



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous (Petition) No. 9802/2025

Kunaram S/o Shri Chainaram Ji, Aged About 60 Years, Resident
Of Begh Charnan, Tehsil Osian, District Jodhpur

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Mahindra And Mahindra Financial Services Limited,
Through Authorised Signatory, (General Attorney).
Jitendra Singh S/o Shri Bhanwar Singh, Address- 101-
102, S.s Tower, Akhliya Chorahe Ke Pass, Chopasani
Road, Jodhpur.

-----Respondents

For Petitioner(s) : Ms. Urmila Chouhan for
Mr. Dhanraj Vaishnav

For Respondent(s) : Mr. Vikram Singh Rajpurohit, Dy.G.A.
Mr. Ravindra Singh, Asstt. G.A.
Mr. Sanjay Gupta, for respondent
No.2

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

REPORTABLE

28/04/2026

1. Instant Criminal Misc. Petition has been filed by the petitioner against the order dated 06.02.2025 passed by the learned Additional Sessions Judge No.3, Jodhpur Metropolitan, in Criminal Appeal No.527/2024 whereby, while suspending the sentence for offence punishable under Section 138 N.I. Act in pending appeal, the appellate Court directed the petitioner to deposit 20% of the fine amount before the learned trial Court. The petitioner has also challenged the order dated 24.09.2025 passed



by the Appellate Court whereby the application of the petitioner seeking exemption from depositing 20% of the fine amount was rejected.

2. Learned counsel appearing for the petitioner submits that learned Appellate Court has committed a grave error in directing the interim payment of 20% of the fine amount while considering the application for suspension of execution of the sentence, despite the fact that no separate application under Section 148 of the Negotiable Instruments Act (in short 'N.I.' Act) had been filed by the complainant. Counsel submits that the said condition has been imposed by the Appellate Court under the impression that the provisions contained under Section 148 of N.I. Act are mandatory in nature, and that, without compliance therewith, the petitioner's application seeking suspension of sentence could not have been allowed. In support of her contention, counsel has relied upon the judgment of the Hon'ble Supreme Court in ***Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors.***, reported in **(2023) 10 SCC 446**.

3. Learned counsel for the petitioner submits that the petitioner is suffering from a life-threatening illness, and his liver and kidneys are damaged, due to which he has been dependent on medicines for several years and is unable to move independently. It is further submitted that the petitioner has had no source of income for many years and is entirely financially dependent on his family. If the impugned order is allowed to stand, the petitioner would be required to surrender and be taken into custody, which





would make it impossible for him to effectively defend his appeal.

In these circumstances, the liberty of the petitioner is at stake.

4. Learned State Counsel and learned counsel appearing for the complainant submit that the orders passed by the Appellate Court are just and proper and no interference is called for by this Court.

In the alternative, it has been submitted that the learned Appellate Court may be directed to expedite the hearing of the appeal without insisting the payment of 20% of the fine amount.

5. I have considered the rival submissions made by counsel for the parties and perused the impugned orders as well as relevant provisions of law.

6. For a thorough evaluation, it would be appropriate to reproduce Section 148 of N.I Act and Section 430 of BNSS, 2023 (Corresponding to Section 389 of Cr.P.C), which read as under:-

Section 148: Power of Appellate Court to order payment pending appeal against conviction.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty percent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:





Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

Section 430: Suspension of Sentence pending appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond or bail bond:

Provided that the Appellate Court shall, before releasing on his own bond or bail bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,---

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years; or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under subsection (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the





time during which he is so released shall be excluded in computing the term for which he is so sentenced.

7. Perusal of the aforesaid Sections would make it clear that these provisions operate in distinct fields and serve independent purposes in the context of appeals arising out of convictions for cheque dishonour. Section 430 of BNSS empowers the Appellate Court to suspend the execution of the sentence and grant bail to the convicted accused during the pendency of the appeal. While exercising this power, the Appellate Court may impose appropriate conditions to secure the presence of the accused or ensure the orderly administration of justice. However, this provision does not, by itself, authorize the Court to mandate the deposit of a fixed percentage of the fine or compensation amount merely as a precondition for suspension of sentence.

8. Perusal of Section 148 of the N.I. Act makes it clear that the provision begins with a non-obstante clause and, in that view, the jurisdiction under this provision must be exercised notwithstanding anything contained in the Code of Criminal Procedure. Thus, the legislative intent is clear that the provisions contained in Section 148 of the N.I. Act and Section 430 of the BNSS are independent of each other in terms of jurisdiction and, therefore, are required to be exercised separately and independently. Section 148 of NI Act is a special provision specifically introduced to strengthen the enforcement mechanism in cheque dishonour cases. It enables the Appellate Court to direct the appellant-accused to deposit a minimum of 20% of the fine or compensation awarded by the trial Court. Crucially, this power





should be exercised upon an application made by the complainant, and not suo-motu or as a routine condition attached to suspension of sentence.

9. From the wording of Section 148 of the N.I. Act, it is clear that, in the process of hearing an appeal regarding conviction and sentence for an offence under Section 138 of the Act, the appellate Court possesses the power to direct the appellant-accused to make a payment of not less than 20% of the amount of the fine or compensation awarded by the trial Court. Nonetheless, the power possessed by the Court in this respect is neither mechanical nor absolute. This is because the exercise of this power ought not to be based on any kind of casualness or without application of judicial mind. Simply because the law allows the Court to issue such a direction in certain cases does not mean that it should be made in all instances as a matter of routine, without an independent assessment of the specific circumstances. Moreover, this discretion must be exercised in accordance with the requirements of natural justice. The accused should be given an adequate and reasonable opportunity to be heard and should also have the right to oppose the prayer of the complainant seeking such a direction. It is only after considering the arguments presented by both parties and recording appropriate reasons that an order directing such deposit may be passed. Thus, the power under Section 148 is discretionary but structured, and its exercise must be judicious, reasoned, and in adherence to fairness and procedural propriety.





10. The Hon'ble Supreme Court in the case **Jamboo Bhandari** (**Supra**) has held as under :-

"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said 4 conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.

11. The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court."





11. As an upshot, keeping in view the ratio of Supreme Court judgment in **Jamboo Bhandari (supra)** and in the light of the facts and circumstances of the case, the impugned orders dated 24.09.2025 and 06.02.2025 passed by learned Appellate Court are modified and condition imposed by the Appellate Court requiring deposit of 20% of the fine amount for suspending the sentence of the petitioner is hereby set aside.

12. The learned Appellate Court shall proceed with hearing of the appeal without insisting for pre-deposit and shall make all endeavour to decide the appeal finally strictly in accordance with law preferably within a period of six months from the date of receipt of certified copy of this order.

13. Accordingly, the criminal misc. petition stands disposed of.

14. Stay application and pending application(s), if any, also stand(s) disposed of.

(ANIL KUMAR UPMAN),J

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