

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1056 OF 2015

Sheshrao s/o Gunjaram Thorat,
Age 59 years, Occu. Service,
R/o Sanjivani Apartment,
Flat No.3, 'B' Building, Begumpura,
Aurangabad

..Petitioner

Versus

Santosh Keshavrao Shinde,
Age 39 years, Occu. Business,
R/o Nandanvan Colony,
Aurangabad

..Respondent

Mr M.R. Sonawane, Advocate for petitioner

CORAM : N.W. SAMBRE, J.

DATE : 20th August 2015

PER COURT

Heard learned Counsel for the petitioner.

2. The petitioner was convicted for offence punishable under Section 138 of the Negotiable Instruments Act vide Section 255 (2) of the Cr.P.C. and was directed to suffer one year's simple imprisonment and fine of Rs.15,000/- was ordered to be paid; in default to suffer simple imprisonment for one month.

3. In appeal before the learned Sessions Judge, Aurangabad an application for suspension of sentence and grant of bail came to be allowed on 7th July 2015, whereby condition was imposed on the petitioner to deposit 50% of the cheque amount. Feeling aggrieved by the said order, the present writ petition.

4. Learned Counsel for the petitioner while relying upon the judgment of the Apex Court in the matter of **Dilip s. Dahanukar vs. Kotak Mahindra Co. Ltd. and anr.** reported in **2008 (1) Mh.L.J. (SC) 22** would urge that such condition cannot be imposed while entertaining the appeal. According to him, since the appeal is a statutory right, putting restrictions on the right of the petitioner will be without any legal basis and as such, has sought quashing of the order to the extent of directing the petitioner to deposit 50% of the cheque amount.

5. Learned A.P.P. has supported the order.

6. Perused the law laid down by the Apex Court in the matter of Dilip Vs. Kotak Mahindra Co.Ltd., (cited supra), wherein the Apex Court has, in categorical terms observed that while entertaining the appeal, the appellate Court is not empowered to put any condition. In the present case it is noticed that the appeal of the present petitioner is very much entertained and the condition of deposit is incorporated for release of the present petitioner on bail and for suspension of sentence, as he has already suffered conviction for offence under Section 138 of the Negotiable Instruments Act.

7. The condition of deposit of 50% of the cheque amount in the matter of order of interim release of the petitioner, in my opinion, is just and proper.

8. No illegality is noticed in the order impugned. The writ petition as such fails, stands rejected.

(N.W. SAMBRE, J.)

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