

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 684 of 2015

Ashok Kumar Chandravanshi S/o Late Tangu Chandravanshi Aged
About 32 Years R/o Village - Andhiyarkhor, P.O. - Mohgaon, P.S.
Pandariya, Tehsil & Distt. - Kabirdham Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through : District Magistrate, Kabirdham,
Distt. - Kabirdham Chhattisgarh
2. Kamlesh Singh Rajput S/o B.N. Singh Rajput Aged About 36
Years R/o B.B.C. Tractor, Bypass Road, Raipur Road, Kawardha,
P.S. - Kawardha, Tehsil - Kawardha, Distt. - Kabirdham
Chhattisgarh

---- Respondents

For Petitioner – Shri Atul Kumar Kesharwani, Advocate.
For Respondent/State – Smt. M. Asha, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

21/09/2015

1. This is a petition against the order dated 28/04/2015 passed by the Additional Sessions Judge, Kabirdham.
2. Learned counsel for the petitioner submits that impugned order dated 28/04/2015 over suspension of sentence is passed on an appeal filed by the petitioner against the conviction made under Section 138 of the Negotiable Instruments Act wherein by order convicting petitioner a sentence of six months RI and compensation of Rs.4,30,000/- was ordered for. Learned counsel submits that said conviction was subject of challenge in appeal wherein the court while ordering suspension of sentence directed to furnish Rs.5000/- as personal bond and surety and further has directed to submit a bank guarantee of Rs.2 lakhs. Learned

counsel submits that order to submit bank guarantee of Rs.2 lakhs is most unreasonable as virtually it amounts to denial of justice. He places his reliance in case of Dilip S. Dahanukar Vs. Kotak Mahindra Company Limited and another reported in **2007 (2) CCSC 737 (SC)** and would submit that the order suspending sentence is most unreasonable, therefore in the light of that same may be set aside.

3. Learned State counsel however opposes the same.

4. I have gone through the order dated 28/04/2015. Order of suspension of sentence purports that sentence shall be suspended on furnishing personal bond of Rs.5000/- and furnishing surety for like amount. Further it directs for bank guarantee of Rs.2 lakhs to be deposited. First part of the order purports that sentence was suspended subject to furnishing personal bond of Rs.5000/- and also Rs.5000/- as surety. Now coming to the bank guarantee of Rs.2 lakhs. Bank guarantee necessarily involves like a nature of cash amount. Therefore in the opinion of this court for suspension of sentence to furnish bank guarantee it would be unreasonable in the facts of this case since bank guarantee are issued in lieu of mortgage of immovable property or any other security. As the amount of Rs.2 lakhs as bank guarantee has been ordered for, therefore would be unreasonable and virtually would amount to denial of justice. The compensation ordered while sentencing a person cannot be intermingled with the sentence. In the opinion of this court order of suspension of sentence has to be reasonable. Since appeal is admitted against the judgment of conviction for hearing, consequently, order of furnishing of bank guarantee of Rs.2 lakhs is set aside. Rest of the order

of furnishing surety of Rs.5000/- and furnishing personal bond of Rs.5000/- appears to be reasonable which the petitioner contends that has already been submitted.

5. In view of the same, with the above observation, petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE