

Present:  
Mr. Justice Md. Salim  
And  
Mr. Justice Shahed Nuruddin

**CRIMINAL MISCELLANEOUS CASE NO.69830 OF 2023.**

Mirza Fakhrul Islam Alamgir  
.....Accused-Petitioner.

-VERSUS-

The State  
..... Opposite Party.

Mr. Md. Zainul Abedin, Senior Advocate with  
Mr. Md. Sagir Hossain, Advocate  
.....For the Accused-Petitioner.

Mr. B.M. Abdur Rafell, DAG with  
Mr. Binoy Kumar Ghosh, A.A.G.  
Mr. A.T.M. Aminur Rahman (Milon), A.A.G.  
Ms. Lily Rani Saha, A.A.G.  
.....For the State.

**The 10<sup>th</sup> January, 2024.**

**MD. SALIM, J:**

The accused petitioner in this case, named, Mirza Fakhrul Islam Alamgir has preferred an application for enlarging him on bail invoking Section 498 of the Code of Criminal Procedure,1898, and Rule was obtained in connection with G.R. No.226 of 2023 arising out of Ramna Model Police Station Case No.19 dated 29.10.2023 under Sections 143 / 147 / 148 / 149 / 186 / 332 / 333 / 353 / 307 / 427 / 436 / 109 of the Penal Code,1860 read with

Sections 3 / 4 of the Explosive Substances Act,1908 (amended in 2002), now pending before the learned Chief Metropolitan Magistrate, Dhaka.

Facts that are relevant for disposing of this case, can be summarized in a nutshell, the criminal case against the accused petitioner came into animation following the lodging of a First Information Report (hereinafter referred to as FIR) by one Md. Mofizur Rahman, a Sub-Inspector of Police (unarmed), is also in charge of Kakrail Police Fari, under Ramna Model Police Station of Dhaka Metropolitan Police. The FIR was lodged on 29<sup>th</sup> October,2023. The same was duly accepted by one Md. Abul Hasan, PPM-Bar an inspector (unarmed) and officer-in-charge of Ramna Model Police Station Dhaka Metropolitan Police. The informant named as many as 72 people and alleged that on 28<sup>th</sup> October 2023, between 12:30 pm and 1:30 pm committed serious offenses within the area of Ramna Police Station catchment area. The instant petitioner is number 2 on the list of the accused persons.

The allegations laid against the accused persons are that on the siren date they, who are leaders and workers

of a political party named Bangladesh Nationalist Party (BNP) had arrived from different parts of the country and gathered together, being armed with sticks, iron rod, cocktails, and other deadly weapons at around 12:30 pm at Kakrail area within the catchment area of Ramna Model Police Station. Those people created obstruction on the roads, compelling motor vehicles and passers to stop using the road, vandalized several vehicles, beating up police personnel on duty, and threw cocktails over the public, despite requests by the police functionaries to restraint themselves from hooliganism activities.

It has also been alleged in the FIR that they stayed an attack on the house of the Hon'ble Chief Justice of Bangladesh, broke down the gate of that House, removed the sign that states, the House of the Chief Justice, and gained forcible entry into the House, causing further damage therein. The informant alleges that the accused people, some of whom were rounded up from the places of occurrence, acted under the order of senior BNP Leaders, inclusive of the present petitioner, who is the Secretary General of the party. The informant states that the people apprehended red-handed confided to him that the senior

BNP leaders including the instant petitioner, ordered the people to stage the hooliganism and the attack on the Hon'ble Chief Justice's official residence.

The informant cited Sections 143 / 147 / 148 / 149 / 186 / 332 / 333 / 353 / 307 / 427 / 436 / 109 of the Penal Code and Sections 3 / 4 of the Explosive Substance Act, 1908 (as amended).

The accused petitioner, who was apprehended by the police on 29.10.2023 initially applied for bail before the learned Chief Metropolitan Magistrate, Dhaka without success. His appeal against the said refusal order also ended in refusal by the learned Metropolitan Sessions Judge Dhaka.

