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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.314 OF 2018**

Kailash Nath Sitaram Jaiswar

...Petitioner

Versus

Premchanda Nandlal Vishwakarma and Anr.

...Respondents

Mr.Murtaza Nazmi i/b Mr.Abhaychand Sharma, for the Petitioner.

Mr.Narendra Dubey, for the Respondent No.1.

Mr.Vinod Chate, A.P.P for the Respondent No.2-State.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 2<sup>nd</sup> FEBRUARY, 2018***

**P.C. :**

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 5<sup>th</sup> January, 2018, passed by the learned Sessions Judge, in an application (for suspension of sentence), filed by the petitioner in Criminal Appeal

No.360 of 2017. By the said order, the learned Sessions Judge, directed the petitioner to deposit 50% of the cheque amount i.e. Rs.7,50,000/-.

3. Learned Counsel for the petitioner submits that the direction to deposit 50% of the cheque amount is harsh, onerous and unreasonable. He relied on the Judgment of the Apex Court in the case of ***Dilip S. Dahanukar v/s Kotak Mahindra Company Limited and Anr.***<sup>1</sup>. He submitted that the amount be reduced from 50% to 10%.

4. Learned Counsel for the respondent no.1 opposed the petition. He submitted that no interference was warranted in the impugned order.

5. Perused the papers including the impugned order dated 5<sup>th</sup> January, 2018. The petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, vide Judgment and Order dated 7<sup>th</sup> December, 2017, passed by the learned Metropolitan Magistrate, 48<sup>th</sup> Court, Andheri, Mumbai and has been sentenced to suffer simple imprisonment for 8 months. The petitioner was also directed to pay a fine of Rs.15 lakhs. Being aggrieved by the said Judgment and Order of

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<sup>1</sup> 2007 ALL MR (Cri) 1775 (S.C.)

conviction and sentence, the petitioner filed an Appeal, being Criminal Appeal No.360 of 2017 in the Sessions Court. The petitioner filed an application in the said Appeal and sought suspension of his sentence, pending the final disposal of his appeal. Pursuant thereto, the learned Sessions Judge passed the impugned order directing the petitioner to deposit 50% of the fine amount i.e. Rs.7,50,000/-, within one month in the Trial Court. Having regard to the Judgment of the Apex Court in the case of ***Dilip S. Dahanukar (Supra)***, the direction to deposit 50% of the cheque amount is harsh, onerous and unreasonable.

6. Accordingly, in the facts of the case, the petition is allowed and the direction given by the learned Sessions Judge to deposit 50% of the fine amount is modified and is reduced to 20% of the fine amount. The petitioner shall deposit the aforesaid amount in the Trial Court, within two weeks from today. It is made clear, that no further extension will be granted.

7. Petition is allowed in the aforesaid terms and is accordingly disposed of.

8. All concerned to act on the authenticated copy of this order.

***REVATI MOHITE DERE, J.***