

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

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Revision No. 4285 of 2025**

Md. Hasan Kabir Raza alias Md. Abul  
Hasan Kabir

...**Convict- Petitioner**

-Versus-

Phoenix Finance and Investments Limited  
and another

..... **Opposite Parties.**

None appears

..... For the petitioner.

Mr. Mahabub Hasan Chowdhury, Advocate  
.....For Opposite Party No. 1.

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. 25 dated 13.08.2025 passed by the learned  
Special Joint Sessions Judge and Judge (Joint District and

Sessions Judge), Poribesh Adalat, Dhaka rejecting the prayer for bail of the convict-petitioner arising out of the judgment and order of conviction and sentence dated 25.05.2023 passed by the learned Special Joint Sessions Judge and Judge (Joint District and Sessions Judge), Poribesh Adalat, Dhaka in Metropolitan Sessions Case No. 9186 of 2019 arising out of Complaint Register (C.R) Case No. 67 of 2018, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for a period of 01(one) year and to pay a fine of Tk. 42,43,296/- (forty two lacs forty three thousand and two hundred ninety six), 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. 1, M/S Phoenix Finance and Investments Limited as complainant filed Complaint Register (C.R) Case No. 67 of 2018 before the Court of the learned Chief Metropolitan Magistrate, Dhaka against the present petitioner alleging *inter alia* that, the accused obtained a term

loan amounting to Taka 33,06,488/- (thirty three lacs six thousand and four hundred eighty eight) 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 08.11.2017 towards repayment of the outstanding liabilities amounting to Taka 42,43,296/- (forty two lacs forty three thousand and two hundred ninety six). The same was dishonoured by the concerned bank on 09.11.2017 due to insufficiency of funds. Thereafter a statutory legal notice was issued to the petitioner on 07.12.2017 demanding payment of the cheque amount, but the petitioner failed to comply with the same. Consequently, the case was filed on 01.02.2018.

Subsequently, the case was transferred to the Court of the learned Special Joint Sessions Judge and Judge (Joint District and Sessions Judge), Poribesh Adalat, Dhaka and was registered as Metropolitan Sessions Case No. 9186 of 2019. Upon taking cognizance of the offence, charge was framed under Section 138 of the Negotiable Instruments Act, 1881 against accused persons namely, Md. Hasan Kabir Raza alias Md. Abul Hasan Kabir who was absconding at the time of

charge framing. After hearing the parties and considering the evidence, the learned Special Joint Sessions Judge and Judge (Joint District and Sessions Judge), Poribesh Adalat, Dhaka found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer rigorous imprisonment for 01(one) year and to pay a fine of Taka 42,43,296/- (forty two lacs forty three thousand and two hundred ninety six) by judgment and order dated 25.05.2023.

Thereafter, the petitioner was arrested and produced before the trial Court on 13.08.2025. At that time the petitioner filed an application for bail before the learned Special Joint Sessions Judge and Judge (Joint District and Sessions Judge), Poribesh Adalat, Dhaka without preferring any appeal against the judgment of conviction and sentence 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. 25 dated 13.08.2025.

Being aggrieved by and dissatisfied with the order dated 13.08.2025 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 02(two) months subject to conditions runs as follows:

“Pending hearing of the Rule, let the convict-petitioner namely, Md. Hasan Kabir Raza alias Md. Abul Hasan Kabir Son of late Harun Ur Rashid and Rehana Begum, be enlarged on ad-interim bail for a period of 02 (two) months 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 25.05.2023 passed by the learned Special Joint Sessions Judge

and Judge (Joint District and Sessions Judge), Poribesh Adalat, Dhaka within 02(two) months and to furnishing bail bond to the satisfaction of the learned Special Joint Sessions Judge and Judge (Joint District and Sessions Judge), Poribesh Adalat, 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. 1 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 02 (two) months 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. 1 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 02 (two) months 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=77 DLR(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 25.05.2023 passed by the learned Special Joint Sessions Judge and Judge (Joint District and Sessions Judge), Poribesh Adalat, Dhaka in Metropolitan Sessions Case No. 9186 of 2019.

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.)**

