

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

**58 CRIMINAL WRIT PETITION NO.1701 OF 2022
WITH WP/1763/2022**

**MAHESH BHAUSAHEB SURASE
VERSUS
ADIL AHEMAD JAMIL AHEMAD AND OTHERS**

Mr. Nikhilesh K. Tungar, Advocate for the petitioner in wp/1701/2022 & respondent No.3 in wp/1763/2022
Mr. M. B. Shaikh, Advocate for respondent No.1 in both petitions
Mr. V. V. Jahagirdar, Advocate for respondent No.3 in wp/1701/2022 & petitioner in wp/1763/2022

CORAM : KISHORE C. SANT, J.

DATE : 21st FEBRUARY, 2023

P C.

1. Both the petitions are by the original accused in SCC No.584/2016 who are now convicted by the learned JMFC, Aurangabad and are sentenced to suffer imprisonment till rising of the court and to pay fine of Rs. 55,21,250/-. Against conviction an appeal came to be filed in the Sessions Court, Aurangabad bearing Criminal Appeal No. 40/2022. The petitioner in petition No.1701/2022 filed an application for suspension of substantive sentence. However, no order is passed

on that application. The petitioner in Petition No.1763/2022 filed an application for suspension of substantive sentence below Exh.11 in the appeal, on which the learned Additional Sessions Judge passed an order suspending the substantive sentence with a condition to deposit 20% of the amount of the final compensation imposed by the learned trial court before the next date which was 05-11-2022. The order was passed on 18-10-2022. It is this order which is under challenge in both the petitions.

2. At the outset the learned Advocate for the petitioner in petition No.1763/2022 argued that in view of section 148 of the N. I. Act it was incumbent on the part of the learned Sessions Court to grant at least 60 days time to deposit the amount of 20% however by directing the applicants to deposit the amount practically within 15 days is in violation of section 148. He further submits that in fact the court has to take into consideration the grounds in the appeal. It is not always necessary to direct to deposit 20% of the amount of

compensation. He relied upon some judgments to submit that Section 148 uses the word 'may' and therefore, it is not imperative that there has to be an order of deposit of money. He further submits that looking to the object of the act this court at Nagpur has in Criminal Application [APL] No. 1057/2022 observed that overwhelming exceptional circumstances are required to record of section 138 of the N. I. Act can be accepted by relying upon the statement of object of purpose behind Section 148 of N. I. Act. The object is to strengthen the credibility of the cheques and help trade and commerce and in view of this he submits that in this case, there is no question of trade as relations are not in relation to trade. He further relied upon the judgment in the case of *Surinder Singh Deswal @ Col. S. S. Deswal and others Vs Virender Gandhi reported in 2019 (11) SCC 341 and another judgement between the same parties reported in 2020 (2) SCC 514*. Thus, in short his submission is that it is not always necessary to impose condition of deposit of an amount. He further submits that when trial court has relied upon the various document and different cheques it was

necessary for the appellate court to consider it as an exceptional circumstance.

3. Learned advocate in Petition No. 1701/2022 argued that though he had filed an application for suspension of substantive sentence, his application still is not considered and no order is yet passed. However, in respect of his petition the court has passed the order in another application that was filed by another accused and now even the bailable warrant is issued for non-compliance of the order. The appellate court has clearly committed illegality and challenged the impugned order.

4. The advocate for the contesting respondent in both the petitions vehemently argued that the statute prescribes vide section 148 of the N. I. Act that court can suspend the sentence with condition to deposit the amount. He submits that the court has rightly considered the said aspect and has passed an order. He relies on the judgment referred to above in the case of Surinder Singh Deswal (supra) and submits that no illegality is

committed by the learned appellate court. He submits that when the trial court has convicted the petitioner even if under challenge the proper stage to consider judgment on merit is at the hearing of appeal. In this writ petition at the stage when the court has considered the application for suspension of substantive sentence and no other material can be seen.

5. Though the petitioner has vehemently argued in petition No.1701/2022 that on his application no order is passed. However, this court finds that its only technical aspect when there is only one appeal filed by both the petitioners it was necessary for them to file one application. When the appeal is same there is no question of each of the applicant filing separate applications for suspension of substantive sentence.

6. Having considered the submission, this court finds that certainly the appellate court has failed to appreciate the provision of Section 148 of the N. I. Act by directing the applicants/petitioners to deposit the amount within 15 days or

till next date. When the statute prescribes that the said amount can be deposited within 60 days from the date of order or within such period not exceeding 30 days thereafter as may be directed so it was necessary to at least grant that much time. This court does not find any illegality with the order passed by the court except as observed above, therefore following order:-

ORDER

a] The impugned order passed by the learned Additional Sessions Judge, Aurangabad on an application below Exh.11 impugned in writ petition No. 1763/2022 is modified to the extent that the petitioner shall deposit 20% of the amount as directed by the appellate court within 60 days from the date of this order.

b] The petitioners in both the petitions shall file undertaking to that effect within two weeks that they shall deposit amount as directed by the appellate court by way of impugned order within 60 days.

7. With this, the criminal writ petitions stand disposed off.

(7)

criwp1701.22

8. Needless to say that in case failure to give an undertaking and to deposit an amount the consequences will follow.

[KISHORE C. SANT, J.]

VishalK/criwp1701.22