his death for striking of the accused petitioners but he died due to heart and brain blockage.

Considering all these aspects we are inclined to allow the accused to remain on bail.

In the result, the Rule is made absolute.

The accused petitioner Md. Khalilur Rahman son of late Goni Howlader is hereby enlarged on bail till submission of the police report upon the satisfaction of the learned Chief Metropolitan Magistrate, Barishal.

The court concerned is at liberty to cancel the privilege of bail if there be any allegation of misuse of

bail by the accused petitioner in any manner whatsoever.

Communicate the order at once.

FRM Nazmul Ahasan, J

I agree.