

**Present**

**Mr. Justice Yousuf Abdullah Suman**

**Criminal Revision No. 2571 of 2025.**

Md. Kobir Uddin Biswas

... Convict-Petitioner

**-Versus-**

The State and another

... Opposite Parties

None appears.

.... For the Petitioner

Mr. Md. Farhad Hossain (Kazal), D.A.G  
with

Mr. Md. Sherajul Alam, A.A.G. with

Mr. Md. Hasan Imam Talukder, A.A.G..

.....for the State

Mr. Mr. Md. Taufiqul Islam, Advocate

...For the Complainant- Opposite party

No.02

**Heard on: 23.08.2026**

**Judgment on: 24.08.2026.**

***Yousuf Abdullah Suman, J:***

On an application under section 439 read with section 435 of the Code of Criminal Procedure, this Rule was issued calling upon the opposite parties to show cause as to why

the order dated 24.02.2025 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Jhenaidah in Sessions Case No. 905 of 2019 arising out of C.R. Case No. 09 of 2018 convicting the petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentencing him to suffer simple imprisonment for 01 (one) year and to pay a fine of Tk. 25,04,054/- (twenty five lac four thousand and fifty four) vide the judgment and order of conviction and sentence dated 21.04.2022 passed by the same court, rejecting the prayer for bail of the convict-petitioner, should not be set aside, and/ or such other or further order or orders be passed as to this court may seem fit and proper.

The facts necessary for disposal of this case are that, being convicted and sentenced, as stated above, under section 138 of the

Negotiable Instruments Act, 1881, the convict-petitioner, instead of preferring an appeal by depositing at least 50% of the amount of the dishonored cheque pursuant to section 138A of the Act of 1881, filed an application for bail under section 426(2A) of the Code of Criminal Procedure expressing his intention that he would prefer an appeal against the impugned judgment and order of conviction and sentence. The said application for bail was, however, rejected by the court below on the ground that, the convict did not deposit the required 50% of the dishonored cheque's amount as mandated by section 138A of the Negotiable Instruments Act, 1881. The petitioner therefore filed this revision against the impugned order rejecting his prayer for bail, and obtained the instant Rule.

No one appears to press the Rule, though the matter appeared regularly in the cause list with the name of the learned counsel for the petitioner, thereby giving the petitioner ample opportunity to be heard in his defence.

Mr. Md. Taufiqul Islam, the learned counsel for the opposite-party no.2, submits that though the provisions of section 138A of the Negotiable Instruments Act, 1881 and section 426(2A) appears to be contradictory on the face of them, the provisions of the Act of 1881, being a special law, shall prevail over the general law provided under the Code of Criminal Procedure. He relies on *Pubali Bank Ltd. vs Chowdhury Shamim Hamid* [2024] 17 LM (AD) 124, and on Criminal Revision No. 1481 of 2024 (HCD). The learned counsel further submits that, the bail was granted by this Division subject to the deposit of 50% of the

amount of the dishonored cheque to the concerned court within 90 (ninety) days, which the petitioner failed to comply with. He therefore prays for discharging the Rule.

Heard the learned counsel appearing for the opposite party no.2, perused the materials on record, and the impugned order passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Jhenaidah rejecting the prayer for bail of the convict-petitioner.

It is settled and no longer *res integra* that, as section 138A of the Negotiable instruments Act is prefaced by a *non-obstante* clause, i.e., *Notwithstanding anything contained in the Code of Criminal Procedure, 1898*, the provision of this section has overriding effect over general provisions contained in section 246(2A) of the Code of

Criminal Procedure: *Pubali Bank Ltd. vs Chowdhury Shamim Hamid* [2024] 17 LM (AD) 124.

Thus, the requirement of depositing at least 50% of the amount of the dishonoured cheque provided in section 138A of Act of 1881 is a condition precedent, *a sine qua non*, for preferring an appeal, and cannot be given a go-by or bypassed. The condition of depositing the 50% amount of the dishonoured cheque and the right of appeal are therefore, interdependent and inseparable. The court has no latitude to dispense with this condition for the purpose of enabling a convict to present an appeal and to enlarge him on bail ignoring the binding precedent laid down by our apex court. The impugned order of the court below, therefore, calls for no interference.

Accordingly, the Rule is discharged as being *per incuriam* and devoid of merit, without, however, any order as to costs.

The ad-interim order of bail granted at the time of issuance of the Rule is hereby recalled and cancelled.

The convict-petitioner is directed to surrender before the trial court within 30 (thirty) days from the date hereof to serve the remaining period of his sentence, failing which the trial court shall take necessary steps to secure his arrest in accordance with law.

Communicate the judgment and order at once.