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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

CRIMINAL WRIT PETITION NO.930 OF 2015

Naresh Sadashivrao Karewatkar,
Aged about 65 years, Occ: Retired
R/o. Shriram Nagar, Manewada Road,
Ring Road, NAGPUR. ..PETITIONER

VERSUS

1. Fourth Additional Sessions
Judge, Nagpur.

(Removed R. 1 as per Court
order dated 14.01.2016)

2. Naresh Chandumal Jothwani,
Aged about 47 years,
Occ: Business, R/o. Dal Oli
No.1, Kamptee, Tah. Kamtee,
Dist. Nagpur. ..RESPONDENTS

Mr A.P. Raghute, Advocate for petitioner;

CORAM : N.W. SAMBRE, J.

DATE : 17th MARCH, 2017

ORAL ORDER :

Present petitioner was convicted by
learned Judicial Magistrate, First Class (Court NO.
27), Nagpur, vide judgment and order dated 8th
October, 2015, in Summary Complaint Case No. 21948
of 2014, for offence punishable under Section 138
of the Negotiable Instruments Act, as the cheque

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for an amount of Rs.35,00,000/- issued by the present petitioner-accused came to be dishonoured.

2. In an appeal against the conviction, learned Additional Sessions Judge-4, Nagpur, below Exhibit-6, passed order directing suspension of sentence and release of the petitioner on bail, subject to condition that the petitioner shall deposit the amount to the extent of 25% of the compensation awarded by the trial Court i.e. Rs. 8,77,500/- with one solvent surety or cash security of Rs.15,000/-.

3. It is this order by learned Sessions Judge on 20th November, 2015 is questioned by the petitioner-accused in the present petition.

4. Mr. Raghute, learned Counsel for the petitioner-accused would invite attention of this Court to the document viz., reply to the notice dated 18th November, 2011 issued by the accused on 7th January, 2012. According to him, it is claimed by the complainant that there was an agreement in

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relation to the transfer of certain immovable property, which is alleged to have been cancelled by the present petitioner. According to him, once the respondent-complainant has come out with the stand that the agreement is very much exists and governs relationship between the complainant and petitioner, in his submission, there cannot be lawful enforceable liability against the present petitioner. He would rely upon the judgment of Madhya Pradesh High Court in the matter of **Mahinder Singh Bhasin vs Ssangyong Engineering and Construction Co. Ltd.** reported in **2015(6) Mh.L.J. (Journal) 26**. According to him, since there is no enforceable liability, proceedings under Negotiable Instruments Act, the petitioner ought not to have been convicted and as such, the order of imposing condition for his bail is unreasonable one.

5. With the assistance, I have perused the order of conviction passed by the learned Magistrate. In paragraph-22, it is required to be noted that learned Magistrate has observed that present petitioner-accused by issuing notice has

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cancelled agreement in relation to the transfer of property, for which, cheque was issued by present petitioner-accused to the respondent-complainant. Based on the same and plea of the complainant that he was not interested in the property but he was interested in getting his amount, conviction came to be ordered.

6. No doubt, right of present petitioner qua seeking bail in statutory appeal is very much available, however, such right is qualified one as could be inferred from the judgment of the Apex Court in the matter of ***Dilip S. Dahanukar vs Kotak Mahindra Co. Ltd., and another*** reported in **2007(6) SCC 528**.

7. Learned Sessions Judge, while ordering release and suspension of sentence, has imposed condition of deposit of Rs.8,77,500/-. The said condition of deposit of 25% of the amount of compensation/cheque amount, in my opinion, appears to be most reasonable. The issue as to whether there is enforceable liability or legally

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enforceable liability or not, can be gone into by learned Sessions Judge while dealing with the proceedings questioning the conviction of present petitioner, however, reasonability of the condition, if appreciated, in my opinion, there is no any illegality in the same. The writ petition, as such, fails and stands dismissed.

(N.W. SAMBRE, J.)

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