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

CRM-M-49534-2024

Date of Decision: October 03, 2024

Manoj Kumar

.....Petitioner

Versus

Ajab Singh Nagar

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Sandeep Kumar Rana, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.(ORAL)

1. Present petition has been filed praying to quash impugned order, dated 08.07.2024 Annexure P-4, passed by learned Additional Sessions Judge, Faridabad, in Criminal Appeal No.176 of 2024, only to the extent whereby the petitioner has been directed to pay 20% amount of compensation awarded by the learned trial Court. It is further prayed that during pendency of the present petition, operation of impugned order, dated 08.07.2024, Annexure P-4, to the extent of deposit of 20% of the amount of compensation be stayed.

2. Learned counsel for the petitioner has stated that petitioner was convicted by learned Judicial Magistrate Ist Class, Faridabad, under Section 138 of the Negotiable Instrument Act, 1881 (for brevity, 'the NI Act'), vide judgment dated 27.05.2024, and sentenced for a period of one year simple imprisonment and to pay compensation of Rs.8,00,000/-, i.e. double the



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cheque amount, vide order dated 29.05.2024, Annexure P-1, It is further submitted that against the order dated, 27/29.05.2024, the petitioner filed an appeal before the Court of Sessions at Faridabad, which is pending adjudication. Though application for suspension of sentence of petitioner was allowed, vide Annexure P-3, however, the appellate Court, vide impugned order, dated 08.07.2024, ordered the petitioner to pay 20 per cent of the compensation amount in the Court within 60 days from the date of passing of the order. 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 case.

3. Heard.

4. In view of the aforesaid facts, and the judicial precedent settled



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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 08.07.2024 by learned Appellate Court to the extent of depositing of 20% of compensation amount within 60 days from the date of passing of the order 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.

5. Disposed of accordingly.

October 03, 2024

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(RAJESH BHARDWAJ)
JUDGE

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

Yes/No
Yes/No