

Present

Mr. Justice Yousuf Abdullah Suman

Criminal Revision No. 6579 of 2024.

Md. Thandu Mia

... 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: 30.08.2026

Judgment on: 07.09.2026.

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 18.09.2024 passed by the learned Joint Sessions Judge, 1st Court, Chuadanga rejecting the prayer for bail of the convict-petitioner in Sessions Case No. 261 of 2022 arising out of C.R. Case No. 161 of 2020 under Section 138 of the Negotiable Instruments Act, 1881, 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, having been convicted and sentenced to imprisonment for not exceeding one year under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as the act of 1881), vide the judgment and order passed by the learned Joint Sessions Judge, 1st Court, Chuadanga, the convict-petitioner, instead of preferring an appeal by

depositing at least 50% of the amount of the dishonored cheque as required by Section 138A of the Act of 1881, filed an application for bail under Section 426(2A) of the Code of Criminal Procedure praying that he intended to prefer an appeal against the impugned judgment and order of conviction and sentence, which constitutes a ground for bail contemplated under Section 426(2A) of the Code. The said application for bail was, however, rejected by the court below on the basis that, the convict did not deposit the required 50% of the dishonored cheque 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 along with an ad-interim order of bail.

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, and thereby giving the petitioner ample opportunity to be heard in his defence.

Mr. Md. Iqbal Hossain, the learned counsel for the opposite-party no.2, submits that though the provisions of Section 138A of the Negotiable Instruments Act and Section 426(2A) of the Code of Criminal Procedure appear 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 60 (sixty) 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, 1st Court, Chuadanga 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 dishonoured cheque amount provided in Section 138A of Act of 1881 is a condition precedent, i.e., *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 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 disregarding and/or ignoring the substantive provisions of law as well as the binding precedent laid down by our apex court. This court, therefore, finds no

substance in the revision and merit in the Rule.

Accordingly, the Rule is discharged as being *per incuriam* and devoid of merit.

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 at once 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.