

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

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CRM(M) No.343/2026
CrIM No.(788/2026), CrIM No.(820/2026)

NOOR MOHAMMAD RAH

.....Petitioner(s)

Through: Mr.R.A.Jan, Sr. Advocate
with Mr. Syed Mohammad Yahya, Advocate

V/s

BASHIR AHMAD WANDROO

... ..Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

01.06.2026

1. The petitioner has challenged order dated 10.11.2025 passed by learned 1st Additional Sessions Judge, Srinagar, whereby while exercising powers under Section 148 of the Negotiable Instruments Act (hereafter the N.I.Act), the petitioner has been directed to deposit an amount of 20% of the awarded compensation i.e, Rupees two lacs (Rs.2,00,000/-) before the said Court within a period of 30 days.
2. Heard learned senior counsel appearing for the petitioner and perused the record.

3. It appears that the respondent/complainant filed a complaint against the petitioner before the Court of learned Judicial Magistrate 1st Class (Sub Registrar) Srinagar (hereafter the trial Magistrate) alleging commission of offence under Section 138 of N.I.Act. The subject matter of the complaint was four cheques for Rupees Five lacs (Rs.5,00,000/-) each, which according to the complainant were issued by the petitioner/accused in his favour for liquidating liability towards him. The cheques were dishonoured for insufficiency of funds, whereafter the complainant served notice of demand upon the petitioner. When the petitioner failed to pay the amount to the respondent/complainant, a complaint came to be filed by the respondent against the petitioner before the learned trial Magistrate.

4. After full dressed trial of the case, the learned trial Magistrate vide his judgment dated 31.12.2021 held the petitioner herein guilty of having committed offence under Section 138 of the N.I.Act. Accordingly, the petitioner was sentenced to undergo simple imprisonment for a period of six months. Besides this, the petitioner was also sentenced to pay a fine of Rupees ten lacs (Rs.10,00,000/) and in default of payment of fine, he was directed to undergo further simple imprisonment for a period of six months.

5. The aforesaid judgment was assailed by the petitioner by way of an appeal before the learned 1st Additional Sessions Judge, Srinagar (hereafter “the Appellate Court”). During the pendency of the appeal, the respondent filed an application under Section 148 of N.I.Act seeking a direction upon the petitioner to deposit amount of compensation awarded by the trial Magistrate in the Court. The learned Appellate Court after inviting objections to the application from the petitioner herein has passed the impugned order whereby the petitioner has been asked to deposit 20% of the awarded compensation i.e, Rupees two lacs (Rs.2,00,000/-) before the Court.

6. It seems that the petitioner filed an application seeking recall of order dated 10.11.2025 before the learned Appellate Court but the said application has been dismissed by the Court in terms of order dated 30.04.2026 primarily on the ground that the provisions contained under Section 403 of BNSS prohibit a Criminal Court from reviewing or altering its judgment/order.

7. The petitioner has challenged the impugned order on the grounds that the mandate relating to deposit of 20% of the compensation awarded is not absolute and that it does admit of exceptions but this aspect of the matter has not been considered by the learned Appellate Court. It has been further contended that there are special circumstances attendant to the present case,

inasmuch as, the respondent complainant in his cross examination has admitted having received an amount of Rupees twenty lacs (Rs.20,00,000/-) in cash. Therefore, the petitioner is not liable to pay any further amount to the respondent.

8. Before coming to the merits of the contentions raised by the petitioner, it would be apt to understand the position of law as regards the power of Appellate Court to order payment pending appeal against conviction. Section 148 of the N.I.Act, which has been inserted by Act 20 of 2018 w.e.f 01.09.2018, vests power with the Appellate Court to pass a direction upon the appellant who has been convicted under Section 138 of N.I.Act to deposit such sum which has to be a minimum of 20% of the fine or compensation awarded by the trial Court. The Supreme Court in the case of **Surinder Singh Deswal v. Virender Gandhi (2019) 11 SCC 341** has, while interpreting the provisions of Section 148 of N.I.Act observed as under:-

“8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI Act as amended, the appellate court “may” order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court and the word used is not “shall” and therefore the discretion is vested with the first appellate court to direct the appellant-accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and

Reasons of the amending Section 148 of the NI Act, though it is true that in the amended section 148 NI Act, the word used is “may”, it is generally to be construed as a “rule” or “shall” and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the NI Act confers power upon the appellate court to pass an order pending appeal to direct the appellant-accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant-accused under Section 389 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the NI Act is purposively interpreted in such a manner it would serve the objects and reasons of not only amended in Section 148 NI Act, but also Section 138 NI Act. The Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque, who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 NI Act and also Section 138 of the NI Act.”

9. The aforesaid observations of the Supreme Court were explained by the said Court in a later judgment delivered in the case of **Jamboo Bhandari vs Madhya Pradesh State Industrial**

Development Corporation and Ors, (2023) 10 SCC 446 in the following manner:-

“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, the 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 conclusion must be recorded.”

10. From the analysis of the aforesaid ratio laid down by the Supreme Court, it becomes manifest that in ordinary course the appellate Court would be justified in imposing the condition of deposit as provided in Section 148 of N.I.Act. It is only if the Appellate Court is satisfied that the condition of deposit of 20% would be unjust or the same would amount to deprivation of right of appeal of the appellant that such condition may be waived. Therefore, it is in exceptional cases that the Appellate Court can dispense with the condition of deposit of 20% of the fine/compensation and for the said purpose the Court would have to record the reasons.

11. Adverting to the facts of the present case, the stand of the petitioner before the Appellate Court was that cheque amount has been realized by the respondent in execution of decree passed by the civil court. It has been contended by the petitioner that the respondent during his cross examination has admitted that he has received Rupees twenty lacs (Rs.20,00,000/-) in cash and in view of this special circumstance, the petitioner cannot be asked to deposit 20% of the amount of fine/compensation.

12. If we have a look at the statement of the respondent/complainant recorded before the learned trial Magistrate, which is reproduced in judgment dated 31.12.2021 passed by learned trial Magistrate, it is revealed that the respondent in his cross examination though has admitted that he has received cash amount of Rupees twenty lacs (Rs.20,00,000/-), but he has explained that the said amount which was received by him from the petitioner pertained to a document prepared between the parties and as per the said document the respondent was to pay Rupees fifty lacs (Rs.50,00,000/-) out of which rupees twenty lacs were paid by him. He has further explained that the petitioner had issued seven cheques for an amount of Rupees twenty eight lacs and fifty thousand (Rs.28,50,00,000/-), out of which four cheques are subject matter of the complaint which amount to Rupees twenty lacs. The said explanation

tendered by the respondent has been accepted by the learned trial Court and prima facie, the observations of the trial Court in this regard are not perverse. In these circumstances it cannot be stated that there are any exceptional circumstances that would warrant dispensation of condition with regard to deposition of the amount in terms of Section 148 of N.I.Act in the present case. It is pertinent to mention here that the petitioner has not been asked by the trial Court to deposit an interim compensation in terms of Section 143A of N.I.Act.

13. For what has been discussed hereinbefore, I do not find any ground to interfere in the impugned order passed by the learned Appellate Court. Accordingly, the petition is **dismissed** being without any merit.

(SANJAY DHAR)
JUDGE

SRINAGAR

01.06.2026

Sarveeda Nissar

Whether the order is speaking: Yes

Whether the order is reportable: Yes