

DISTRICT-SHERPUR**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)****CRIMINAL MISCELLANEOUS CASE NO. _____ OF 2025.****IN THE MATTER OF:**

Raju Ahmed

.... Accused-petitioner.

- Versus -

The State and another

... Opposite parties

Mr. Tajul Islam Miajee, Advocate

..... For the petitioner

Ms. Shiuli Khanom, D.A.G

..... For the respondents

The Order on: 11th March, 2025**Present:****Mr. Justice Md. Khairul Alam****and****Mr. Justice K.M. Emrul Kayesh**

By filing this application under section 561A of the Code of Criminal Procedure, the convict petitioner seeks to quash the order dated 02.01.2025 passed by the learned Joint Sessions Judge, 1st Court, Sherpur in Sessions Case No. 501 of 2023 arising out of C.R Case No. 312 of 2023 rejecting an application filed by the convict petitioner to release him on bail to enable him to present an appeal against the judgment and

order of conviction and sentence dated 15.05.2024 convicting under section 138 of the Negotiable Instruments Act, 1881 and sentencing to suffer imprisonment for one year and to pay a fine of Taka 42,40,000/-.

Relevant facts for disposal of the application are that the present convict petitioner was put on trial before the Court of Joint Sessions Judge, 1st Court, Sherpur for an offence punishable under section 138 of the NI Act filed by the present opposite party No. 2 alleging dishonour of a cheque bearing No. 0013828 dated 23.05.2023 amounting to Taka 42,40,000/-. After the conclusion of the trial, the learned Joint Sessions Judge, 1st Court, Sherpur by the judgment and order of conviction and sentence dated 15.05.2024 convicted and sentenced the petitioner as aforesaid. On 17.10.2024, the petitioner was sent to jail in connection with the said judgment. Without depositing 50% of the cheque amount as required under section 138A of the NI Act to prefer an appeal the petitioner filed an application under section 426(2A) of the Code of Criminal Procedure to release him on bail. The learned Joint Sessions Judge, 1st Court, Sherpur by the order dated 02.01.2025 rejected the said application.

Being aggrieved thereby the petitioner has filed this application.

Mr. Tajul Islam Miajee, the learned Advocate appearing for the petitioner submits that the sentence of the petitioner did not exceed one year, so he was entitled to be released on bail under the provision of section 426(2A) of the Code of Criminal Procedure which cannot be curtailed applying the provision of section 138A of the NI Act, the Court below without considering this aspect of the case passed the impugned order hence the order is liable to be quashed and petitioner is entitled to be release on bail.

Per contra, Ms. Shiuli Khanom, the learned Deputy Attorney General appearing for the state submits that the petitioner did not deposit fifty per cent of the cheque amount as required under section 138A of the NI Act to satisfy the trial Court that the petitioner intends to present an appeal, so the trial Court rightly rejected the application for bail of the petitioner.

Heard the learned Advocates and perused the application and the impugned order.

It appears that the conviction and sentence against the petitioner is under section 138 of the NI Act, the sentence is one year and an appeal lies from that sentence. It also appears that the prayer for bail of the petitioner filed under section 426(2A) of the Code of Criminal Procedure to enable him to present an appeal was rejected by the trial Court holding, inter alia, that the application without depositing fifty per cent of the cheque amount as required to prefer an appeal under section 138A of the NI Act is not maintainable.

The main contention of the petitioner is that amongst the contradictory provisions of sections 426(2A) of the Code of Criminal Procedure and 138A of the NI Act, the provision of section 426(2A) of the Code of Criminal Procedure will apply to the petitioner.

The issue as raised by the petitioner is not a res integra. Our apex Court settled the issue in Criminal Petition for Leave to Appeal Nos. 1059-1061 of 2024. In the said case, convicts under section 138 of the NI Act, without depositing 50% of the

total amount of the respective cheques, filed applications under section 426(2A) of the Code of Criminal Procedure to be released on bail to enable them to present an appeal. The said applications were rejected. Against the orders, the convicts filed Criminal Revision Nos. 3178, 3180, and 3179 of 2024 and obtained Rule and they were also enlarged on bail. Complainants of the cases preferred Criminal Petition for Leave to Appeal Nos. 1059-1061 of 2024. In the said Criminal Petition for Leave to Appeals our apex Court held that section 426(2A) of the Code of Criminal Procedure is not contradictory with the provision of section 138A of the NI Act, rather the provision of section 426(2A) of the Code of Criminal Procedure will be applicable subject to fulfillment of condition stipulated under section 138A of the NI Act i.e. subject to deposit 50% of the total amount of the cheque.

Therefore, we are of the view that the trial court rightly passed the impugned order rejecting the bail application of the petitioner and we do not find any reason to interfere with the same.

Hence, the application is rejected summarily.

Communicate this order to the court concerned at once.

Kashem, BO