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

**CRM-M No.45899 of 2024
Date of decision : 16.09.2024**

Bhupinder Singh

.....Petitioner

versus

Harwinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Piyush Sharma, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing/setting aside the order dated 20.12.2023 (Annexure P-2) passed by the Ld. Additional Sessions Judge, Fazilka in CRA No. 525 of 2023 titled as "Harwinder Singh vs. Bhupinder Singh" whereby the Petitioner has been ordered to deposit 20% of compensation amount as awarded by Ld. Trial Court vide order dated 21.11.2023 passed in complaint case no. NACT-386/2021 dated 28.04.2021 under section 138 of Negotiable Instruments Act, within a period of 60 days, in view of the order passed by Hon'ble Supreme Court in case titled as Jamboo Bhandari Versus M.P. State Industrial Development Corporation Ltd. & Ors reported in 2023 (4) RCR (Criminal) 296, as opportunity of explaining the exceptional circumstances has not been granted while imposing the above said condition of 20%. Further prayer has been made for staying the impugned order dated 20.12.2023 imposing condition of deposit of 20% of compensation amount during the pendency of said appeal.



2. Learned counsel for the petitioner has stated that petitioner was convicted by learned Judicial Magistrate First Class, Abohar under Section 138 of the Negotiable Instrument Act, 1881 (for brevity, 'the NI Act'), vide judgment dated 21.11.2023 and sentenced to undergo rigorous imprisonment of 02 years and was ordered to pay compensation of Rs.5,00,000/-. It is further submitted that the petitioner assailed the order dated 21.11.2023 by filing an appeal before the Court of learned Additional Sessions Judge at Fazilka, which is admitted for hearing on merits. Though application for suspension of sentence of petitioner was allowed, vide Annexure P-2, however, the Appellate Court, vide impugned order, dated 20.12.2023, ordered the petitioner to pay 20% of the compensation amount under Section 357(3) Cr.P.C. 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 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, 2023 (4) RCR (Criminal) 296*** 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 or not, the reasons for coming to the said conclusion must be recorded, which is missing in the present case.

3. Heard.



4. 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 appropriate application before it, 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 the date of filing of the application. The directions given in the order dated 20.12.2023 by learned Appellate Court to the extent of depositing 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 abovesaid application is decided by the appellate Court in view of the directions as given above.

5. Disposed of accordingly.

16.09.2024
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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No