

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 4166 of 2025

Sajjatuz Jumma

...Convict- Petitioner

-Versus-

The State and another

..... Opposite Parties.

None appears

..... For the petitioner.

Mr. Mahabub Hasan Chowdhury, Advocate

.....For Opposite Party No. 2.

Mr. S. M. Aminul Islam Sanu, DAG with

Mr. Md. Nasimul Hasan, AAG with

Mr. Md. Golamun Nabi, AAG and

Ms. Farhana Abedin, AAG

..... For the State.

**Heard on 22.01.2026, 25.01.2026 and
24.02.2026**

Judgment on 26.02.2026.

This Rule was issued at the instance of the convict-petitioner calling upon the opposite parties to show cause as to why order No. 51 dated 24.08.2025 passed by the learned Special Judge (District and Sessions Judge), 4th Court, Dhaka rejecting the prayer for bail of the convict-petitioner arising

out of the judgment and order of conviction and sentence dated 21.10.2020 passed by the learned Special Judge (District and Sessions Judge), 4th Court, Dhaka in Sessions Case No. 63 of 2017 arising out of C.R Case No. 767 of 2016 convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer simple imprisonment for a period of 03(three) months and to pay a fine of Taka 1,72,79,182/- (one crore seventy two lac seventy nine thousand one hundred and eighty two), should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the opposite party No. 2, M/S Phoenix Finance and Investments Limited as complainant filed C.R Case No. 767 of 2016 before the Court of the Chief Metropolitan Magistrate, Dhaka against the present petitioner alleging *inter alia* that, the accused obtained a loan amounting to Taka 1,50,00,000/- (one crors fifty lac) from the complainant. Upon failure to repay the said amount in time, the accused issued the cheque in question in favour of the complainant on

05.07.2016 towards repayment of the outstanding liabilities amounting to Taka 1,72,79,182/- (one crore seventy two lac seventy nine thousand one hundred and eighty two). The same was dishonoured by the concerned bank on 16.07.2016 due to insufficiency of funds. Thereafter a statutory legal notice was issued to the petitioner on 07.08.2016 demanding payment of the cheque amount, but the petitioner failed to comply with the same. Consequently, the case was filed on 19.09.2016.

Subsequently, the case was transferred to the Court of the Special Judge, 4th Court, Dhaka and was registered as Sessions Case No. 63 of 2017. Upon taking cognizance of the offence, charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against accused persons namely, Sajjatuz Jumma and Hazi Abdus Sakur who pleaded not guilty and claimed to be tried when charge was read out and explained to the accused. After hearing the parties and considering the evidence, the learned Special Judge, 4th Court, Dhaka found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced them to suffer simple imprisonment for 03(three) months and

to pay a fine of Taka 1,72,79,182/- (one crore seventy two lac seventy nine thousand one hundred and eighty two) by judgment and order dated 21.10.2020.

Thereafter, the petitioner was arrested and produced before the trial Court on 20.08.2025. At that time the petitioner filed an application for bail before the learned Special Judge, 4th Court, Dhaka without preferring any appeal against the judgment of conviction and sentence and without depositing 50% of the cheque amount as required under the provisions of law. The learned Judge, upon consideration, rejected the application for bail by order No. 51 dated 24.08.2025.

Being aggrieved by and dissatisfied with the order dated 24.08.2025 the petitioner preferred this Criminal Revision before this Court and obtained the Rule. Pending hearing of the Rule, this Court enlarged the petitioner on ad-interim bail for 01(one) month subject to conditions runs as follows:

“Pending hearing of the Rule, let the convict-petitioner namely, Sajjatuz Jumma Son of Chowdhury Ataur

Rahman, be enlarged on ad-interim bail for a period of 01 (one) month from date, subject to on condition that after release the convict petitioner from the jail custody to deposit 50% money of the cheque amount to the concerned bank for filing appeal against the judgment and order of conviction and sentence dated 21.10.2020 passed by the learned Special Judge (District and Sessions Judge), 4th Court, Dhaka within 01(one) month and to furnishing bail bond to the satisfaction of the learned Special Judge (District and Sessions Judge), 4th Court, Dhaka.”

