

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Rule No. 235(Con-A) of 2024

In the matter of:

Alhaj Mohammad Dulal Hossain Khan
.....Convict-Appellant-Petitioner.

-Versus-

The State and another
.....Respondents

No one appears
..... For the Convict-Appellate-Petitioner

Mr. K.M. Hafizur Rahman (Nehal),
Advocate
.....For the Respondent No. 2

Heard on 09.03.2026 and 10.03.2026

Judgment on: 12.03.2026

On an application under section 5 of the Limitation Act, 1908, the Rule was issued calling upon the opposite parties to show cause as to why the delay of 2496 days in filing the criminal appeal should not be condoned and/or pass such other or further order or orders as to this Court may seem fit and proper.

In the application, it has been stated that the petitioner was convicted by the judgment and order dated 19.10.2017 passed by Additional Sessions Judge, Court No. 6, Dhaka in Metropolitan Sessions Case No. 13659 of 2015 arising out of CR Case No. 945 of 2014 convicting the petitioner under section 138 of the

Negotiable Instruments Act, 1881 and sentencing him thereunder to suffer rigorous imprisonment for 01(one) year and fine of Tk. 1,10,00,000.

No one appears on behalf of the convict petitioner.

The learned Advocate Mr. K.M. Hafizur Rahman(Nehal) appearing on behalf of the respondent No. 2 submits that after conviction and sentenced dated 19.10.2017 passed by the trial court, the petitioner filed Criminal Revision No. 3510 of 2019 and the Hon'ble High Court Division by order dated 17.12.2019 issued Rule and granted bail to the petitioner for a limited period of 02 (two) months and thereafter he did not file the appeal and the order dated 17.12.2019 granting bail to the petitioner for 02(two) months stand cancelled on 17.02.2020. He further submits that although the bail granted earlier by the High Court Division was cancelled on 17.02.2020, the petitioner did not surrender, and he was arrested on 16.07.2024. Therefore, suppressing the earlier order dated 17.12.2019 passed by the High Court Division, again, he illegally obtained bail on 08.09.2024 from the trial court. He further submits that at the time of issuance of the Rule on 23.10.2024, there was no valid order granting bail in favour of the petitioner, and he is a fugitive from justice. He prayed for discharging the Rule.

At this stage, it is relevant here to quote the ad-interim order passed by this court on 17.012.2019 in Criminal Revision No. 3510 of 2019, which is quoted below”

“Pending hearing of the Rule, let the convict-appellant-petitioner Alhaj Mohammad Dulal Hossain

Khan, son of late Fazar Ali Khan be enlarged on bail for a period of 2(two) months from the date on furnishing adequate bail bond to the satisfaction of the learned Chief Metropolitan Magistrate, Dhaka subject to depositing the passport of the convict-petitioner being No. BM 0392579 before the learned Chief Metropolitan Magistrate, Dhaka.

The learned Chief Metropolitan Magistrate, Dhaka is directed to accept the bail bond after receiving the said passport of the convict-petitioner and to keep the same in the custody of the said Court. The convict-petitioner is at liberty to withdraw his passport after filing the appeal against the impugned judgment and order of conviction and sentence dated 19.10.2017 by depositing 50% of the cheque amount through Chalan in the trial Court, failing which, the order of bail shall stand canceled, and the Rule will be discharged.

The learned Advocate for the convict-petitioner is directed to file an affidavit of compliance on or before 20.02.2020.

The office is directed to place this matter before any appropriate Bench on 20.02.2020 for further order.”

On perusal of the said order dated 17.12.2019 it appears that the High Court Division granted bail for a limited period for 02 months to file appeal against the judgment and order of conviction and sentenced dated 19.10.2017 passed in Metropolitan Sessions Case No. 13659 of 2015 upon depositing 50% of the cheque

amount through chalan in the trial court. This court also passed default order regarding cancellation of bail. Consequently, the bail stand cancelled and the Rule has been discharged.

It appears that no appeal was filed by the petitioner within two months, as directed by the High Court Division by order dated 17.12.2019 in Criminal Revision No. 3510 of 2019. The accused Alhaj Mohammad Dulal Hossain Khan was aware of the judgment and order of conviction and sentence dated 07.11.2019 passed by the trial court when he filed the said revision, but in compliance of the said order dated 17.12.2019, he did not file the appeal and remained fugitive from justice. Later on, he was arrested on 16.07.2024 and, in violation of the order dated 17.12.2019 passed by this court in Criminal Revision No. 3510 of 2019, illegally obtained bail on 08.09.2024 from the trial court. Although the petitioner illegally obtained bail on 08.09.2024 for two months, at the time of issuance of the Rule on 23.10.2024, no order granting bail to the petitioner was passed by this court. I am of the view that at the time of issuance of the Rule on 23.10.2024, the petitioner was a fugitive from justice.

It is settle proposition that a fugitive is not entitled to get justice. The learned Advocate for the petitioner intentionally remained absent at the time of the hearing. It further appears that at the time of filing the instant appeal, the impugned judgment and order passed by the trial court was not filed along with the memo of the appeal.

In view of the above facts and circumstances of the case, I am of the view that on 07.09.2019 the petitioner was aware of the

impugned judgment and order of conviction and sentenced dated 19.10.2017 passed by the trial court when the filed the Criminal Revision No. 3510 of 2019 and violating the order dated 17.12.2019 passed in Criminal Revision No. 3510 of 2019, the petitioner absconded. He failed to explain the cause of the delay of 2496 days in filing the appeal against the impugned judgment and order of conviction and sentence dated 19.10.2017, passed by the Additional Metropolitan Sessions Judge, Court No. 6, Dhaka in Metropolitan Sessions Case No. 13659 of 2015.

I find no merit in the Rule.

In the result, the Rule is discharged.

The convict petitioner Alhaj Mohammad Dulal Hossain Khan is hereby directed to surrender before the trial court forthwith and pay the remaining fine amount, failing which the trial court shall do the needful.

The trial court is directed to allow the complainant to withdraw 50% of the cheque amount deposited by the accused within 7 days from the date of filing the application, if any.

The office is directed to do the needful in accordance with the law.

