

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO Nos. 604 and 605 of 2026

Reserved on: 18.09.2026

Date of Decision: 30.09.2026.

1. CrMMO No. 604 of 2026

Kuldeep Sharma

.... Petitioner

Versus

M/s Shakun Chit Fund & Leasing Ltd.

.... Respondent

2. Cr.MMO No. 605 of 2026

Kuldeep Sharma

.... Petitioner

Versus

M/s Shakun Chit Fund & Leasing Ltd.

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Petitioner : M/s Vishal Bindra & Kuldeep Gagta,
Advocate, in both the petitions.

For the Respondent : Mr Rakesh Thakur, Advocate, in both
the petitions.

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Rakesh Kainthla, Judge

The petitioner has filed the present petitions against the orders dated 20.04.2026 passed by the learned Sessions Judge, Solan, District Solan, in CrMA no 585 of 2026 and CrMA no 586 of 2026, vide which the petitioner's prayer to exempt him from depositing 20% of the compensation amount was rejected.

2. Briefly stated, the facts giving rise to the present petitions are that the respondent/complainant filed two complaints against the petitioner/accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act), which were decided by the learned Additional Chief Judicial Magistrate Court No.1, District Solan, who convicted and sentenced the petitioner/accused for the commission of an offence punishable under Section 138 of the NI Act. The petitioner filed separate appeals before the learned Sessions Judge against the judgments and order of the learned Additional Chief Judicial Magistrate, Court No. 1, Solan, District Solan, H.P. He also filed separate applications seeking exemptions from depositing 20% of the compensation amount, asserting that his case was exceptional. He had sustained a brain stroke in the year 2022. He was prescribed medicines and

surgery. He had preferred another appeal in which he was directed to deposit ₹60,000/-, 20% of the cheque amount, which he could not deposit. Therefore, he had to surrender before the learned Trial Court and undergo the sentence imposed in default of the payment of compensation. Hence, he prayed that he be exempted from depositing 20% of the compensation amount.

3. Learned Sessions Judge held that financial hardship is an inherent consequence of conviction and cannot be elevated to the status of an exceptional ground. The medical condition did not show complete incapacitation from complying with the statutory mandate. Therefore, the sentence imposed by the learned Trial Court could not be suspended without the payment of 20% of the compensation amount.

4. Being aggrieved by the order passed by the learned Sessions Judge, the petitioner has filed the present petitions asserting that the learned Sessions Judge erred in not dispensing with the requirement of deposit of 20% of the compensation amount. He would not be in a position to deposit 20% of the compensation amount because of his medical condition and would be compelled to serve the sentence imposed in default of

the payment of compensation. The petitioner's case was exceptional, and the exemption from depositing 20% of the compensation amount should have been granted to him. Therefore, it was prayed that the present petitions be allowed and the orders passed by the learned Sessions Judge be set aside.

5. No reply was filed.

6. I have heard M/s Vishal Bindra and Kuldeep Gagta, learned counsel for the petitioner and Mr Rakesh Thakur, learned counsel for the respondent.

7. Mr Vishal Bindra, learned counsel for the petitioner, submitted that the petitioner is unable to deposit 20% of the compensation because of his medical condition. He has been prescribed medicines and advised surgery, but he is unable to undergo surgery because of the financial constraints. He had to surrender before the Court as he was not in a position to deposit 20% of the compensation amount. The present case is an exceptional case, and the Court had jurisdiction to waive the deposit of 20% of the compensation amount. Hence, he prayed that the present petitions be allowed and the order passed by learned Session Judge be set aside.

8. Mr Rakesh Thakur, learned counsel for the respondent, submitted that the medical condition is not a reason for not complying with the requirement of deposit of 20% of the compensation. The accused had issued a cheque which was dishonoured because of insufficient funds. He enjoyed the money taken by him and the complainant should be compensated for the loss sustained by him. Therefore, he prayed that the present petitions be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The Hon'ble Supreme Court held in *Jamboo Bhandari v. M.P. SIDC Ltd.*, (2023) 10 SCC 446: 2023 SCC OnLine SC 1144 that the Appellate Court has the discretion to waive the condition of deposit of 20% when it would be unjust or imposing such a condition as would deprive the appellant of his right of appeal. It was observed at page 449

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI 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, an exception can be made for the reasons specifically recorded.

