



2025:AHC:169257

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 24891 of 2025

Deep Chaurasia

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Bharat Singh Pal, Prashant Kumar Singh

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

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Bharat Singh Pal, learned counsel for the applicant, Sri S.K. Singh, learned A.G.A. for the State and Sri Rahul Mishra, learned counsel for the opposite party no.2.
2. A joint statement has been made by the parties that they do not propose to file any further affidavit and the application be decided at this stage on the basis of the documents available on records.
3. With the consent of the parties, the application is being decided at the fresh stage.
4. This is an application under Section 528 of BNS preferred by the applicant to stay the effect and operation of the impugned order dated 26.11.2024 passed by the Additional Sessions Judge/Fast Track Court-1, Bhadohi in Criminal Appeal No.40 of 2024 (Rajesh Gopal Rupani Vs. State and others) and further direct the lower appellate court to release the interim compensation to the applicant/complainant during pendency of the criminal appeal against the conviction under Section 138 of the Act.
5. The case of the applicant is that post-lodging of a complaint by the applicant-complainant against the opposite party no.2, by virtue of the judgment and order dated 30.07.2024 passed by the Chief Judicial Magistrate, Bhadohi, Gyanpur in Complainant Case No.-504 of 2018 (Deep Chaurasia Vs. Rajesh Gopal Rupani) the opposite party no.2 came to be

convicted while sentencing him for imprisonment for a period of one year and payment of fine/compensation to the tune of Rs. 1,50,000,00/-. The said order became subject matter of challenge by way of a Criminal Appeal No.40 of 2024 (Rajesh Gopal Rupani Vs. State of U.P.) under Section 415(3) BNSS in which an order came to be passed for deposit of 20% of the total amount Rs. 1,50,000,00/- while staying the conviction, sentence and the recovery. Thereafter an application came to be preferred by the applicant-complainant on 08.11.2024 purported to be under Section 148(3) of the NI Act for release of the said amount which was objected by the opposite party no.2 on 26.11.2024, whereupon an order came to be passed 26.11.2024 in Criminal Appeal No.40 of 2024 (Rajesh Gopal Rupani Vs. State of U.P.) whereby the request of the appellant-accused was turned down.

6. Questioning the said order the present application has been preferred.

7. Learned counsel for the applicant has submitted that the order dated 26.11.2024 rejecting the application so preferred by the applicant for release of amount of Rs. 30,000,00/- cannot be sustained for the simple reason that the considerations which weighed the court below are alien and foreign to the provisions contained under NI Act.

8. Submissions is that though it was the stand of applicant-accused that the applicant herein is an offender and a clever person, look outs has issued by the Custom Department but the court below instead of recording any finding to the said aspect has come up with the new case that in case the amount is being released then it would be difficult to recover the same in case the appeal stands allowed in favour of opposite party no.2 and further it entails a major technicalities which at a given point of time would create complications. Contention is that the said basis cannot be sustained, particularly when in case the court below was of the opinion that there was any apprehension that the amount would not be returned back when the appeal stands allowed then appropriate regulatory measures would have been directed to be made directed to be made.

9. Learned A.G.A. as well as Sri Rahul Mishra, learned counsel for the opposite party no.2 submits that pursuant to the order passed in Application U/s 528 BNSS No. 25047 of 2025, an order has been passed by this Court for expeditious disposal and thus the appeal is to be decided and the question

of release of the said amount would not arise, particularly when the appeal stands decided. Further submission is that the court below has exercised its discretion and proceed to pass an order which cannot be said to be suffering from inherent illegality, particularly when there happens to be consideration of relevant aspects of the matter. However, according to him since the order in question does not advert to crucial aspects of the matter the same be set aside and the matter be remitted back to the court below to pass a fresh order.

10. Sri S.K. Singh, learned A.G.A. has accepted the argument of the learned counsel for the opposite party no.2.

11. I have heard the submissions so made across the Bar and perused the records carefully.

12. Apparently, post lodging the applicant came to be convicted under Section 138 of NI Act on 30.07.2024 by the trial court against which an appeal came to be preferred, wherein the applicant was directed to deposit 20% of the total amount of Rs. 1,50,000,00/- being Rs. 30,000,00/- which came to be deposited, thereafter an application came to be preferred by the applicant for release under Section 148(3) of the NI Act, which has been rejected. The order dated 26.11.2024 impugned reads as under:-

"वाद पुकारा गया। उभयपक्ष के विद्वान अधिवक्ता उपस्थित हैं। अपीलार्थी के द्वारा उत्तरदाता प्रतिवादी के प्रार्थनापत्र दिनांकित-08.11.2024 के विरुद्ध आपत्ति प्रस्तुत की गयी है।

