IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 5130 of 2019

IN THE MATTER OF:
An Application under Article 102 (1) and (2) (a) (i) (ii) of the Constitution of the People's Republic of Bangladesh
-AND-
IN THE MATTER OF:
Mohammad Kamal Udddin
....Petitioner
-Versus-
The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Ramna, Dhaka, and others
....Respondents
Mr. Sk. Md. Jahangir Alam, Advocate
....For the petitioner
Mr. Md. Anichur Rahman Khan, D.A.G with
Mr. Md. Mizanur Rahaman, D.A.G with
Mr. Mir Moniruzzaman, A.A.G with
Mr. Md. Saruwar Alam Khan, A.A.G with
Ms. Nargis Parvin (Alija), A.A.G
....For the Respondent No. 1
Heard on 16.11.2025

Judgment delivered on 19.11.2025

Present:

Mr. Justice Md. Shohrowardi
And
Mr. Justice Md. Sagir Hossain

Md. Shohrowardi, J.

On an application filed under Article 102 (1) and (2) (a) (i) (ii) of the Constitution of the People's Republic of Bangladesh, Rule Nisi was issued in the following terms:-

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why the failure of the respondents to release the petitioner in connection with the following scheduled cases under Section 138 of the Negotiable Instruments Act, 1881, despite the petitioner having already suffered imprisonment pursuant to the judgments and orders of convictions and sentences passed in the scheduled cases 1. Sessions Case No. 3473 of 2017, 2. Sessions Case No. 5243 of 2017 and/or such other or further order or orders be passed as to this Court may seem fit and proper."

In the writ petition, it has been stated that the petitioner was convicted by the Joint Metropolitan Sessions Judge, Court No. 6, Chattogram in Metro Sessions Case No. 3473 of 2017 arising out of C.R. Case No. 370 of 2015 by judgment and order dated 27.06.2018 under section 138 of the Negotiable Instruments Act, 1881 and he was sentenced to suffer imprisonment for 1(one) year and fine of Tk. 1,00,00,000(one crore). The petitioner was also convicted by the said Court by judgment and order dated 27.06.2018 in Sessions Case No. 5243 of 2017 arising out of C.R. Case No. 1872 of 2014 under section 138 of the Negotiable Instruments Act, 1881, and he was sentenced to suffer imprisonment for 1(one) year and a fine of Tk. 7,04,58,197(seven crore four lakh fifty eight thousand one hundred ninety seven).

The learned Advocate Mr. Sk. Md. Jahangir Alam, appearing on behalf of the petitioner submits that the trial Court by judgment and order 27.06.2018 convicted the petitioner in two cases and on the date of passing the impugned judgments and orders on 27.06.2018, the petitioner was sent to custody and the writ petition has been filed on 05.05.2019 and in the meantime, he served 1(one) year in jail. He further submits that since the trial Court passed both the judgments and orders on 27.06.2018 and in the meantime, he served 1(one) year, the convict-petitioner was illegally detained in custody. The jail authority ought to have considered both the judgments and orders of conviction and sentence as concurrent. He prayed for making the Rule absolute.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing on behalf of the respondent No. 1 submits that nothing has been stated in the subsequent judgment and order that the sentence will run concurrently. Therefore, the petitioner is liable to serve both the sentences consecutively.

We have considered the submissions of the learned Advocate Mr. Sk. Md. Jahangir Alam, who appeared on behalf of the petitioner, and the learned Deputy Attorney General, Mr. Md. Anichur Rahman Khan, who appeared on behalf of the respondent No. 1, perused the writ petition and the records.

On perusal of the records, it reveals that at the time of issuance of the Rule on 18.06.2019, the petitioner Mohammad Kamal Udddin was enlarged on bail for a period of 06(six) months on furnishing bail bond to the satisfaction of the Joint Metropolitan Sessions Judge, Court No. 6, Chittagong. Thereafter, the said order was not extended, and the order dated 18.06.2019, granting bail to the petitioner, expired on 18.12.2019.

The Negotiable Instruments Act, 1881 is a special law, and there is a specific provision in section 138A of the said Act regarding filing an appeal against the judgment and order of conviction and sentence passed by the trial Court under section 138 of the Negotiable Instruments Act, 1881. The provision made in section 138A of the said Act regarding filing an appeal on payment of 50% of the cheque amount is sine qua non. It is found that the petitioner was convicted and sentenced by the trial

Court under section 138 of the Negotiable Instruments Act, 1881. No appeal has been filed by the petitioner against the judgments and orders passed by the trial Court in Sessions Case No. 5243 of 2017 and Metro Sessions Case No. 3473 of 2017. The petitioner, without filing the appeal against the said judgments and orders, obtained the instant Rule. Therefore, the Rule is not maintainable in law.

In the case of Mrs. Shamima Ara Bashar Vs. Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Ramna, Dhaka, and others, passed in Writ Petition No. 5316 of 2018, judgment dated 03.09.2025 (Md. Shohrowardi, J), the High Court Division has held that;

> "Negotiable Instruments Act, 1881 is a special law and there is a provision in respect of filing an appeal in section 138A of the said Act. Therefore, the provision made in section 138A of the said Act is mandatory. I am of the view that the Rule is not maintainable in law and the writ petition has been filed maliciously to avoid the mandatory deposit of 50% of the amount of the cheque stated in section 138A of the said Act."

In Criminal cases, involving multiple conviction, the trial Court is at liberty to pass an order in the judgment to the effect that the subsequent sentence will run concurrently or consecutively. On perusal of both the judgments and orders dated 27.06.2018, passed in Metro Sessions Case No. 3473 of 2017 and Sessions Case No. 5243 of 2017 reveals that nothing has been stated in the said judgments whether either of the judgments would be consecutive or concurrent.

In this respect, it is relevant here to quote section 397 of the Code of Criminal Procedure, 1898, which is as under;

> "When a person already undergoing a sentence of imprisonment, or transportation, is sentenced to imprisonment, or transportation, such imprisonment, or transportation shall commence at the expiration of the imprisonment, or transportation to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:
>
> Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced:
>
> Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to

> imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately."

On a bare reading of section 397 of the Code of Criminal Procedure, 1898, it transpires that when a person already undergoing a sentence of imprisonment is further sentenced in a subsequent case, the imprisonment shall commence at the expiration of the imprisonment passed earlier unless the Court directs that the subsequent sentence shall run concurrently. Nothing has been stated in either of the judgments and orders passed by the trial Court that the subsequent sentence passed against the petitioner will run concurrently. Therefore, we are of the view that both the sentences shall run consecutively.

In view of the above facts and circumstances of the case, findings, observation, and the proposition, we do not find any merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

Md. Sagir Hossain, J.

I agree.