

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

CRIMINAL WRIT PETITION NO.846 OF 2018

(SURESH BHAVARLAL SHAHA....VS.. STATE OF MAH. THR. PSO KHAMGAON CITY, DIST BULDANA.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.D.Bhate, Advocate for Petitioner.
Ms Swati Kolhe, A.P.P. for Respondent/State.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 18, 2018.

Heard.

2. By this petition the accused has challenged the condition imposed by the learned Sessions Judge requiring the accused to deposit 50% of the amount of compensation within 15 days for suspension of substantive sentence of imprisonment. The order passed by this Court on 28th August 2018 shows that this Court, while issuing notice to the respondents, accepted the proposal given on behalf of the petitioner that to show bonafides the petitioner would deposit an amount of Rs.1,00,000/- before the learned Magistrate. The learned advocate for the petitioner/accused has stated that the amount of Rs.1,00,000/- is deposited, as assured.

3. The learned A.P.P. has pointed out from the impugned order, the submission made on behalf of the accused before the Sessions Court that the accused was willing to deposit half of the amount of compensation if some time is granted. The advocate has pointed the averments in paragraph No.8 of the petition to the effect that the Sessions

Court has wrongly recorded that the accused was willing to deposit 50% of the amount of compensation. The advocate for the petitioner has submitted that as per the proposition laid down in the judgment given by the Hon'ble Supreme Court in the case of *Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd.*, reported in **2007 ALL MR (Cri) 1775 (S.C.)** and the judgment given by this Court at Aurangabad in **Criminal Writ Petition No.496 of 2015** (*Pawan S/o. Rameshchandra Rathi Vs. Tarachand S/o. Ghevarchand Dhoot & another*), the Court cannot imposed condition of depositing the amount of compensation while considering the prayer of the accused for suspension of sentence.

4. Without going into the controversy, as to whether the accused showed willingness to deposit 50% of the amount of compensation as recorded in the impugned order, in my view, the following order would sub-serve the ends of justice:

- i) The order passed by the Sessions Court, suspending substantive sentence of imprisonment on the accused depositing 50% of the amount of compensation is maintained, however, the accused is granted time till 19th October, 2018 to deposit the amount.
- ii) If the accused fails to deposit the amount till 19th October, 2018, the substantive sentence of imprisonment shall be effective and enforceable.
- iii) The amount, if deposited by the accused, shall not be given to the complainant till disposal of the appeal. The Sessions Court may pass appropriate

order regarding disbursal of the amount deposited by the accused, while deciding the appeal.

- iv) The learned Sessions Court shall decide the appeal within three months.

The writ petition is **disposed** in the above terms.

JUDGE

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