



2025:AHC:175216

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 6413 of 2025 (Leading Application)

Rahul Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Santosh Kumar Kesarwani, Sudhir
Kumar

Counsel for Opposite Party(s) : G.A., Vidit Narayan Mishra

with

APPLICATION U/S 528 BNSS No. - 6396 of 2025 (Connected Application)

Rahul Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Santosh Kumar Kesarwani, Sudhir
Kumar

Counsel for Opposite Party(s) : G.A., Vidit Narayan Mishra

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Heard learned counsel for the applicant and learned AGA for the State as well as learned counsel for opposite party no. 2.
2. The counsel for the rival parties has made a joint statement that they do not propose to file any further affidavits, thus, with the consent of the parties, the application is being decided at the fresh stage.
3. The facts of the leading applications are that post lodging of the complaint under Section 138 of the N.I. Act by the opposite party no. 2 against the applicant came to be convicted on 02.05.2024 by the Court of Presiding Officer, Special Court (138 N.I. Act), Gautam Buddh Nagar in complaint Case No. 910 of 2022 multi tasking and others while sending for simple

imprisonment of 21 months with a fine of Rs. 32 lakhs and one lakh rupees to be paid to be retained in the State exchequer.

4. Assailing the same, the applicant preferred a criminal appeal bearing no. 419 of 2024 along with an application for staying the conviction sentence and recovery and on 12.08.2024, the Court of Sessions Judge, Gautam Buddh Nagar proceeded to direct the applicant to deposit 20% of the total amount of Rs. 33 lakhs.

5. Questioning the same, the applicant has been filed the leading application.

6. As regards connected application, a complaint came to be lodged under Section 138 of the Act by the opposite party no. 2 against the applicant and the applicant came to be convicted in Complaint Case No. 911 of 2022 while sentencing him three months simple imprisonment and fine of Rs. 6,50,000/- out of which Rs. 50,000/- as to be paid to the State exchequer.

7. Assailing the said order, a Criminal Appeal No. 418 of 2024 came to be preferred by the applicant in which on 08.08.2024, the Court of Sessions Judge, Gautam Buddh Nagar proceeded to deposit 20% of the total amount of Rs. 6,50,000/- in exercise of the powers under Section 148 of the N.I. Act while staying the conviction, sentence and recovery.

8. Questioning the same, the applicant has been filed the connected application.

9. Learned counsel for the applicant has submitted that the order passed by the Additional Sessions Judge, Gautam Buddh Nagar while exercising the powers under Section 148 of the N.I. Act suffers from patent illegality, particularly, when though the power vests with the appellate court in the proceedings under Section 148 of the N.I. Act to stay the conviction and recovery post, by deposit of 20% of the amount determined by the trial court but the same needs consideration in view of the fact as to whether the case of the applicant/ accused falls under exceptional category or not. He submits that as a matter of rule on mere asking, the order directing 20% of the fine as determined by the trial court has been passed which is not as per the mandate of the Hon'ble Apex Court in ***Jamboo Bhandari v. M.P. State Industrial development; 2023 (10) SCC 466 and Muskan Enterprises v. State of***

Punjab; 2024 0 Supreme(SC) 1331. He thus submits that the appellate court be issued a blanket direction of 20% of the fine.

10. Learned AGA as well as counsel appearing for the opposite party No. 2 on instructions submitted that though the cheques stood drawn and applicant stood convicted but as per the mandate in ***Jamboo Bhandari (supra)*** and ***Muskan Enterprises (supra)*** has not been addressed. They submit that the order insofar as directs 20% of the fine as determined by the trial court is set aside and the matter be remitted back to Court below to pass fresh orders.

11. I have heard learned counsel for the parties and gone through the records carefully.

12. Apparently, post conviction the applicant preferred an appeal in which in exercise of the powers under Section 148 of the Act, the applicant was directed to deposit 20% of the said amount. There is no discussion whether the case of the applicant has been considered as exceptional category or not as a matter of rule, a direction was given to deposit 20%. It was imperative upon the court below to have considered the judgment in ***Jamboo Bhandari (supra)*** and ***Muskan Enterprises (supra)***. Since the said exercise is lacking, thus, the order cannot be sustained.

13. At this stage, learned counsel for the applicant as per the specific instructions submits that he is agreeable to deposit the total amount of 10% of the fine determined by the court below.

14. Learned counsel for the opposite party no. 2 has no objection to the same. However, his anxiety is that the appeal be decided within time bound period and the order impugned insofar as it directs to deposit to the tune of 20% may be modified to 10%.

15. Accordingly, the present application is being decided in the following terms:

(a). The order dated 12.08.2024 passed by Learned Sessions Judge, Gautam Buddha Nagar in Criminal Misc. Case No. 418 of 2024 (complaint Case no. 911 of 2022) leading application and order dated 12.08.2024 passed by Learned Sessions Judge, Gautam Buddha Nagar in Criminal Misc. Case No. 419 of 2024 (complaint Case no. 910 of 2022) connected insofar as it directs

to deposit 20% of the total amount of Rs. 33 lakhs is modified to 10 % i.e. Rs. 3,30,000/- as well as connected application in the order dated 12.08.2024 passed by Learned Sessions Judge, Gautam Buddha Nagar in Criminal Misc. Case No. 419 of 2024 (complaint Case no. 910 of 2022), it directs to deposit 20% of the total amount of Rs. 6,50,000/- is modified to 10 % i.e. Rs. 65,000/- as determined by the trial court is set aside.

(b). The matter stands remitted back to pass fresh order strictly in accordance with law.

16. Learned counsel for the applicant as well as counsel appearing for the opposite party No.2 have made a joint statement that they are in receipt of instructions, according to which, the party shall not take any unnecessary adjournments, thus, this Court is directed to the court below to pass fresh orders strictly in accordance with law, in case, any adjournment is being granted for any eventuality then the same should be on the genuine reasons and not more than ten days at a stretch.

17. It goes without saying that the appeal be also decided as per the mandate of the Act.

18. The 10% of the amount as referred to above which is to the tune of Rs. 3,30,000/- in the leading and Rs. 65,000/- in the connected application is to be deposited by 28.10.2025. In case of default of the said amount, the protection shall vacated and the court below shall free to proceed in accordance with law.

19. Accordingly, the applications stand ***disposed of***.

(Vikas Budhwar,J.)

September 26, 2025

A. Prajapati