



127

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

CRM-M-51223-2024

Date of decision : 16.10.2024

Didar Singh @ Dara**.....Petitioner****versus****State of Punjab and another****..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Abdul Aziz, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed seeking quashing of order dated 28.08.2023 (Annexure P-4) passed by the Ld. Additional Sessions Judge, Sangrur in Criminal Appeal No.293 of 2023 titled as Didar Singh @ Dara Vs. Tarlok Singh Rai arising out of the judgment dated 24.07.2024 passed in Criminal Case No.NACT/411/2023 titled as Tarlok Singh Rai Vs. Didar Singh @ Dara under Section 138 of Negotiable Instrument Act, 1881 being wrong, illegal and unsustainable in the eyes of law.

2. Learned counsel for the petitioner has stated that petitioner was convicted by learned Sub Divisional Judicial Magistrate, Malerkotla under Section 138 of the Negotiable Instrument Act, 1881 (for brevity, 'the NI Act'), vide judgment dated 24.07.2023 and sentenced to undergo rigorous imprisonment of 01 year and was ordered to pay the amount double of the amount of cheque as compensation under Section 357 Cr.P.C. It is further submitted that the petitioner assailed the order dated 24.07.2023 by filing an appeal before the Court of learned Additional Sessions Judge at Sangrur, which is pending adjudication. Though



application for suspension of sentence of petitioner was allowed, however, the Appellate Court, vide impugned order, dated 28.08.2023, ordered the petitioner to pay 20% of the compensation amount under Section 148 of Negotiable Instruments 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 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 allowed. 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 28.08.2023 by learned Appellate Court to the extent of depositing 20% of compensation amount within 60 days from the date of order and in case he fails to deposit the same, the suspension granted to the petitioner shall be deemed to have been vacated, 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.

16.10.2024
ps-I

(RAJESH BHARDWAJ)
JUDGE

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