

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

912 CRIMINAL APPLICATION NO.1048 OF 2023

**SURESH RAMBHAU SHELKE
VERSUS
ANUPAMA W/O. YOURJA POTE THROUGH GPA YOURAJ BHANUDAS POTE**

Mr.J.I. Shaikh, Advocate for the applicant.

Mr.R.K. Kasat h/f. Mr. S.S. Thombre, Advocate for the respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 28.04.2023**

PC :-

01. Heard learned Advocates for the parties. The original accused, who is convicted by the learned Additional CJM, Court No.13, Ahmednagar, for the offence punishable under section 138 of the Negotiable Instruments Act by its judgment and order dated 28.02.2022, has preferred Criminal Appeal bearing No. 101 of 2022 in the Court of learned Sessions Judge, Ahmednagar. In the appeal the applicant filed application below Exh.5 seeking suspension of sentence. However, same was not moved before the Court for orders and preferred to stay in jail to suffer sentence of one year, imposed by the Trial Court. After completing half sentence he filed another application below Exh.8 for his release on bail, in view of section 436-A of the Cr.P.C. The learned Appellate Court vide impugned order dated 10.02.2023 passed a common order on both the applications as below :-

“1. The order of conviction and sentence passed in SCC No. 2063/2020 is suspended on the following condition.

a) Appellant shall deposit 20% of compensation amount i.e. Rs.21,15,000/- immediate after release from jail.

2. Accused Suresh Rambhau Shelke be released on bail on executing P.B. and S.B. of Rs.15,000/-”

02. It is submission of the learned Advocate for the applicant that when the application below Exh.5 was not pressed, there was no question of directing to deposit 20% amount of compensation. The application of applicant for releasing him on bail is passed in view of section 436-A of the Cr.P.C., in which no condition is necessary to be imposed. The learned Sessions Judge has thus committed mistake of law by directing to deposit 20% of the amount and submits that the order deserves to be quashed and set aside to the extent of directing to deposit 20% amount of the compensation.

03. The learned Advocate for the respondent/original complainant vehemently opposed the application stating that from the record it is not seen that the application for suspension of sentence below Exh.5 was not pressed. He submits that as it is in view of section 148 of the NI Act, it is for the Court to direct to deposit the amount of compensation which shall be minimum 20%. In this case, only minimum amount is directed to be paid. The Court has power to impose such condition even in absence of application for bail or suspension of sentence. This power is pure and simple without any condition. In-fact, amount under section 148 of the NI Act is in addition to the amount to be deposited in view of section 143-A of the NI Act. He thus submits that this application deserves to be dismissed.

04. Considering the submissions, this Court finds that there is no material on record to show that application Exh.5 was not pressed by the applicant. Considering the nature of the order, it appears that the amount was directed to be deposited as a condition for suspension of sentence. However, considering section 148 of the NI Act, the Court can certainly direct a convict in an offence punishable under section 138 of the NI Act to deposit such amount. In this case minimum amount is directed to be deposited. The discretion is thus exercised by the Court. This is not a stage to go into merits of the matter, since the learned Sessions Judge is seized of the appeal.

05. The learned Advocate for the applicant relied upon a judgment in the case of Satender Kumar Antil Vs. CBI & Anr., reported in 2022 LiveLaw(SC) 577 to submit that when half of the sentence is suffered by the appellant, no application for bail is in-fact necessary. He submits that it is thus clear that no condition needs to be imposed when a person has undergone half of the sentence as awarded by the Trial Court. He further relied upon a judgment passed by this Court at Principal Seat at Mumbai in the case of Ranjana Shantilal Suryawanshi Vs. Jaiprakash Tulsiram Gupta & Anr., (Criminal Application No.380 of 2019). Lastly he relied upon a judgment reported in 2016 ALL MR (Cri) 5181 in the case of Amit s/o. Bhagirath Mishra Vs. State of Maharashtra & Anr.

06. All these cases are not under the NI Act. The question about deposit under 148 of the NI Act was not a question for consideration in all

these cases and those are purely in respect of release of a convict on a bail.

07. After considering all these submissions, this Court finds that power to direct to deposit minimum 20% amount of compensation under section 148 of the NI Act is independent and not a condition. This Court finds that no illegality is pointed out in the impugned order. The order cannot be said to be perverse and is purely discretionary. No interference is called for. The Criminal Application is therefore dismissed.

[KISHORE C. SANT, J.]