

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 5232 of 2024

Md. Mobarok Hosen Molla

...Convict-petitioner

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioner

Mr. Md. Mahafujur Rahman, Advocate

...For the complainant-opposite party No. 2

Heard on 20.11.2024

Judgment delivered on 25.11.2024

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite parties to show cause as to why the impugned order dated 19.08.2024 passed by the Joint Sessions Judge, Court No. 1, Narsingdi rejecting the application for bail filed under Section 426(2A) of the Code of Criminal Procedure, 1898 for preferring appeal against the judgment and order of conviction and sentence dated 05.03.2024 passed by the Joint Sessions Judge, Court No. 1, Narsingdi in Sessions Case No.1448 of 2022 arising out of C.R Case No. 268 of 2022 convicting the petitioner under Section 138(1) of the Negotiable Instrument Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 01(one) year and to pay a fine of Tk. 40,00,000 (forty lakh) should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

No one appears on behalf of the convict-petitioner.

Learned Advocate Mr. Md. Mahafujur Rahman appearing on behalf of the complainant-opposite party No. 2 submits that the order granting bail on 05.09.2024 by this Court expired on 05.11.2024 and the convict-petitioner neither filed an appeal nor surrendered before the trial Court. Therefore, he prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Mahafujur Rahman who appeared on behalf of the complainant-opposite party No. 2, perused the impugned order passed by the trial Court and the records.

On perusal of the records, it appears that at the time of issuance of the Rule on 05.09.2024 bail was granted to the convict-petitioner for a limited period of 2(two) months which expired on 05.11.2024. Section 426(2A) of the Code of Criminal Procedure, 1898 empowers the trial Court to grant bail to the accused who is sentenced to suffer imprisonment for a term not exceeding one year on condition to file appeal against the judgment and order of conviction and sentence passed by it.

The Negotiable Instruments Act is a special law. Section 138A is inserted in the said Act by Act No. III of 2006 making provision to deposit 50% of the cheque amount before filing appeal against the judgment and order of conviction and sentence passed by the trial Court. Section 138A of the Negotiable Instruments Act, 1881 imposes a restriction and excludes the application of the Code of Criminal Procedure, 1898 till the deposit of 50% of the cheque amount as regards filing appeal against the judgment and order of conviction and sentence passed by the trial Court. Therefore, I am of the view that the trial Court is not empowered under Section 426(2A) of the Code of Criminal Procedure, 1898 to grant bail to the accused convicted under Section 138 of the Negotiable Instrument Act, 1881 by it unless the accused deposit 50% of the cheque amount. Therefore, the Rule is not maintainable in law.

In the result, the Rule is discharged.

The convict-petitioner Md. Mobarok Hosen Molla is directed to surrender before the trial Court forthwith failing which the trial Court is directed to take necessary steps following law.

However, there will be no order as to costs.