

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

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

CRIMINAL REVISION NO. 3500 OF 2025

Md. Tayabur Rahman..... Convict-petitioner

-Versus-

The State and anotherOpposite party

Mr. Md. Toufiq Elahi, Advocate

.....For the convict-petitioner

Mr. Mohammad Zafar Imam, Advocate

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

Mrs. Tashrifa Sultana Jali, AAG

.....For the state

Heard and judgment on: The 30th of October, 2025

ABU TAHER MD. SAIFUR RAHMAN, J.

This Rule was issued calling upon the opposite parties to show cause as to why Order No. 19 dated 08.07.2025 passed by the learned Joint Sessions Judge, 2nd Court, Jhalokathi in Sessions Case No. 148 of 2023, arising out of C.R. Case No. 189 of 2023 (Jhalokathi), rejecting the bail application of the convict-petitioner—who has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for 1 (one) year and to pay a fine of Tk. 2,87,00,000/- (Taka two crore eighty-seven lakh)—shall not be set aside and/or why such other or further order or orders shall not be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the convict-petitioner was granted ad-interim bail for **30 (thirty)** days, subject to depositing 50% (fifty percent) of the cheque amount to the concerned bank account after his release, and further subject to filing an appeal against the aforesaid judgment and order of conviction and sentence dated 12.03.2024 within **30 (thirty)** days.

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

Opposite Party No. 2, as complainant, filed C.R. Case No. 189 of 2023 under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred as NI Act) alleging, inter alia, that the petitioner purchased construction materials worth **Tk. 70,000,00/-** (Taka seventy lac) from the complainant and also received **Tk. 89,37,514/-** (Taka eighty-nine lakh thirty-seven thousand five hundred fourteen) from him on different occasions. To protect the business reputation of the petitioner, the complainant paid **Tk. 47,62,486/-** (Taka forty-seven lakh sixty-two thousand four hundred eighty-six) to different creditors on his behalf. The complainant further completed construction works for the petitioner, against which the petitioner withdrew **Tk. 80,00,000/-** (Taka eighty lakh) without making due payments to the complainant. Subsequently, the petitioner admitted his total liability of **Tk. 2,87,00,000/-** (Taka two crore eighty-seven lakh) and issued a

cheque for the said amount, which was dishonoured due to insufficient funds. Despite issuance of legal notice, the petitioner failed to make payment, whereupon the instant case was initiated.

Thereafter, the accused-petitioner appeared before the learned Court below, obtained bail, and the charge was duly framed in his presence. However, the petitioner subsequently absconded and the learned trial Court proceeded with the trial in his absence and passed the judgment and order of conviction and sentence dated 12.03.2024. After more than one year, the petitioner was arrested by the police and produced before the learned Court below on 03.07.2025, when he filed an application for bail which was rejected by the impugned Order No. 19 dated 08.07. 2025. Being aggrieved, the convict-petitioner preferred this Criminal Revision before this Court wherein the Rule was issued and ad-interim bail was granted upon conditions.

Mr. Md. Toufiq Elahi, the learned Advocate for the accused-petitioner, submits that due to financial hardship the petitioner could not deposit the money as directed by this Court and prays for further extension of time to deposit the said amount for preferring an appeal.

As against this, Mr. Mohammad Zafar Imam, the learned Advocate for opposite party No. 2, submits that the petitioner

has been convicted under Section 138 of the NI Act, 1881 and sentenced accordingly, but without preferring any appeal against the judgment and order of conviction, he has filed this Criminal Revision only challenging the rejection of bail which is not maintainable in law. He further submits that the petitioner has failed to comply with the conditions imposed by the High Court Division and as such, the 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 Advocates of both sides 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 law having an overriding effect and provides a special appellate forum under Section 138A thereof. However, the petitioner did not prefer any appeal challenging the judgment and order of conviction. Instead, after his arrest in execution of the sentence, he only sought bail without assailing

the conviction itself, which prayer was rejected by the impugned order.

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

It is well settled that when a statute provides a specific appellate forum, the aggrieved person must exhaust such statutory remedy and cannot bypass the same by seeking alternate reliefs under the revisional jurisdiction of this Court. A criminal revision challenging only the refusal of bail without questioning the conviction itself is, therefore, not maintainable in the eye of law. The doctrine of alternate remedy squarely applies in the facts of the present case.

In the instant matter, 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 to challenge the legality of his conviction.

Therefore, the conviction and sentence remain valid, operative and executable in accordance with law. Hence, the present Criminal Revision challenging only the order of refusal of bail cannot be entertained.

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.