

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)**

**Present:
Mr. Justice Md. Khairul Alam**

CRIMINAL REVISION NO. 4247 OF 2025.

IN THE MATTER OF:

Md. Ahsanul Haque
..... Accused-petitioner.

- Versus -

The State and another
... Opposite parties

Mr. Md. Zahirul Islam, Advocate
..... For the petitioner

Mr. Abdul Alim, Advocate
..... For the opposite party No.2

Heard on: 07.12.2025 and

Judgment on: 05.03.2026

This Rule was issued in an application under sections 439 read with 435 of the Code of Criminal Procedure calling upon the opposite parties to show cause as to why the order dated 29.07.2025 passed by the learned Joint Metropolitan Sessions Judge, Acting 5th Court, Chattogram, rejecting the prayer for bail of the petitioner, in connection with the judgment and order of conviction and sentence dated 15.04.2025

passed in Sessions Case No. 6759 of 2023 arising out of C.R. Case No. 159 of 2021 (Doublemooring), whereby the petitioner was convicted under section 138 of the Negotiable Instruments Act, 1881 (shortly, the N.I. Act) and sentenced to suffer simple imprisonment for 01 (one) year and to pay a fine of Tk. 24,81,734/- should not be set aside.

The relevant facts, necessary for disposal of the Rule, are that the present convict-petitioner was put on trial before the Court of Joint Metropolitan Sessions Judge, Acting 5th Court, Chattogram, for an offence punishable under section 138 of the N.I. Act on the allegation of dishonour of the cheque bearing No. IBW 2852496, IBW 1238717 and IBW 2852497 dated 19.05.2021 amounting to Tk. (8,43,341+7,76,423+8,61,970) totaling Tk. 24,81,734 /-. Upon conclusion of the trial, the learned Judge, by judgment and order dated 15.04.2025, convicted and sentenced the petitioner as stated above.

Subsequently, on 28.07.2025, the petitioner was arrested and sent to jail in connection with the said

judgment. Without depositing 50% of the cheque amount as required under section 138A of the N.I. Act for preferring an appeal, the petitioner filed an application before the trial Court seeking bail. The learned Joint Metropolitan Sessions Judge, 4th Court, Chattagram by the order dated 29.07.2025, rejected the said application.

Being aggrieved thereby, the petitioner moved this Court and obtained the present Rule, and was enlarged on ad-interim bail for a period of one month, which was subsequently extended from time to time, the last such extension having been granted on 22.10.2025 till 07.12.2025 with a specific direction that no further extension would be allowed, and the said period has expired long before.

Mr. Md. Zahirul Islam, the learned Advocate appearing for the petitioner, submits that since the sentence imposed does not exceed one year, the petitioner is entitled to be released on bail under section 426(2A) of the Code of Criminal Procedure, and such statutory entitlement cannot be curtailed by

invoking section 138A of the N.I. Act. He contends that the Court below failed to consider this legal aspect and, as such, the impugned order is liable to be set aside.

On the other hand, Mr. Abdul Alim, the learned Advocate appearing for the opposite party No. 2, submits that the petitioner did not deposit 50% of the cheque amount as required under section 138A of the N.I. Act to demonstrate his intention to prefer an appeal, and therefore, the trial Court rightly rejected the bail application.

We have heard the learned Advocates and perused the materials on record.

It appears that the petitioner has been convicted under section 138 of the N.I. Act and sentenced to imprisonment for one year, against which an appeal lies. It further appears that the prayer for bail, intended to enable the petitioner to prefer an appeal, was rejected by the trial Court on the ground that the petitioner failed to deposit 50% of the cheque amount as mandated under section 138A of the N.I. Act.

The principal contention raised by the petitioner is that in the event of any inconsistency between section 426(2A) of the Code of Criminal Procedure and section 138A of the N.I. Act, the provisions of section 426(2A) of the Code of Criminal Procedure should prevail.

The issue is no longer *res integra*. Our apex Court, in Criminal Petition for Leave to Appeal Nos. 1059-1061 of 2024 has conclusively settled the matter. In the said case, convicts under section 138 of the N.I. Act, without depositing 50% of the cheque amount, filed applications under sections 439/435 of the Code of Criminal Procedure seeking bail to prefer appeals. Although they initially obtained bail from the High Court Division, the Appellate Division, upon consideration, held that section 426(2A) of the Code of Criminal Procedure is not in conflict with section 138A of the N.I. Act. Rather, the provisions operate harmoniously, and any application for bail under sections 439/435 of the Code of Criminal Procedure must be subject to compliance with the condition stipulated under section

138A of the N.I. Act, namely, the deposit of 50% of the cheque amount.

In view of the settled legal position, I am of the considered opinion that the trial Court committed no illegality in rejecting the bail application of the petitioner for non-compliance with the mandatory requirement of section 138A of the N.I. Act.

Accordingly, this Court finds no substance in the Rule.

Hence, the Rule is discharged.

The order of ad-interim bail is hereby recalled and vacated.

Communicate this order to the Court concerned at once.

Kashem, B.O