

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Revisional Jurisdiction)**

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL REVISION NO. 2309 OF 2025

Rozi Hasna..... Convict-petitioner

-Versus-

The State..... Opposite party

None appears.... For the convict-petitioner

Mr. Mohd. Mominul Islam, Advocate

.....For the opposite party No. 2

Mrs. Tashrifa Sultana Jali, AAG

.....For the state

Heard on: 10.11.2025 and 11.11.2025

Judgment on: The 16th of November, 2025

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued calling upon the opposite parties to show cause as to why the order dated 17.05.2025 passed by the learned Joint Sessions Judge, 2nd Court, Magura, in Sessions Case No. 62 of 2022, arising out of Magura C.R. Case No. 407 of 2021, whereby the bail application of the convict-petitioner was rejected, who was convicted under section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of 1 (one) year and also to pay a fine of **Tk. 4,52,400/-** (Taka four lakh fifty-two thousand four hundred) only, shall not be set aside and/or such other or further order or orders be passed as this Court may deem fit and proper.

At the time of issuance of the Rule, the convict-petitioner was admitted to ad-interim bail for a period of 3 (three) months and was directed, upon his release, to deposit fifty percent (50%) of the cheque amount in the concerned bank account and to file an appeal against the judgment and order of conviction and sentence dated 10.05.2023 within 90 (ninety) days.

For disposal of the Rule, the relevant facts may briefly be stated as follows:

The opposite party No. 2, as complainant, instituted C.R. Case No. 407 of 2021 under section 138 of the Negotiable Instruments Act, 1881, alleging inter alia, that the accused-petitioner obtained loans amounting to **Tk. 4,00,000/-** from ADI, Alokdia Branch on 15.02.2020 and after making partial repayment, failed to liquidate the outstanding dues despite repeated demands. In discharge of the said liability, the accused-petitioner issued a cheque in favour of the complainant company, which, upon presentation was dishonoured on 28.03.2021. Thereafter, a statutory legal notice dated 04.04.2021 was duly served upon the accused-petitioner; however, he failed to make payment within the stipulated time, compelling the complainant to institute the instant case.

Subsequently, the accused-petitioner was arrested by the police and produced before the learned trial Court on 17.05.2025. On the same date, the accused-petitioner filed an application for bail, which was rejected by Order No. 12 dated 17.05.2025. Being aggrieved by the said order of rejection of

bail, the convict-petitioner preferred the present Criminal Revision, pursuant to which this Rule was issued and the petitioner was enlarged on bail for a limited period.

Mr. Syed Amzad Hossain, learned Advocate for the petitioner, notwithstanding his earlier appearance, did not appear at the time of hearing and failed to press the Rule.

Mr. Mohd. Mominul Islam, the learned Advocate appearing for opposite party No. 2, submits that the petitioner has already been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced accordingly. Without preferring any appeal against the judgment and order of conviction, the petitioner has filed the present Criminal Revision challenging only the order rejecting his prayer for bail, which is not maintainable in law. He further submits that the petitioner has also failed to comply with the conditions imposed by the High Court Division and, as such, the instant Rule is liable to be discharged.

Mrs. Tashrifa Sultana Jali, the learned Assistant Attorney General, concurs with the submissions made by the learned Advocate for opposite party No. 2.

Heard the learned Advocate for the opposite party No. 2 and perused the materials on record.

In order to appreciate the contention advanced by the learned Advocate for the opposite parties, it is necessary, at the

very outset, to examine whether the present Criminal Revision is maintainable in law.

It appears from the record that the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced as stated hereinbefore. The Negotiable Instruments Act is a special statute having overriding effect and provides a specific appellate forum under Section 138A thereof. The petitioner, however, did not prefer any appeal against the judgment and order of conviction. Instead, after being taken into custody in execution of the sentence, the petitioner sought bail only, without assailing the judgment and order of conviction itself, which prayer was rejected by the impugned order.

Against a judgment and order of conviction and sentence passed under Section 138 of the Negotiable Instruments Act, 1881, the statutory remedy is to prefer an appeal under Section 138A of the said Act. The petitioner neither availed himself of such statutory remedy nor invoked the inherent jurisdiction of this Court under Section 561A of the Code of Criminal Procedure seeking quashment of the conviction. Consequently, the judgment of conviction and sentence remains unchallenged and operative in law.

It is well settled that where a statute provides a specific appellate forum, the aggrieved person must exhaust such statutory remedy and cannot circumvent the same by invoking the revisional jurisdiction of this Court. A Criminal Revision

challenging only the refusal of bail, without questioning the legality of the conviction itself, is, therefore, not maintainable in the eye of law.

In the instant case, as discussed above, the petitioner has neither preferred an appeal under Section 138A of the Negotiable Instruments Act, 1881 nor invoked the inherent jurisdiction of this Court under Section 561A of the Code of Criminal Procedure. As such, the conviction and sentence remain valid, subsisting, and executable in accordance with law. Hence, the present Criminal Revision challenging only the order refusing bail is not entertainable.

In such view of the matter, the present revisional application is not maintainable.

Accordingly, we find no merit in this Rule.

In the result, the Rule is discharged.

The convict-petitioner is directed to surrender before the concerned Court below within 30 (thirty) days from the date of receipt of a copy of this judgment and order; failing which the concerned Court below shall take necessary legal steps for execution of the sentence in accordance with law.

Let a copy of this judgment and order be communicated to the Court below at once.

