

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

CRIMINAL WRIT PETITION NO. 189 OF 2023

Haresh Hasmukh Rambhiya

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

Mr. Krishna K. Kulkarni, Advocate for the Petitioner.

Smt. P. V. Diggikar, APP for Respondent No. 1.

Mr. A. C. Darandale, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 10th MARCH, 2023.

P C. :-

. This is the petition challenging an order passed by the learned Additional Sessions Judge, Ahmednagar in appeal filed by the petitioner challenging the judgment and order convicting him for the offence punishable under Section 138 of the Negotiable Instruments Act (for short “N. I. Act”) in respect of different cheques. After conviction the petitioner filed appeal. In the appeal he also filed application for suspension of sentence awarded by the learned Trial Court. The learned Additional Sessions Judge by order dated 09.01.2023 allowed the application Exh. 5 and suspended the sentence till the appeal is pending with a condition to deposit 20% of the amount of the cheque. The petitioner is aggrieved by that condition

and has approached this Court. Now, the petitioner has shown readiness to deposit the amount as per the order. However, he submits that, the learned Additional Sessions Judge had directed that the amount be deposited within a period of 30 days from the date of order whereas, Section 148 of the N.I. Act provides that such amount can be directed to be deposited within 60 days and the same can be extended for 30 days thereafter. He submits that, at least that much period should have been granted by the learned Appellate Court.

2. On going through the order, it is seen that, order is not passed under Section 148 of the N.I. Act, but is passed while suspending the sentence awarded by the learned Trial Court by way of condition. Thus, it cannot be said to be an order under Section 148 of the N.I. Act.

3. After arguing for some time, learned advocate for the petitioner on instructions submits that, the petitioner would deposit the amount as per the order passed by the learned Appellate Court dated 09.01.2023, however, he prays for some time to deposit the said amount.

4. Learned advocate for the respondent No. 2 vehemently opposes this prayer. He submits that, the order is passed on 09.01.2023. By now already two months time has expired after the order and no further

extension to be granted. He fairly concedes that the petitioner should have deposited the amount within 90 days and he prays that at the most 30 days time be granted in tune with Section 148 of the N.I. Act.

5. Learned advocate for the respondent No. 2 has fairly conceded and produced on record the judgment of the Hon'ble Apex Court in a case of Surinder Singh Deswal @ Colonel S. S. Deswal and ors. Vs. Virender Gandhi reported in 2019 (11) SCC 341 wherein, the Hon'ble Apex Court has held that, even the condition while suspending the sentence is governed by the principles of Section 148 of the N.I. Act.

6. Learned advocate for the petitioner submits that, immediately after the cheques were issued, in view of Corona pandemic he suffered great loss in the business and therefore he is finding it difficult to deposit the amount and requests this Court to grant three months time.

7. Looking to the fact that, already two months time is over after passing the order, this Court finds that, only two (02) months time can be granted from today subject to filing of undertaking by the petitioner in the learned Appellate Court within a period of two (02) weeks from today. Hence, the following order.

8. The writ petition is partly allowed.

9. The petitioner to deposit the amount as per the order dated 09.01.2023 passed by the learned Additional Sessions Judge, Ahmednagar in appeal within a period of two (02) months from today. The order is subject to filing of undertaking by the petitioner within a period of two (02) weeks from today in the learned Appellate Court. To that extent, the order of the learned Appellate Court shall stand modified.

10. With this, the petition stands disposed off.

(KISHORE C. SANT, J.)

RS.B.