7. Therefore, when the appellate court considers the prayer under Section 389 CrPC of an accused who has been convicted for an offence under Section 138 NI 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.”

11. It was held in *Bharat Mittal v. State of Rajasthan*, (2026) 6 SCC 155: 2025 SCC OnLine SC 2856, that the Appellate Court can waive the condition of deposit of 20% of the compensation amount in exceptional cases. It was observed at page 173:

33. This Court, in *Muskan Enterprises v. State of Punjab* [*Muskan Enterprises v. State of Punjab*, (2024) 20 SCC 85 : (2026) 2 SCC (Cri) N-23] (hereinafter referred to as *Muskan* [*Muskan Enterprises v. State of Punjab*, (2024) 20 SCC 85 : (2026) 2 SCC (Cri) N-23]) once again considered the question whether Section 148 of the NI Act is mandatory in all cases. Concurring with the ratio laid down in *Jamboo Bhandari* [*Jamboo Bhandari v. M.P. SIDC Ltd.*, (2023) 10 SCC 446 : (2024) 1 SCC (Civ) 547 : (2024) 1 SCC (Cri) 90], this Court reiterated that while Section 148 is generally mandatory, the appellate court retains the discretion, in exceptional circumstances, to exempt an appellant from making the deposit contemplated under the said provision.

34. We concur with the ratio laid down in *Jamboo Bhandari* [*Jamboo Bhandari v. M.P. SIDC Ltd.*, (2023) 10 SCC 446 : (2024) 1 SCC (Civ) 547 : (2024) 1 SCC (Cri) 90] and *Muskan Enterprises* [*Muskan Enterprises v. State of Punjab*, (2024) 20 SCC 85 : (2026) 2 SCC (Cri) N-23] and are of the considered view that the appellate court does possess a limited discretion, to be exercised only in exceptional circumstances, to exempt an appellant from making the deposit contemplated under Section 148 of the Act.”

12. Therefore, the Appellate Court can exempt the appellant from depositing 20% of the compensation amount at the time of the filing of the appeal.

13. In the present case, the petitioner has produced the medical record which shows that he is suffering from Parkinson's disease and is taking regular treatment at PGI Chandigarh. His movement is restricted. He has been advised Parkinson's Deep Brain Stimulation (DPS) Surgery. The cost of which is ₹6,00,000/- to ₹10,00,000/-. However, he has not undergone the surgery because of the financial difficulties he faces. A person who is unable to take care of himself and carry out any work, who has difficulty in walking and has tremors all over the body, cannot be expected to work and make out a living. The conclusion of the learned Appellate Court that medical condition may not be a valid reason for waiving the condition of deposit of 20% may be correct in general but is not correct in the

facts of the present case, when it has been demonstrated that the petitioner is suffering from the debilitating disease to such an extent that he is unable to take care of himself. If the condition of depositing 20% of the amount is imposed upon him, he would be deprived of his right to appeal because he would have to undergo the sentence imposed in default of the payment of compensation, which would frustrate his right of appeal.

14. It was rightly submitted on the petitioner's behalf that he cannot be compensated for the lost time spent by him in jail consequent upon the failure to deposit 20% of the compensation amount, whereas the complainant will get the money or the petitioner would go to imprisonment after the decision of the learned Appellate Court. Therefore, the consequences of non-waiver of the amount of compensation would be far graver to the petitioner than to the respondent.

15. In view of the above, the present petitions are allowed, and the order dated 20.04.2026 passed by the learned Sessions Judge is ordered to be set aside, and the petitioner is exempted from depositing 20% of the compensation amount during the pendency of the appeal.

16. A copy of this order be transmitted to the learned Sessions Court and learned Trial Court for record.

17. The present petitions stand disposed of, and so are the miscellaneous applications, if any.

18. The observations made hereinbefore shall remain confined to the disposal of these petitions and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

30th September, 2026
(Nikita)