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

CRM-M-53194-2024 (O&M)

Date of Decision: 24.10.2024

Anil Kumar

..... Petitioner

Versus

Rajesh Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. R.K.Arya, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

1. Prayer in the present petition filed under Section 528 BNSS, 2023 is for quashing the order dated 05.02.2024 (Annexure P-2) passed by learned Additional Sessions Judge, Pathankot in CRA-10-2024 titled as "Anil Kumar vs. Rajesh Kumar" whereby the petitioner has been directed to deposit 20% of the amount of fine or compensation as awarded by learned trial Court in favour of the complainant/respondent, within 60 days from the date of order.

2. Learned counsel for the petitioner has stated that petitioner was convicted by learned Judicial Magistrate Ist Class, Pathankot under Section 138 of the Negotiable Instrument Act, 1881 (for brevity, 'the NI Act'), vide judgment dated 05.01.2024 and sentenced to undergo rigorous imprisonment of two years and was ordered to pay compensation of Rs.2,00,000/-. It is further submitted that against the order dated 05.01.2024, the petitioner filed an appeal before the Court of learned Additional Sessions at Pathankot, which is pending for 27.02.2025. Though application for suspension of sentence of petitioner was allowed, vide order dated 05.02.2024 Annexure P-2, however, the appellate Court, ordered the petitioner to deposit 20% of



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the compensation amount with aid of Section 148 of the NI Act within 60 days. 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,** 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. It is submitted that learned trial Court has not appreciated the circumstances of the petitioner as per mandate of Hon'ble Supreme Court in **Jamboo Bhandari's** case (supra).

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 05.02.2024 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.

24.10.2024		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No