Mr. Md. Zainul Abedin, learned counsel appearing on behalf of the petitioner submitted that the petitioner was addressing a huge gathering as the chief guest at a place away from the place of occurrence, that he had been suffering from some serious ailments and was due to be seen by his physician in a hospital in Singapore, that he has been falsely implicated as a course of political vendetta., accused of a similar offense, have already been

enlarged on bail as some of the sections areailable. The accused petitioner stands on a better footing than them.

Mr. B.M. Abdur Rafell, learned Deputy Attorney General appearing for the state by filing a counter affidavit opposes the contention so made by the learned counsel for the accused petitioner and submitted that release of the petitioner on bail, at this investigation stage shall impede the investigation, that the allegation that he was the mastermind in the attack on the residence of the Hon'ble Chief Justice, is a very serious one. Around the House of the Hon'ble Chief Justice, there are several public and private offices, temples, etc. The accused persons did not attack these. They only launched an attack on the House of the Hon'ble Chief Justice intending to destroy the whole judiciary. He lastly submits that it has been prima facie found that the offenses were carried out as per the direction of the accused petitioner.

We have anxiously considered the submissions of the learned counsel for both parties and perused the record. It manifests that the court below has seen the C D and found the involvement of the accused petitioner with

the instant case. Moreover, as the case is still under investigation without creating any impact on the investigation process we can nevertheless, state that the allegations particularly that of an attack on the residence of the Chief Justice, and forcible entrance into that house, a very serious one indeed. The Hon'ble Chief Justice is head of one of three organs of the republic and hence allegation of such an attack may be tantamount to sedition. The petitioner's learned counsel submits that the petitioner was far away from the residence of the Chief Justice. But it has been decided by the privy council in the case of Barendra Kumar Ghosh and others Vs. Emperor popularly known as the Post Office case (Privy Council, 23<sup>rd</sup> October 1924) express that a person can instigate offenses and can be liable under section 34 of the Penal Code even from a far-away place. Although Privy Council in the Barendra Kumar Ghosh case was concerned with section 34 of the Penal Code. The same view was reiterated in the case of Mejoor Md. Bazlul Huda (Artillery) and Others Vs. The State popularly known as the Bangabandhu Marder case ( ADC Vol. VI (A) (2010). We are of the view that the same principle is applicable in

section 109 of the penal Code as well. We bear in mind that Section 109 has also been involved, so an accomplice can put orders on his followers from a long distance. The claim that the petitioner is too ill goes against the assertion that he was addressing a huge role as the chief guest which could not be possible for a seriously ailing person. We must, without influencing the investigation process, state that there is some implied admission as to his involvement.

We take judicial notice of the fact that the accused petitioner has for a long time in agitating what he claims to be the voting rights of the people. Unfortunately, we have seen during the few preceding months that those propagating for so-called voting rights have been engaged in creating a state of anarchy in the country, causing loss of lives, burning, attacking hospitals, ambulances, public and private transport which carrying daily necessities, police vehicles, etc. In short state of havoc has been created by the so-called agitators. We do take judicial notice of these unholy and destructive events, which have virtually brought the country to a state of panic. Indeed hell has been let loose on the country and its people.

Whether the petitioner is the mastermind or had any role in the catastrophic, unruly events, can only be decided after a fair investigation, but to ensure fairness in the investigation, we are of the view that it will not be conducive to release him on bail at this stage. Some of the sections are non-bailable. The enclosed seizure list goes a long way to substantiate the allegation that explosives, such as cocktails, may have been used in violation of the provision of the Explosive Substance Act.

We, accordingly, discharge the Rule, bearing in mind that the security of the Republic and its people are of utmost importance. However, we are directing the jail authority to take the necessary steps for his treatment if he suffers from any illness.

**SHAHED NURUDDIN, J:**

I agree.