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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1627/2019 & CrI.M.As. 6503-04/2019**

BIRENDRA SHUKLA Petitioner
Through: Mr. Varun Chandiok, Advocate

Versus

STATE & ANR. Respondents
Through: Mr. Izhar Ahmed, Additional
Public Prosecutor for respondent-
State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
27.03.2019

While entertaining petitioner's appeal against conviction under Section 138 of *Negotiable Instruments Act, 1881*, Appellate Court vide impugned order of 31st January, 2019, has suspended the substantive sentence awarded to petitioner subject to deposit of 20% of the total fine amount and vide order of 18th March, 2019, the Appellate Court has made it clear that in case petitioner fails to deposit 20% of the total fine amount, then the bail granted to appellant shall stand cancelled.

Petitioner's counsel submits that neither trial court nor Appellate Court has the power to impose the condition to deposit the fine amount or to cancel the bail in case fine is not deposited. Petitioner's counsel relies upon Supreme Court's decision in *Ajay Vinodchandra Shah Vs. State of Maharashtra & Anr.* 2019 SCC OnLine Bom 436 to submit that in the

event of failure to deposit the fine, consequence cannot be cancellation of bail, as the fine imposed is recoverable by recourse to Section 421 Cr.P.C. Petitioner's counsel informs that the appeal is now coming up before the Appellate Court on 25th April, 2019.

In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition with direction to the Appellate Court to provide an effective hearing to petitioner if it proceeds to cancel petitioner's bail, as it *prima facie* appears that petitioner has an arguable case in the light of Supreme Court's decision in *Ajay Vinodchandra Shah (Supra)*.

This petition and applications are accordingly disposed of while not commenting on the merits of the case and with direction to the Appellate Court to pass a speaking order in case it chooses to cancel petitioner's bail.

Dasti.

**(SUNIL GAUR)
JUDGE**

MARCH 27, 2019

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