



CRM-M-41415-2024

-1-

126

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-41415-2024

Date of Decision: August 27, 2024

Narender Kumar

.....Petitioner

Versus

Niranjan Dass

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Aditya Sanghi, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.(ORAL)

Present petition has been filed under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023, praying to quash impugned order, Annexure P-1, dated 03.07.2024, passed by learned Additional Sessions Judge, Sirsa, while exercising the power of appellate Court directed the petitioner/accused to deposit 20 per cent of the compensation amount with aid of Section 148 of the Negotiable Instruments Act in case arising out of CRA-170-2024, registration, dated 11.06.2024, CNR No.HRS1010057002024, under Section 138 of the Negotiable Instruments Act, pending for 02.09.2024 before learned Additional Sessions Judge, Sirsa, District Sirsa. It is further prayed to stay the impugned order, dated 03.07.2024, directing petitioner to pay 20% of the cheque amount as interim compensation.

Learned counsel for the petitioner has stated that petitioner was convicted by learned Judicial Magistrate Ist Class, Ellenabad, District Sirsa

**CRM-M-41415-2024****-2-**

under Section 138 of the Negotiable Instrument Act, 1881 (for brevity, 'the NI Act'), vide judgment dated 14.05.2024, Annexure P-3, for a sentence of one year simple imprisonment and was ordered to pay fine of Rs.35,00,000/-. It is further submitted that against the order dated, 14.05.2024, the petitioner filed an appeal before the Court of Sessions at Sirsa, which is pending adjudication for 02.09.2024. Though application for suspension of sentence of petitioner was allowed, vide Annexure P-5, however, the appellate Court, vide impugned order, dated 03.07.2024, ordered the petitioner to pay 20 per cent of the compensation amount with aid of Section 148 of the NI Act. He has submitted that the petitioner has not been provided any opportunity of hearing to submit his defence before the order was passed and hence the same is unsustainable in the eyes of law. It is further submitted that moreover the impugned order has been passed by the learned Appellate Court in violation of the law settled by Hon'ble Supreme Court in **Jamboo Bhandari vs M.P.State Industrial Development Corporation Ltd. and others**, 2024(1) SCC (Cri) 90 wherein it has been held that when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the NI Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded, which is missing in the present



CRM-M-41415-2024

-3-

Heard.

In view of the aforesaid facts, and the judicial precedent settled by Hon'ble Apex Court in **Jamboo Bhandari**'s case (supra), without commenting anything on the merits of the case, the present petition is disposed of. Petitioner is relegated to approach the learned Appellate Court concerned and file an application, which would be decided, by taking into consideration the law laid down by the Hon'ble Apex Court in **Jamboo Bhandari**'s case (supra) in this regard within one month from today. The directions given in the order dated 03.07.2024 by learned Appellate Court to the extent of depositing of 20% of compensation amount on or before the date fixed and in case he fails to deposit the same, the bail granted to the accused shall be deemed to have been cancelled, is set aside. The petitioner will remain on bail as granted by the appellate Court till the application is decided by the appellate Court in view of the directions as given above.

Disposed of accordingly.

August 27, 2024

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No