प्रार्थनापत्र 16ख दिनांकित-08.11.2024 उत्तरदाता प्रतिवादी दीप चौरसिया की ओर से इस आशय का प्रस्तुत किया गया है कि अपीलार्थी/अभियुक्त ने जुमनि की धनराशि मु० 1,50,00000/- रुपये की बीस प्रतिशत धनराशि मु० तीस लाख रुपये अभियुक्त ने न्यायालय में जमा कर दी है जिसे विधिनुसार उत्तरदाता प्रतिवादी के पक्ष में अवमुक्त किया जाना आवश्यक है। प्रार्थनापत्र पर बल देते हुए उत्तरदाता के विद्वान अधिवक्ता ने यह कहा है कि एन०आई०एक्ट की धारा-148 (3) के अन्तर्गत जुमनि की धनराशि का जो भाग अपीलार्थी/अभियुक्त ने न्यायालय में जमा कराया है उसे उत्तरदाता के पक्ष में अवमुक्त किये जाने का प्राविधान है। विद्वान अधिवक्ता ने यह भी कहा है कि यदि अभियुक्त अपीलार्थी द्वारा प्रस्तुत की गयी फौजदारी अपील न्यायालय के द्वारा स्वीकृत हो जाती है और अपीलार्थी को दोषमुक्त होना पाया जाता है तो ऐसी स्थिति में उत्तरदाता सम्पूर्ण धनराशि मय ब्याज जैसा कि एन०आई०एक्ट में प्राविधानित है, वापस लिये जाने के सम्बन्ध में अण्डरटेकिंग प्रस्तुत करने के लिए तैयार है।

अपीलार्थी/अभियुक्त के द्वारा प्रस्तुत की गयी आपत्ति पर बल देते हुए यह तर्क प्रस्तुत किया गया है कि एन०आई०एक्ट की धारा-148 (3) में May शब्द का प्रयोग हुआ है न कि shall. जिससे यह परिलक्षित होता है कि अपीलार्थी द्वारा जमा की गयी धनराशि को परिवादी के पक्ष में अवमुक्त किया जाना अनिवार्य है। आपत्ति पर बल देते हुए यह भी कहा गया है कि तीस लाख रुपये एक बहुत बड़ी धनराशि होती है, जो यदि एक बार अवमुक्त कर दी जाये तो अपील स्वीकार हो जाने की स्थिति में इस धनराशि को वापस करना सम्भव नहीं होगा। विद्वान अधिवक्ता ने यह भी कहा है कि उत्तरदाता/परिवादी एक चालाक व साजिशी प्रकार का व्यक्ति है जो कस्टम विभाग द्वारा चलाये जा रहे मुकदमे में फरार हो गया है। ऐसी स्थिति में जमाशुदा धनराशि को अवमुक्त किये जाने में बहुत बड़ा खतरा है।

सुना गया तथा अवलोकन किया गया।

एन०आई०एक्ट की धारा-148 (3) के अनुसार अपीलीय न्यायालय

में अपील के लम्बित रहने के दौरान किसी भी समय अपीलार्थी द्वारा जमा की गयी रकम को परिवादी को देने का निदेश दे सकेगा। इससे स्पष्ट है कि न्यायालय को विधायिका द्वारा विवेकाधिकार प्रदान किया गया है जिसके अनुसार अपीलीय न्यायालय उक्त धनराशि परिवादी का देने से इंकार भी कर सकता है तथा धनराशि दिये जाने का आदेश भी पारित कर सकता है।

वाद के तथ्य एवं परिस्थितियों को दृष्टिगत रखते हुए अपीलार्थी द्वारा प्रस्तुत किया गया तर्क तीस लाख रुपये बहुत बड़ी धनराशि है जो अपील स्वीकार हो जाने की स्थिति में वापस प्राप्त करना उसके लिए अत्यधिक कठिन होगा, न्यायालय के अभिमत में उचित प्रतीत होता है, क्योंकि अपील स्वीकार किये जाने की दशा में धनराशि की वापसी की प्रक्रिया अत्यधिक जटिल होगी। ऐसी स्थिति में न्यायालय का अभिमत है कि सुविधा का संतुलन अभियुक्त अपीलार्थी के पक्ष में है। तदनुसार उत्तरदाता द्वारा दिया गया प्रार्थनापत्र कागज संख्या-16ख निरस्त किया जाता है। नियत दिनांक 30.11-24 को वास्ते बहस प्रस्तुत है।"

13. In the opinion of the Court, once a stand had been taken by opposite party no.2 that the applicant is an absconder in a criminal case lodged by Custom Department and in case the appeal is allowed then it would be difficult to recover the said amount and would create complications is concerned, then it was obligatory for the court below to deal with the said aspect and record findings in that regards. Since the said aspect is lacking thus the order impugned cannot be sustained.

14. Accordingly, the present application is being decided in the following manner.

(A) The order dated 26.11.2024 passed by Additional Session Judge/Fast Track Court-I, Bhadohi in Criminal Appeal No.-40 of 2024 (Rajesh Gopal Rupani Vs. State of UP) is set aside.

(B) The matter stands remitted back to the court below to pass a fresh order strictly in accordance with law.

(C) For facilitating early disposal, the parties shall furnish the certified copy of the order before the court below by 07th October, 2025 and the court below shall proceed to decide the said proceeding with most expedition.

15. Needless to point out that the Court has not adjudicated upon the merits of the case.

16. Accordingly, the application stands **disposed of**.

(Vikas Budhwar,J.)

September 19, 2025

Virendra