When the revisional application was taken up for hearing none appeared on behalf of the petitioner to support the Rule although the matter had been appearing in the daily

cause list on several days with the name of the learned Advocate for the petitioner.

Per contra, Mr. Mahabub Hasan Chowdhury, the learned Advocate appearing for the opposite party No. 2 submits that the charge brought against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been proved beyond reasonable doubt and the trial Court rightly convicted and sentenced the petitioner. He further contends that the petitioner sought bail without preferring any appeal and without depositing 50% of the cheque amount as mandated by law and hence, the trial Court rightly rejected the prayer for bail. He next submits that although this Court enlarged the petitioner on bail for 01(one) month subject to specific conditions, the petitioner failed to comply with the said conditions and as such the Rule is liable to be discharged. In support of his contention, he has referred to the decision passed in the case of *Pubali Bank Limited Vs. Chowdhury Shamim Hamid and others*, reported in 31 ALR(AD)58=77 DLR(AD)(2025)113.

I have heard the learned Advocate for the opposite party No. 2 and perused the materials on record.

It appears that by order dated 27.08.2025, this Court issued the Rule and enlarged the petitioner on bail for a period of 01(one) month and after expiry of the said period of bail the petitioner neither took any step for extension of the period of bail, nor complied with the condition of preferring an appeal by depositing 50% of the cheque amount within the stipulated period of 90 days. Thus the petitioner has failed to comply with the directive issued by this Court. Consequently, the order of ad-interim bail has automatically lost its force and has become ineffective and infructuous.

Moreover, the Appellate Division has consistently discouraged the practice of granting bail to a convict under Section 138A of Negotiable Instruments Act for any period merely on the condition of preferring an appeal against the sentence, unless at least 50% of the cheque amount is deposited prior to filing of such appeal.

In this regard the Apex Court observed, in *Pubali Bank Limited Vs. Chowdhury Shamim Hamid and others*, reported in 31ALR(AD)58=77DLR(AD) (2025)113, wherein it has been held:

“It is manifest from the overall reading of the Negotiable Instruments Act that the legislature inserted the provision of deposit of 50% of the total cheque money before preferring an appeal in the Negotiable Instruments Act only to streamline the process of recovery of cheque money so that no person can deceive another as regards transactions over cheque. Therefore, the pre-condition of depositing 50% of the total cheque money while preferring appeal as enshrined in Section 138A of the Negotiable Instruments Act cannot be given a go-bye which according to the

principle of interpretation of statute must be adhered to. The High Court Division is not given such latitude to allow a convict under Section 138(1) of the Negotiable Instruments Act to go on bail for some period on condition of preferring appeal against the sentence without depositing 50% of the total cheque money before preferring appeal. But the High Court Division by the impugned orders misconstrued the provisions of Section 138A of the Negotiable Instruments Act and as such those call for interference by this Division.”

In view of the facts, circumstances of the case and the *ratio* passed by the Apex Court in the above-mentioned case, this Court finds no merit in the Rule which is liable to be discharged.

In the result, the Rule is discharged.

The petitioner is directed to surrender forthwith before the trial Court concerned to comply with the judgment and order dated 21.10.2020 passed by the learned Special Judge, 4th Court, Dhaka in Sessions Case No. 63 of 2017.

However, upon deposit of 50% of the total cheque amount by the petitioner this judgment shall not preclude the petitioner from preferring an appeal against the respective judgment pronounced by the trial Court. In case of deposit of 50% of the total cheque amount the Court below will be at liberty to enlarge the petitioner on bail in connection with the case.

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

(Md. Bashir Ullah, J.)

Md. Sabuj Akan
Assistant Bench Officer.